

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL DEFENSE FOUNDATION, Petitioner v. COMMONWEALTH OF PENNSYLVANIA; THE PENNSYLVANIA HOUSE OF REPRESENTATIVES and BRYAN DEAN CUTLER, in his official capacity as its SPEAKER; THE PENNSYLVANIA SENATE and JAKE CORMAN, in his official capacity as the SENATE PRESIDENT PRO TEMPORE; TOM WOLF, in his official capacity as GOVERNOR of PENNSYLVANIA, and THE PENNSYLVANIA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES and CINDY ADAMS DUNN, in her official capacity as SECRETARY, Respondents

447 M.D. 2021

NOTICE TO PLEAD

You are hereby served with the attached Petition for Review Addendum filed in the Pennsylvania Commonwealth Court in its original jurisdiction. You are required to file an answer to this Petition for Review Addendum within 30 days pursuant to Pa. Rule of Appellate Procedure 1516.

Date: August 24, 2022

Handwritten signature of John E. Childe over a horizontal line, with the printed name John E. Childe below it.

TABLE OF CONTENTS

	<u>Page</u>
I. ADDENDUM INTRODUCTION	1
II. ADDENDUM STATEMENT OF JURISDICTION	4
III. ADDENDUM PARTIES	4
IV. ADDENDUM STATEMENT OF MATERIAL FACTS	5
A. ATV Use on Our State Forest and State Parks	5
B. Degradation on Constitutional Trust Assets by ATV Use	14
V. ADDENDUM CONTESTED ACTS AND ACTIONS	27
F. DCNR Grant Project Approval to Implement Section 1720-E of the Fiscal Code Is Unconstitutional	27
VI. ADDENDUM CONCLUSION	34

ADDENDUM EXHIBITS

Exhibit A-A – DCNR Press Release, April 11, 2022, announcing award of grant funds to construct the Renovo ATV Connector Segment

Exhibit A-B – Newspaper articles of Secretary Dunn’s visit to Renovo, PA, to announce DCNR’s award of grant funds to construct the Renovo ATV Connector Segment

Exhibit A-C – Central Mountain ATV Association DCNR Grant Application for funds to construct the Renovo ATV Connector Segment, September 20, 2021

Exhibit A-D – Renovo ATV Connector Segment, Draft Plan Drawings, PennCore Consulting

Exhibit A-E – Renovo ATV Connector Segment, PNDI Receipt, January 31, 2022

ADDENDUM EXHIBITS (cont.)

Exhibit A-F – Renovo ATV Connector Segment, DCNR Conservation Planning Tool Report, January 28, 2022

Exhibit A-G – Pennsylvania All-Terrain Vehicle Area Suitability Study, January 2019

Exhibit A-H – DCNR Bureau of Forestry letter dated February 7, 2020 commenting on plans for Renovo ATV Connector Segment

Exhibit A-I – Central Mountain ATV Association letter to Clinton County dated January 28, 2022 transferring the Renovo ATV Connector Segment project to Clinton County

Exhibit A-J – Clinton County Resolution No. 2 of 2022 authorizing the County to become the applicant for the DCNR grant application to construct the Renovo ATV Connector Segment

Exhibit A-K – DCNR email dated February 3, 2022 on the status of the grant to fund construction of the Renovo ATV Connector Segment

Exhibit A-L – Expert Report of Douglas J. D’Amore, Robert Davey, Roy A. Siefert, and Robert G. Merrill, Retired DCNR State Forest District Managers, on DCNR’s Approval of Design and Construction of the Renovo ATV Connector Segment from Brewery Run Road to the Sproul State Forest, August 5, 2022

I. ADDENDUM INTRODUCTION

A1. The Pennsylvania Environmental Defense Foundation (“PEDF”) filed its Petition for Review in the Nature of Declaratory Relief of the Constitutionality of Legislatively Mandated All-Terrain Vehicle Use on State Forest and State Parks in this case on December 10, 2021 (“Petition”).

A2. PEDF, with the permission of the Court, hereby files this addendum to the Petition (“Petition Addendum”). The averments in the introduction of the Petition (¶¶ 1-6) are incorporated by reference into this section of the Petition Addendum.

