

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
Petitioner	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
BRYAN DEAN CUTLER,	:	
in his official capacity as	:	447 M.D. 2021
SPEAKER OF THE PENNSYLVANIA	:	
HOUSE OF REPRESENTATIVES,	:	
	:	
JAKE CORMAN, in his official capacity as	:	
PRESIDENT PRO TEMPORE of the	:	
PENNSYLVANIA SENATE, and	:	
	:	
and TOM WOLF, in his official capacity	:	
as GOVERNOR of PENNSYLVANIA,	:	
Respondents	:	

**APPLICATION FOR EXPEDITED RELIEF
IN THE FORM OF A STAY OF FURTHER PROCESSING OF THE
RENOVO ATV CONNECTOR SEGMENT GRANT APPLICATION**

APPLICATION SUMMARY

In its Petition for Review filed on December 10, 2021 in the above-captioned matter (“Petition”), the Pennsylvania Environmental Defense Foundation (“PEDF”) requests declaratory relief from this Honorable Court alleging that legislatively mandated use of all-terrain vehicles (“ATVs”) on our State Forest and State Parks and implementation of those mandates violates Article I, Section 27 of the

Pennsylvania Constitution, commonly referred to as the Environmental Rights Amendment (“ERA”).¹ PEDF requests declarations that the Respondents, through the challenged actions, violated the ERA their trustee duties under the ERA to conserve and maintain our State Forest and State Park trust assets, and to protect the rights of PEDF’s members, as well as all trust beneficiaries, to the clean air, pure water, and preservation of the natural, scenic, historic and esthetic values of these trust assets.

Based on additional information that PEDF has obtained since the filing of its Petition, which PEDF sets forth in an addendum to the Petition also filed today (“Petition Addendum”), PEDF is hereby requesting pursuant to Pennsylvania Rule of Appellate Procedure 123 that this Honorable Court grant expedited relief and stay further processing by the Commonwealth of the grant application for \$1.2 million to construct just over one mile of ATV road to travel from Brewery Run Road north of Renovo up the side of a mountain via steep switchbacks to reach the Sproul State Forest on the ridge top. The purpose of this project, referred to in the Petition Addendum as the “Renovo ATV Connector Segment,” is to allow ATVs to travel from Renovo, Pennsylvania, to the existing Bloody Skillet and Whiskey Springs

¹ Pa. Const. art I, § 27 (“The people have a right to clean air, pure water, and to 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 of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.”)

ATV Trails on the Sproul State Forest, and to travel to Cross Fork, Pennsylvania, through the Sproul State Forest as part of ATV roads to the New York border—all as mandated by Section 1720-E of the Fiscal Code enacted in 2018 and amended in 2020, 72 P.S. § 1720-E.

To fulfill the purposes of the Renovo ATV Connector Segment and the Fiscal Code, an estimated 40 – 50 miles of new ATV roads/trails will need to be established through the Sproul State Forest (Petition Addendum, ¶¶A25-A35). This significant expansion of ATV roads in the State Forest will degrade thousands of acres of State Forest trust assets that the Pennsylvania Department of Conservation and Natural Resources (“DCNR”) has the constitutional duty to conserve and maintain under the ERA. *Id.* DCNR is the agency processing the application for the \$1.2 million in grant funds to construct the Renovo ATV Connector Segment.

Based on the information currently available to PEDF as set forth in the Petition Addendum, DCNR has not evaluated the degradation, diminution or depletion of the public natural resources of the Sproul State Forest, which are ERA trust assets, from the significant expansion of the use of ATVs necessary to fulfill the purposes of the Renovo ATV Connector Segment and the Fiscal Code. Nor has DCNR considered the consequences of this significant expansion of ATV use on the Sproul State Forest on the rights of PEDF’s members, as trust beneficiaries, to clean air, pure water, and preservation of the natural, scenic, historic and esthetic values

of the Sproul State Forest trust assets. As PEDF asserts in the Petition Addendum, DCNR's failure to evaluate the full scope of the consequences of granting \$1.2 million to construct the Renovo ATV Connector Segment violates DCNR's duties as a trustee of the Sproul State Forest.

PEDF has learned that DCNR has already approved the \$1.2 million grant for the Renovo ATV Connector Segment and is expected to execute the final grant agreement committing these funds at any time. Clinton County, the current grant recipient, is ready to proceed with construction of the Renovo ATV Connector Segment upon DCNR's commitment of the funds for this project. Given that DCNR has already funded the design of this project, already announced its approval of grant funds to construct this project, and already acknowledged the significant expansion of ATV use on our State Forest that will occur in support of this project and Section 1720-E of the Fiscal Code, PEDF has added DCNR and its Secretary as parties to this matter through the Petition Addendum.²

If DCNR executes the grant agreement committing \$1.2 million to construct the Renovo ATV Connector Segment prior to this Honorable Court's review of this project as requested by PEDF, DNCR will alter the status quo to the detriment of

² Clinton County also has trustee duties to conserve and maintain public natural resources, including the Sproul State Forest, under the ERA. PEDF has not added Clinton County as a party at this time because DCNR has the primary duty as the statutorily named trustee of our State Forests to evaluate the consequences of awarding grant funds for the Renovo ATV Connector Segment on the State Forest trust assets.

