



## **INTRODUCTION**

The Pennsylvania Environmental Defense Foundation ("Petitioner") hereby applies to this Court for special relief in the nature of a preliminary injunction pursuant to Pa. R.A.P. 1532(a). The relief requested is to enjoin Respondent Commonwealth of Pennsylvania ("Commonwealth") and Respondent Governor Thomas Corbett ("Governor") (collectively, the "Respondents") from requiring the Pennsylvania Department of Conservation and Natural Resources ("DCNR") to lease additional State Forest or State Park land for the extraction of natural gas for the purpose of generating \$75,000,000 for the General Fund. Also, to enjoin the Respondents from requiring DCNR to use \$117,000,000 from the Oil and Gas Lease Fund (the fund containing the money generated by the State Forest oil and gas leasing) for its operating expenses. These actions are proposed in the Governor's Executive Budget for 2014-15, issued on February 4, 2014 ("2014-15 Executive Budget"). The injunctive relief is requested until the resolution of Petitioner's Petition for Review in this matter.

Petitioner further requests that this Court expedite the schedule for consideration of its request for a preliminary injunction because the budget for 2014-15 is currently being negotiated and will be finalized by June 30, 2014. Without this preliminary injunction, the Respondents will alter the status quo and cause irreparable injury by requiring additional leasing of State Park or State

Forest land for oil and gas extraction and commit more than \$192,000,000 of public trust assets from the public trust, in violation of Article I, Section 27 of the Pennsylvania Constitution ("Article I § 27), and in violation of the Respondents' trustee duties and the Petitioner's rights thereunder.

Petitioner hereby incorporates its Brief in support of Petitioner's Motion for Summary Judgment, filed and served on April 21, 2014.

Petitioner further states the following:

### **RELEVANT PROCEDURAL AND FACTUAL BACKGROUND**

1. Petitioner filed its original Petition for Review in the Nature of an Action for Declaratory Relief on March 6, 2012 against the Respondents, the Secretary of the Budget and the State Treasurer alleging that their actions violated Article I § 27, their trustee duties and the Petitioner's rights thereunder, by misusing money generated from the leasing of State Forest land for oil and gas extraction, and by demanding additional leasing to raise revenue for these unlawful uses. Petitioner also seeks declaration that certain legislation enacted to carry out these actions (Article XVI-E, Sections 1602-E through 1605-E of the Fiscal Code, and certain provisions of Act 13 of 2012, including the new Chapter 25 of Title 58 of the Pennsylvania Consolidated Statutes) are unconstitutional.

2. In response to preliminary objections, Petitioner filed an Amended Petition on April 30, 2012 that removed the Secretary of the Budget and the State

Treasurer as respondents. The Respondents (Commonwealth and Governor) again filed preliminary objections, which were fully briefed and denied by this Court on January 22, 2013.

3. After discovery, the Petitioner filed its Second Amended Petition on December 30, 2013 to include further allegations of specific actions taken by the Governor in violation of Article I § 27, his trustee duties and the Petitioner's rights thereunder, based on information obtained during discovery. The Second Amended Petition also withdrew allegations of violations of Article III, Sections 3 and 11 of the Pennsylvania Constitution, and added eleven (11) affidavits of members and member groups in support of Petitioner's standing. The Respondent Commonwealth, represented by the Attorney General, and the Respondent Governor, represented by the Governor's General Counsel, answered the Second Amended Petition on February 12, 2014, and alleged a new matter. Petitioner answered the new matter on March 4, 2014.

4. On February 20, 2014, Petitioner filed a request for an Addendum to the Second Amended Petition to include allegations of Respondents' further violations of Article I § 27, their duties and the Petitioner's rights thereunder, by the Governor's actions proposed in his 2014-15 Executive Budget, which was published on February 4, 2014.. The additional violations include requiring DCNR to lease additional State Forest and/or State Park land for oil and gas extraction to

generate \$75,000,000 for the General Fund, and to require DCNR to use \$117,000,000 from the Oil and Gas Lease Fund for its operating expenses. This Court granted Petitioner's request on March 18, 2014. The Respondents answered the Addendum on April 18, 2014, and again alleged a new matter, which the Petitioner answered on April 21, 2014.