A3. Among other things, PEDF avers in the Petition that Section 1720-E of the Fiscal Code, 72 P.S. § 1720-E, enacted in 2018 and amended in 2020, violates Article I, Section 27 of the Pennsylvania Constitution, Pa. Const. art. I, § 27, commonly known as the Environmental Rights Amendment (“ERA”), because it mandates increased use of all-terrain vehicles (“ATVs”) on our State Forest and State Parks when such use degrades these public natural resource trust assets. By enacting and implementing this legislation, PEDF avers in the Petition that the Respondents violated their trustee duties under the ERA to conserve and maintain our State Forest and State Park trust assets by failing to protect the constitutional

rights of PEDF’s members under the ERA to the clean air and pure water of our State Forest and State Parks, and to the preservation of their natural, scenic, historic and esthetic values.

A4. This Petition Addendum includes actions taken by the Pennsylvania Department of Conservation and Natural Resources (DCNR”) since the filing of the Petition to implement Section 1720-E of the Fiscal Code. On April 11, 2022, DCNR announced the award of a \$1.2 million grant to construct a 1.25 mile segment of ATV trail north of Renovo in Clinton County to connect Brewery Run Road with the Sproul State Forest (the “Renovo ATV Connector Segment”). Based on the averments of material facts set forth below, PEDF contends this project, which DCNR has already paid to design, violates the ERA and DCNR’s duties as trustee under the ERA because it will:

(1) Degrade Brewery Run, a high quality public natural resource, that this new ATV road will cross approximately 60 feet upstream of an adjacent spring used by the public for drinking water;

(2) Create safety and environmental hazards by constructing a steep narrow road with switchbacks to ascend the side of a mountain above Brewery Run to reach the Sproul State Forest at the ridge top; and

(3) Degrade thousands of acres of Sproul State Forest public natural resources in numerous exceptional value and high quality watersheds by committing DCNR to develop an extensive network of new ATV roads/trails (an estimated 40 – 50 miles) to connect the Renovo ATV Connector Segment with the Bloody Skillet ATV Trail south of Renovo, the Whiskey Springs ATV Trail northwest of Renovo, and Cross Fork north of Renovo as part of ATV roads/trails to the New York border, all to meet the mandates of Section 1720-E of the Fiscal Code.

A5. Through this Petition Addendum, PEDF is adding DCNR and its Secretary as Respondents because their actions, while taken to comply with the legislative mandates of Section 1720-E of the Fiscal Code, nonetheless violate the ERA and their trustee duties thereunder. DCNR made no evaluation of the degradation of public natural resources, particularly those of the Sproul State Forest for which it is the statutorily designated trustee, or other safety and environmental hazards associated with the Renovo ATV Connector Segment prior to approving this project. Its approval was based solely on benefits to ATV recreational special interests and unsubstantiated economic benefits to Renovo and Clinton County.

II. ADDENDUM STATEMENT OF JURISDICTION

A6. The Statement of Jurisdiction in the Petition (¶ 7) is incorporated by reference into this section of the Petition Addendum.

III. ADDENDUM PARTIES

A7. The averments in the Petition regarding the Parties (¶¶ 8-12) are incorporated by reference into this section of the Petition Addendum.

A8. This Petition Addendum adds DCNR as a Party to this case. The Respondent DCNR is an agency of the Commonwealth established in 1995 under the Conservation and Natural Resources Act (“CNRA”), 71 P.S. §§ 1340.101 – 1340.1103, to administer our State Forest and State Park trust assets, which are public natural resources of Pennsylvania to be “conserved and maintained for the use and benefit of all its citizens as guaranteed by section 27 of Article I of the Constitution of Pennsylvania” and “to assure their long-term health, sustainability and economic use.” 71 P.S. §§ 1340.101.

A9. This Petition Addendum adds the DCNR Secretary as a Party to this case. The Respondent Cindy Adams Dunn is the Secretary of Conservation and Natural Resources appointed by the Governor and approved by a majority of the members elected to the Senate to serve as the head of DCNR. 71 P.S. § 1340.301.

As Secretary, she has taken an oath to “support, obey and defend the Constitution of Pennsylvania.” Pa. Const. art. VI, § 3; 71 P.S. § 78.