PEDF and its members, as well as all ERA trust beneficiaries. Thus, for the reasons set forth in more detail below, PEDF requests that this Honorable Court order the Commonwealth, through Governor Wolf, to direct DCNR to temporarily suspend processing this grant application pending this Court's review of this matter.

GROUNDNS FOR APPLICATION FOR STAY

Stay Necessary to Protect PEDF's Constitutional Rights

PEDF is requesting this Honorable Court to stay further processing of the \$1.2 million grant to construct the Renovo ATV Connector Segment pending its review of the constitutionality of this project under Article I, Section 27 of the Pennsylvania Constitution and the fiduciary provisions of the Declaratory Judgement Act, 42 Pa.C.S. § 7535. PEDF believes that the averments in its Petition and Petition Addendum show that DCNR's approval of the Renovo ATV Connector Segment to significantly expand ATV use on our State Forest as legislatively mandated by Section 1720-E of the Fiscal Code violates the ERA and the constitutional rights of PEDF's members to have their State Forest trust assets conserved and maintained, and to have clean air, pure water and natural, scenic, historic, and esthetic values of these trust assets protected and preserved.

DCNR's grant approval process is not open to the public. Trust beneficiaries under the ERA have no opportunity to review or provide comments on grant applications or proposed final grant agreements for projects that affect their ERA

trust assets. PEDF has no administrative remedy available to challenge DCNR's decision to grant funds for a project affecting ERA trust assets prior to DCNR's execution of a grant and the commencement of construction activities that affect ERA trust assets.

The purpose of the Declaratory Judgments Act is to “settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.” 42 Pa.C.S. §7541(a). Under the fiduciary provisions of the Declaratory Judgments Act, 42 Pa.C.S. §7535, “any person interested ... in the administration of a trust ... may have a declaration of rights or legal relations in respect to thereto” and seek declarations to “direct the ... administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity” and declarations to “determine any question arising in the administration of the ... trust, including questions of construction of ... writings.”

Subsequent to PEDF's filing of the Petition, DCNR announced approval of a \$1.2 million grant to fund the construction of the Renovo ATV Connector Segment, which will commit DCNR to establishing 40 – 50 miles of new ATV roads/trails in the Sproul State Forest to connect Renovo and this one mile segment to two existing ATV trails in the Sproul State Forest (Blood Skillet to the south and Whiskey Springs to the northwest), and to Cross Fork to the north as part of ATV roads/trails to the New York border—all mandated by Section 1720-E of the Fiscal Code. DCNR

is intending to fund this one mile piece of a much larger 40 – 50 mile expansion of ATV use in our State Forest, which will have permanent and profound impacts, without any assessment of the degradation, diminution and depletion of the affected public natural resources. Petition Addendum, ¶A29-A33.

As set forth in the Petition and Petition Addendum, the legislatively mandated significant expansion of ATV use in the State Forest will degrade the pure water of numerous exceptional value and high quality streams (including Brewery Run, a high quality stream used for drinking water) through erosion, sedimentation, ATV leaks and spills, and other activities associated with construction and ongoing maintenance of this extensive new road/trail system. This expanded ATV use will degrade the clean air of the State Forest with exhaust and dust from ATVs that already number in the hundreds on some days, and will degrade the natural, scenic, historic and esthetic values of the forest ecosystem by significantly fragmenting the forest; by disrupting the quiet character of the wild, undeveloped forest; by disrupting numerous scenic mountain vistas; by disturbing wildlife; and by diminishing traditional low impact, low density, healthful outdoor recreational activities in the State Forest (*e.g.*, hunting, fishing, hiking).

The construction of the Renovo ATV Connector Segment directly affects the constitutional rights of Petitioner PEDF's members as beneficiaries of the public natural resources affected by the significant expansion of ATV use in the Sproul

State Forest to support this project and the mandates of Section 1720-E of the Fiscal Code. Without constitutional review of this expanded ATV use before DCNR executes a grant for \$1.2 million to construct this one mile segment and commence this expansion, PEDF's constitutional rights will be directly, immediately and substantially threatened. *See EQT Prod. Co. v. DEP*, 130 A.3d 752 (Pa. 2015) (threat of agency penalty action presented sufficient actual controversy to allow pre-enforcement judicial review of the agency's interpretation of its statutory regime); *Arsenal Coal Co. v. Commonwealth*, 477 A.2d 1333 (Pa. 1984) (the hardship presented by the direct and immediate effect of a new agency regulation sufficed to establish justiciability in advance of enforcement); *Commonwealth v. Donahue*, 98 A.3d 1223, 1230-31 (Pa. 2014) (statutory interpretation making compliance by other agencies more burdensome was sufficient harm to support judicial review).