### **INJUNCTIVE RELIEF**

5. This Court may order special relief, including preliminary injunctions, “in the interest of justice and consistent with the usages and principles of law” pursuant to Pa. R.A.P. 1532(a). Equity will grant a preliminary injunction if the petitioner's right to relief is clear, the need for relief is immediate, and the injury will be irreparable if the injunction is not granted. *City of Phila. v. Commonwealth*, 837 A.2d 591, 598 (Pa. Cmwlt. 2003) (citing *Zebra v. Pittsburgh Area School District*, 449 Pa. 432, 296 A.2d 748 (1972)). A preliminary injunction is to be granted only when and if these criteria have been fully and completely established. *Id.* (citing *Committee of Seventy v. Albert*, 381 A.2d 188 (Pa. Cmwlt. 1977)).

6. The "clear right to relief" element does not impose upon the proponent of the preliminary injunction the burden of establishing an absolute right to relief on the underlying claim. *T.W. Phillips Gas and Oil Co., v. The Peoples Natural Gas Co.*, 492 A.2d 776, 780 (Pa. Cmwlt. 1985) (citing *Pa. Interscholastic Athletic Assoc. v. Geisinger*, 474 A.2d 62 (1984)). A preliminary injunction may be granted

to preserve the status quo when important legal questions deserving of serious consideration and resolution must be resolved and the threat of immediate and irreparable harm to the petitioning party is evident. *Id.* (quoting *Fischer v. Dept. of Public Welfare*, 497 Pa. 267, 271-272, 439 A.2d 1172,1174-1175 (1982)).

7. In describing irreparable injuries, this Court has stated that "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough. *The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm.*" *Chambliss v. Phila.*, 535 A.2d 291, 294 (Pa. Cmwlth. 1987) (citing *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

8. Where no certain pecuniary standard exists for the measurement of damages, the threatened harm is irreparable. *T.W. Phillips Gas and Oil Co.*, 492 A.2d at 781 (citing *Phila. Ball Club v. Lajoie*, 202 Pa. 210, 216, 51 A. 973, 974 (1902); *Alabama Binder & Chemical Corp. v. Pa. Industrial Chemical Corp.*, 410 Pa. 214, 189 A.2d 180 (1963)).

9. In considering injuries, "no balancing of conveniences" is permitted, rather "it should be clear that greater injury will be done by refusing [the preliminary injunction] than by granting it." *Pennsylvania R. Co. v. Driscoll*, 33 Pa. 97, 101, 198 A. 130, 133 (1938).

10. As set forth herein, Petitioner has fully and completely established all of the criteria for issuing a preliminary injunction.

### **Petitioner's Right to Relief is Clear**

11. Petitioner relies on its Brief in support of Motion for Summary Judgment.

12. Article I § 27 declares that “[t]he people have a right to clean air, pure water, and 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, the Commonwealth shall conserve and maintain them for the benefit of all the people.”

13. Article I § 27 creates a public trust, with the corpus consisting of our public natural resources, including our State Parks and Forests and the natural, scenic, historic and esthetic resources that are a part of these properties (*e.g.*, their trees and plants; their fish, birds, animals, and other creatures that live in them; their habitats and ecology that support the flora and fauna; their scenic vistas; their clean air; their pure waters; *and their mineral resources*), and establishes the people of the Commonwealth, including Petitioner's members, as the beneficiaries of this public trust. *See* Petitioner's Second Amended Petition, Motion for Summary Judgment, and Brief in support of its Motion for Summary Judgment.

14. Petitioner's members have a substantial, immediate and direct interest in the State Parks and State Forests that have been leased for oil and gas extraction, as well as the natural resources including the natural gas and oil, and the use of the money derived from this leasing and royalties to conserve and maintain the public natural resources of the State Parks and Forests. *Id.* (see Exhibits A-O; Brief Section XIV).

15. The leasing of State Park and State Forest land for oil and gas results in industrial activities that adversely impact the public natural resources by clearing trees and plants and disturbing habitat for birds and animals to construct well pads, roads, pipelines, compression stations, impoundments, storage tanks, and other structures and equipment necessary to oil and gas extraction and production; by storing large quantities of chemicals, fuel and waste material at the industrial sites; by creating noise, dust and heavy truck traffic on gravel State Park and Forest roads; by altering scenic vistas, hiking trails and the quiet and solitude hallmark to the enjoyment of State Parks and Forests. *Id.*

16. The money generated from leasing State Forest land for oil and gas extraction and the production of oil and gas from these lands, which is deposited by law into the Oil and Gas Lease Fund, is part of the public trust established by Article I § 27 and must be used by DCNR to conserve and maintain the State Park and State Forest land impacted by oil and gas extraction. *Id.*; see also *Hospital and*



*Healthsystem Assoc. v. Commonwealth (MCARE Fund)*, 77 A.3d 587, 600-604 (Pa. 2013) (finding special fund to be in the nature of a trust fund that could not be diverted to other purposes by the Fiscal Code).

