

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL :
DEFENSE FOUNDATION, :
Petitioner :
 : **No. 228 M.D. 2012**
v. :
 :
TOM CORBETT, GOVERNOR; :
COMMONWEALTH OF :
PENNSYLVANIA, :
Respondent :

**PETITIONER’S APPLICATION FOR HEARING IN SUPPORT OF
PRELIMINARY INJUNCTION**

Petitioner hereby requests this honorable court to hold a hearing on the Application for Preliminary Injunction at the earliest convenience of the Court. The Respondents have raised factual issues in their Joint Brief In Response which Petitioner believes the Court would benefit by taking testimony on.

Attached as exhibits to the Response are the (A). Executive Summary to the State Forest Management Plan,; (B) Draft Lease for State Forest Lands; (C)Shale Gas Monitoring Report; (D) Guidelines For Administering Oil and Gas Lease Activity on State Forest lands; (E) Forest Management Certification Report. Without discussing these documents in detail the Respondents imply that at least two out of the three prongs of test of the *Payne v. Kassab* have been met by these documents .

Putting aside the question as to whether or not the three pronged test this court enunciated in *Payne* is relevant to the issues presented by the Second Amended Petition, and the Motion for Summary Judgment, Petitioner requests to offer testimony that these documents and the assumptions the Respondents make from them, do not deal with the impacts from the 2008 to 2010 leases and the loss of the funds from those leases.

The proposed witnesses would include Michael DeBerardinis, former Secretary under the Governor Ed Rendell up to April, 2009, Dr. James Grace, former Deputy Secretary for Parks and Forests in the Rendell Administration, State Forester before that, John Quigley, former special assistant to Secretary DeBarerdinis and Secretary of DCNR under Governor Rendell from 2009 to the end of the Rendell Administration, John Norbeck, former Director of the Bureau of State Parks, up to 2012, and five members of the Petitioner who have submitted affidavits in support of the Petition. They would provide testimony on the following:

-The three leases of State Forest land in 2008, 2009 and 2010 of approximately 140,000 acres should have not been entered into. They did not understand the impacts that shale gas extraction requires and the potential harm that can result from that extraction to the natural resources.

-When those 140,000 acres are added to the existing leases that are and will be converted to shale gas extraction, and to the severed rights on additional State Forest and Park lands, over 800,000 acres of our State Forests and Parks are exposed to gas leases.

-Added to those 800,000 acres are the private lands within and surrounding the State Forests and Parks that are also being developed and that will impact the State lands.

- In addition to the Marcellus Shale Region that is being developed there are several other shale gas regions underlying the Marcellus that will subsequently be developed. The gas extraction process will continue on these State lands for an unknown period of time, in terms of decades.

-When the 2008 leases for 74,000 acres was entered into it was the expectation of the DCNR that the revenue from those leases would be used by DCNR to protect and improve the natural resources, as had been required since leasing was authorized. They would not have leased if they knew the lease and royalty money would not be retained by DCNR to use for the natural resources.

-At the time of the 2008 leases there was a backlog of at least several hundred million dollars of projects that needed to be done on our State lands.

-At the time of the 2008 leases there was need to purchase mineral rights on severed lands of State Forests and Parks in order to protect them., and to purchase lands to buffer and to mitigate the lands that had been leased.

-With the inception of the 2008 leases DCNR learned enough of the gas extraction process to know that there would be immediate and long term impacts, including fragmentation and air pollution that would impact the natural resources. That is why they decided not to lease any more land after the 2008 leases, in order to study the impacts and learn what would be needed to study and monitor, minimize and mitigate the impacts.

-Since its inception in 1995 DCNR has developed a plan to conserve and maintain our natural resources to sustain the multiple uses for future generations. DCNR cannot implement that plan if they do not control leasing the land for gas extraction and maintaining the revenue from those leases and gas extraction royalties.

-DCNR has the duty to develop the economic and recreational uses of our natural resources. To accomplish this DCNR has developed a comprehensive initiative to promote conservation, sustainability and community revitalization. DCNR has done this by working with other state agencies, county and local governments, foundations and non-profit groups to develop a coordinated effort to revitalize large geographic area of public natural resources to support recreational

outdoor experiences and to enhance and develop tourism and other economic benefits. The largest and most advanced of these projects is the Pennsylvania Wilds, a 12 county region in the north central region of Pennsylvania, right where the Marcellus Shale Region is located. DCNR cannot conserve and maintain these initiatives if they cannot control the leasing of State Forest and Park lands and the revenue therefrom.

-DCNR has the duty to act as trustee to insure the sustainability of the public natural resources of our State Parks and Forests. They cannot meet that duty if they cannot control the decision as to when and where and how much State land can and should be leased. They cannot meet that duty if they cannot control the revenues from the leasing to deal with the impacts.

-DCNR has the duty to insure the rights of the beneficiaries of the public trust, the people of Pennsylvania, to the public natural resources. They cannot do that if the Governor continues to lease State lands, removes the natural resources therefrom, and takes the revenue from DCNR.

-The gas extraction has just begun on State Forest land. It has not started on our State Parks. The impacts on the natural resources and on the uses of those resources both now and for future generations, are being studied but are only beginning to be understood. But it is certain that the impacts will be immediate and

long term, direct and indirect, cumulative and synergistic. The impacts will be environmental and economic.

-The costs of the studying, monitoring and dealing with the impacts, of buffering and mitigating those impacts and of restoring them is not known, has not begun to be evaluated. But it could require all of the projected revenue from the existing leases and royalties.

-Until those costs can be determined and insured there should be no diversion of Oil and Gas Lease Funds.

The above needs to conserve and maintain our public natural resources have not been and cannot be met by the lease agreements of DCNR or the monitoring protocols.

WHEREFORE, the Petitioner respectfully request that this honorable court hold a hearing to hear testimony as proposed above.

Respectfully submitted,

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