Legislative Mandates for ATV Use on our State Forests and Parks

As the material facts set forth in the Petition explain, DCNR and its predecessor have been legislatively mandated since 1985 to allow ATV use on the State Forest and Parks without any consideration of whether this use conserves and maintains these trust assets as required by the ERA. Petition, ¶¶13-20. When DCNR was created in 1995 to advocate for our State Forest and Parks, which were recognized as public natural resources protected under the ERA, the Bureau of Forestry adopted a new strategic plan, *Penn's Wood, Sustaining Our Forests*, that

adopted principles of ecosystem management to manage these trust assets. Petition, ¶¶21, 59-60, Exhibit P. After years attempting to effectively manage ATV use on the State Forest without success, DCNR adopted policies against further expansion of this use beginning in 2001. Petition, ¶¶22-35. Pressure to expand ATV use continued, however, despite DCNR's policies and the Bureau of Forestry's inability to manage this activity, until expansion of ATV use was legislatively mandated through Section 1720-E of the Fiscal Code enacted in 2018 and amended in 2020. Petition, ¶¶36-44.

On June 22, 2018, the Respondents named in the Petition enacted Section 1720-E(a) of the Fiscal Code, which states:

The following shall apply to appropriations for the Department of Conservation and Natural Resources:

(1) The department shall, in consultation with the Department of Transportation, develop, open and maintain an ATV trail connecting the Whiskey Springs ATV trail to the Blood (sic) Skillet ATV trail by utilizing existing State roads and State forest roads by April 1, 2020.

(2) The department shall, in consultation with the Department of Transportation, implement the full Northcentral Pennsylvania ATV initiative and create a network of ATV trails connecting Clinton County to the New York State border by utilizing existing State roads and State forest roads by April 1, 2024.

72 P.S. § 1720-E(a); *see* Petition, ¶38.

DCNR remained opposed to allowing ATV use on State Forest roads because of significant safety concerns, and focused its efforts on identifying potential routes for the construction of new trails dedicated to ATV use through the Sproul State

Forest to meet the mandates of the Fiscal Code. The cost of constructing such trails was estimated to be between \$16-20 million and while DCNR's consultant searched for routes that would minimize harm to the State Forest public natural resources, such harm could not be avoided. Petition, ¶¶36-43, 63-68.

Under continuing pressure from the Respondents named in the Petition, DCNR revised its ATV policy on November 18, 2020, and five days later Section 1720-E(b) of the Fiscal Code was enacted, stating that DCNR "shall establish a regional pilot program for ATV use on department lands;" that DCNR "shall ... evaluate all department forest districts, including Elk, Moshannon, Sproul, Susquehannock and Tioga, for roads and trails to serve as potential regional connectors and to provide local access or serve as a trail complex for ATV use;" and that DCNR "shall provide access to the department ATV pilot area for the 2021 summer ATV riding season from the Friday before Memorial Day through the last full weekend in September." Petition, ¶¶43-44.

DCNR Projects to Implement Section 1720-E of the Fiscal Code

Since 1985, DCNR and its predecessors have been forced to allow ATV use on our State Forest. The Bureau of Forestry has established ATV trails in various State Forest Districts, including the Bloody Skillet and Whiskey Springs ATV Trails in the Sproul State Forest in Clinton County. Based on over 35 years of experience with the impacts of ATV use on the State Forest, this use is not compatible with the

ecology of the forest. Petition, ¶¶62-68. To comply with the legislative mandates of Section 1720-E of the Fiscal Code, however, DCNR began to take actions to expand ATV use on our State Forest and State Parks. DCNR implemented its 2021 ATV Regional Trail Connector Pilot as required by Section 1720-E(b) of the Fiscal Code. This ATV pilot included 59 miles of ATV trails on the State Forest (45.4 miles of existing trails and 13.6 miles of new trails) and new designation of 11.8 miles of State roads under PennDOT’s jurisdiction for ATV use. This pilot would also use existing township roads already designated for ATV use. Petition, ¶45. As required by its internal policies, the Bureau of Forestry conducted an environmental review of this pilot project and identified numerous long-standing concerns with ATV use on the State Forest. However, the pilot was implemented without addressing these concerns. Instead, the pilot was approved with conditions requiring “future” evaluation of this long-standing use known to harm the State Forest. Petition, ¶¶46-49.

DCNR also continued to explore options for expanded ATV use in the Sproul State Forest to connect the Bloody Skillet and Whiskey Springs ATV Trails through Renovo, as mandated by Section 1720-E(a) of the Fiscal Code. The Central Mountain ATV Association (“CMATVA”), a strong advocate for expanding use of ATVs in the Sproul State Forest surrounding Renovo, obtained grant funds from DCNR to design the one mile Renovo ATV Connector Segment and subsequently

applied for grant funds to construct this segment. Petition Addendum, ¶¶A12-A16. As described in the Project Grant Application, “the proposed [off-highway vehicle] trail will cross Brewery Run upstream from the spring and continue behind and upslope of the developed spring house utilizing a short portion of an old logging road, then transition to a trail that will connect with DCNR/Forestry lands within the Sproul State Forestry lands to the north.” *Id.* The application further acknowledges that the site “is very steep and challenging with the environmental sensitivities of Brewery Run, where the trail has been designed to cross in the only (one) physically constructible and feasible location.” *Id.* Upon ascending to the mountain adjacent to Brewery Run to reach the Sproul State Forest, CMATVA states in its Project Grant Application that the Bureau of Forestry “has committed to providing a trail alignment into Sproul State Forest at the top of the ridge” and “will continue on to The Whiskey Springs ATV Area” and “in the other direction, to the south, this trail will connect through Renovo and South Renovo Boroughs and southeastward on to The Blood Skillet ATV Area.” *Id.*