IV. ADDENDUM STATEMENT OF MATERIAL FACTS

A. ATV Use on Our State Forest and State Parks

A10. The statements of material fact regarding ATV use on our State Forest and State Parks set forth in the Petition (PP13-49) are incorporated by reference into this section of the Petition Addendum. These averments establish that DCNR, consistent with its trustee duties under the ERA, long opposed expanding ATV use on our State Forest and State Parks because this use cannot be managed to avoid degradation of these trust assets. Despite its long-standing policy against expanding ATV use, DCNR has recently revised its policy and expanded ATV use on our State Forest and State Parks to comply with Section 1720-E of the Fiscal Code. PEDF is seeking declarations through its Petition that legislation mandating ATV use on our State Forest and State Parks and actions taken to implement such legislation violate the ERA and the Respondents’ duties as trustees.

A11. PEDF, through this Petition Addendum, is adding material facts in support of its averments that the Renovo ATV Connector Segment violates the ERA

and that DCNR violated its trustee duties under the ERA in approving this project to implement Section 1720-E of the Fiscal Code.

A12. DCNR Secretary Dunn visited Clinton County on April 11, 2022, several months after the filing of the Petition, to publicly announce a \$1.2 million grant to fund construction of the 1.25-mile Renovo ATV Connector Segment from Brewery Run just north of Renovo to the Sproul State Forest. According to DCNR, this ATV trail segment will allow significant expansion of ATV trails through the Sproul State Forest to connect Renovo to the Bloody Skillet ATV Trail and Whiskey Springs ATV Trail, and to connect Renovo to Cross Fork and ultimately to the New York border, as mandated by Section 1720-E of the Fiscal Code. A copy of the DCNR press release for Secretary Dunn’s visit to make this grant announcement is provided as **Exhibit A-A**; see also two newspaper articles reporting on Secretary Dunn’s visit and grant announcement provided as **Exhibit A-B**.¹

A13. The need for the Renovo ATV Connector Segment to meet the mandates of Section 1720-E of the Fiscal Code is further documented in the project

¹ The exhibits to the Petition (Exhibits A – Y) are incorporated by reference into this Petition Addendum. Additional exhibits filed as part of this Petition Addendum are labeled with the prefix “A” to distinguish them from the Petition Exhibits.

grant application submitted to DCNR by the Central Mountain ATV Association (“CMATVA”) on or about September 30, 2021 (“Project Grant Application”). A copy of the Project Grant Application is provided as **Exhibit A-C**.²

A14. The Project Grant Application states that “[t]his is a Pilot Project 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 the New York State border.” **Exhibit A-C** at 2. CMATVA states in its application that “DCNR and Bureau of Forestry have not been able to find an amenable alignment to fulfill The Governor’s directive to plan or construct The Northern Initiative, therefore CMATVA has investigated other alternatives.” *Id.* at 10.

A15. As described in the Project Grant Application, “the proposed [off-highway vehicle] trail will cross Brewery Run [approximately 60 feet] 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

² This copy was produced by Clinton County in response to a request submitted by PEDF under the Pennsylvania Right-to-Know Law upon learning of this grant through Secretary Dunn’s announcement. Clinton County redacted the personal phone number and email address of the CMATVA President that submitted the Project Grant Application.

connect with DCNR/Forestry lands within the Sproul State Forestry lands to the north.” *Id.* at 2. 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.* at 10. The proposed layout of the Renovo ATV Connector Segment is shown in the project plan drawings provided as **Exhibit A-D**.

A16. 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.” **Exhibit A-C** at 10.

A17. Although the purpose of the Renovo ATV Connector Segment is to facilitate an extensive network of new ATV roads/trails in the Sproul State Forest to comply with the mandates of Section 1720-E of the Fiscal Code, DCNR has not determined the final location of these new ATV roads/trails or evaluated the

degradation to State Forest public natural resources that will result from these ATV roads/trails prior to awarding grant funds for the Renovo ATV Connector Segment.

A18. The review of the Renovo ATV Connector Segment project for potential impacts to threatened, endangered and rare species through the Pennsylvania Natural Diversity Index (“PNDI”) project review tool was limited to a 6.74 acre corridor along the proposed 1.25 mile ATV road/trail route with no consideration of potential impacts to the Sproul State Forest from the extensive new ATV road/trail network that will be constructed to meet the purpose of the Renovo ATV Connector Segment and Section 1720-E of the Fiscal Code. A copy of the PNDI receipt for the project dated January 31, 2022 is provided as **Exhibit A-E**.

