

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
Petitioner	:	
	:	
v.	:	No. 228 M.D. 1012
COMMONWEALTH OF PENNSYLVANIA,	:	
And	:	
GOVERNOR OF PENNSYLVANIA,	:	
THOMAS W. CORBETT, Jr., in his official	:	
capacity as GOVERNOR,	:	
Respondents	:	

**SECOND AMENDED
PETITION FOR REVIEW
IN THE NATURE OF
AN ACTION FOR DECLARATORY RELIEF**

John E. Childe
Attorney for Petitioner
I.D. No. 19221
1847 Center Street
Camp Hill, Pa. 17011
717-743-9811
childeje@aol.com

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTORY STATEMENT.....	1
II. STATEMENT OF JURISDICTION.....	2
III. STATUTORY AUTHORITY	2
IV. PARTIES	2
V. STATEMENT OF FACTS	4
A. Article I § 27 of the Pennsylvania Constitution.....	4
B. Statutory and Constitutional Responsibility of DCNR.....	5
C. Specialized Nature of Oil and Gas Lease Fund.....	10
D. State Forests and State Parks Are Public Natural Resources	12
1. State Forests.....	12
2. State Parks	13
E. DCNR Warnings To Governor Against Further Leasing and Diversion of Oil and Gas Lease Funds.....	14
F. Lease Sale Environmental Reviews.....	20
G. Impacts on State Forests From Leasing.....	24
H. Impacts on State Parks From Gas Extraction.....	28
I. Impacts to the Peoples' Rights to the Public Natural Resources	29
J. Impacts on Natural Resources From Loss of Oil and Gas Lease Fund.....	31
VI. DECLARATORY RELIEF REQUESTED	34
Declaration A.....	34

Declare that the Governor, as the Constitutional Trustee of Pennsylvania's Public Natural Resources Under Article I § 27, Has the Affirmative Duty to Conserve and Maintain those Public Natural Resources for the Benefit of the People

TABLE OF CONTENTS

	<u>Page</u>
Declaration B	35
Declare that the Governor has the Constitutional Duty to Consult with the Department of Conservation and Natural Resources When Considering an Action that will Negatively Impact Pennsylvania’s State Forests and Parks	
Declaration C.....	36
Declare that the Trustee Under Article I § 27 with the Mandate to Conserve and Maintain the Public Natural Resources, has the Duty Before Making a Decision or Taking an Action that Will Negatively Impact the Public’s Natural Resources, to Evaluate the Present and Future Impacts, How to Restore or Mitigate those Impacts, the Costs to Do So, and to Insure that Money is Available to Do So	
Declaration D.....	38
Declare that the Conservation and Natural Resources Act Establishes a Statutory Structure Under Article I § 27 to Balance the Negative Impact from Leasing State Forest Land for Gas Extraction with the Benefits Obtained From the Use of the Funds From the Leasing By Limiting the Leasing to the Discretion of DCNR, and Providing DCNR With All the Money From the Leasing to Restore and Mitigate the Public Natural Resources	
Declaration E.....	40
Declare that the Governor Violated the Public Trust Amendment by Deciding in the Executive Budget for Fiscal Year 2009-10 to Transfer \$163,000,000 From the Oil and Gas Lease Fund to the General Fund	

TABLE OF CONTENTS

	<u>Page</u>
Declaration F.....	43
Declare that the Governor Violated His Duty Under Article I § 27, and Violated the Conservation and Natural Resources Act, By Requiring DCNR to Lease State Forest Land for Gas Extraction to Acquire Money to be Transferred From the Oil and Gas Lease Fund to the General Fund	
Declaration G.....	44
Declare that the Governor Violated His Duty Under Article I § 27 By Approving and Signing Into Law the Provisions of the Appropriations Act For 2009-10 that Transferred \$143,000,000 From the Oil and Gas Lease Fund to the General Fund	
Declaration H.....	45
Declare that the Governor Violated His Duty Under Article I § 27 By Deciding in the Executive Budget for Fiscal Year 2010-11 to Transfer of \$180,000,000 From the Oil and Gas Lease Fund to the General Fund	
Declaration I.....	45
Declare that the Governor’s Decision to Approve and Sign into Law Article XVI-E (Oil and Gas Wells) of the 2009 Fiscal Code Amendments Violated His Duty Under Article I § 27	
Declaration J.....	52
Declare that the Fiscal Code Amendments Violate Article I §27 and are Therefore Unconstitutional	

TABLE OF CONTENTS

	<u>Page</u>	
Declaration K.....	53	
Declare that Section 104(P) of the Appropriations Act of 2011-12 Violates Article I § 27 and is Therefore Unconstitutional for Allocating Funds From the Oil and Gas Lease Fund to the General Fund for the Specific Purposes of Payment of Salaries, Fees, Travel Expenses, and Other Expenses Not Related to Conservation and Maintenance of Public Natural Resources Impacted By Gas Extraction		
Declaration L.....	53	
Declare that the Governor Violated the Public Trust Amendment by Using Oil and Gas Lease Funds for Administrative Purposes		
Declaration M.....	55	
Declare that the Governor Violated the Public Trust Amendment by Approving the Act 13 Transfers From Oil and Gas Lease Fund to the Marcellus Legacy Fund		
Declaration N.....	58	
Declare that Moneys From the Leasing of State Forest Land For Gas and Oil Extraction Are Part of The Public Trust And Must Be Used To Deal With The Impacts From Those Leases On the Public Natural Resources		
Declaration O.....	59	
Declare that Transfers of the \$383,000,000 From the Oil and Gas Lease Fund Were In Violation of The Oil and Gas Lease Fund Act, and Not Authorized Under the Fiscal Code (72 P.S. 3611), or Article I § 27		
VII. STANDING.....	61	
A. Petitioner’s Members’ Unique Interests.....		61

TABLE OF CONTENTS

	<u>Page</u>
B. Petitioner Members' Rights and Interests Are Substantially And Immediately Harmed.....	64
1. Loss of DCNR Control of Oil and Gas Funds.....	64
2. Loss of Use of Forest Land From Private Industrial Development	67
3. Loss of Air Quality and Water Quality.....	68
4. Aesthetic Harm.....	69
5. Increased Flooding From Increased Stormwater.....	70
6. Loss of Value to Real Estate.....	70
C. Conclusion.....	71
D. Request For Declaration that Petitioner has Standing.....	71

LIST OF EXHIBITS

	<u>Page</u>
EXHIBIT A-Affidavit of Cynthia Bower.....	2
EXHIBIT B-Affidavit of Joseph Lauver.....	3
EXHIBIT C-Affidavit of Robert (Butch) Davies.....	3
EXHIBIT D-Affidavit of Ron Evans.....	3
EXHIBIT E-Affidavit of Pine Creek Preservation Assn.....	3
EXHIBIT F-Affidavit of Keystone Trails Assn.....	3
EXHIBIT G-Affidavit of Lycoming Creek Watershed Assn.....	3
EXHIBIT H-Affidavit of Muncy Creek Watershed Assn.....	3
EXHIBIT I-Affidavit of Tiadaghton Audubon Society.....	3

LIST OF EXHIBITS

	<u>Page</u>
EXHIBIT J-Affidavit of Lycoming Audubon Society.....	3
EXHIBIT K-Affidavit of Responsible Drilling Alliance.....	3
EXHIBIT L-Affidavit of Slate Run Sportsmen.....	3
EXHIBIT M-Affidavit of Pine Creek Headwaters Protective Assn.....	3
EXHIBIT N-Affidavit of Pennsylvania Forest Coalition.....	3
EXHIBIT O-Affidavit of Loyalsock Creek Watershed Assn.....	3
EXHIBIT P - Penns Woods, Sustaining Our Forests.....	8
EXHIBIT Q –Auditor General Special Audit on Oil and Gas Lease Fund	10
EXHIBIT R – Attorney General “Informal” Opinion On Oil and Gas Lease Fund Act.....	11
EXHIBIT S – General Counsel letter of 1990.....	11
EXHIBIT T – Letter Opinion of Chief Counsel DCNR on Oil and Gas Lease Fund.....	11
EXHIBIT U – 2007 Update State Forest Resources Management Plan, Executive Summary	12
EXHIBIT V –Bureau of State Parks Mission Statement	14
EXHIBIT W- DiBerardinis Memos of Jan. 10 & Feb. 26, 2008.....	14
EXHIBIT X - Quigley Memorandum of September 4, 2008.....	16
EXHIBIT Y – State Park History, The Goddard Era	18

LIST OF EXHIBITS

	<u>Page</u>
EXHIBIT Z – 2011 State of the Parks/State of the Forests Report, Pennsylvania Parks and Forest Foundation, Excerpts	18
EXHIBIT AA– DCNR Natural Gas Exploration on State Lands.....	18
EXHIBIT BB –2009-20 Governor’s Executive Budget, Excerpts	18
EXHIBIT CC-DiBerardinis Memo of March 27, 2009.....	18
EXHIBIT DD-Quigley Memo of May 6, 2009.....	20
EXHIBIT EE –FY 2009-10 Environmental Review; May 2010	21
EXHIBIT FF- 2010-11 Governor Executive Budget Excerpts	22
EXHIBIT GG- 2010-11 Environmental Review.....	23
EXHIBIT HH – Governor’s Executive Order 2010-05, October 26, 2010	24
EXHIBIT II – Governor’s Marcellus Shale Advisory Commission Report, July 22, 2011, Excerpts	25
EXHIBIT JJ –The Nature Conservancy 2010, Excerpts.....	27
EXHIBIT KK – DCNR Natural Gas Exploration, Management Challenges	33
EXHIBIT LL– DCNR Natural Gas Development, Public Access and Recreation, Balancing Uses of State Forest Lands ...	33
EXHIBIT MM - Governor’s Executive Budget, FY2013-2014, Oil and Gas Lease Fund, page H53.....	54
EXHIBIT NN - Governor's Executive Budgets, FY2007-08 through FY 2012-13, Oil and Gas Lease Fund.....	54

I. INTRODUCTORY STATEMENT

(1). Petitioner submits this Second Amended Petition to include new information from documents obtained from preliminary discovery and deposition testimony regarding the active involvement of Governor Ed Rendell in the process of requiring the transfer of funds from the Oil and Gas Lease Fund to the General Fund and in the requirement to lease additional State Forest land for gas extraction.

(2). Petitioner also submits this Second Amended Petition to present the nature of the declaratory relief sought more clearly. Since all the relief sought is declaratory relief, Petitioner has eliminated the use of Counts and organized the relief section as a series of declaratory statements that the Petition is seeking. The Governor has taken a series of actions since 2008 that threaten the integrity of our State Forests and other public natural resources being subject to oil and gas extraction. The complexity of these actions makes presentation of succinct statements of relief sought difficult.

(3). With respect to the declaratory relief sought, this Second Amended Petition clarifies that in addition to declarations that certain legislation is unconstitutional, Petitioner also seeks, based on the new evidence obtained during discovery, declarations of the Governor's violation of Article I, Section 27 of the Pennsylvania Constitution, his duties as trustee of the State Forest and other public natural resources under the Constitution, and the people's rights, specifically those of the Petitioner, to those public natural resources.

(4). Additionally, Petitioner is withdrawing the allegations that Article III § 3 and Article III § 11 have been violated.

II. STATEMENT OF JURISDICTION

(5). The Commonwealth Court has jurisdiction to review this case pursuant to 42 P.S. § 761(a); the Pa. Rule of Civil Procedure 1601 *et seq.*; and the Declaratory Judgment Act, 42 P.S. §§ 7531 *et seq.*, as well as the Pennsylvania Rules of Civil and Appellate Procedure.

III. STATUTORY AUTHORITY

(6). This Petition For Review is brought pursuant to Article I § 27 of the Pennsylvania Constitution; the Conservation and Natural Resources Act, Act of June 28, 1995, P.L. 89, No. 18 (71 P.S. §§ 1340.101 *et seq.*); and the Oil and Gas Lease Fund Act, Act of December 15, 1955, P.L. 865, No. 256 (71 P.S. §§ 1331 *et seq.*).