The benefits discussed by CMATVA in its application for \$1.2 million grant to construct the Renovo ATV Connector Segment are the benefits to the outdoor/motorized recreation industry and to the local economy. Petition Addendum, ¶A20. CMATVA states in the Project Grant Application that “[d]ue to the latent and exponentially increasing demand and unprecedented investments by

citizens in off-highway motorized recreation vehicles (ATVs/OHVs/OHMs) in our region (especially within central and northern PA), CMATVA is realizing significant and rapid growth in membership numbers and respective demand to find more diverse and extensive trail riding experiences for its club rides.” Petition Addendum, ¶A21. CMATVA also asserts that “Motorized Recreation is a multi-billion dollar industry” and that the outdoor and motorized recreation industries “when combined can provides massive economic development benefits to local and regional communities.” Petition Addendum, ¶A22. CMATVA further states that “[o]ther economic benefits will follow as more PA residents travel to Clinton and surrounding counties to enjoy motorized recreation trail touring and exploration rather than spend their vacation time and finances in surrounding states that have proven success with similar scale systems (WV, KY, TN, OH, MI, VA and now even NY).” *Id.* Thus, CMATVA contends that “[i]t is imperative that we begin to accommodate this underserved trail user group in order to stop the massive economic development leak and bolster the industry right here in the Commonwealth.” *Id.* CMATVA also contends that this grant funding is urgent because the “benefits of this key connection from Renovo to the Sproul state Forest riding areas will have economic gains for years to come, providing both locals and riders from outside the region access to the trails system as well as to local amenities that will have opportunity to grow as rider usership increases.” *Id.*

Four retired State Forest District Managers (two that managed the Sproul State Forest for the past 39 years) have reviewed the Renovo ATV Connector Segment grant project and prepared an expert report that finds this project unsupportable because it will degrade public natural resources and create numerous safety and environmental hazards. Petition Addendum, ¶A29-A53, Exhibit A-L. The property being used for the project is the steep side and point of a mountain that is clearly too steep to build an ATV road/trail that would provide safe access. They also state that the mountain slope is too steep to be able to construct and maintain the storm drainage needed to control erosion and sedimentation to protect Brewery Run, a high quality stream, and the adjacent spring used for public drinking water. They observe that the standards for ATV road/trail construction exist for good reasons. The plan for the Renovo ATV Connector Segment ignores best management practices and results in both safety and environmental concerns. The trail must be constructed using switchbacks often with running slopes of up to 10-15 percent. This steepness is dangerous for the most experienced ATV riders assuming the trail is kept in excellent condition through constant maintenance. The steepness of the slope prevents building the trail wide enough to allow two ATVs to pass one another safely. Use by emergency vehicles and equipment will be next to impossible to deal with the inevitable emergencies. Petition Addendum, ¶¶A51-A52.

In addition to safety and environmental problems with the one mile grant project, DCNR is committing to an estimated 40 – 50 miles of new ATV roads/trails in the Sproul State Forest to connect this one mile segment with the Bloody Skillet and Whiskey Springs ATV Trails and to Cross Fork as part of ATV roads/trails to the New York border, all mandated by Section 1720-E of the Fiscal Code. These new trails will significantly degrade the Sproul State Forest by expanding ATV use to thousands of acres of historically natural forest in exceptional value and high quality watersheds, some of which serve as sources of water supply to Renovo, South Renovo and surrounding townships. Petition Addendum, ¶A40.

DCNR Grant Project Violates the ERA

Article I, Section 27 of the Pennsylvania Constitution protects Pennsylvania’s public natural resources, including our State Forest, State Parks, surface waters and groundwater. It requires all agencies of the Commonwealth to conserve and maintain these public natural resources for both current and future generations. To conserve and maintain those resources, State and local government agencies cannot make decisions or take actions that degrade, diminish or deplete these protected resources. Further, these agencies all must both prevent and restore any degradation, diminution or depletion of these protected resources. Petition, ¶¶50-57.