A19. A review of the Renovo ATV Connector Segment for potential impacts to other sensitive ecological habitats using the DCNR Conservation Planning project review tool was limited to a 7.5 acre corridor along the proposed 1.25 mile ATV road/trail route with no consideration of potential impacts to the Sproul State Forest from the extensive new ATV road/trail network that will be constructed to meet the purpose of the Renovo ATV Connector Segment. Even with this limited scope of review, an Important Bird Area known as the Susquehanna Headwaters Forest Block was identified within the project area. The DCNR Conservation Planning Report

generated for the project on January 28, 2022 (copy provided as **Exhibit A-F**) states that Important Bird Areas “are areas recognized as being *globally important habitat for the conservation of bird populations*. Currently there are about 10,000 [Important Bird Areas] worldwide” (emphasis added). In an analysis performed for DCNR in 2019 to identify areas within Pennsylvania potentially suitable for ATV use, Important Bird Areas were identified as landscapes with environmental sensitivity that were less likely to be suitable for ATV activity. A copy of the Pennsylvania All-Terrain Vehicle Area Suitability Study, January 2019, is provided as **Exhibit A-G**.

A20. The benefits discussed in the Project Grant Application to justify the award of \$1.2 million in grant funds to construct the Renovo ATV Connector Segment are benefits to the outdoor/motorized recreation industry and to the local economy. **Exhibit A-C** at 4.

A21. 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 ... to enjoy their sport of choice – long distance community connector motorized riding.” **Exhibit A-C** at 4.

A22. 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.” 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).” 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.* at 5.

A23. In the Project Grant Application, CMATVA states that the documents needed to solicit bids for construction of the project have been prepared using funds awarded previously by DCNR through a project design grant and the project “is essentially now SHOVEL READY and Clinton County HAS CONTROL of The PROPERTIES [needed for construction] (in the form of PERPETUAL EASEMENTS).” *Id.* at 2-3.

A24. During the design of the Renovo ATV Connector Segment, CMATVA submitted its conceptual trail alignment to the DCNR Bureau of Forestry for review because the bureau will be expected to develop ATV trails on the Sproul State Forest to connect the 1.25 mile road/trail segment to the Whiskey Springs and Bloody Skillet ATV Trails and to Cross Forks as part of the ATV roads/trails to the New York border mandated by Section 1720-E of the Fiscal Code. CMATVA will also need access through the Sproul State Forest to construct the Renovo ATV Connector Segment, which will require DCNR to construct a new section of road on the Sproul State Forest. In a letter dated February 7, 2020, DCNR Assistant State Forester Jason Albright advised CMATVA of Bureau of Forestry concerns that would need to be

addressed if the project proceeded. While acknowledging the need for this project to connect Renovo to the Whiskey Springs ATV Trail through the Sproul State Forest, this letter does not provide any details regarding the availability of new ATV roads/trails in the Sproul State Forest for this purpose. A copy of this letter is provided as **Exhibit A-H**.

A25. On January 28, 2022, CMATVA notified Clinton County of its intention “to convey all responsibilities of the successfully attained DCNR ATV Restricted Fund Grant monies to Clinton County as official ‘Grant Applicant’, ‘Grantee’ and Manager of the associated Construction Phase Services for which the grant has been awarded.” A redacted copy of the letter provided by Clinton County is included as **Exhibit A-I**; see also Clinton County Resolution No. 2 of 2022 authorizing the County to become the applicant for the DCNR grant to fund construction of the Renovo ATV Connector Segment (copy provided as **Exhibit A-J**). CMATVA committed in its letter to manage and maintain the Renovo ATV Connector Segment after its construction.

A26. On February 3, 2022, DCNR advised CMATVA and Clinton County via email that it had everything it needed to change the grantee on the grant to fund construction of the Renovo ATV Connector Segment from CMATVA to Clinton

County. DCNR advised that it would execute the grant and send it to the County when “we get through environmental clearance and get approval from PennDOT,” which it anticipated taking a few more months. A redacted copy of the DCNR email provided by Clinton County is included at **Exhibit A-K**. The environmental clearances required for this project include approval of the erosion and sediment control plan by the Clinton County Conservation District and approval of the stream crossing by the Pennsylvania Department of Environmental Protection. The Pennsylvania Department of Transportation (“PennDOT”) must approve a right-of-way along State Route 120 to enable ATV users to access the Renovo ATV Connector Segment from Renovo.