IV. PARTIES

(7). The Petitioner is the Pennsylvania Environmental Defense Foundation (“PEDF”), Ron Evans, President, 818 Spring Creek Road, Bellefonte, Pennsylvania, 16823, Phone: 717-579-2263, an entity incorporated as a non-profit organization in 1986 under the laws of Pennsylvania for the purpose of protecting and preserving the environmental interests of its members in Pennsylvania. As established by the following affidavits attached hereto, Petitioner’s members have substantial, direct and immediate interest in the claims set forth in the Petition:

(a). Affidavit of Cynthia Bower, **Exhibit A**

- (b). Affidavit of Joseph E. Lauver Jr., **Exhibit B**
- (c). Affidavit of Robert (Butch) Davey, **Exhibit C**
- (d). Affidavit of Ron Evans, **Exhibit D**
- (e). Affidavit of Pine Creek Preservation Association, **Exhibit E**
- (f). Affidavit of Keystone Trails Association, **Exhibit F**
- (g). Affidavit of Lycoming Creek Watershed Association, **Exhibit G**
- (h). Affidavit of Muncy Creek Watershed Association, **Exhibit H**
- (i). Affidavit of Tiadaghton Audubon Society, **Exhibit I**
- (j). Affidavit of Lycoming Audubon Society, **Exhibit J**
- (k). Affidavit of Responsible Drilling Alliance, **Exhibit K**
- (l). Affidavit of Slate Run Sportsmen, **Exhibit L**
- (m). Affidavit of Pine Creek Headwaters Protection Group, **Exhibit M**
- (n). Affidavit of Pennsylvania Forest Coalition, **Exhibit N**
- (o). Affidavit of Loyalsock Creek Watershed Association, **Exhibit O**

(8). The Respondent Commonwealth of Pennsylvania is the Constitutional Trustee of the Public Trust of Pennsylvania's public natural resources as set forth in Article I § 27.

(9). The Respondent Governor of the Commonwealth of Pennsylvania (formerly Edward Rendell and currently Thomas W. Corbett, Jr., acting in his official capacity as Governor) is the Chief Executive Officer of the

Commonwealth. Under Article IV, Section 2 of Pennsylvania’s Constitution, the governor of the Commonwealth “has the supreme executive power of the executive branch of the Commonwealth, who shall take care that the laws [of the Commonwealth] be faithfully executed.”

IV. STATEMENT OF FACTS

A. Article I § 27 of the Pennsylvania Constitution

(10). The Public Trust Amendment, which was adopted by the citizens of Pennsylvania on May 18, 1971 as part of the Constitution of the Commonwealth, 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.

(11). The Public Trust Amendment requires the Commonwealth, as Trustee, to conserve and maintain our natural resources for the benefit of all the people of the Commonwealth, both now and for the future. This provision establishes two mandates for the Trustees: (1) to conserve and maintain the public resources; and (2) to manage those resources for the benefit of all the people, both now and for generations to come.

(12). The Commonwealth’s obligation to conserve and maintain the public’s natural resources for the benefit of all the people must be carried out in a

manner that protects the people’s “right to clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment” under the Public Trust Amendment.

B. Statutory and Constitutional Responsibility of DCNR

(13). DCNR is the agency designated with the expertise and the responsibility to manage our State Parks and State Forests; and to determine when and where to lease those lands for development and sale of oil and gas; and to determine how and when to use the rents and royalties from leasing State Forest lands for projects that conserve and maintain our State Parks and Forests, as well as our rivers, trails, greenways and community recreation and heritage areas consistent with the requirements of the Public Trust Amendment, the Conservation and Natural Resources Act and the Oil and Gas Lease Fund Act.

(14). The intent and purpose of the Conservation and Natural Resources Act, is:

To create a new Department of Conservation and Natural Resources to serve as a cabinet-level advocate for our state parks, forests, rivers, trails, greenways and community recreation and heritage conservation programs to provide more focused management of the Commonwealth’s recreation, natural and river environments. The primary mission of the Department of Conservation and Natural Resources will be to maintain, improve and preserve state parks, to manage State forest lands to assure their long-term health, sustainability and economic use ...

71 P.S. § 1340.101(b)(1) (emphasis added).

(15). CNRA incorporates the Public Trust Amendment, stating: “Pennsylvania’s public natural resources are to be conserved and maintained for the use and benefit of all its citizens as guaranteed by section 27 of Article I of the Constitution of Pennsylvania.” 71 P.S. § 1340.101(a)(1).

(16). DCNR is the statutorily designated trustee under Article I § 27 for the purpose of conserving and maintain Pennsylvania’s public natural resources, including the State Parks and Forests.

(17). CNRA recognizes that DCNR has a strong economic component to its responsibilities, stating: “Our state parks and forests and community recreation and heritage conservation areas are critical to the continued success of our tourism and recreation industry, the second largest industry in the State.” 71 P.S. § 1340.101(a)(4).

(18). CNRA goes on recognize the vital importance of Pennsylvania’s State Parks and Forests, stating: “Preserving, enhancing, maintaining and actively managing our system of state parks, forests, community recreation and heritage conservation areas contributes to the quality of life of Pennsylvania’s citizens and the economic well-being of the State.” 71 P.S. § 1340.101(a)(6).

(19). CNRA recognized the need for a new department, DCNR, to be the advocate for these public natural resources, stating: “State parks, forests and community recreational and heritage conservation areas have lost out in the

competition for financial and staff resources because they have no cabinet-level advocate to highlight these issues for the public.” 71 P.S. § 1340.101(a)(9).

(20). CNRA articulates DCNR’s role, stating: “The primary mission of DCNR will be to maintain, improve and preserve State parks, to manage State forest lands to assure their long-term health, sustainability and economic use...and to administer grant and technical assistance programs that will benefit rivers conservation, trails and greenways, local recreation, regional heritage conservation and environmental education programs across Pennsylvania.” 71 P.S. § 1340.101(b)(1).

(21). The DCNR Bureau of Forestry, citing Article I § 27 and its statutory mission to assure the long term health, sustainability and economic use of the forest (71 P.S. § 1340.101(b)(1)), defines its mission as:

“Managing state forests under sound ecosystem management, to retain their wild character and maintain biological diversity while providing pure water, opportunities for low-density recreation, habitats for forest plants and animals, sustained yields of quality timber, and environmentally sound utilization of mineral resources.

Protecting forestlands, public and private, from damage and/or destruction by fires, insects, diseases and other agents.

Promoting forestry and the knowledge of forestry by advising and assisting other government agencies, communities, landowners, forest industry, and the general public in the wise stewardship and utilization of forest resources.

Protecting and managing native wild flora resources by determining status, classifying, and conserving native wild plants.”

DCNR Bureau of Forestry Mission Statement, first stated in the 1995 Planning Document, “Penn’s Woods, Sustaining Our Forests, **Exhibit P**.”¹

(22). CNRA reauthorizes in DCNR, subject to the mandates of the Public Trust Amendment, authority previously given to the Department of Forests and Waters “to make and execute contracts or leases in the name of the Commonwealth for the mining or removal of any valuable minerals that may be found in State forests ... whenever it shall appear to the satisfaction of the Department that it would be for the best interests of the Commonwealth to make such disposition of those minerals.” 71 P.S. § 1340.302(a)(6).

(23). CNRA also reauthorizes in DCNR, subject to the Public Trust Amendment, the authority previously given to the Secretary of Forest and Waters under the Oil and Gas Lease Fund Act to use rents and royalties generated from Commonwealth oil and gas leases of State Forest land for projects to benefit the public natural resources managed by DCNR. 71 P.S. § 1340.304(c).

(24). The Oil and Gas Lease Fund Act requires that the rents and royalties from oil and gas leases of Commonwealth land (other than game and fish lands) be placed in a special fund known as the Oil and Gas Lease Fund, to be used for the exclusive purposes of conservation, recreation, dams, and flood control; and authorizes only the Secretary of Forest and Waters (now DCNR) to determine the

¹ http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_20026631.pdf.

need for and location of such projects and to acquire the necessary land. It also authorizes DCNR to purchase land to meet the purposes of the Act. 71 P.S. § 1331-1334.

(25). By reauthorizing authority in DCNR to lease State Forest land for oil and gas extraction and to use the rents and royalties from such leasing for the purposes established in Oil and Gas Lease Fund Act, CNRA ensures that DCNR has the resources to carry out the mandates of the Public Trust Amendment.

(26). Through CNRA, the legislature created a balanced protection under Public Trust Amendment to allow leasing State Forests for oil and gas extraction by limiting the decision to lease to the statutorily designated trustee, DCNR; and providing DCNR with the authority to allocate the funds from the leasing to insure that the duties to conserve and maintain the public natural resources for the use and benefit of the citizens are met.

(27). DCNR has developed the knowledge and expertise to implement the purpose and goals of CNRA, including implementing continued oil and gas extraction on the State Forest. DCNR has the staff and the experience to study and evaluate the impacts from oil and gas extraction on both State Parks and State Forests, and to insure the sustainability of the public natural resources of our State Parks and Forests impacted by oil and gas extraction.

C. Specialized Nature of the Oil and Gas Lease Fund

(28). The Auditor General conducted an audit of the Oil and Gas Lease Fund and submitted the results of the audit to the Governor (then Governor Rendell) on August 10, 2004. The Auditor General found that revenue from the Oil and Gas Lease Fund must by law be used exclusively for conservation, recreation, dams and flood control Projects on Commonwealth lands. The Auditor General concluded that DCNR failed to exercise reasonable oversight of royalty payments to the Fund; and that DCNR had failed to ensure that the purchases made from the funds were for the specific purposes set forth in the Oil and Gas Lease Fund Act. Auditor General Special Audit on Oil and Gas Lease Fund (“2004 Audit”), Page 1, **Exhibit Q**.

(29). The Auditor General found that expenditures for items such as salaries, clothing and other costs which do not appear to be within the purposes set out in the Oil and Gas Lease Fund Act, were of questionable direct benefit to the physical enhancement and conservation of State Parks and State Forests, the intended beneficiaries of the revenues in the Oil and Gas Lease Fund, and therefore were inappropriate or unjustified. 2004 Audit, Page 2, **Exhibit Q**.

(30). The Auditor General cited in the 2004 Audit an “informal guidance” letter from the Attorney General dated February 7, 1991 in which the Attorney General advised the State Treasurer that the proper lawful use of the Oil and Gas

Lease Fund is to carry out physical projects to enhance and conserve the Commonwealth's natural resources. 2004 Audit, Pages 19-22, **Exhibit Q**; Attorney General Letter dated February 7, 1991 ("1991 Letter"), **Exhibit R**; *see also* General Counsel letter to the State Treasurer dated November 2, 1990, **Exhibit S**; and DCNR Chief Counsel memorandum dated February 24, 2012, **Exhibit T**.

(31). The Attorney General specifically states in the 1991 Letter that the Oil and Gas Lease Fund Act "expressly authorizes expenditures to acquire land needed for conservation, recreation, dam or flood control projects" and also for "the construction of facilities and other improvements to land *necessary for such projects*, and for the subsequent purchase of equipment, supplies and services *necessary to maintain or enhance* such projects." 1991 Letter, Page 2, **Exhibit R** (emphasis added). The 1991 Letter continues:

I believe it beyond the authority of the [Oil and Gas Lease Fund] Act to expend Fund receipts for a purpose not attributable to a specific project undertaken pursuant to the Act. It is not enough that expenditures for the Fund should relate to conservation, recreation, dam or flood control. If it were, then the Oil and Gas lease Fund would be little more than a general funding source for the broad range of statutory functions performed by DER^[2]; and the Act, while imprecise in its expression of intent, certainly suggests otherwise.

In my judgment, the General Assembly's establishment of *this special fund*, and its *focus on geographically-identifiable projects* reflects an

² DER refers to the Department of Environmental Resources, which prior to CNRA's enactment carried out the regulatory functions now performed by the Department of Environmental Protection and the recreation and conservation functions now performed by DCNR.

intent that revenues derived from the depletion of the Commonwealth's natural resources should be dedicated directly to the physical enhancement or conservation of the Commonwealth's natural resources. Viewed in this light, [the Oil and Gas Lease Fund Act] would not authorize the use of Fund receipts to support DER's regulatory or enforcement activities, its general administrative or legal operations, or any other function not related directly to a project undertaken pursuant to the Act.

