

COMMONWEALTH COURT OF PENNSYLVANIA

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

**PETITIONER’S APPLICATION FOR A DECLARATION
THAT PART XVI OF THE APPROPRIATIONS ACT OF 2017,
ENTITLED OIL AND GAS LEASE FUND APPROPRIATION
IS UNCONSTITUTIONAL AND INVALID**

Petitioner Pennsylvania Environmental Defense Foundation here applies to this Honorable Court for a declaration, consistent with the Pennsylvania Supreme Court decision in this matter dated June 20, 2017, that the use of funds from the Oil and Gas Lease Fund appropriated in Part XVI of the Appropriations Bill of 2017, which derive from the extraction and sale of natural gas from Pennsylvania’s State Forests, is unconstitutional under Article I, Section 27 of the Pennsylvania Constitution because these funds will be used for the purpose of funding general operations costs for the Pennsylvania Department of Conservation and Natural

Resources (DCNR) and operations costs for the DCNR Bureaus of Forestry and Parks.

SUMMARY OF RELEVANT FACTS AND LAW

On January 30, 2017 both the House and Senate of the General Assembly of Pennsylvania passed the Appropriations Bill of 2017 designated House Bill 218, Printer’s No. 2196, Session of 2017. The Appropriations Bill includes the following:

Part XVI, Oil and Gas Lease Fund Appropriation, Section 1601, Department of Conservation and Natural Resources appropriate to the Department:

(A copy of Section 1601 is attached hereto as Exhibit A)

For General Operations:

State Appropriation.....50,000,000

For State Parks Operations

State Appropriation.....7,739,000

For State Forests Operations:

State Appropriation.....3,552,000

On June 20, 2017, the Pennsylvania Supreme Court remanded this case back to this Court “for further proceedings consistent with this Opinion.” (Opinion, Page 45.)

The Supreme Court, in its opinion, holds: “Because state parks and forests, including the oil and gas minerals therein, are part of the corpus of Pennsylvania’s environmental public trust, we hold that the Commonwealth, as trustee, must manage them according to the plain language of Section 27, which imposes fiduciary duties consistent with Pennsylvania trust law.”

The Court stated: “We further find that the constitutional language controls how the Commonwealth may dispose of any proceeds generated from the sale of its public natural resources.” (Opinion, Page 2). The Court went on to find that “...Section 27 expressly creates a trust, and pursuant to Pennsylvania law in effect at the time of the enactment, proceeds from the sale of trust assets are part of the corpus of the trust’ ...the unavoidable result is that proceeds from the sale of oil and gas from Section 27’s public trust remain in the corpus of the trust.”(Opinion, Page 34.)

In response to the Commonwealth’s arguments in their Brief that the General Assembly has a right to direct the proceeds from oil and gas development toward **any** uses that benefit the people of the Commonwealth, the Supreme Court states: “The phrase ‘for the benefit of all the people’ may not be read in isolation and **does not confer upon the Commonwealth a right to spend proceeds on general budgetary items.**” (Emphasis added) The Court continues, stating: “The Commonwealth’s fiduciary duty to conserve and maintain our public natural

resources is a duty owed to the beneficiaries of the public trust, namely ‘the people, including generations yet to come,’ as set forth in the first sentence of Section 27.” (Opinion, Page 35.)

The Court then concludes, stating: “Accordingly, the Environmental Rights Amendment mandates that the Commonwealth, as trustee, ‘conserve and maintain’ our public natural resource in further of the people’s specific enumerated rights. Thus understood in context of the entire amendment, the phrase ‘for the benefit of all the people’ is unambiguous and clearly indicates that assets of the trust are to be used for the conservation and maintenance purposes. Only within those parameters, clearly set forth in the text of Section 27, does the General Assembly, or any other Commonwealth entity, have the discretion to determine the public benefit to which the trust proceeds - generated from the sale of trust assets – are directed.” (Opinion, Page 35-36.)

To make its Opinion abundantly clear, the Court then states: “As a result, royalties – monthly payments based on the gross production of oil and gas at each well – are unequivocally proceeds from the sale of oil and gas resources. They are part of the corpus of the trust and the Commonwealth must manage them pursuant to its duties as trustee.” (Opinion, Page 37.)¹ The Supreme Court ultimately

¹ For other revenue streams from oil and gas production on State lands, namely lease and bonus payments, the Supreme Court remanded to this Court as to

determined that Sections 1602-E and 1603-E of the Fiscal Code, 72 P.S. §§ 1602-E and 1603-E, are “facially unconstitutional”. The Court found that “these [Fiscal Code] amendments lacked any indication that the Commonwealth is required to contemplate, let alone reasonably exercise, its duties as trustee of the environmental trust created by the Environmental Rights Amendment”. The Court dismissed the language in Section 1602-E that the General Assembly “consider” allocating the (oil and gas) funds to municipalities impacted by a Marcellus well.”

The court also dismissed the language in Section 1603-E, which required DCNR to “give preference to the operation and maintenance of state parks and Forests” rather than to conservation purposes, in finding this amendment unconstitutional.

ARGUMENT

Section 7532 of the Declaratory Judgments Act, 42 Pa.C.S § 7532, entitled **General scope of declaratory remedy**, states: “Courts of record, within their respective jurisdictions, shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.”

Section 7535 of the Declaratory Judgments Act, entitled **Rights of fiduciaries and other persons**, states: “Any person interested, as or through ... [a]

whether they are part of the corpus of the Section 27 trust. That is the subject of the Petitioner’s recently filed Motion to this Court, to make such determination.

trustee, ... in the administration of a trust, ... may have a declaration of rights or legal relations in respect thereto: ...

(2) To direct the ... administrators, or trustees to do or to abstain from doing any particular act in their fiduciary capacity.

(3) To determine any question arising in the administration of the ... trust, including questions of construction of ... writings.”

If the Commonwealth can use our public natural resources for general operating expenses, including salaries and expenses, even assuming it is argued that the employees’ salaries and expenses are related to “conserving and maintaining” public natural resources, then no constitutional protection of the actual public natural resources will exist. The Commonwealth can and will argue that most, if not all, of DCNR employees are working toward conserving and maintaining our State Parks and Forests. The Department of Environmental Protection employees are also arguably working to conserve and maintain the public natural resources of our clean air and pure water. Other agencies also have obligations that could be viewed, under this interpretation, to be conserving and protecting our public natural resources, including both statewide and municipal entities. An interpretation of Article I, Section 27 that allows DCNR to decide to lease our State Forests for private industrial use to extract oil and gas to pay the general operational costs of DCNR and other State agencies results in the

degradation, diminution and depletion of the corpus of the public trust and, therefore, fails to conserve and maintain the public natural resources for the benefit of the people, including future generations. The proceeds of the sale of trust assets must be directly related to conserving those resources. Article XVI of the Appropriations Act of 2017 makes an impermissible and unconstitutional general appropriation of trust assets for purposes that are not consistent with the trust purposes.

CONCLUSION

Wherefore, the Petitioner respectfully requests this honorable Court to find Part XVI, Oil and Gas Lease Fund Appropriation, Section 1601, Department of Conservation and Natural Resources, of the Appropriations Act of 2017, Printer's No. 2196, House Bill No. 218, Session of 2017, to be unconstitutional, and to direct the Commonwealth to abstain from using the corpus of the public natural resource trust to operate Department of Conservation and Natural Resources and/or any other state agency or part thereof.

Respectfully Submitted,

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