

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	:	

PETITIONER’S OPPOSITION

TO RESPONDENTS’ JOINT APPLICATION FOR STAY

TO RESPOND TO MOTION FOR SUMMARY JUDGMENT

Petitioner Pennsylvania Environmental Defense Foundation, through their counsel respectively opposes the Respondents’ Joint Application for Stay, and responds seriatim to the Application:

A. Procedural Background

1. Petitioner challenges the Respondents’ actions requiring leasing of State Forest land, which is a public natural resource protected under Article I § 27 of Pennsylvania’s Constitution, for the purpose extracting natural gas, which is also a public natural resource, and which extracting causes harm to the State Forest, for the sole purpose of providing revenue for the General Fund, which is contrary to the provisions of the Oil and Gas Lease Fund Act. These actions violate the Respondents’ duties as trustee of the public trust established by Article I § 27, and violate Article I § 27, and violate Petitioner’s members’ constitutional rights and

benefits thereunder. Petitioner also challenges the Respondents' use of the Oil and Gas Lease Fund to operate DCNR; and the Respondents' approval of the 2009 Oil and Gas Amendments to the Fiscal Code, Article XVI-E, Sections 1602-1605-E, and approval of Act 13 of 2012 provisions which amend the Oil and Gas Lease Fund Act. Petitioner also challenges the Article XVI-E Amendments and the Act 13 Amendments as unconstitutional.

2. Admitted

3. Admitted.

4. Admitted.

5. Admitted

6. Admitted in part. After a hearing the Court denied the Caucuses intervention on matters dealing with Article I § 27, but granted intervention on matters dealing with Article III challenges. The Article III challenges were dropped by Petitioner in the Second Amended Petition, and the Caucuses' limited intervention was withdrawn by the Court.

7. Admitted. As part of Petitioner's motion of September 3, 2013, Petitioner submitted the eleven affidavits of member groups to support the 5 affidavits submitted with the original Petition. In their opposition, submitted October 28, almost two months after the motion was filed, the Respondents suggested they needed to take some depositions of the members, but had made no attempt to do so prior to filing the opposition, or after the November 4 Court order.

8. Admitted in part. It is admitted that Respondents objected to the motion as being premature, but it is denied that Respondents had not the opportunity to conduct discovery. In the past two years the Respondents have not initiated discovery. But by responding to Petitioner's interrogatories and request for production for documents, which were served on Respondents on August 19, 2013, the Respondents had the obligation to meet and consult with their own agencies,

including the Secretary of the Governor's Office of the Budget, the Secretary of the Department of Conservation and Natural Resources, the Secretary of the Department of Environmental Protection, and to review their documents relative to this case. Additionally, on November 21, 2013, the Respondents participated in the depositions of former Secretary of DCNR, Michael DeBerardinis, and former Deputy Secretary for Parks and Forests, James Grace, and were given the opportunity to ask any questions of the witnesses. The Respondents were given copies of the documents which were attached to the depositions and which were the subject of the questions of the witnesses. Respondents were also given the opportunity to participate in a deposition of Former Governor Rendell, which was noticed to be taken on October 16, 2013. But Respondents objected to the deposition, and on behalf of Governor Rendell, requested and received a protective order precluding his deposition.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

B. Reasons for Denying a Stay to allow Further Discovery.

15. Admitted. It is admitted that Petitioner's Motion For Summary Judgment is complex, but the complexity is the result of the Respondents' complex actions to strip away from DCNR its constitutional and statutory duty to conserve and maintain Pennsylvania's State Forests and Parks so that Respondents could control when and how much State Forest and/or Park land to lease, and could control the allocation of the revenues from the leasing and royalties from that leasing, without

any consideration of Respondents' duties to also conserve and maintain the public natural resources under Article I § 27.

It is admitted that Petitioner's Motion for Summary Judgment contains 18 separate arguments; but none of those arguments requires additional discovery by Respondents from Petitioner. The Petition and the Motion for Summary Judgment contain all the information Petitioner has regarding the arguments presented.