Id., Page 3 (emphasis added.)

D. State Forests and State Parks Are Public Natural Resources

(32). Pennsylvania's State Parks and State Forests, including the air, water, wild animals and fish, trees and plants and minerals, especially those that are rare and endangered, are part of the public natural resources that are the common property of all people, including generations yet to come, as set forth in CNRA Section 101(b), 71 P.S. § 1340.101(b), and the Public Trust Amendment. *See* Robert Broughton, *The Proposed Pennsylvania Declaration of Environmental Rights, Analysis of H.B. 958*, 41 Pa. Bar Assn. Q. 421, 426-427 (1970).

1. State Forests

(33). Pennsylvania's 2.1 million acre publicly-owned forest system (the "State Forest") is one of the largest expanses of public forest land in the eastern United States, making it a truly priceless public asset. 2007 Update State Forest Resources Management Plan ("SFRM Plan"), Executive Summary, **Exhibit U**.³

³ <http://www.dcnr.state.pa.us/forestry/sfrmp/update.aspx>.

(34). The benefits of this public asset to the people of Pennsylvania, as stated in the SFRM Plan, include, to provide high quality forestry products which help support a forest products industry; to provide a 2.1 million acre water treatment and air purification system; to provide recreational opportunities and wilderness experiences, as well as a multitude of natural, scenic, historic and aesthetic resources, all vital to Pennsylvania's tourism industry and the health of Pennsylvania's citizens. To provide the largest publically owned habitat for plants and animals, including many endangered, threatened and rare species, in the Commonwealth. *Id.*

(35). Our State Forest contains valuable mineral resources that have provided economic benefits to the people of Pennsylvania for the acquisition of additional lands for the State Forest and for State Parks, and for the development, operation and maintenance of the facilities needed to allow the people of the Commonwealth to enjoy these resources. *Id.*

(36). Our State Forest is a combination of these resources, uses, and values, as well as a functioning biological system with intrinsic values, to be held in trust for future generations. *Id.*

2. State Parks

(37). Pennsylvania has a nationally-recognized system of 120 State Parks, with over 295,000 acres of land, providing an array of recreational opportunities,

environmental education forums, and unique natural, scenic, historic and esthetic areas within 25 miles of every Pennsylvanian (*see* Pennsylvania State Parks, DCNR website⁴).

(38). DCNR describes its State Park mission under CNRA as follows: “The primary purpose of Pennsylvania’s State Parks is to provide opportunities for enjoying healthful outdoor recreation and serve as outdoor classrooms for environmental education. In meeting these purposes the conservation of the natural, scenic, aesthetic, and historical values of parks should be given first consideration. Stewardship responsibilities should be carried out in a way that protects the natural outdoor experience for the enjoyment current and future generations.” Pennsylvania State Parks Management Plan, Draft, Sept. 2012, **Exhibit V**; 71 P.S. § 1340.303(a).

E. DCNR Warnings To Governor Against Further Leasing and Diversion of Oil and Gas Lease Funds

(39). Early in 2008, then DCNR Secretary Michael DiBerardinis advised then Governor Rendell that he decided to lease 75,000 acres of State Forest land for gas development in the Marcellus Shale Geologic region. Secretary DiBerardinis Memoranda dated January 10, 2008 and February 26, 2008 (“2008 Memos”), **Exhibit W**.

⁴ <http://www.dcnr.state.pa.us/discoverdcnr/ataglance/bureaus/index.htm>.

(40). In the 2008 Memos, Secretary DiBerardinis specifically advised Governor Rendell that:

(a). The purpose of the proposed 75,000 acre lease sale was to meet the demands of the industry for more leases, and to preempt legislation which had been introduced by Senator Mary Joe White and Representative Hutchinson,⁵ then chair of the Joint Conservation Committee, to lease the entire State Forest for gas extraction;

(b). Secretary DiBerardinis expressed concern that such legislation would take away from DCNR the ability to decide when to lease State land for gas extraction, and would result in damaging impacts to the State Forest;

(c). Gas drilling activity on the State Forest has occurred since 1947 and, as of 2008, more than 565,000 acres of the 2.1 million acres of State Forest were under active natural gas development; more than 250,000 acres were under

⁵ Senate Bill 1127, Session of 2007, was introduced on October 19, 2007 and House Bill 32, Special Session No. 1 of 2007-2008, was introduced on October 18, 2007. Both bills proposed to amend the State Forest leasing provision in CNRA Section 302(a)(6) to include the following: “The department shall conduct a competitive public auction to lease State forest land for exploration and development of natural gas reserves owned by the Commonwealth whenever two or more bidders nominate overlapping or contiguous State forest land acreage for lease. The department shall conduct the public auction within six months of the receipt of a second nomination for contiguous or overlapping acreage.” The bills also required the department to grant rights-of-way through State Forests and State Parks “as needed to facilitate the gathering and delivery to market of natural gas produced from State forest [or State park] lands or from adjacent or contiguous public or private lands.”

active oil and gas leases managed by DCNR, mostly in the Pennsylvania Wilds CLI area, with approximately 550 wells drilled, over 90% of which were shallow gas wells; another 315,000 acres were under development through private oil and gas leases because the Commonwealth does not own the subsurface oil and gas rights on these State Forest lands.

(d). The 2003 State Forest Resource Management Plan had proposed a ban on shallow gas leasing, which DCNR believed at the time to cause more intense impact on the surface of the land than deep well gas drilling. DCNR believed that most of the impact from gas drilling resulted from the fragmentation of the surface vegetation caused by the development of roads and well pads. Shallow gas development requires a proportionally greater number of wells at closer spacing than medium or deep development.

(41). On September 3, 2008, DCNR received the bids for the approximately 74,000 of State Forest land offered in the oil and gas leases with the bids totaling approximately \$190,000,000. Subsequently, the final lease sale bid total was reduced to \$163,408, 695. Email from John Quigley to the Governor's Office dated September 4, 2008 ("2008 Email"), **Exhibit X**; *see also* 2008 Lease Sale Information on DCNR's website.⁶

⁶ http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_017231.pdf

(41). In the 2008 Email, John Quigley, then advisor to Secretary DiBerardinis, provided the following to the Governor through the Governor's chief of staff at the direction of the Secretary:

(a). A series of documents regarding the 2008 lease sale, including a list of the bidders and the amounts they bid, with a statement below the list stating, "*Revenues generated from a lease sale go to the Oil and Gas Lease Fund, which by law must be used for conservation and recreation programs*" (emphasis added).

(b). A list of projects that DCNR needed to complete using the funds from the 2008 lease sale, with the statement that DCNR anticipated that only a small portion of the total leased acreage would be used for well site locations.

(c). A copy of the Oil and Gas Lease Fund Act;

(d). A list of projects completed with money from the Oil and Gas Lease Fund since its inception in 1955, including the purchase of oil and gas development rights under State Parks and State Forests; State Park and State Forest recreation sanitation facilities; State Parks and State Forest flood control and dam safety projects; Pine Creek Rail Trail; land acquisition for 9 new State Parks, and enlargement of 20 other State Parks.⁷

⁷ Since 1955, when Maurice Goddard got the Act passed the Oil and Gas Lease Fund has been used to purchase 26 state parks, construct 170 drinking water treatment systems, 58 wastewater treatment systems, 798 bridges, 3,000 miles of

(42). On February 4, 2009, five months after the 2008 Email from DCNR advising of its planned use of revenue the 2008 lease sale consistent with the requirements of the Oil and Gas Lease Fund Act, then Governor Rendell sent his proposed budget to the General Assembly. In that proposed budget, the Governor ignored DCNR's plans, and committed to transferring \$174,000,000 from the Oil and Gas Lease Fund to the General Fund. Excerpts from the Governor's Executive Budget for Fiscal Year 2009-10, **Exhibit BB**.

(43). A month later, Secretary DiBerardinis sent another memorandum to the Governor expressing his great concern and the concern of DCNR, as the steward of State Forest resources, about the intense interest in leasing even more State Forest land for gas extraction. Secretary DiBerardinis Memorandum dated March 27, 2009 ("March 2009 Memo"), **Exhibit CC**.

(44). Specifically, Secretary DiBerardinis warned the Governor of the following in the March 2009 Memo:

(a). Now 660,000 acres of State Forest was subject to oil and gas leases, 290,000 under private leases, and all of which would allow unconventional drilling in shale formations like the Marcellus;

roads, 125 dams and 5,000 buildings. See *State Parks History, The Goddard Era*, attached as **Exhibit Y**; *2011 State of the Parks/State of the Forests Report, Pennsylvania Parks and Forest Foundation* (excerpts attached as **Exhibit Z**); and *DCNR Natural Gas Exploration on State Forest Land*, attached as **Exhibit AA**).

(b). To date only two unconventional Marcellus wells had been drilled, but DCNR now believed more than 4000 unconventional wells could be drilled, and that full development of the leased acreage could take 10 to 20 years or more;

(c). The continued wholesale leasing of the State Forest for natural gas extraction will damage the State forest landscape, and *scar the economic, scenic, ecological, and recreational values of the forest, especially the most wild and remote areas of our state in the PA WILDS* (emphasis added);

(d). That “*diverting the Oil and Gas Lease Fund’s* lease sale and royalty proceeds toward general use and away from their legislated purpose *sets a dangerous precedent. This reliable funding stream-intended to offset the impacts of resource extraction*-has endured through 50 years and multiple administrations, providing stable investments to conservation and environmental protection. The fund has supported the acquisition, infrastructure investments, and maintenance of our state parks and forest that make them what we enjoy today”; and

(e). In conclusion, that “*A rush to drill places the state forest and all its benefits at risk. A balanced management will protect and enhance the legacy we inherited and allow us to deliver it safely to future generations of Pennsylvanians.*”

(45). In spite of warnings of Secretary DiBerardinis, less than a month and a half later the Governor directed DCNR to prepare to lease a total of 80,000 additional acres of State Forest to generate money for the General Fund. Memorandum of Acting Secretary John Quigley dated May 6, 2009 (“May 2009 Memo”), **Exhibit DD.**)

(46). In the May 2009 Memo, the then newly appointed acting Secretary of DCNR, John Quigley, acknowledging the Governor’s mandate to go forward with leasing the additional 80,000 acres, cited and restated the concerns of the March 2009 Memo, and advising that “DCNR remains very apprehensive about the leasing of any additional State Forest land. Field Staff who are charged with managing exploration activity on SFL are deeply concerned about any new leases.”

(47). Again the Governor and his staff ignored the warnings of the acting DCNR Secretary, and required the leasing of the 80,000 acres to go forward.

F. Lease Sale Environmental Reviews

(48). On October 9, 2009, the Governor signed the Appropriations Act for Fiscal Year 2009-10, which transferred \$143,000,000 generated from the 2008 lease sale from the Oil and Gas Lease Fund to the General Fund. The Governor also signed a Fiscal Code Amendment on the same day that authorized the transfer of another \$60,000,000 from the Oil and Gas Lease Fund to the General Fund for the current Fiscal Year 2009-10. To generate this additional \$60,000,000 approved

by the Governor, DCNR was ordered to proceed with additional leasing of the State Forest. And with the Governor's enactment of the Appropriations Bill and the Fiscal Code Amendments, DCNR had no choice but to proceed.

(49). One month later on November 9, 2009, DCNR announced the availability of six additional tracts of State Forest land (approximately 32,000 acres) for lease for oil and gas extraction. The same day, DCNR issued an environmental review to support the lease sale, but acknowledged in the document that review was a formality as the department was holding the lease sale to comply with the Governor's approval of the sale to generate revenue for the General Fund. FY 2009-10 Oil & Gas Lease Sale State Forest Environmental Review ("2009 Environmental Review"), **Exhibit EE**.⁸

(50). The 2009 Environmental Review states under the heading "PROJECT REVIEW ITEMS: 1. Consistency with State Forest Management Plan": "This lease sale is a direct result of certain line items contained within the budget agreement and fiscal code for FY 2009-10. Following the success of the September 2008 Lease Sale, DCNR and the Bureau of Forestry had decided to not to offer additional lands for lease but rather study the Marcellus play and the operational developments and requirements on the 660,000 acres within the Marcellus fairway

⁸ http://www.dcnr.state.pa.us/cs/groups/public/documents/document/d_000606.pdf

subject to valid lease agreements.” 2009 Environmental Review, Page 4, **Exhibit EE**.