B. Degradation of Constitutional Trust Assets by ATV Use

A27. The statements of material fact regarding degradation of our State Forest and State Park trust assets by ATV use set forth in the Petition (¶¶50-81) are incorporated by reference into this section of the Petition Addendum. These averments set forth the Respondents’ duties as trustees under the ERA to conserve and maintain these trust assets and to protect the rights of PEDF’s members to the clean air and pure water of these trust assets and to their natural, scenic, historic and esthetic values. These averments also set forth the long-standing harm to the State

Forest from ATV use and the harm to PEDF members from ATV use on our State Forest and State Parks.

A28. This Petition Addendum sets forth additional material facts regarding the degradation of constitutionally protected public natural resources by the Renovo ATV Connector Segment in support of PEDF’s averments that this project violates the ERA and that DCNR has violated its ERA trustee duties by approving this project.

A29. Four retired State Forest District Managers, Douglas J. D’Amore, Robert Davey, Roy A. Siefert, and Robert G. Merrill (two that managed the Sproul State Forest for the past 39 years (Davey from 1982 – 2003 and D’Amore from 2003 – 2021), have reviewed the Renovo ATV Connector Segment grant project and prepared an expert report (“Retired District Managers’ Expert Report,” copy provided as **Exhibit A-L**) that finds this project unsupportable because it will degrade public natural resources and create numerous safety and environmental hazards, as summarized below.

A30. The Renovo ATV Connector Segment will result in the need both to construct new ATV roads/trails through the State Forest and to open State Forest roads for ATV use. This new ATV road/trail development will cause permanent

degradation to the natural resources of the State Forest, the water quality downstream, and to the natural, scenic, historic, and esthetic values of the State Forest. It will ultimately lead to the degradation of the natural resources in the entire northcentral State Forest area, including in the Susquehannock, Elk, Moshannon, Tioga, and Tiadaghton State Forests. *Id.* at 5.

A31. New ATV roads/trails in the State Forest cannot be constructed, maintained and managed to conserve and maintain the natural resources of the State Forest. New ATV roads/trails needed to support the Renovo ATV Connector Segment and the mandates of Section 1720-E of the Fiscal Code will extend through adjoining State Forest District all the way to the New York border. It is not possible to conserve and maintain the State Forest public natural resources and manage ATV use in the State Forest at the same time. *Id.*

A32. Construction of the Renovo ATV Connector Segment, if funded by DCNR, will be unsafe for most ATV riders, will be difficult to construct and maintain, has great potential to cause erosion and sediment impacts to the high quality water of Brewery Run, and will likely have major impact on the natural spring relied on by the public for drinking water. *Id.* at 5-6.

A33. An estimated 40 - 50 miles of new ATV roads/trails will be necessary in the Sproul State Forest alone to fulfill the purposes of the one mile Renovo ATV Connector Segment and Section 1720-E of the Fiscal Code. While the ultimate location of the new State Forest ATV roads/trails may vary, this significant expansion of ATV use in the State Forest will degrade the forest. Funding the construction of the one mile Renovo ATV Connector Segment without locating or evaluating the degradation to the State Forest from the entire project is a piece meal approach that will result in the failure to protect the public natural resources of the State Forest. *Id.* at 6-7 & Attachment).

A34. The major increase in ATV use in the Sproul State Forest associated with the Renovo ATV Connector Segment is only a part of the intended future ATV road/trail development throughout the State Forest mandated by Section 1720-E of the Fiscal Code. As CMATVA states in its Project Grant Application, its members want to develop the entire northcentral State Forest into a comprehensive ATV motorized recreational vehicle area, similar to those developed in West Virginia and New England. DCNR cannot know the impact of the one mile Renovo ATV Connector Segment until the entire northcentral ATV road/trail complex within the State Forest is located and designed. *Id.* at 7.

A35. The existing Whiskey Springs and Bloody Skillet ATV Trails were constructed in Sproul State Forest in direct response to the requirements of the 1985 amendments to the Pennsylvania Vehicle Code requiring the Bureau of Forestry to develop ATV trails on State Forest lands. These existing ATV roads/trails were specifically constructed on abandoned and unreclaimed coal mining areas to avoid impacting the ecology of the Sproul State Forest. The existing roads/trails were chosen to contain runoff to the already disturbed areas of the State Forest. *Id.* at 7-8.

A36. To connect Renovo to the Whiskey Springs and Bloody Skillet ATV Trails and to Cross Fork, new ATV roads/trails will need to be developed within the State Forest and may require the use of existing State Forest roads. New ATV road/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. *Id.* at 8.