DCNR was created in 1995 by the Conservation and Natural Resources Act, 71 P.S. §§ 1340.101-1340.1103, to manage our State Forest and State Park public

natural resources as the statutorily designated trustee under the ERA. The public natural resources of our State Forest and State Parks include the air, forest and other plants, streams and other surface waters, groundwater, and wildlife on these public lands. To conserve and maintain our State Forest, the Bureau of Forest developed a new strategic plan, *Penn's Woods, Sustaining Our Forests*, in 1995 to manage these public natural resources based on the science of ecosystem management. Petition, ¶59-60, Exhibit P. This plan recognizes that the primary goal of ecosystem management is to keep the complex interdependencies of the forest ecosystems intact and functioning well over long periods of time. *Id.*

The Renovo ATV Connector Segment is part of ATV road/trail system connecting the Bloody Skillet and Whiskey Springs ATV Trails that DCNR was mandated to establish under Section 1720-E(a)(1) of the Fiscal Code by 2021. It will also be part of the network of the ATV roads/trails that DCNR is required to develop to connect Clinton County to the New York border by 2024 under Section 1720-E(a)(2) of the Fiscal Code. Finally, it will be part of the regional pilot program for ATV use on DCNR lands that DCNR is required to establish under Section 1720-E(b) of the Fiscal Code. Thus, the construction of the Renovo ATV Connector Segment must be approved by DCNR and DCNR must comply with the ERA in deciding whether to grant that approval, but it has not.

The one mile Renovo ATV Connector Segment itself violates the ERA because it will degrade a high quality stream, Brewery Run, through erosion and sedimentation caused by earth disturbance necessary to construct and maintain an ATV road on the steep mountain slope that drains into Brewery Run. It will also quite possibly degrade an existing natural spring used by the public for drinking water because this ATV road/trail will cross Brewery Run a short distance (60 feet) upstream of this spring and run behind and upslope of the spring house. In addition, the steepness of this ATV road/trail segment will be unsafe for many ATV and non-ATV users of the trail. As a trustee under the ERA, DCNR has a fiduciary duty to consider these environmental and safety issues in deciding whether to approve this grant project, which it has not done.

ATV Roads/Trails Connecting to the DCNR Grant Project Violate the ERA

The sole purpose of the one mile Renovo ATV Connector Segment is to connect the Borough of Renovo to Whiskey Springs ATV Trail in Sproul State Forest to the northwest, to Bloody Skillet ATV Trail in the Sproul State Forest to the south, and to Cross Fork as ATV roads/trails to the New York State border, all as mandated by Section 1720-E of the Fiscal Code.

By spending \$1.2 million on the approximately one mile Renovo ATV Connector Segment, DCNR is committing to design and complete the ATV roads/trails in the Sproul State Forest mandated by the Fiscal Code to connect with

this one mile segment without any evaluation of the impacts to the Sproul State Forest, or ultimately to other State Forests that would be impacted. By constructing the one mile segment without first considering the impacts to the public natural resources of the State Forest, DCNR has violated its statutory and constitutional duty as trustee under the ERA.

DCNR is committing to allow an estimated 40 – 50 miles of new ATV roads/trails in the Sproul State Forest by approving the Renovo ATV Connector Segment to connect this one mile segment to the Bloody Skillet and Whiskey Springs ATV Trails and to Cross Fork enroute to the New York border. However, Section 1720-E of the Fiscal Code demands more. It requires DCNR to connect this new 40 – 50 miles of ATV roads/trails in the Sproul State Forest with other potential regional connector roads/trails in all the State Forest District, including Elk, Moshannon, Susquehannock and Tioga, “to provide local access or serve as a trail complex for ATV use.” As CMATVA states in its application for a \$1.2 million grant from DCNR for the Renovo ATV Connector Segment, the project is “aimed at closure through construction of a key gap that will help to fulfill Governor Wolf’s mandate to implement the Northern Initiative connecting Renovo, PA to Whiskey Springs to Bloody Skillet and eventually to the New York State border”. Petition Addendum, ¶A14. CMATVA asserts that “Motorized Recreation is a multi-billion dollar industry” and that the outdoor and motorized recreation industries “when

combined can provides massive economic development benefits to local and regional communities.” Petition Addendum, ¶A22. CMATVA further states that “[o]ther economic benefits will follow as more PA residents travel to Clinton and surrounding counties to enjoy motorized recreation trail touring and exploration rather than spend their vacation time and finances in surrounding states that have proven success with similar scale systems (WV, KY, TN, OH, MI, VA and now even NY).” *Id.* Thus, CMATAVA contends that “[i]t is imperative that we begin to accommodate this underserved trail user group in order to stop the massive economic development leak and bolster the industry right here in the Commonwealth.” *Id.* DCNR and the people of Pennsylvania cannot know the impact of the one mile Renovo trail until the entire northcentral ATV trail complex is defined and evaluated. Petition Addendum, ¶A34.

Until DCNR had evaluated the full impact to the public natural resources of the State Forest from the significant expansion of ATV roads/trails mandated by Section 1720-E of the Fiscal Code, DCNR cannot approve and fund construction the one mile Renovo ATV Connector Segment in compliance with its trustee duties under the ERA.

ATV Use Mandated by Fiscal Code Degrades ERA Trust Assets

The natural resources of the State Forest include not only the trees, but also other forest plants and wildlife, including insects, birds, fish, and animals of the

forest. The natural resources also include the soil that enriches the trees and plants, and the microbiology that enriches the soil. It also includes the hydrology of the surface and subsoil conditions. Petition Addendum, ¶A37.