(51). As a result of the Governor’s order to conduct the lease sale in spite of the fact that DCNR had decided not to lease any more State Forest land until DCNR had time to study the impacts from the existing leases, DCNR was required to go ahead with an environmental review without sufficient information from the studies DCNR had hoped to perform.

(52). On January 12, 2010, the bid opening for the six additional State Forest tracts offered for lease generated bids totaling of over \$128,000,000.⁹

(53). On February 9, 2010, the Governor proposed to transfer another \$180,000,000 from the Oil and Gas Lease Fund to the General Fund in his Executive Budget for Fiscal Year 2010-11, and again required DCNR to lease additional State Forest land to generate the revenue for this transfer. Excerpts from Governor’s Executive Budget for Fiscal Year 2010-11, **Exhibit FF**.

(54). On May 10, 2010, DCNR conducted a sole source lease sale of approximately 33,000 additional acres of State Forest land to Anadarko E&P Company LLP for over \$120,000,000.¹⁰ May 2010 Oil & Gas Lease Offering

⁹ http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_017232.pdf

¹⁰ http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_017233.pdf

State Forest Environmental Review (“2010 Environmental Review”), **Exhibit GG**.¹¹

(55). In the 2010 Environmental Review, DCNR again states that it has been directed to conduct the lease sale and the environmental review is a formality. Specifically, DCNR state under “*PURPOSE*” that “Planning for the May 2010 Oil and Gas Lease offering began approximately five (5) months ago at the direction of the Governor’s Office as part of the FY 2010-11 Commonwealth budget process.” DCNR also states under the heading “PROJECT REVIEW ITEMS; 1. Consistency With State Resource Management Plan” that “Following the FY 2009-10 Lease Sale, DCNR and the Bureau of Forestry decided [again] not to offer additional lands for lease but rather study the Marcellus play and the operational developments and requirements of the 700,000 acres (approximate) within the Marcellus fairway already subject to valid lease agreements. However, due to projected shortfalls in the Commonwealth Budget, the Bureau of Forestry has been mandated to generate \$180 million for the Commonwealth.” 2010 Environmental Review, Pages 1, 5, **Exhibit GG**.

(56). The Governor again, without conducting any independent environmental review, again ignored DCNR’s decision not to lease because of the need to study the impacts of the existing leases.

¹¹ http://www.dcnr.state.pa.us/cs/groups/public/documents/document/d_000599.pdf

(57). DCNR again was required to lease, and to conduct an environmental review with the foregone conclusion that the lease sale had to be approved.

(58). The environmental reviews for 2008, 2009 and 2010 were based on DCNR having little or no knowledge of how the deep well, horizontal drilling process in the Marcellus Shale Region would have on the surface of the land.

G. Impacts On State Forests From Gas Leasing

(59). Most of the State Forest impacted by Marcellus Shale extraction activities is concentrated in the north central part of the State, which is the headwaters area for much of the Susquehanna River Basin. This State Forest land, [principally in the Loyalsock, Tioga, Tiadaghton, Sproul, Susquehanna, and Moshannon State Forests], includes the Pine Creek George, and much of the high quality cold water streams that are the habitat of endangered wild trout populations of Pennsylvania. It is also the center of many of Pennsylvania's wild native plant species. Governor's Executive Order 2010-05 issued on October 26, 2010 ("Governor's Executive Order"), **Exhibit HH**).

(60). The Public Trust lands currently leased for gas production are and will continue to be significantly impacted as they are developed. These impacts include and have been identified as follows:

(a). By 2030, an estimated 38,000 to 90,000 acres of forest cover will be cleared by Marcellus gas development. That clearing could threaten forest

interior species in an additional 91,000 to 220,000 forest acres. Forest impacts will be concentrated in the north central and southwest parts of the state where many of the State's largest and most intact forest patches could be fragmented into smaller patches by well pads, roads, and other infrastructure. A significant percentage of Pennsylvania's globally rare and threatened species can be found in areas with high potential for Marcellus gas development. Governor's Marcellus Shale Advisory Commission Report, page 76, **Exhibit II**.

(b). Construction and operation of approximately 1100 wells located principally in the concentrated area of State Forest lands in north central Pennsylvania known as the Pennsylvania Wilds, along with the construction and expansion of access roads, pipelines, compression stations, water impoundments, wastewater storage tanks and other gas production facilities, will significantly increase openings in large blocks of currently contiguous forest canopies resulting in fragmentation and stress from invasive species and disease—the cumulative effect of which could fundamentally alter these forest ecosystems. *Id.*

(c). The cumulative effects of this contiguous fragmentation of State Forest will dramatically change the character and threaten the ecological integrity of the State Forest. The edges created by these openings cause significant stress to the surrounding forest by creating avenues for invasive species and individual tree mortality from root compaction, insects and diseases, and shock

from additional sun exposure. Fragmentation affects wildlife by limiting natural migration patterns and increasing vulnerability to predation for some species. Changes to surface and groundwater hydrology also affect aquatic ecosystems as well as soil chemistry and structure, eventually causing additional stress to trees and plants. Combined with tree mortality caused by gypsy moth and other insects and diseases, which totaled 32,000 acres in 2009, the cumulative effects of forest conversion could be devastating to the forest ecosystem as a whole. Particularly, the State Forest contains some of the largest blocks of contiguous, unfragmented forest in the Commonwealth, providing and protecting habitat components for plants and animals that are limited on private lands. The State Forest is globally important for some species, including many neotropical migratory birds. Continued development and conversion threatens this core value of the State Forest System.

Id.

(d). An estimated 60,000 new Marcellus wells [throughout the Marcellus region] are projected by 2030, with a range of between 6,000 and 15,000 new pads, nearly two thirds of which will be in forest areas with forest clearing projected to range between 34,000 and 200,000 acres of forest interior habitat impacts. This will impact forest interior breeding habitats, and will impact watersheds with healthy native brook trout populations. Excerpts from the Pennsylvania Energy Impacts Assessment: Report 1: Marcellus Shale Natural Gas

and Wind, The Nature Conservancy/Audubon, November 15, 2010, page 29, **Exhibit JJ**.

(e). The cumulative harm from the fragmentation and stress from invasive species and disease threatens the certification of Pennsylvania's State Forest system as compliant with the gold standard for environmentally and socially responsible forestry established by the international Forest Stewardship Council (FSC). This certification is vital to the economic viability of the forest products industry in Pennsylvania Governor's Executive Order, **Exhibit HH**.

(f). Additional impacts include the increased noise from the construction and operation of the gas wells, from the compressor stations that operate 24 hours a day, and from the truck traffic on the roads, all are having and will continue to have negative impacts on the ecology and public uses of the leased Public Trust land. Governor's Marcellus Shale Advisory Commission Report, page 109, **Exhibit II**.

(g). The increased and expanded gravel roads and the traffic on those roads on the leased Public Trust lands, which are necessary to support the production of gas on these lands over the next 10 to 20 years, creates dust and runoff which have caused and will continue to cause increased sediments into our natural streams. *Id.* at 70, 76.

(h). The compressor stations required to compress the gas for transport emit a significant quantity of pollutants, including methane, into the air. The industry necessarily uses gas powered engines in the operations of the gas production, which also emit contaminants into the air. These contaminants will cumulatively affect the ecology of the leased lands. *Id.* at 76-77.

H. Impacts To State Parks From Gas Extraction

(61). The Pennsylvania Wilds CLI, which encompasses 29 State Parks, and Laurel Highlands CLI, which encompasses 5 State forests, is subject to natural gas extraction and development.

(62). The Commonwealth does not own the oil and gas rights on over 80% of the land comprising our State Parks and these privately held resources are subject to development.

(63). The land surrounding many of our State Parks, whether privately owned or managed as State Game Lands or State Forest, is being developed for gas extraction.

(64). As a result, the State Parks and the people traveling to and trying to enjoy them are impacted by the traffic, the construction, the compression stations, the forest fragmentation and other disturbances associated with the industrialized activity of gas extraction.

I. Impacts To The Peoples' Rights To The Public Natural Resources

(65). The Public Trust Amendment mandates that the Commonwealth conserve and maintain the public natural resources, which are the common property of the people for the benefit of the people, and that the people have a right to clean air, pure water and the preservation of the natural, scenic, historic and esthetic values of the environment that as part of these public natural resources.

(66). The people have lost the protections established by law to allow gas extraction to occur to our public natural resources.

(67). As a result of the Governor's actions, DCNR has lost its ability to decide when to lease State Forest land for oil and gas extraction under CNRA Section 302(c), 71 P.S. § 302(c), and its control over the Oil and Gas Lease Fund under CNRA Section 304(a)(6), 71 P.S. § 304(a)(6). The exclusive purpose of the Oil and Gas Lease Fund to offset the harm to our public natural resources from oil and gas extraction no longer exists. The revenue that DCNR still receives from the Oil and Gas Fund is limited to up to \$50,000,000, and DCNR has been forced to use these funds to administer the agency, not restore damage to our public natural resources from oil and gas extraction. The Governor has taken away more revenue from the Oil and Gas Lease Fund under Act 13 of 2012 (\$20,000,000 in 2013 and increasing to \$50,000,000 annually by 2016) for projects that do not conserve and maintain Pennsylvania's State Parks and Forests.

(68). The people have lost the undisturbed use of 700,000 acres of State Forest land to private industrial development of gas extraction. They have lost this land for at least 20 to 40 years, in some cases permanently.

(69). The construction and operation of approximately 1100 wells located in the concentrated area in the north central Pennsylvania, the expansion of the roads, pipelines, compression stations, water impoundments, storage tanks, and other gas production facilities, directly affect the public natural resources and the rights of the people to use and enjoyment of those resources.

(70). The people will lose the character of the State Forest from the cumulative effects of fragmentation over the decades of the natural gas development. The ecological integrity of the State Forest is at stake. Hiking, fishing, camping, seeing wild natural plants and animals, feeling the quiet interior of a deep forest, walking along a pristine wild trout stream, all the recreational and esthetic values of our State Forests and Parks affected by gas extraction are immediately impacted, and will continue to be impacted throughout the gas extraction process. Fragmentation will encourage and increase exotic species of plants and insects and diseases. Damage from overgrazing of deer herds will increase. Floods from storm water runoff caused by loss of the forest canopy and the impaction of the soils from gas extraction will worsen.

(71). The air and ground pollution from the truck traffic and the compression stations; along with the noise they produce constantly impact the natural, scenic and esthetic experiences within both our forests and parks.

(72). The economic value to the people who live and work with tourism and outdoor recreation in the areas affected by gas extraction are immediately impacted and will be throughout the gas extraction process.

(73). As set forth in the Affidavits of the Petitioner's members in **Exhibits A - O**, their rights and interests are and have been substantially and immediately harmed by the loss of DCNR's control of the Oil and Gas Lease Funds, the loss of the uses of the State forest land and natural resources from private industrial development of gas extraction, the loss of air quality and water quality, the loss of aesthetic uses, increased flooding from increased stormwater, and the loss of value to real estate. (See pages 62 through 71 herein)

J. Impacts to Natural Resources From Loss of Oil and Gas Lease Funds

(74). Without the control of the Oil and Gas Lease Funds DCNR cannot conserve and maintain the resources by maintaining a balance between the losses from negative impacts on State forest and park lands to our natural resources and the uses and rights to those resources that result from the leasing of our State forests for gas extraction with sufficient mitigation to provide new natural resource

lands and benefits to the public uses of those lands to insure that the benefits outweigh the losses.

(75). DCNR needs to be able to purchase rights to natural gas extraction from private owners on State parks and forests that are severed rights in order in some special cases to be able to protect the integrity of the public natural resources.