A37. 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. *Id.*

A38. State Forest roads were constructed to provide forestry personnel with access to the forest to protect and maintain the forest. State Forest roads are typically narrow, tree canopied, unpaved roads. They are used to conserve and maintain the health of the forest. Some of those roads have been opened and maintained to allow the public to experience the forest from their vehicles. They are open to horseback riding, hiking, biking, and bird watching activities. It has been the long standing policy of the Bureau of Forestry until just recently to not allow ATVs to use these roads because such use is unsafe and leads to further illegal riding that degrades the forest. Every mile of ATV trail designated in the State Forest opens hundreds of acres of historically natural areas of the forest to impacts of illegal ATV riding. *Id.* at 9.

A39. 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. *Id.*

A40. 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 roads/trails in the Sproul State Forest, either through new construction or the use of existing 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. *Id.* at 10, Attachment A & Figures 1 – 4.

A41. 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 road/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. *Id.* at 10-11.

A42. ATV road/trail 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. *Id.* at 11.

A43. ATV road/trail development in the forest causes immediate and long term erosion and sedimentation problems, which directly affects both the air and water quality from dust and stormwater discharges. To deal with these problems, measures such as stormwater diversion devices, erosion and sediment controls, dust suppression, and the spreading and compacting of gravel and stone to reinforce the road/trail surface would all be needed. ATVs dig ruts on gravel roads/trails, which build up berms and channelize stormwater. The concentrated water flow further erodes the road/trail carrying fine soil particles to cut deeper channels with increasing flow that eventually reaches nearby intermittent and perennial high quality and exceptional value streams. *Id.* at 11-12.

A44. The most degrading ATV roads/trails or areas are the ones that allow stormwater to leave the general area of the ATV road/trail or system. Most of the existing roads/trails attempt to retain stormwater within the system. The ATV roads/trails required by Section 1720-E of the Fiscal Code cover such a vast area that containment of the stormwater will not be possible and the degradation to the streams from erosion and sedimentation will be transported far beyond the streams

in northcentral PA, most of which drain into the Susquehanna River and ultimately into the Chesapeake Bay. *Id.* at 12.

A45. The new ATV roads/trails 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. *Id.* at 12.

A46. 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 roads/trails to cross intermittent streams within these watersheds. *Id.* at 13.

A47. 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. *Id.*

A48. These degrading changes to the Sproul State Forest from the new ATV roads/trails would be permanent. *Id.*

A49. The DCNR Bureau of Forestry cannot responsibly manage ATV use on the State Forest, either on dedicated ATV roads/trails or multi-use State Forest roads. Trying to construct and maintain ATV roads/trails has been a constant problem. It

takes away both the time and the resources from the bureau's ability to manage the natural resources of the State Forest. The hope that developing ATV roads/trails on the State Forest would eliminate illegal use has not been realized. To the contrary, developing new ATV roads/trails on the State Forest only added to more illegal ATV use. Trying to limit ATV use to designated roads/trails is impossible and the inability to control illegal ATV use causes serious enforcement problems and impacts to the forest ecology. *Id.* at 13-14.

A50. The Renovo ATV Connector Segment is unsupportable from both safety and ecological standpoints. *Id.* at 14.

A51. The private property to be used for the Renovo ATV Connector Segment is the steep side and point of a mountain. It is clearly too steep to build an ATV road/trail that would provide safe access, and too steep to be able to construct and maintain storm drainage to control erosion and sedimentation and to protect the Brewery Run, a high quality stream. This property is too steep to support an ATV road/trail that will protect the natural spring along Brewery Run used for drinking water because the ATV road/trail will need to be constructed adjacent the spring. *Id.* at 14-15.

A52. 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 road/trail is kept in excellent condition through constant maintenance. The steepness of the slope prevents building the road/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. *Id.* at 15.

A53. Rachel Carson said it best almost 70 years ago:

“The real wealth of our nation lies in the resources of the earth – soil, water, forests, minerals, wildlife. To utilize them for present needs while insuring their preservation for future generations requires a delicately balanced and continuing program, based on the most extensive research. Their administration is not properly, and cannot be, a matter of politics. By long tradition, the agencies responsible for these resources have been directed by [persons] of professional stature and experience, who have understood, respected, and been guided by the findings of their scientists.”³

³ Letter from Rachel Carson to the editor of the *Washington Post* (1953); quoted in *Lost Woods: The Discovered Writing of Rachel Carson* (1999) edited by Linda Lear, p. 99; see also <https://www.themarginalian.org/2017/02/08/rachel-carson-washington-post-letter-1953/>.

