

THE SUPREME COURT HAS SAVED OUR STATE FORESTS AND PARKS!

Much has been written and talked about the impact of the **Supreme Court Decision** in *PEDF v. Governor Wolf*, decided a week ago on June 20, 2017, on the development of the meaning of our Environmental Amendment, Article I § 27.

The reason why the PEDF brought the action in the first place was to stop the destruction of our State Forests and Parks from the extraction of natural gas and oil. In early 2012, when PEDF first brought the action in Commonwealth Court, 660,000 acres of State Forest were open to leasing for oil and gas in the Marcellus Shale region, Northcentral Pennsylvania. Additionally, these lands were surrounded by private land and State Game lands also subject to gas development.

In 2008, when the first unconventional deep, horizontal wells were drilled, DCNR realized how much they didn't know about just how destructive the extraction process was and would continue to be. DCNR issued a decision not to lease until they could deal with the problems they were confronting. DCNR also needed the money from leasing the land to deal with the problems. But Governor Rendell and then Governor Corbett ignored DCNR's requests, both to stop the leases and to keep the funds.

In 2012 Governor Corbett started to use the lease funds to replace general funds to pay for DCNR's operations. That is when PEDF filed the Petition.

The Supreme Court Decision has specifically provided the legal mechanisms both to stop further leasing of our State Forest and Parks, and to insure that the funds are there for DCNR to deal with the impacts from the leases and to meet its other statutory and constitutional obligations regarding the public natural resources.

The Court's findings that the standards for determining compliance with the trust provisions is the text of Article I § 27, the duty to conserve and maintain the public natural resources; and that **duty requires the government to both prevent and remedy degradation, depletion, or diminution of those resources**, provides strict protections. These protections cannot be modified by any legislation because they are constitutionally based.

Conversely, the Court's determination that the three-pronged test of Payne v. Kassab no longer is the standard opens up new jurisprudence.

The Court's determination that each and all governmental agencies, both statewide and local, are trustees, and that if DCNR continues to determine that no further leases can be entered into, then the Governor and the Legislature can only change that decision by proving that such leasing meets their duty to conserve and maintain.

The Court's determination that all royalty moneys are part of the trust established under Article I § 27 means that DCNR has access to those funds now to deal with the gas extraction problems, as well as their other trust duties. That means that hundreds of millions of dollars are now available to them. It also means that the funds must remain available for DCNR to deal with future problems, to insure that future generations' rights are retained.

The Supreme Court's determination that the trustees must meet all legally enforceable fiduciary duties provides ever further protection. Any decision the trustee makes regarding public natural resources must meet the tests of prudence, loyalty, and impartiality, each defined with clear limitations.

The determination that the Commonwealth no longer has any proprietary rights to our public natural resources specifically limits their decisions regarding the natural resources, and provides the people with much greater roles than conceived before the decision. The immediate impact is to preclude the Government from using a balancing test to allow some degradation if other Government interests are advanced.

Overall, the Supreme Court has issued an opinion that is and will continue to provide strong protection for our public natural resources.

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