(76). In the case of State parks in the Marcellus region of both the north central area and the south western area of the Laurel Highlands, DCNR only has the mineral rights to 20% of the lands of those parks. Under the limits established by the Supreme Court decision in *Belden & Blake v. DCNR*, 600 Pa. 559, 969 A.2d 528, DCNR has no control over access to State parks by private gas developers except by going to court and using eminent domain to restrain the direct impacts to the parks. (*Id.* At 568, 533.)

(77). DCNR needs to acquire lands not impacted by gas extraction to replace the loss by conversion of hiking trails; nesting, breeding, spawning and migratory habitat; hunting areas; and wild and scenic areas that are or will be impacted by the gas extraction operations. Such purchases are the only way to mitigate the loss of these Public Trust lands and the people's constitutional rights to them, to buffer the impact of the gas extraction process, and to provide sufficient replacement of wildlife habitat affected by the gas extraction process.

(78). Without control of the funds DCNR cannot have sufficient funds to comprehensively monitor and document the cumulative impacts, both positive and negative, of natural gas development on plants and forests, wildlife, habitat, water, soil and recreational resources, including fragmentation, invasive species, loss of wildlife food and cover, erosion and sedimentation. Governor's Marcellus Shale Advisory Commission Report, pages 109-112, **Exhibit II**.

(79). Those cumulative impacts would at least include effects of the fragmentation of the forests; the loss of canopy; the impact of increased impervious surfaces on our State lands, including flooding, erosion and sedimentation; the impacts from air pollution; and the impacts of noise pollution on the public resources and their uses.

(80). Without the control of the funds DCNR cannot sufficiently study, evaluate and implement sufficient methods to reduce the economic and environmental impacts as much as possible during the lifetime of the gas extraction process, and understand and implement the restoration needs from the cumulative impacts when the gas development is completed and private industry is gone. DCNR, Natural Gas Exploration, Management Challenges, **Exhibit KK**; and DCNR Natural Gas Development, Public Access and Recreation, Balancing Uses of State Forest Lands, **Exhibit LL**¹².

¹² http://www.dcnr.state.pa.us/ucmprd1/groups/public/documents/document/dcnr_003745.pdf.

(81). Without control of the funds DCNR cannot complete a long list of natural resource projects on State parks and forest lands that are currently in need of funding. Over 400 million dollars of project backlogs are needed for our State Parks alone, and additional State Forest projects have not been completed because of lack of funds. 2011 State of the Parks/State of the Forests Report, pages 17-19, **Exhibit Z.**

VI. DECLARATORY RELIEF REQUESTED

A. Declare that the Governor, as the Constitutional Trustee of Pennsylvania's Public Natural Resources Under Article I § 27, Has the Affirmative Duty to Conserve and Maintain those Public Natural Resources for the Benefit of the People

(82). All prior paragraphs are hereby incorporated by reference.

(83). Article I § 27 establishes a public trust of the Commonwealth's natural resources. Specifically, the Amendment states, "Pennsylvania's 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." This public trust provision of Article I § 27 is self-executing. *Payne v. Kassob*, 361 A.2d 263, 272 (Pa. 1976).

(84). Pennsylvania's natural resources within the Public Trust include State Parks and State Forests (*Payne v. Kassob*, 312 A.2d 86 (Pa. Cmwlth. 1973)), and include wild animals and fish, trees, plants and minerals on State Parks and Forests, and especially endangered species, and it also includes surface and ground

water as well as ambient air. Robert Broughton, *The Proposed Pennsylvania Declaration of Environmental Rights, Analysis of H.B. 958,41*, Pa. Bar Assn. Q. 421, 426-427 (1970).

(85). Under Article I § 27 the Commonwealth trustees have the duty to conserve and maintain the public natural resources for the benefit of all the people.

(86). The Commonwealth trustees also have the duty to conserve and maintain the peoples' rights to those natural resources, including clean air and water, and the preservation of the natural, scenic, historic and aesthetic values of the public natural resources.

B. Declare that the Governor has the Constitutional Duty to Consult with the Department of Conservation and Natural Resources When Considering an Action that will Negatively Impact Pennsylvania's State Forests and Parks

(87). All prior paragraphs are hereby incorporated by reference.

(88). DCNR is the agency with the expertise and the statutory responsibility to manage our State Parks and State Forests; to determine when and where to lease those lands for development and sale of oil and gas; and to determine how and when to use the rents and royalties from leasing State Forest lands for projects that conserve and maintain our State Parks and Forests, as well as our rivers, trails, greenways and community recreation and heritage areas consistent with the requirements of the Public Trust Amendment, the Conservation and Natural Resources Act and the Oil and Gas Lease Fund Act.

(89). DCNR is the statutorily designated trustee under Article I § 27 for the purpose of conserving and maintain Pennsylvania’s public natural resources, including the State Parks and Forests.

(90). DCNR has the ability and the constitutional and statutory responsibility to evaluate the natural resources, the impacts to those natural resources, and the ability to conserve and protect those resources from the negative impacts from leasing State Forest land for gas extraction.

(91). The Governor has no ability independent of DCNR to make evaluations of the public natural resources and the impacts from gas leasing, and has no ability to conserve and maintain those resources independent of DCNR.

C. Declare that the Trustee Under Article I § 27 with the Mandate to Conserve and Maintain the Public Natural Resources, has the Duty, Before Making a Decision or Taking an Action that Will Negatively Impact the Public’s Natural Resources, To Evaluate the Present and Future Impacts, To Evaluate How To Minimize those Impacts, To Evaluate How Restore or Mitigate those Impacts, the Evaluate the Costs to Do So, and to Insure that Money is Available to Do So.

(92). All prior paragraphs are hereby incorporated by reference.

(93). The leasing of State Forest land to private industry for the extraction of natural gas and oil causes direct, immediate and long term impacts to the public’s natural resources, and to the rights of the people thereto.

(94). Any decision to lease State Forest land to extract gas and oil must be made within the limits of the Article I § 27 mandate, to conserve and maintain the public's natural resources.

(95). The Conservation and Natural Resources Act provides a statutory framework that reauthorized leasing of State Forest land for gas and oil extraction under the limits of Article I § 27 by limiting the decision to lease to the DCNR, and by limiting the use of the funds from the leases to DCNR within the specific purposes set forth in the Oil and Gas Lease Fund Act.

(96). The constitutional mandate to conserve and maintain the natural resources requires a thorough understanding of the impacts to the resources from the gas extraction process, both immediate and long term, throughout the duration of the lease; and on the rights to those resources.

(97). Within the constitutional mandate to conserve and maintain, the trustee has the duty to be able to minimize, and to restore and/or mitigate the impacts to the public natural resources, and to minimize, and to restore and/or mitigate the rights of the people that may or will be impacted.

(98). Within the constitutional mandate to conserve and maintain the public natural resources is the duty of the trustee to insure that the money from the leasing of State Forest land for gas extraction is used to balance the negative impacts of the gas extraction process, and to restore and/or mitigate those impacts.

D. Declare that the Conservation and Natural Resources Act Establishes a Statutory Structure Under Article I § 27 to Balance the Negative Impact from Leasing State Forest Land for Gas Extraction with the Benefits Obtained From the Use of the Funds From the Leasing By Limiting the Leasing to the Discretion of DCNR, and Providing DCNR With All the Money From the Leasing to Restore and Mitigate the Public Natural Resources.

(99). All prior paragraphs are hereby incorporated by reference.

(100). The Conservation and Natural Resources Act renews in DCNR, subject to the mandates of the Public Trust Amendment, authority previously given to the Department of Forests and Waters “to make and execute contracts or leases in the name of the Commonwealth for the mining or removal of any valuable minerals that may be found in State forests ... whenever it shall appear to the satisfaction of the Department that it would be for the best interests of the Commonwealth to make such disposition of those minerals.” 71 P.S. § 1340.302(a)(6).

(101). CNRA also renews in DCNR, subject to the Public Trust Amendment, the authority previously given to the Secretary of Forest and Waters under the Oil and Gas Lease Fund Act to use rents and royalties generated from Commonwealth oil and gas leases of State Forest land for projects to benefit the public natural resources managed by DCNR. 71 P.S. § 1340.304(c).

(102). The Oil and Gas Lease Fund Act requires that the rents and royalties from oil and gas leases of Commonwealth land (other than game and fish lands) be

placed in a special fund known as the Oil and Gas Lease Fund, to be used for the exclusive purposes of conservation, recreation, dams, and flood control; and authorizes only the Secretary of Forest and Waters (now DCNR) to determine the need for and location of such projects and to acquire the necessary land. It also authorizes DCNR to purchase land to meet the purposes of the Act. 71 P.S. § 1331-1334.

(103). By reauthorizing authority in DCNR to lease State Forest land for oil and gas extraction and to use the rents and royalties from such leasing for the purposes established in Oil and Gas Lease Fund Act, CNRA ensures that DCNR has the resources to carry out the mandates of the Public Trust Amendment.

(104). Through CNRA, the legislature created a balanced protection under Public Trust Amendment to allow leasing State Forests for oil and gas extraction by limiting the decisions to lease to the statutorily designated trustee, DCNR; and providing DCNR with the authority to allocate the funds from the leasing to insure that the duties to conserve and maintain the public natural resources for the use and benefit of the citizens are met.

(105). DCNR has developed the knowledge and expertise to implement the purpose and goals of CNRA, including implementing continued oil and gas extraction on the State Forest. DCNR has the staff and the experience to study and evaluate the impacts from oil and gas extraction on both State Parks and State

Forests, and to insure the sustainability of the public natural resources of our State Parks and Forests impacted by oil and gas extraction.

(106). Since the enactment of the Oil and Gas Lease Fund Act the funds for the leasing of State forest land have been used exclusively to offset the impacts for the gas extraction.

(107). Specifically, the Fund has been used for the purchase of oil and gas development rights under State Parks and State Forests; State Park and State Forest recreation sanitation facilities; State Parks and State Forest flood control and dam safety projects; the development of the 60 mile Pine Creek Rail Trail; and, land acquisition for 9 new State Parks, and enlargement of 20 other State Parks.¹³

(108). The Fund has thus been a de facto public trust fund since its inception.

E. Declare that the Governor Violated the Public Trust Amendment by Deciding in the Executive Budget for Fiscal Year 2009-10 to Transfer \$163,000,000 From the Oil and Gas Lease Fund to the General Fund

(109). All prior paragraphs are hereby incorporated by reference.

(110). The Governor made the decision to transfer \$163,000,000 (reduced to \$143,000,000) from the Oil and Gas Lease Funds to the General Fund in his

¹³ Since 1955, when Maurice Goddard got the Act passed the Oil and Gas Lease Fund has been used to purchase 26 state parks, construct 170 drinking water treatment systems, 58 wastewater treatment systems, 798 bridges, 3,000 miles of roads, 125 dams and 5,000 buildings. See *State Parks History, The Goddard Era*, attached as **Exhibit Y**; *2011 State of the Parks/State of the Forests Report, Pennsylvania Parks and Forest Foundation* (excerpts attached as **Exhibit Z**); and *DCNR Natural Gas Exploration on State Forest Land*, attached as **Exhibit AA**).

Executive Budget for Fiscal Year 2009-10, which he sent to the General Assembly and to the Executive Agencies on February 4, 2009.

(111). The \$143,000,000 was from the 2008 oil and gas lease sale of 74,000 acres of State Forest initiated by DCNR to stay the efforts of the gas industry and the key members of the General Assembly to lease the entire remaining State Forest lands that had not been leased.

(112). In leasing the 74,000 acres of State Forest, DCNR was relying on receiving the funds from both the upfront rental or bonus money paid for the lease and the royalties that would be generated when gas was produced to offset the impacts from the gas extraction allowed under leases.

(113). By deciding to transfer the money from the 2008 leases to the General Fund, the Governor left DCNR with an additional 74,000 acres of State Forest subject to oil and gas extraction, which added to the 585,000 acres already committed to oil and gas extraction for made a total of 660,000 acres under lease, with very little money in the Oil and Gas Lease Fund from the 2008 lease to deal with the impacts of the new oil and gas extraction.

(114). The decision to transfer the Oil and Gas Lease Fund money undid the balance achieved under the CNRA, to conserve and maintain the public natural resources when leasing occurs by using the funds from the lease deposited into the Oil and Gas Lease Fund to offset the negative impacts with the benefits received

for the public natural resources, and thus violated the constitutional protections under CNRA.