DCNR, the agency designated as the trustee under our state constitution with the duty to conserve and maintain our State Forest public natural resources for future generations, must understand, respect and be guided by the science of forest ecology. DCNR has repeatedly found that expanding ATV use in our State Forests is harmful to the ecology of the forest, infeasible economically, and unsafe. Now, DCNR has approved a \$1.2 million grant to construct the one mile Renovo ATV Connector Segment and significantly expand ATV use in the State Forest not based on science, but because it was forced to do so as a matter of politics. *Id.* at 15-16.

V. CONTESTED ACTS AND ACTIONS

A54. The contested acts and actions set forth in the Petition (¶¶82-131) are incorporated into this section of the Petition Addendum. In addition, this Petition Addendum sets forth additional contested acts and actions related to the Renovo ATV Connector Trail.

F. DCNR Grant Project Approval to Implement Section 1720-E of the Fiscal Code is Unconstitutional

A55. 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.

A56. As a Commonwealth agency with trustee duties under the ERA, DCNR must ensure that ATV road/trail projects for which it provides grant funds conserve and maintain public natural resources that are trust assets under the ERA, including the forest ecosystems of our State Forest and State Parks, air quality, surface and groundwater quality, and wildlife.

A57. On April 11, 2022, the Respondents announced the award of \$1.2 million in grant funding to construct the 1.25 mile Renovo ATV Connector Segment to implement the expansion of ATV use in our State Forest mandated by Section 1720-E of the Fiscal Code. The purpose of the Renovo ATV Connector Segment is to facilitate a significant expansion (an estimated 40 - 50 miles) of ATV trails through the Sproul State Forest to connect the Bloody Skillet ATV Trail to the Whiskey Springs ATV Trail, and to connect Renovo to Cross Fork and ultimately to the New York border, as mandated by Section 1720-E of the Fiscal Code.

A58. As set forth in the material facts of this Petition Addendum, the Renovo ATV Connector Segment requires the construction of a steep narrow road using switchbacks with slopes of up to 10-15% on the side of a mountain that drains into

a high quality stream, Brewery Run. The steepness of this mountain will prevent effective stormwater drainage to control erosion and sedimentation necessary to conserve and maintain Brewery Run. In addition, a spring used by the public for drinking water is located along Brewery Run just downstream of the new project stream crossing. The new ATV road will run behind and upslope of the spring house and will likely degrade this spring. The steepness of this new ATV road will pose safety and other environmental hazards as well.

A59. DCNR approved grant funding for the Renovo ATV Connector Segment without any evaluation of the impacts to public natural resources protected as trust assets under the ERA, either from this one mile segment or from the much larger expansion of ATV roads/trails on our State Forest and State Parks to which DCNR has committed.

A60. DCNR's approval of funding for the construction of the Renovo ATV Connector Segment violates the ERA because the legislation mandating this significant expansion of ATV trails and ATV use on our State Forest and State Parks is unconstitutional for the reasons set forth the Petition and this Petition Addendum.

A61. DCNR's approval of funding for the Renovo ATV Connector Segment violates the ERA by significantly expanding ATV roads/trails and ATV use on our

State Forest and State Parks, which it knows will degrade these constitutionally protected trust assets, and by infringing on the constitutional rights of PEDF members and current and future generations of Pennsylvanians to the benefits of those resources under the ERA, as set forth in the material facts in the Petition and this Petition Addendum. The Renovo ATV Connector Segment further violates the ERA by facilitating a significant expansion of ATV use on existing State Forest roads, which will further degrade the corpus of the public trust and will endanger the lives and the welfare of the beneficiaries of our State Forest trust assets.

A62. The Respondents violated the ERA and their duties as trustees thereunder by approving grant funds for the Renovo ATV Connector Segment without identifying the scope of the significant expansion of ATV use on our State Forest and State Parks necessary to meet the purposes of this project and Section 1720-E of the Fiscal Code; and without conducting any evaluation to ensure compliance with the ERA consistent with their fiduciary duties prior their approval of \$1.2 million to construct the Renovo ATV Connector Segment and significantly expand use of our ERA trust assets by ATVs.