The construction of an ATV trail requires working with heavy equipment including bull dozers, excavators and back hoes. ATV “trails” are in fact roads that convert forest natural resources to non-forest developed land. The ground would have to be leveled, removing the topsoil and the microbiology, and destroying the natural hydrology. The earth would have to be dozed to a width of at least 12 – 15 feet for the running surface of the trail, with an additional clearing width in some cases of at least 50 feet for stabilizing the cut and fill slopes with the heavy equipment. Roads/trails constructed to support ATV use would also support possible future use by other all-wheel drive motorized vehicles. There would have to be wider areas around turns, and in areas requiring storm water diversion devices, erosion and sediment control areas. In certain areas spreading and impacting stone to reinforce the surface of the trail would have to be added. Petition Addendum, ¶A41. New ATV trail construction and the use of State Forest roads by ATVs will permanently degrade the natural resources of the forest, cause continuing air and water pollution, fragment the forest, allow invasive species to follow the ATV’s everywhere they go, disturb the tranquility of the forest, and create serious safety issues. Petition Addendum, ¶A36.

An estimated 50 miles of new ATV trail would need to be developed throughout much of the Sproul State Forest to achieve the purpose of the Renovo ATV Connector Segment and the requirements of Section 1720-E of the Fiscal Code. These ATV trails would significantly increase ATV use within the high quality and exceptional value watersheds of the Sproul State Forest, some of which also serve as sources for water supply to Renovo, South Renovo and surrounding townships. If forced to open State Forest roads to ATV use contrary to long standing bureau policy, an estimated 30 miles of State Forest roads could be designated for ATV use. Construction of new ATV roads/trails would not be eliminated. An estimated 13 miles of new ATV road/trail construction would still be needed with the maximum use of State Forest roads. Either option would significantly degrade the Sproul State Forest. By developing 40 – 50 miles of new ATV trails in the Sproul State Forest, either through new construction or the use of State Forest roads, illegal ATV use will expand to thousands of acres of historically natural forest within the Sproul State Forest as these off-road vehicles illegally use undesignated roads, pipelines and other areas within the State Forest. Petition Addendum, ¶A40.

The new ATV trail through the Sproul State Forest to connect the Renovo ATV Connector Segment with the Bloody Skillet and Whiskey Springs ATV Trails and Cross Fork as mandated by Section 1720-E of the Fiscal Code will degrade two scenic vistas, two State Forest hiking trails, and an Important Bird Area. ATVs

would travel right next to the Fish Dam and Two Rock Run Scenic Vistas impacting the visitor experience and most likely turning their parking lots into ATV trail heads. ATVs would repeatedly cross the Chuck Keiper and Donut Hole State Forest Hiking Trails (an estimated 12 crossings) impacting users' hiking experience. The entire area traversed from the Bloody Skillet ATV Trail to Renovo is located within an Important Bird Area recognized by both the Pennsylvania Game Commission and Audubon for the diversity of bird species and its importance as a large block of continuous forest. Petition Addendum, ¶A45.

To connect the Renovo ATV Connector Segment with the Whiskey Springs and Bloody Skillet ATV Trails and Cross Fork through the Sproul State Forest, new ATV roads/trails would degrade at least eight high quality and exceptional value watersheds. At least ten bridges with forty-ton weight limits wide enough and strong enough to allow bull dozers to cross would be needed to cross streams in these watersheds if new ATV roads/trails are constructed in the Sproul State Forest to make these connections. In addition, at least 29 large 24-inch plus diameter culverts will need to be installed as part of these new ATV trails to cross intermittent streams within these watersheds. Petition Addendum, ¶A46.

The municipal water supply area for the Borough of Renovo and Chapman Township is Paddy's Run, an exceptional value stream that drains much of the Sproul State Forest north of the West Branch of the Susquehanna River. The

municipal water supply for the Borough of South Renovo and Noyes Township is Halls Run, an exceptional value watershed that drains a portion of the Sproul State Forest south of the West Branch of the Susquehanna River. These areas will host significant lengths of new ATV roads/trails needed to connect the Bloody Skillet and Whiskey Springs ATV Trails. Petition Addendum, ¶A47.

ATV trail/road development in the State Forest degrades the forest by fragmentation. Fragmenting the forest means to separate the forest into sections that are no longer contiguous. Fragmenting is one of the most serious degradations to the ecology of the forest. It opens the forest to invasive species. It interrupts the interaction of the trees and plants. It disrupts the natural flow of surface and subsurface water in the forest. It degrades the habitat of the animals and birds. It diminishes the wildness of the forest. As a result, it diminishes the biodiversity of the forest. Petition Addendum, ¶A42.

Until its revised policy issued on November 18, 2020, DCNR prohibited use of ATVs on State Forest roads. In its ATV policy issued on September 16, 2015, DCNR stated that it “does not consider state forest roads to be an option for connectors between [ATV] trail networks, as there is an established and consistent record of ATV accidents that illustrates that the use of such machines on roadways is not in the best interest of visitor safety.” Petition, ¶34.