(115). The Governor's decision violated each and all of the conditions set forth in the Oil and Gas Lease Fund for the use of the money in the Fund, exclusively for conservation, recreation, dams and flood control.

(116). The Governor's decision was made without consulting with DCNR to determine what effect the transfer of the \$143,000,000 would have on DCNR's constitutional and statutory duty to conserve and protect the public natural resources of our State forests and parks.

(117). Both Michael DiBerardinis, as Secretary of DCNR, and John Quigley, as Acting Secretary following DiBerardinis' resignation, advised the Governor against committing the Funds from the 2008 lease sale to the General Fund. (See Section IV.E. above.)

(118). The Governor's decision was made over the objections of DCNR, and in spite of DCNR's clear warnings, that the decision was in violation of the Oil and Gas Lease Fund Act, and that the decision would undo the balance upon which DCNR relied to meet their duty to conserve and maintain the public natural resources under CNRA.

(119). The Governor violated his duties under Article I § 27 by diverting the money from the 2008 oil and gas lease sale of 74,000 acres of State Forest land

without any independent evaluation of the impact of that decision on DCNR's ability to conserve and maintain the public natural resources impacted by the lease sale, and by failing to make any independent analysis of this decision on the public natural resources.

F. Declare that the Governor Violated His Duty Under Article I § 27, and Violated the Conservation and Natural Resources Act, By Requiring DCNR to Lease State Forest Land for Gas Extraction to Acquire Money to be Transferred From the Oil and Gas Lease Fund to the General Fund.

(120). All prior paragraphs are hereby incorporated by reference.

(121). As evidenced in the May 6, 2009 Memorandum from then Acting Secretary John Quigley to the Governor's Chief of Staff, the Governor had directed DCNR to lease 80,000 acres of State forest land for additional funds to be transferred to the General Fund (**Exhibit DD**).

(122). The Conservation and Natural Resources Act states that only DCNR can make the determination to lease State Forest land for gas extraction. 71 P.S. § 304(6). DCNR can only make that determination within the limits of Article I § 27.

(123). The Governor's decision to require DCNR to lease additional State Forest land for gas extraction simply for the purpose of obtaining more Oil and Gas Lease Funds was made without consulting DNCR.

(124). The Governor's decision was made without any independent analysis as to the impacts on DCNR's duty to conserve and maintain the public natural resources.

(125). The Governor's decision was made in spite of the fact that DCNR had repeatedly recommended against it as set forth in Sections IV.E.

(126). The Governor's decision was made in spite of the fact that DCNR had made the decision, consistent with its duties under the Conservation and Natural Resources Act, and its obligations as trustee of the Commonwealth's natural resources, not to lease any more State Forest land after the 2008 oil and gas lease sale until DCNR had the time to evaluate the impacts of the existing 660,000 acres of State Forest land under lease for oil and gas extraction.

(127). The Governor violated his duty as trustee under Article I § 27 to support and protect DCNR's responsibilities under CNRA as the statutorily designated trustee to conserve and maintain the public's natural resources and the people's rights thereto on State forests and parks.

G. Declare that the Governor Violated His Duty Under Article I § 27 By Approving and Signing Into Law the Provisions of the Appropriations Act For 2009-10 that Transferred \$143,000,000 From the Oil and Gas Lease Fund to the General Fund.

(128). All prior paragraphs are hereby incorporated by reference.

(129). For all of the reasons stated previously in Declarations E and F, the Governor violated his duties as trustee under Article I § 27 by signing into law the Appropriations Act for FY 2009-10.

H. Declare that the Governor Violated His Duty Under Article I § 27 By Deciding in the Executive Budget for Fiscal Year 2010-11 to Transfer of \$180,000,000 From the Oil and Gas Lease Fund to the General Fund

(130). All prior paragraphs are hereby incorporated by reference.

(131). For all of the reasons stated previously in Declarations E and F, the Governor violated his duties as trustee under Article I § 27 by deciding in the Executive Budget for Fiscal Year 2010-11 to transfer \$180,000,000 from the Oil and Gas Lease Fund to the General Fund.

I. Declare that the Governor's Decision to Approve and Sign into Law Article XVI-E (Oil and Gas Wells) of the 2009 Fiscal Code Amendments Violated His Duty Under Article I § 27

(132). All prior paragraphs are hereby incorporated by reference.

(133). The Governor violated his duties as trustee under Article I § 27 by approving on October 9, 2009 amendment of the Fiscal Code to include Article XVI-E (Oil and Gas Wells), 72 P.S. § 1601-E *et seq.*, for the following reasons.

1. Section 1602-E of the Fiscal Code

(134). Section 1602-E of the Fiscal Code, 72 P.S. § 1602-E, changes the Oil and Gas Lease Fund Act by taking away the authority of DCNR to determine how to use these funds, by eliminating the exclusive purposes of this special fund

established by the Oil and Gas Lease Fund Act for conservation, recreation, dams and flood control, and by instead giving the General Assembly complete control of the Oil and Gas Lease Fund.

(135). When the Governor signed into law Section 1602-E of the Fiscal Code on October 9, 2009, he withdrew the authority that the Secretary of DCNR (and DCNR's predecessors) had since 1955, under the Oil and Gas Lease Fund Act, to use the money deposited in the Oil and Gas Lease Fund to balance the negative impacts on the public natural resources caused by the leasing of State Forest land to private industry for extraction and production of natural gas and oil. This balance was achieved by purchasing additional lands to buffer the negative impacts and to provide new public natural resources, and to develop projects exclusively for conservation, recreation, dam and flood control that the Secretary determined were appropriate.

(136). Section 1602-E permanently supplants the authority of DCNR under the Oil and Gas Lease Fund Act, 71 P.S. §§ 1331-1333, to determine how to allocate the funds in the Oil and Gas Lease Fund by stating that “notwithstanding any provision of law [the Oil and Gas Lease Fund Act], and except as provided in Section 1603-E, no money in the Oil and Gas Lease Fund from royalties may be expended unless appropriated by the General Assembly.” 72 P.S. § 1602-E.

(137). Section 1602-E is more than the legislative authorization to transfer money from the Oil and Gas Lease Fund to the General Fund through the budget and appropriations process. This provision permanently supplants the constitutional and statutory protections established in the passage of the Conservation and Natural Resources Act to allow the continued leasing of the public's natural resources for extraction of oil and gas on State Forest lands within the limits of Article I § 27.

(138). The Governor's approval of Section 1602-E directly impacts DCNR's abilities to comply with its duties and obligations under the Conservation and Natural Resources Act to be the statutorily designated trustee of the Public Trust under Article I § 27 and to conserve and maintain the State's natural resources by taking away DCNR's ability to determine when, how, and where to allocate the Oil and Gas Lease Funds.

(139). DCNR can no longer balance the negative impacts from oil and gas leasing with land purchases and conservation and recreation projects on State lands that mitigate the impacts, and provide more benefit to the public natural resources and the people's rights thereto than negative impacts.

(140). The Governor's approval of Section 1602-E gives the General Assembly control over all the royalty funds generated from the leasing of State Forest lands, including the 250,000 acres under lease prior to 2008 and the 74,000

acres leased in 2008, as well as the 65,000 acres leased in 2010 to generate money for the General Fund as recommended by the Governor's 2009-10 and 2010-11 Executive Budgets, and required when he approved Sections 1604-E and 1605-E of the Fiscal Code, and any future requirements the General Assembly will impose on DCNR to lease more State Forest land.

(141). The General Assembly has no scientific ability to know how to conserve and maintain the natural resources of our State Parks and Forests and still allow the development of private gas extraction.

(142). Section 1602-E overrides the specific and exclusive requirements of the Oil and Gas Lease Fund Act to allocate the money from leasing State lands for the limited purposes of conservation, recreation, dams and flood control projects. As a result, General Assembly can use the funds for any purpose it deems appropriate.

(143). Before signing into law Article XVI-E (Oil and Gas Wells) of the Fiscal Code, neither the Governor nor anyone on his immediate staff consulted with anyone at DCNR on the effects of approving Section 1602-E of the Fiscal Code on DCNR's ability to comply with the duty under Article I § 27 to conserve and protect the public's natural resources.

(144). By failing to consult with DCNR on the potential impacts of Article XVI-E of the Fiscal Code before signing it into law, and then by signing it into law on October 9, 2009, the Governor violated his duties under Article I § 27.

(145). Section 1602-E of the Fiscal Code amendments broke the balance achieved under the Conservation and Natural Resources Act to continue to allow leasing of State Forest land for oil and gas extraction within the limits of Article I § 27 by taking away DCNR's control of the funds generated by the leases needed to administer the leases, to minimize the negative impacts of oil and gas extraction, and to mitigate the losses of the natural resources and the peoples' rights thereto established through the Oil and Gas Lease Fund Act.

(146). The Governor's decision to sign into law Section 1602-E of the Fiscal Code amendments violated his duties under Article I § 27.

2. Section 1603-E of the Fiscal Code

(147). Section 1603-E of Article XVI-E of the Fiscal Code states that, "[s]ubject to the availability of money in the [Oil and Gas Lease] fund, up to \$50,000,000 from the fund from *royalties* shall be appropriated annually to [DCNR] to carry out the purposes set forth in the [Oil and Gas Lease Fund Act]." 72 P.S. § 1603-E.

(148). The Governor's approval of Section 1603-E of Article XVI-E of the Fiscal Code directly impacts DCNR's ability to comply with its constitutional and

statutory mandates by giving the General Assembly authority to arbitrarily control the limit of funds DCNR would get each year from the Oil and Gas Lease Fund from anywhere between zero (0) and up to 50,000,000 dollars, to carry out the purposes set forth in the [Oil and Gas Lease Fund Act].

(149). Section 1603-E of the Fiscal Code limits the royalties available to DCNR from the Oil and Gas Lease Fund arbitrarily to \$50,000,000 without any fiduciary analysis of the needs of the Public Trust lands for funds to balance the impacts from gas leases.

(150). Section 1603-E also requires DCNR to give preference to operation and maintenance rather than to purchase land and or complete capital projects for our State Parks and Forests, and DCNR's other broad responsibilities to provide more focused management of the Commonwealth's recreation, natural and river environments under CNRA Section 101(b)(1), 71 P.S. § 101(b)(1).

(151). The Governor violated his duties under Article I § 27 by signing into law Section 1603-E of the Fiscal Code.

3. Sections 1604-E and 1605-E of the Fiscal Code

(152). Sections 1604-E and 1605-E provide the statutory authority to require the transfer to the General Fund of \$60,000,000 and \$180,000,000 from the Oil and Gas Lease Fund the General Fund that had been required by the Governor in his Executive Budgets of Fiscal Years 2009-10 and 2010-11.

(153). Section 1604-E and 1605-E of the Fiscal Code, 72 P.S. § 1604-E and 1605-E, authorized the transfer of the \$240,000,000 from the Oil and Gas Lease Fund to the General Fund.

(154). The Governor ordered DCNR to lease an additional 80,000 acres of State Forest land for oil and gas extraction to generate the additional \$240,000,000, although DCNR convinced the Governor it could generate the funds required by the Governor's actions by leasing 65,000 acres.

(155). The Governor, through the budget process and signing into law the Appropriations Acts of 2009-10 and 2010-11, and Sections 1602-E, 1604-E and 1605-E of the Fiscal Code, forced DCNR to generate \$240,000,000 for the Oil and Gas Lease Fund for transfer to the General Fund by requiring additional leasing of 65,000 acres of State Forest land for oil and gas extraction. This leasing was in addition to the 74,000 acres leased in 2008 that generated the \$143,000,000 transferred from Oil and Gas Lease Fund to the General Fund by the Appropriations act of 2009-10.

(156). As a result of the Governor's actions, DCNR was forced to manage approximately 700,000 acres of State Forest land subject to natural gas and oil extraction (approximately 139,000 acres from the new oil and gas leases added to the existing 565,000 acres already under DCNR and private leases, without the \$383,000,000 generated from the new leases or any control over the future funds

generated from the oil and gas leases to deal with the impacts to and loss of natural resources from the oil and gas extraction.