17. The Respondents have directed DCNR to lease additional State Forest land for oil and gas extraction to generate \$75,000,000 for the General Fund without identifying the tracts to be leased; without evaluating the specific impacts to the public natural resources of those tracts, the cumulative impacts to surrounding public natural resources, or the cost to mitigate these impacts; and without soliciting any public input on the people's rights to these public natural resources, the proposed impacts to them, without considering the need for the natural gas resources to sustain the public natural resources for future generations, or the use of the money generated from the additional leasing.

18. The Respondents have directed DCNR to use \$117,000,000 from the Oil and Gas Lease Fund to pay for its annual operating expenses for budget year 2014-15 from the Oil and Gas Lease Fund to the Marcellus Legacy Fund without evaluating the direct and cumulative impacts to the approximately 700,000 acres of State Forest land and approximately 200,000 acres of State Park land currently subject to oil and gas extraction, without determining the cost to mitigate these impacts; and without soliciting any public input on the people's rights to these

public natural resources, the proposed impacts to them, or the use of the Oil and Gas Lease Fund.

### **The Need for Relief is Immediate**

19. The Respondents are actively engaged in negotiating the 2014-15 budget with the General Assembly in order to finalize the budget by June 30, 2014.

20. The 2014-15 Executive Budget proposes to transfer \$75,000,000 from the Oil and Gas Lease Fund to the General Fund and identifies additional leasing as the source of that revenue. 2014-15 Executive Budget at H50.

21. To generate the \$75,000,000 for the General Fund, DCNR is currently preparing to execute additional leases of State Park or State Forest land for oil and gas extraction.

22. The Governor is currently preparing to amend or rescind Executive Order 2010-05 (Second Amended Petition, Exhibit HH) to allow additional leasing of State Park and State Forest land.

23. Under the standard terms of DCNR's oil and gas lease for State Park or State Forest land, any new leases will remain in effect as long as the lessees are producing oil or gas in paying quantities on the leased tracts.<sup>1</sup> DCNR leases allow oil and gas extraction from all geologic formations, so natural gas extraction and production on the leased tracts will continue for decades.

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<sup>1</sup> See DCNR's lease at [http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr\\_008504.pdf](http://www.dcnr.state.pa.us/cs/groups/public/documents/document/dcnr_008504.pdf).

24. The ability of DCNR to rescind a lease after execution is limited, if not impossible.

25. The 2014-15 Executive Budget proposes to appropriate \$117,546,000 from the Oil and Gas Lease Fund to DCNR to pay for its operating expenses (*e.g.* staff salaries, vehicles, fuel and electric costs, office rental, office equipment and supplies, routine maintenance, *etc.*), rather than proposing to appropriate General Fund revenue to DCNR for these annual operating expenses. 2014-15 Executive Budget at E12.4, H50.

26. The ability for DCNR to use other sources of revenue for its annual operating expenses after the budget has been finalized and enacted through an Appropriations Bill will be difficult, if not impossible.

**The Injury will be Irreparable if the Injunction is not Granted**

27. The above paragraphs describing why the need for relief is immediate also explain why the injury will be irreparable if the injunction is not granted. Without this injunction, the Respondents will direct DCNR to execute leases of additional State Park and State Forest lands, committing these lands to oil and gas extraction for decades. These leases, once executed, cannot be rescinded and the commitment of these public natural resources to development will be irreversible. The natural gas, itself a nonrenewable public natural resource, cannot be replaced after it is extracted.

28. The Respondents are likely to assert that no injury will result from these new leases because they will purportedly not allow any surface disturbance for oil and gas extraction. This assertion misses the point that the commitment to extraction of the natural gas on these lands itself is an irreparable injury. In addition, the contention that the surface impact from the shale gas development will be limited is speculative without identification of the specific tracts to be leased and an analysis of the direct and cumulative impacts to these tracts and the surrounding lands.

29. The costs to deal with the immediate and long term, direct and indirect, cumulative and synergistic impacts from the existing and potential leases on the public natural resources are not known. The costs to inspect, monitor, test, sample, study, analyze, research, those impacts are not known. The costs to minimize, avoid, mitigate and restore those impacts is not known. The costs to conserve and maintain the other natural resources that are a part of the public trust, beyond the costs of dealing with the impacts from gas extraction, to sustain those resources over succeeding generations, the costs to repair, replace, and improve those resources and the facilities to use those resources, are not known.