ATVs are motorized vehicles built for off road use because of their specialized tires and suspensions. Their high performance engines allow them to travel at speeds of 50 to 100 miles per hour. The noise of their engines can be heard far into the forest beyond the road being used. Operating ATVs in the forest creates noise at such levels that both people using the forest to hike or fish or hunt, and the wildlife, including birds and animals, are disturbed. ATV trails are often used by multiple ATV vehicles traveling together, sometimes with hundreds of vehicles at a time. Petition Addendum, ¶A39.

The construction of the Renovo ATV Connector Segment of the Whiskey Springs/Bloody Skillet Connector trail also violates the ERA because it will ultimately result in the permanent degradation of the State Forest as set forth in the Petition and Petition Addendum and summarized above.

The material facts set forth in the Petition and Petition Addendum, along with their exhibits, establish that DCNR has repeatedly determined that developing new ATV roads/trails through the Sproul State Forest to connect the Whiskey Springs and Bloody Skillet ATV Trails is untenable because of environmental, safety, management and cost problems. It is also clear that in 2020, a week before Section 1720-E of the Fiscal Code was further amended to require more expansion of ATV roads/trails on State Forest and State Park lands, DCNR was forced to change its long standing policy against such expansion, including its policy prohibiting ATV

use on State Forest roads. It is equally clear that no intervening facts exist to remedy the environmental, safety and management problems supporting DCNR's previous policies against expansion of ATV use on our State Forest and State Parks.

DCNR Decision Based on Economic Development, Not Conserving Trust Assets

DCNR provides grants to municipalities, profit and nonprofit organizations to design, construct and maintain ATV trails on private and public lands using money collected primarily from fees collected to register and title ATVs. 75 Pa.C.S. § 7706. To obtain grant funds from DCNR, applicants must submit the information requested by DCNR on its standardized grant application form. DCNR's grant form has several "Project Criteria Questions" that applicants must address to be considered for grant funding, the first question being project needs, benefits and urgencies. As stated in the CMATVA Project Grant Application submitted to DCNR, the Renovo ATV Connector Segment is "needed" because of "the latent and exponentially increasing demand and unprecedented investments by citizens in off-highway motorized recreation vehicles (ATVs/OHVs/OHMs) in our region" and CMATVA's "significant and rapid growth in membership numbers and respective demand to find more diverse and extensive trail riding experiences for its club rides ... to enjoy their sport of choice – long distance community connector motorized trail riding." Petition Addendum, ¶21, Exhibit A-C at 4. The Project Grant Application further states that the project will "benefit" the multi-billion dollar outdoor and motorized recreation

industries, which “when combined provide massive economic development benefits to local and regional communities” thus making it “imperative that we begin to accommodate this underserved trail user group in order to stop the massive economic development leak bolster the industry right here in the Commonwealth.” Petition Addendum, ¶A22. The Project Grant Application asserts that the project is “urgent” because the “benefits of this key connection from Renovo to the Sproul State Forest riding area will have economic gains for years to come, providing locals and riders from outside the region access to trails system as well as local amenities that will have opportunity to grow as rider usership increases.” *Id.*

Nothing in the DCNR grant application form solicits information on the impacts of a proposed project on public natural resources to allow DCNR to fulfill its trustee duties under the ERA. The only project criteria question in the grant application that could include such information is the question focusing on how the project “will help to reduce the severity of current and future climate impacts through green and sustainable practices.” CMATVA states that the Renovo ATV Connector Segment will meet this criterion by “installation of a one acre tree planting ... intended to offset/mitigate the area impacted by the trail on Brewery Run where the project bridge ... will be located.” Thus, while the Project Grant Application fully recognizes that an extensive network of ATV roads/trails in the Sproul State Forest will be required to connect to the project, no information is provided on the impacts

to these ERA trust assets. By allowing consideration of this one mile ATV road/trail segment in isolation from the full extent of the ATV roads/trails on the State Forest to which DCNR is committing, DCNR has violated its ERA trustee duties. Nothing in the trust established under the ERA authorizes DCNR to degrade and diminish our State Forest or State Parks to provide economic benefit for the outdoor and motorized recreation industries, or to provide membership incentives for the ATV associations, or even, for that matter, to provide economic benefit for the towns in the vicinity of these ERA trust assets.

Respondents' Violated Their ERA Trustee Duties

Any decision made by DCNR, or any action taken by DCNR, that may degrade, diminish or deplete a public natural resource protected by the ERA, or that may infringe on the ERA rights of current and future generations of trust beneficiaries, including their rights to clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of their trust assets, must be made or taken in compliance with the ERA. DCNR's approval and funding of the Renovo ATV Connector Segment involves such decisions and actions.

PEDF has set forth material facts in the Petition Addendum that support its allegations that DCNR has violated the ERA and its trustee duties thereunder by funding and approving the design of the Renovo ATV Connector Trail and approving the CMATVA/Clinton County application for \$1.2 million in grant funds

to construct this project. Upon DCNR's execution of the grant agreement to commit the Commonwealth to paying \$1.2 million, this one mile segment will be constructed even though it is both unsafe for the users of the trail, will cause erosion and sedimentation of a high quality stream, will commit DCNR to allowing 40 – 50 miles of new ATV roads/trails in the Sproul State Forest that will degrade thousands of acres of high value public natural resources, and will open our entire State Forest in northcentral Pennsylvania to a significant expansion of degrading ATV use.