A63. As set forth in the material facts in the Petition and this Petition Addendum, DCNR adopted and continued its policy against further expansion of

ATV use on our State Forest for more than 17 years based on now more than 35 years of experience by the Bureau of Forestry with ATV use on the State Forest. The Renovo ATV Connector Segment was approved to appease ATV owners and promote tourism and economic development in local communities even though DCNR knew this project would degrade constitutionally protected trust assets. The ERA does not sanction degradation of our public natural resource trust assets for non-trust purposes.

A64. The constitutionality of the Respondents' acts and decisions effecting our public natural resources depends upon whether the acts and decisions result from the Respondents' "faithful exercise of [their] fiduciary duties vis a vis our public natural resources." *PEDF v. Commonwealth*, 161 A.3d 911, 939 (Pa. 2017). The Respondents were not faithful to their trustee obligations under the ERA in approving grant funds for the Renovo ATV Connector Segment to implement Section 1720-E of the Fiscal Code and significantly expand ATV use on our State Forest and State Parks.

A65. As set forth in the material facts in the Petition and this Petition Addendum, DCNR established clear evidence of the degradation that ATV roads/trails have on the forest ecosystem of our constitutionally protected trust

assets, and on our constitutional rights to have those assets conserved and maintained, to have the clean air and pure water of those assets protected, and to have the natural, scenic, historic and esthetic values of those assets preserved. The approval of funding to construct the Renovo ATV Connector Segment and significantly expand ATV use on our State Forest and State Parks without consideration of DCNR's clear evidence that degradation will result from this expansion violates the ERA and the Respondents' trustee duties thereunder.

A66. For all the reasons set forth in the Petition and the Petition Addendum, PEDF is asking this Honorable Court to declare the following:

(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 and violate the rights of PEDF's members and all trust beneficiaries to clean air, pure water and the preservation of the natural, scenic, historic and esthetic values of their public natural resources.

VI. CONCLUSION

A67. As set forth in the Petition and this Petition Addendum, PEDF respectfully asks this Honorable Court to grant its requests for declaratory relief.

Respectfully,



John E. Childe
ID No. 19221
960 Linden Lane
Dauphin, PA 17018
childeje@aol.com
(717) 743-9811
Counsel for PEDF

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
Petitioner	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA;	:	
THE PENNSYLVANIA HOUSE OF	:	
REPRESENTATIVES and	:	
BRYAN DEAN CUTLER,	:	
in his official capacity as its SPEAKER;	:	447 M.D. 2021
THE PENNSYLVANIA SENATE and	:	
JAKE CORMAN, in his official capacity as	:	
the SENATE PRESIDENT PRO TEMPORE;	:	
TOM WOLF, in his official capacity	:	
as GOVERNOR of PENNSYLVANIA;	:	
THE PENNSYLVANIA DEPARTMENT OF	:	
CONSERVATION AND NATURAL	:	
RESOURCES and CINDY ADAMS DUNN,	:	
in her official capacity as its SECRETARY,	:	
Respondents	:	

CERTIFICATION OF COMPLIANCE WITH Pa. R.A.P. 127

I hereby certify that this Petition Addendum complies with Pa. Rule of Appellate Procedure 127.



John E. Childe
ID No. 19221
960 Linden Lane
Dauphin, PA 17018
childeje@aol.com
(717) 743-9811
Counsel for PEDF

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
Petitioner	:	
v.	:	
COMMONWEALTH OF PENNSYLVANIA;	:	
THE PENNSYLVANIA HOUSE OF	:	
REPRESENTATIVES and	:	
BRYAN DEAN CUTLER,	:	
in his official capacity as its SPEAKER;	:	447 M.D. 2021
THE PENNSYLVANIA SENATE and	:	
JAKE CORMAN, in his official capacity as	:	
the SENATE PRESIDENT PRO TEMPORE;	:	
TOM WOLF, in his official capacity	:	
as GOVERNOR of PENNSYLVANIA;	:	
THE PENNSYLVANIA DEPARTMENT OF	:	
CONSERVATION AND NATURAL	:	
RESOURCES and CINDY ADAMS DUNN,	:	
in her official capacity as its SECRETARY,	:	
Respondents	:	

CERTIFICATION OF SERVICE

I hereby certify that I have served this Petition Addendum on the counsel for the Respondents through the Court’s PACFile electronic filing system.



 John E. Childe
 ID No. 19221
 960 Linden Lane
 Dauphin, PA 17018
childeje@aol.com
 (717) 743-9811
 Counsel for PEDF

Date: August 24, 2022