30. DCNR acknowledges that it has only just begun to collect the data needed to understand the impacts of existing shale gas development on the State Forest, but observes that there are "clearly impacts and tradeoffs associated with

this activity." DCNR Shale-Gas Monitoring Report at 1.<sup>2</sup> Direct and indirect harm to public natural resources from additional leasing will result from the additional natural gas exploration, construction, truck traffic, noise and air pollution that will occur on the adjoining land already under lease to facilitate natural gas extraction on the newly lease land. The additional leases will also increase the activity and infrastructure, such as new or expanded well pads, roads, pipelines, compression stations, and water storage areas on the public lands already under lease.

31. Petitioners will suffer irreparable injury if the Respondents finalize a budget for 2014-15 that requires DCNR to generate \$75,000,000 by leasing public natural resources – our State Forest or State Park land – for the sale of another public natural resource – our natural gas on these lands. As the beneficiaries to these public trust resources under Article I § 27, Petitioner will suffer irreparable injury by the loss of these trust assets, which are part of the corpus of the public trust, to private industry. No studies have been conducted as to the needs for these resources for future generations who are also beneficiaries of this trust.

32. Without this injunction, the Respondents will finalize a budget committing DCNR to spend over \$117,000,000 from the Oil and Gas Lease Fund for its annual operating costs in budget year 2014-15. Petitioner and its members will suffer irreparable injury from the loss of this money from the Oil and Gas

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<sup>22</sup> Available at <http://www.dcnr.state.pa.us/forestry/NaturalGas/monitoringreport/index.htm>.

Lease Fund because it will no longer be available for conserving and maintaining the corpus of the trust by mitigating the impacts of oil and gas extraction on our State Parks and State Forests.

33. The removal of over \$117,000,000 from the Oil and Gas Lease Fund generated from existing leases of State Forest land for oil and gas extraction and the proposed removal of an additional \$75,000,000 generated from new leases from the Oil and Gas Lease Fund, the specific trust fund established for the purpose of conserving and maintaining our State Parks and Forests, is an immediate, irreparable loss that cannot be remedied by damage claims. The Oil and Gas Lease Fund must be left intact to meet its purpose as a trust fund under Article I § 27.

34. By granting this preliminary injunction, the Court will preserve the status quo until the substantial legal questions involved in this case can be resolved to determine the rights of the respective parties. No additional State Park or State Forest land will be committed to natural gas development and the money generated under existing leases will be preserved in the Oil and Gas Lease Fund until the Court has decided the constitutional issues presented in Petitioner's Second Amended Petition and Petitioner's Motion for Summary Judgment.

**EXPEDITED CONSIDERATION**

35. Petitioner requests expedited consideration of this application for special relief in the nature of a preliminary injunction because negotiations of the budget for 2014-15 are currently ongoing and will be finalized by June 30, 2014. Without expedited consideration of this application, the Respondents will commit to the actions proposed in the 2014-15 Executive Budget. Respondents will direct DCNR to lease additional State Park or State Forest land for oil and gas extraction to generate \$75,000,000 for transfer from the Oil and Gas Lease Fund to the General Fund; Respondents will require DCNR to use over \$117,000,000 from the Oil and Gas Lease Fund for its annual operating expenses during budget year 2014-15.

36. Petitioner requests that this Court direct the Respondents to submit their response to this application by May 22, 2014, the date this Court has ordered submission of their brief in response to Petitioner's Motion for Summary Judgment.

37. Petitioner requests that this Court grant it the opportunity to submit a reply by May 29, 2014 to any new information raised by Respondents in their response.

38. Petitioner requests that this Court schedule oral argument on or before June 5, 2014.

## **CONCLUSION**

39. For the reasons set forth herein, as well as the Petitioner's Second Amended Petition, and Petitioner's Motion for Summary Judgment and its Brief in support thereof, the Petitioner respectfully requests that this Honorable Court grant it application for preliminary injunction and enjoin the Respondents from requiring DCNR to lease additional State Park or State Forest land to generate money for the General Fund, from requiring DCNR to use the Oil and Gas Lease Fund for its annual operating expenses. Petitioner further requests that this Court expedite the schedule for consideration of this application so an order granting the preliminary injunction can be issued before the deadline of June 30, 2014 for completion of the budget for 2014-15.

Respectfully,

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