(157). The Governor actions stripped DCNR of its ability to conserve and maintain the State's Parks and Forests affected by leasing oil and natural gas as required by CNRA and the Public Trust Amendment.

(158). By approving these Fiscal Code sections authorizing the transfers from the Oil and Gas Lease Fund to the General Fund, the Governor gives statutory legitimacy to his prior decisions to require DCNR to lease additional State Forest land for the sole purpose of providing the money for the General Fund.

(159). The Governor violated his duties under Article I § 27 by signing Sections 1604-E and 1605-E of the Fiscal Code into law and requiring DCNR to lease 65,000 acres of State Forest land for the extraction of natural gas for the sole purpose to generate \$60,000,000 for transfer from the Oil and Gas Lease Fund to the General Fund in fiscal year 2009/2010, and \$180,000,000 for fiscal year 2010/2011.

J. Declare that the Fiscal Code Amendments Violate Article I §27 and are Therefore Unconstitutional

(160). All prior paragraphs are hereby incorporated by reference.

(161). Section 1602-E permanently supplants the authority of DCNR under the Oil and Gas Lease Fund Act, 71 P.S. §§ 1331-1333, to determine how to allocate the funds in the Oil and Gas Lease Fund by stating that “notwithstanding

any provision of law [the Oil and Gas Lease Fund Act], and except as provided in Section 1603-E, no money in the Oil and Gas Lease Fund from royalties may be expended unless appropriated by the General Assembly.” 72 P.S. § 1602-E.

(162). Section 1603-E directly impacts DCNR’s ability to comply with its constitutional mandate by giving the General Assembly authority to arbitrarily control the limit of funds DCNR would get each year from the Oil and Gas Lease Fund from anywhere between zero (0) and up to 50,000,000 dollars, to carry out the purposes set forth in the [Oil and Gas Lease Fund Act].

(163). Sections 1604-E and 1605-E violate Article I § 27 by supplanting the constitutional protection under CNRA of authorizing only DCNR to lease State Forest land for gas extraction, 71 P.S. §1340.302(a)(6); and directly impacts DCNR’s duties under the CNRA, to conserve and maintain Pennsylvania’s public natural resources and the rights of the people to those uses under Article I § 27.

K. Declare that Section 104(P) of the Appropriations Act of 2011-12 Violates Article I § 27 and is Therefore Unconstitutional for Allocating Funds From the Oil and Gas Lease Fund to the General Fund for the Specific Purposes of Payment of Salaries, Fees, Travel Expenses, and Other Expenses Not Related to Conservation and Maintenance of Public Natural Resources Impacted By Gas Extraction

(164). All prior paragraphs are hereby incorporated by reference.

L. Declare that the Governor Violated the Public Trust Amendment by Using Oil and Gas Lease Funds for Administrative Purposes

(165). All prior paragraphs are hereby incorporated by reference.

(166). Since 2007, the Governor has consistently reduced expenditures for DCNR’s operations from General Fund revenue while increasing DCNR’s dependence on rents and royalties from the Oil and Gas Lease Fund for its routine operations during the same period, as shown in the table below.

DCNR Operating Budget (Thousands) ¹⁴						
Source	FY 07-08	FY 08-09	FY 09-10	FY 10-11	FY 11-12	FY 12-13
General Fund	116,486	113,369	90,622	80,914	53,720	52,723
Oil & Gas Lease Fund	4,250	12,156	18,549	24,002	59,805	69,511
% OGL Fund	4%	10%	17%	23%	53%	57%

(167). In FY 2011-12 and FY 2012-13, the Governor forced DCNR to rely on funds from oil and gas extraction on the State Forest for over 50% of DCNR’s operating expenses, more than twice the percentage relied upon in FY 2010-11 and even higher increases over prior years.

(168). The Governor proposed that DCNR use \$77,275,000 from the Oil and Gas Lease Fund for operating expenses in FY 2013-2014, further increasing DCNR's reliance on oil and gas funds for operating expenses. Governor’s Executive Budget 2013-2014, page H53, **Exhibit MM**.

(169). The use of the Oil and Gas Lease Fund to replace the General Fund money for DCNR’s operations violates the constitutional protections established in

¹⁴ Source: Governor’s Executive Budgets – Oil and Gas Lease Fund (excerpts attached as **Exhibit NN**); General Fund information provided during discovery.

the Conservation and Natural Resources Act to allow the continued leasing of State forest land under the limits of Article I §27.

(170). By proposing and then signing into law Appropriation Acts that require use of the limited funds from the Oil and Gas Lease Fund allocated to DCNR under Section 1603-E of the Fiscal Code for operating and administrative costs, the Governor has precluded DCNR from using those funds to mitigate the negative impacts to the public natural resources from leasing State forests, and from using those funds to reduce the backlog of projects necessary to conserve and maintain the infrastructure of our State Parks and Forests as required under the Conservation and Natural Resources Act and Article I § 27.

(171). The Governor, through these actions, has violated his duties as trustee of the public natural resources under Article I § 27.

M. Declare that the Governor Violated the Public Trust Amendment by Approving the Act 13 Transfers From Oil and Gas Lease Fund to the Marcellus Legacy Fund

(172). All prior paragraphs are hereby incorporated by reference.

(173). On February 14, 2012, the Governor signed into law amendments to Title 58 of Pennsylvania's Consolidated Statutes (Act 13 of 2012) to add Chapter 25 (Oil and Gas Lease Fund), which annually transfers oil and gas rents and royalties generated from State lands from the Oil and Gas Lease Fund to the Marcellus Legacy Fund beginning with \$20,000,000 in 2013 and increasing to

\$50,000,000 by 2016 and beyond. These rents and royalties will then be distributed from the Marcellus Legacy Fund to the Environmental Stewardship Fund (\$35,000,000 annually by 2014) and to the Hazardous Sites Cleanup Fund (\$15,000,000 annually by 2016). These annual transfers from the Oil and Gas Lease Fund will occur after DCNR is allocated any amount appropriated to it through the annual budget process.

(174). Prior to Act 13 of 2012, the Hazardous Site Cleanup Fund was funded solely by the Capital Stock and Franchise Tax. This fund is for the Department of Environmental Protection to investigate, cleanup and monitor contaminated sites (which would include natural gas extraction sites), to participate in the federal Superfund and hazardous waste programs, and to implement the Commonwealth's land recycling program (*see* excerpts attached as **Exhibit QQ**).

(175). The amendment supplants the constitutional protections or limits established under CNRA to allow for continued leasing of State land for gas extraction by committing the funds from the leasing to the purposes set forth in the Oil and Gas Lease Fund within the limits of the duties under Article I § 27.

(176). The \$50,000,000 from the Oil and Gas Lease Fund annually will be \$50,000,000 lost to DCNR for use in balancing the impacts from the gas extraction leases to the natural resources impacted by the gas extraction processes.

(177). The transfer by Act 13 of \$50,000,000 annually out of the future rents and royalties from the Oil and Gas Lease Fund without evaluating the impacts from the leasing activities both now and over the next several decades on the State Forest and its natural resources, without evaluating the impacts to the rights and benefits of the people to those resources, and without evaluating the needs and costs to mitigate those impacts, is in violation of Article I § 27.

(178). The transfer by Act 13 of \$50,000,000 annually out of the future rents and royalties from the Oil and Gas Lease Fund without evaluating the need for capital improvement projects for the State Parks and Forests necessary to conserve and maintain the State public trust assets and meet the requirements of the Oil and Gas Lease Fund Act, is a violation of Article I § 27.

(179). The Act 13 diversions from the Oil and Gas Lease Fund are contrary to and in violation of the Oil and Gas Lease Fund Act, and the Conservation and Natural Resources Act, which is a constitutional mandated protection for our public natural resources, as set forth in CNRA and Article I § 27.

(180). The transfer by Act 13 of \$50,000,000 annually out of the future rents and royalties from the Oil and Gas Lease Fund without evaluation of the impacts of those transfers on DCNR's ability to meet its statutory and constitutional obligations under the CNRA, is unconstitutional under Article I § 27.

(181). The Governor's signing into law the Act 13 amendment to the Oil and Gas Lease Fund Act is in violation of his duties under Article I § 27.

(182). Only a small portion of the Marcellus Legacy Fund transfers will benefit the Public Trust lands impacted, and therefore these transfers of funds are contrary to the Conservation and Natural Resources Act and the Oil and Gas Lease Fund Act.

N. Declare that Moneys From the Leasing of State Forest Land For Gas and Oil Extraction Are Part of The Public Trust And Must Be Used To Deal With The Impacts From Those Leases On the Public Natural Resources

(183). All prior paragraphs are hereby incorporated by reference.

(184). The Oil and Gas Lease Fund is not a general fund from which the Governor can replenish other funds. It is a special fund, consisting of monies taken from the conversion of assets from the Public Trust under Article I § 27. It is in essence a specific trust fund for Pennsylvania's natural resources established under the Conservation and Natural Resources Act of 1995.

(185). The oil and gas that is taken by private entities through a lease of State Forest land for oil and gas extraction is part of the public natural resources of that land. It is a nonrenewable public natural resource. The conversion of that nonrenewable resource to money requires that the money obtained therefrom must be retained for purposes set forth within Article I § 27.

(186). Where State Forest land is leased to private entities for a period of several decades, potentially in perpetuity, as the lease is held for as long as there is gas extraction, and the land is converted into drilling pads, compression stations, water storage areas, pipe lines, roads and other physical changes to the land for the purpose of gas extraction, then that land is in effect converted to private use, and its attributes as a public natural resource are severely compromised. The conversion of that land from a public natural resource to a private use requires that the money received therefrom is part of the public trust and must be retained for the purposes set forth under Article I § 27.

(187). The Governor's failure to assure the upfront rental payments and royalty payments from the lease of State forest land for gas extraction are kept and stored in a special fund for the purposes of Article I § 27 violates his duty as trustee under that Article.

O. Declare that Transfers of the \$383,000,000 From the Oil and Gas Lease Fund Were In Violation of The Oil and Gas Lease Fund Act, and Not Authorized Under the Fiscal Code (72 P.S. 3611), or Article I § 27

(188). All prior paragraphs are hereby incorporated by reference.

(189). The transfers of money from the Oil and Gas Lease Fund to the General Fund that were obtained from the 2008, 2009 and 2010 leases as upfront rental or bonus bid payments were wrongfully authorized for transfer because the authority for those transfers under Section 1601-E and 1602-E of the Fiscal Code

only authorized transfers of money from royalty payments from the extraction of the natural gas; and that the Respondents wrongfully approved those transfers; and, were in violation of the Oil and Gas Lease Fund Act.

(190). Section 1602-E of the Fiscal Code states that “[n]otwithstanding any other provision of law [Oil and Gas lease Fund Act] and except as provided in Section 1603-E, no money in the [Oil and Gas Lease] Fund from *royalties* may be expended unless appropriated by the General Assembly.” 72 P.S. § 1602-E.

(191). Sections 1604-E and 1605-E mandates reallocation from the Oil and Gas Lease Fund to the General Fund of \$60,000,000 and \$180,000,000. That money, (not yet generated at the time of the enactment of the Fiscal Code Amendments), was not from *royalties* from the Commonwealth’s natural gas that would be extracted, but from the leasing of State Forest land, that is, *rent* or ‘*bonus*’ money from opening up the State’s forests to natural gas exploration and extraction.

(192). Since Section 1602-E only applies to the royalties in the Oil and Gas Lease Fund, the prior appropriation to DCNR under the Oil and Gas Lease Act of all monies in the Oil and Gas Lease Fund is unaffected with respect to the rents deposited in the Fund from 2008 to 2010.

(193). Thus, the transfer of the \$383,000,000 of bonus or rents in the Fund to the General Fund mandated by Sections 1604-E and 1605-E of the Fiscal Code

were both in violation of the Oil and Gas Lease Fund and in violation of Article I § 27.

VII. STANDING

A. Petitioner's Members' Unique Interests

(194). The interests of the Petitioner's members are distinguishable from the interests of the general public. The members and their interests are specifically and uniquely focused on the State Forests and Parks that are impacted by the Marcellus gas development. Five members submitted affidavits as part of the original petition. In addition to their interests, Petitioner is adding eleven affidavits of members and member groups to emphasize the breadth of the impacts to the people living and working in the areas affected by the leasing of State forests. (See **Exhibits A - 0**).