DCNR, as the statutorily designated trustee of all public natural resources in our State Forest and State Parks and as trustee of public natural resources statewide that are affected by its decision, has a constitutional fiduciary duty under the ERA to ensure its decisions and actions concerning the Renovo ATV Connector Segment do not degrade, diminish or deplete these trust assets or infringe upon the trust beneficiaries' rights before making the decisions and taking the above actions. DCNR made no such evaluation and has supported this grant project solely to appease ATV special interests and local economic development special interests.

In making its decisions, DCNR ignored its own undisputed evidence, as set forth in the Petition, that the significant expansion of ATV use on our State Forest and State Parks required to support the Renovo ATV Connector Segment will degrade and diminish the public natural resource trust assets. Ignoring that evidence is itself a violation of DCNR's duties as trustee.

PEDF Will Be Irreparably Harmed Without the Requested Stay

In its Petition Addendum, PEDF is asking this Honorable Court for the following declaratory relief under the fiduciary provisions of the Declaratory Judgments Act:

(1) Declare that DCNR's approval of grant funds for the Renovo ATV Connector Segment is unconstitutional because DCNR failed to conserve and maintain public natural resources that are trust assets protected by the ERA, including a high quality stream (Brewery Run), an adjacent spring used by the public for drinking water, and other resources degraded by environmental and safety hazards created by the project.

(2) Declare that DCNR violated its trustee duties under the ERA by approving grant funds for the Renovo ATV Connector Segment when the project fails to conserve and maintain public natural resources that are trust assets under the ERA.

(3) Declare that DCNR's approval of grant funds for a one mile segment of a much larger project to significantly expand ATV roads/trails as mandated by Section 1720-E of the Fiscal Code is unconstitutional because DCNR failed to conserve and maintain public natural resources impacted by the full project, including the forest ecosystems of our State Forest and State Parks, air quality, exceptional value and high quality streams and wildlife.

(4) Declare that DCNR violated its trustee duties under the ERA by approving grant funds for a one mile segment of a much larger project to significantly expand ATV roads/trails as mandated by 1720-E of the Fiscal Code when the project fails to conserve and maintain public natural resources that are trust assets under the ERA.

(5) Declare that DCNR violated its trustee duties under the ERA by approving grant funds for the Renovo ATV Connector Segment based solely on recreational and economic benefits when this project will degrade public natural resources that are trust assets under the ERA.

PEDF has made averments of material fact and law in the Petition and Petition Addendum that support the granting of its requested declaratory relief. If DCNR is allowed to proceed with executing a grant agreement to commit \$1.2 million to Clinton County for construction of the Renovo ATV Connector Segment, Clinton County will proceed with construction prior to this Honorable Court's review of PEDF's requested relief. In addition, DCNR will proceed with significantly expanding ATV roads/trails on the Sproul State Forest to fulfill the purpose of the Renovo ATV Connector Segment as mandated by Section 1720-E of the Fiscal Code. In the interest of avoiding irreparable harm to the constitutional rights of PEDF's members, trust beneficiaries under the ERA, and to public natural resources that are trust assets under the ERA and to avoid the expenditure of significant funds for activities that this Honorable Court may find to be unconstitutional if PEDF's

requested relief is granted, PEDF respectfully asks this Honorable Court to grant its request for an order temporarily suspending the Commonwealth's processing of the \$1.2 million grant to construct the Renovo ATV Connector Segment pending this court's review of this matter.

CONCLUSION

Based on the statements of material fact and law set forth in the Petition and Petition Addendum and for the reasons stated above, PEDF requests this Honorable Court to grant its request for a temporary stay suspending the Commonwealth's processing of grant funds to construct the Renovo ATV Connector Segment pending this court's review of this matter.

Respectfully submitted,



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COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
Petitioner	:	
v.		
COMMONWEALTH OF PENNSYLVANIA,	:	
	:	
BRYAN DEAN CUTLER,	:	
in his official capacity as	:	447 M.D. 2021
SPEAKER OF THE PENNSYLVANIA	:	
HOUSE OF REPRESENTATIVES,	:	
	:	
JAKE CORMAN, in his official capacity as	:	
PRESIDENT PRO TEMPORE of the	:	
PENNSYLVANIA SENATE, and	:	
	:	
and TOM WOLF, in his official capacity	:	
as GOVERNOR of PENNSYLVANIA,	:	
Respondents	:	

PROPOSED ORDER

It is hereby ordered that the Commonwealth of Pennsylvania, through Governor Wolf, direct the Pennsylvania Department of Conservation and Natural Resources to temporarily suspend the processing of the grant application submitted by the Central Mountain ATV Association Inc. on September 30, 2021 for the project entitled “CMATVA Renovo Connector Trail – Construction Phase” pending this court’s review of this project in the above-captioned matter.

J.