16. Admitted that Petitioner has submitted 48 documents in support of the Motion for Summary Judgment. The first 15 documents are affidavits submitted to support Petitioner's standing. None of those affidavits are used to support the constitutional arguments of the Petition and Motion. Two other affidavits are submitted as Exhibits OO and PP, affidavits of John Quigley, former Secretary of DCNR from 2009 to 2010, and the affidavit of John Norbeck, former Director of State Parks, from 2006 to 2012. Those affidavits are used to establish the authenticity of memorandum sent to Governor Rendell from DCNR, and to establish that the documents were actually sent, in order to establish that DCNR representatives warned the Governor of the problems with his requiring transferring revenue from the Oil and Gas Fund and requiring further leasing before his actions became final, (Exhibits W, X, CC, and DD, which were produced by Respondents in response to Petitioner's discovery requests); and to establish that DCNR Bureau of Parks received complaints from users of State Parks about impacts from gas extraction activities. The other 31 documents are all public documents of the Respondents Commonwealth and the Governor.

17. Denied. It is denied that Respondents need to take most or all the Petitioner's members' depositions who have submitted affidavits. The affidavits are in support of Petitioner's standing, and not incorporated in Petitioner's constitutional claims. It is denied that Respondents need an additional 6 months to serve interrogatories and production of documents or to conduct depositions.

18. Denied. Respondents have had the opportunity to take any discovery they believe necessary and have not done so. That is because there is no need. The Respondents Commonwealth and Governor control the agencies who would have the documents that could add any incite to the allegations of the Petitioner.

19. Denied. The case does not raise questions of Commonwealth policies relating to operation and maintenance of State Parks and State Forests. The Petition and Motion allege that the Respondents have stripped DCNR of its ability to carry out the specific constitutional and statutory duties to conserve and maintain our State Parks and Forests that DCNR has been made responsible for under the Conservation and Natural Resources Act, and stripped DCNR from the ability to comply with its stated mission to carry out those duties. The Commonwealth and the Governor have had since the initial filing of the Petition on March 6, 2012, to prepare.

20. Denied. The case has moved forward deliberately and expeditiously by Petitioner. The Respondents have had two years to develop their defense in this case. With the passage of the Executive Budget in February of 2014, however, the Respondents have added new compelling violations of the public trust that will cause irreparable harm to the Petitioners. Respondents have done this by proposing to require leasing more State Forest and/or State Parks lands for the sole purpose of obtaining \$75,000,000 additional revenue for education, and by requiring DCNR to use \$117,000,000 to operate the agency for the fiscal year 2014-15.

21. Admitted. The Addendum dealt with the actions of the Governor contained in his Executive Budget published on February 4, 2014, which requires DCNR to lease more State Forest and/or Park land to obtain \$75,000,000; and to commit \$117,000,000 from the Oil and Gas Lease Fund to operate DCNR for the next fiscal year.

22. Admitted that there is no scheduling order and that a motion for summary

judgment can be submitted at any time after the relevant pleadings are closed. Denied that Petitioner is effectively curtailing discovery. Respondents, by the proposed budget have left Petitioner with no recourse but to get the case resolved as soon as possible, and before the leasing of more State natural resources for gas extraction. Added to the impact to the public trust from additional leasing there is now the possible loss of \$75,000,000 from the trust, plus \$117,000,000 loss from the trust by transfer for the operations of DCNR for the year, plus an additional \$35,000,000 loss from the trust to go to the Environmental Stewardship Fund through Act 13. That is a total loss for the public trust as a result of the 2014-15 budget proposal, of \$227,000,000 for the next year.

23. Denied. The Respondents have time to prepare a cross motion for summary Judgment by May 22, 2014.

24. Denied. Respondents have had the opportunity to participate in the depositions of the two key figures in the Rendell Administration, former Secretary Michael DiBerardinis and former Deputy Secretary James Grace. Respondents had the opportunity to participate in the deposition of former Governor Ed Rendell, but chose to not allow him to be deposed. Respondents made no effort independent of Petitioner to obtain any information of the Rendell Administration.

25. Admitted that Respondents' response is due May 22, 2014. Respondent's request for additional time must be denied.

26. Denied. Neither party needs further discovery.

27. Denied. Petitioner would be extremely and unfairly prejudiced by any further delay, as stated more fully in paragraph 22 above.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court deny the Respondent's Application for Stay.

Dated: April 29, 2014

Respectfully submitted

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