(195). All of the areas of interest of the Petitioner members and member groups are located within the geographic areas affected by the Marcellus Shale development within our State Forests and State Parks; and within the area of interest of preservation of those Forests and Parks.

(196). Most of the 1,100 members of the Pine Creek Preservation Association are property owners within the Pine Creek Watershed (**Exhibit E**). The majority of these members are located within the five townships that are a part of the Pine Creek Council of Governments. Over 50% of the land in the Pine Creek

Watershed is comprised of State Forests, State Parks and State Game Lands, located in Potter, Tioga and Lycoming Counties. In McHenry Township, where the President of the Preservation Association is Chairman of the Board of Supervisors, over 80% of the township is State Forest and State Game Lands.

(197). The Keystone Trails Association members hike and maintain many trails in Marcellus Region, including the Midstate Trail and Loyalsock Trail (**Exhibit F**). The Association represents over 30 local hiking clubs in Pennsylvania, and the 3.8 million people who are Pennsylvania's hiking community.

(198). The members of the Lycoming Creek Watershed Association live, work and recreate in the Lycoming Creek Watershed because of its wild character (**Exhibit G**). The entire State Forest in the Lycoming Creek Watershed, except for the McIntyre Wild area, has been leased for Marcellus Shale gas development.

(199). Many of the 70 current members of the Muncy Creek Watershed Association live and work in the watershed because of its rural nature and its proximity to nearby State Forests (**Exhibit H**).

(200). The Tiadaghton Audubon Society and its 125 members are located in Wellsboro, Pennsylvania, (Tioga County). It is the oldest Audubon Society in Pennsylvania. They are keenly aware, due to their weekly bird watching hikes in

Tioga and Tiadaghton Forests, that the area is very special with regard to bird habitat (**Exhibit I**).

(201). The Lycoming Audubon Society has 350 members who are from Clinton and Lycoming Counties. The State Forests in their areas of interest are parts of the Bald Eagle, the Sproul, the Tioga, the Tiadaghton and the Loyalsock Forests (**Exhibit J**).

(202). The Responsible Drilling Alliance is located in Williamsport, Pennsylvania. The members hike, bike, fish and recreate throughout the State Forests, including the Loyalsock Forest and the Pine Creek Valley (**Exhibit K**).

(203). The Slate Run Sportsmen was established in 1954 by a group of visionary fly fishermen who enjoy the Class A Wild Trout Stream known as Slate Run in the Pine Creek Valley (**Exhibit L**). The 175 members come from all over the state and from 15 other states, who share their love for the Pine Creek Valley. Some own their own cabins there, others camp or stay in local hotels. They come here to enjoy the more primitive environment, the fresh air, the clean water, and the silence and the darkness of the mountains at night.

(204). The Pine Creek Headwaters Protection Group and its 200 members are committed to the protection of the headwaters of Pine Creek and her tributaries (**Exhibit M**).

(205). The Pennsylvania Forest Coalition is concerned about the protection and preservation of all of Pennsylvania's State Forests. Its members are from all over the State, but frequent use the State Forests and Parks affected by the Marcellus Shale gas extraction leases (**Exhibit N**).

(206). The 300 members of the Loyalsock Creek Watershed Association live and recreate in the watershed because the Loyalsock Creek and the Loyalsock Forest provide a unique connection to nature has become a part of their lives (**Exhibit O**). The membership is deeply committed to the Loyalsock Forest and its ecology because it supports their way of life. A major part of the Forest has been leased for Marcellus Shale gas extraction. The State has leased much of the area where it owns the mineral rights.

B. Petitioner Members' Rights and Interests Are Substantially and Immediately Harmed

1. Loss of DCNR Control Of Oil and Gas Funds

(207). The Fiscal Code Amendments, specifically Section 1602-E, immediately, at the time of enactment, took away from DCNR control of those funds obtained from leasing State Forest land for oil and gas extraction, both prior existing leases, and those leases required by Sections 1604-E and 1605-E of the Fiscal Code, and required the transfer hundreds of millions of dollars from the Fund to the General Fund. Petitioner members experienced the immediate and long term impacts from these actions.

(208). Paul Hoffmaster, President of the Pine Creek Preservation Association, has described explicitly, in **Exhibit E** hereto, the depth of the collaborative relationship of DCNR with his organization and others in the development of the recreational and tourist economy of the Pine Creek Valley. These relationships have resulted in the “Pine Creek Valley Management Plan”, the “Pine Creek Rail Trail Plan”, the “PA Wilds Economic Development Program” and the “Pine Creek Watershed River Conservation Plan”. These plans and programs all integrate the uses of the natural resources of the State Forests and Parks in the area with the recreational and economic development of the Pine Creek Valley, the four-county region of Pine Creek, and the twelve-county area of the PA Wilds. They are all dependent on DCNR’s continued funding commitments.

(209). As stated by Paul Hoffmaster, under **The Stewards** section of **Exhibit E**, “The Pine Creek Valley and whatever remains of the PA Wilds dream of economic growth through recreation and tourism depends heavily on the presence and mission of DCNR.” Paul continues to add, “With the addition of enhancing and accommodating rail trail, tourism and outdoor recreation activities as part of their mission, came additional responsibilities such as maintaining the rail trail, expanding and maintaining snowmobile and cross-country trails, expanding and

maintaining canoe and boat access areas, expanding and improving hiking trails, expanding and improving both camping areas and their amenities.”

(210). In addition to these responsibilities, over and above their duty to protect and conserve the State Forest and the natural resources of the forests, Paul Hoffmaster points to added responsibilities of DCNR to oversee the gas industry activities within those forests. Yet, as Mr. Hoffmaster concludes, DCNR’s local staffing is significantly less today than it was five years ago. DCNR’s proposed recreational enhancements to the area have been curtailed. And, DCNR has lost the Oil and Gas Lease Funds that are necessary to carry out those purposes.

(211). These harms are experienced by other members’ in their affidavits as well. The Slate Run Sportsmen have noted that since the development of gas on State Forest lands the DCNR enforcement officers, who were already spread thin, have been pulled from their regular duties to handle incidents on well pads and gas truck traffic violations and incidents (**Exhibit L**). Further, the Slate Run Sportsmen are concerned that there will not be sufficient funds left in the Oil and Gas Lease Fund to for restoration (of the natural resources) after the damage from the drilling activities are completed.

(212). The Responsible Drilling Alliance believes that the loss of the control of the Oil and Gas Lease Funds by DCNR directly affects the economic interests of

the recreational industry in the area because DCNR is left without sufficient money to successfully perform its responsibilities (**Exhibit K**).

(213). The Lycoming Audubon Society sees the Oil and Gas Lease Fund monies as necessary for public use by DCNR, as both a moral and ethical as well as legal obligation, to restore and protect the aesthetic wilderness, water quality and air quality of our natural resources; and considers use of that money for the General Fund instead to violate those obligations (**Exhibit J**). So too does the Lycoming Creek Watershed Association, (**Exhibit G**), the Muncy Creek Watershed Association (**Exhibit H**), and the Keystone Trails Association (**Exhibit F**).

2. Loss of Use of Forest Land From Private Industrial Development

(214). The Pennsylvania Forest Coalition (**Exhibit N**), as well as other members, have been harmed by the direct loss of the use of hundreds if not thousands of acres of State Forest land that are currently being used for private industrial purposes for gas extraction, including well pads, compression stations, water storage facilities, access roads, pipelines and other facilities. These areas will be unavailable to the Petitioner's members throughout the development process, which could be more than 40 to 60 years.

(215). The entire State Forest (Loyalsock Forest) in the Lycoming Creek Watershed with the exception of the McIntyre Wild Area has been leased for shale

gas development. This amount of guaranteed industrial development will alter the natural character of the lands in the watershed held in the public trust (Lycoming Creek Watershed Association Affidavit, **Exhibit G**); and will negatively affect our outdoor recreation industry, (Responsible Drilling Alliance, **Exhibit K**).

(216). Members of the Lycoming Creek Watershed Association have been denied the right to use State Forest Lands by employees of the gas companies (**Exhibit G**).

3. Loss of Air Quality and Water Quality

(217). The Lycoming Creek Watershed Association stated that the amount of industrial development that will occur cannot occur without impacting the exceptional Value streams. The Association then asks, how will those legally responsible for maintaining our rights to the public trust (DCNR) ensure that the water quality in our Exceptional Value streams...are not degraded from all the industrial activity that will occur without the funds to mitigate those impacts. **Exhibit G**.

(218). The Pine Creek Headwater Protection Group members are deeply concerned with the native brook trout population. The brook trout are very sensitive to increased degradation of the water quality of the streams they inhabit. The drilling activities in the Tioga forest threaten to degrade the streams that the brook trout live and breed in. **Exhibit M**.

(219). The Tiadaghton Audubon Society has experienced impacts to species of birds, mammals, reptiles, amphibians, particularly those that rely on forest interior habitats, from the combination of the gas pads, roads, pipelines, holding ponds, compressor stations, truck traffic and noise, which change the landscape.

Exhibit I.

4. Aesthetic Harm

(220). Members of the Keystone Trails Association have experienced well pads being constructed on existing trails; expanding roads and buildings on or near trails; compressor stations bring industrial level noise pollution to wilderness settings; truck traffic causing loud noises, dust billowing 40 feet into the air; Diesel engines spewing black smoke; loss of canopy; overzealous security guards chasing members off trails. Many of these members are talking about giving up using the trails as a result of these impacts. **Exhibit F.**

(221). The members of the Pine Creek Headwaters Protection Group have experienced noise levels associated with increased truck traffic have greatly increased since the Marcellus Gas industry in many parts of the Tioga State Forest. Hunting experiences and simply enjoyment of wildlife sounds is greatly diminished by the cumulative noise levels from compressor stations, railroad traffic, and truck traffic. **Exhibit M.**

(222). In the Pine Creek Watershed there are many examples of vistas that used to look over unbroken forest that now offer views of industrial development.

Exhibit N.

5. Increased Flooding From Increased Stormwater

(223). The Loyalsock Creek Watershed Association Affidavit points out that much of the Loyalsock Forest has been leased for gas extraction. The State has leased much of the Forest where it owns the mineral rights. Much of the rest of the mineral rights under the State Forest are privately owned and leased out. Much deforestation will occur in the development of natural gas in Forest. Deforestation exacerbates flooding. The gas industry will cause increased impermeable surfaces accelerating runoff. The Loyalsock Valley is subject to frequent flooding. The emotional and economic impacts of flooding are severe. **Exhibit O.**

6. Loss of Value to Real Estate

(224). The members of the Pine Creek Headwaters Protective Association have already experienced that property value in their area in close proximity to gas industry traffic and its activities have declined dramatically, some properties literally unable to sell. **Exhibit M.**

(225). The Loyalsock Creek Watershed Association is also concerned about the loss of property values, as well as jobs. They believe the quality of the State Forest has an impact on the value of their homes, hunting fishing camps and

services that support tourism in and near the Forest. Industrialization of the State Forest for gas extraction may benefit the private gas industry, but not the residents and recreational users of the Loyalsock Forest and Loyalsock Creek. **Exhibit O.**

C. Conclusion

(226). The above listed harms enumerated above only partially cover the impacts and concerns of the affidavits submitted as Exhibits A through K. The Petitioner respectfully requests this Honorable Court to read and review the entirety of the Affidavits to fully understand the direct and immediate impacts of the gas development that is happening to the members of the PEDF on our State Forests and on and around our State Parks. They clearly establish direct and immediate harm.

D. Request For Declaratory Relief

(227). All prior paragraphs are hereby incorporated by reference.

(228). For the reasons set forth above, the Petitioner seeks a declaration that the Petitioner and its members have standing to bring this action.

Respectfully Submitted,

John E. Childe, Esq.
PA Supreme Ct. ID No. 19221
1847 Center Street
Camp Hill, PA 17011
Telephone: 717-761-6162
Email: childeje@aol.com

Date: December 5, 2013