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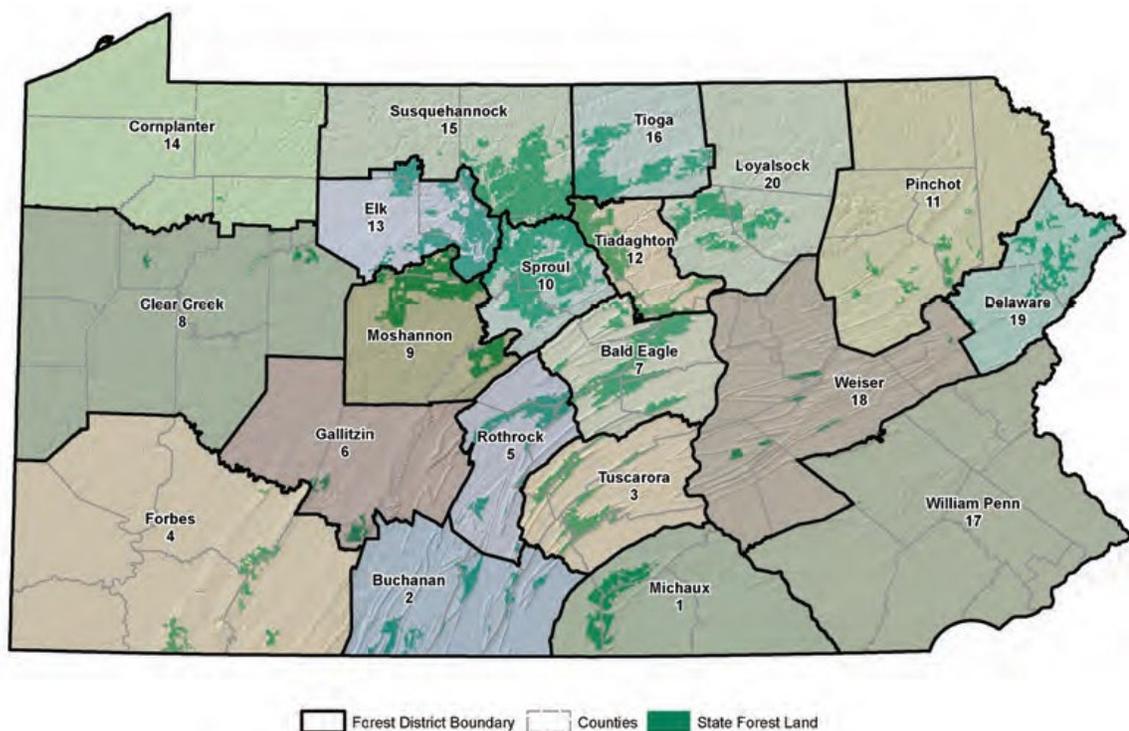
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I. INTRODUCTION

1. The Pennsylvania Environmental Defense Foundation (“PEDF”) files this petition for review (“Petition”) alleging that the Commonwealth of Pennsylvania (“Commonwealth”), its Governor, its Department of Conservation and Natural Resources (“DCNR”), and its Secretary of DCNR (collectively, the “Commonwealth Trustees”) have failed to remedy existing and ongoing losses to the natural resources of our State Forest in northcentral Pennsylvania caused by multiple uses that have been authorized, thus failing to conserve and maintain these public natural resources as mandated by Article I, Section 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment (“ERA”).



Source: *State Forest Resource Management Plan*, 2016, DCNR, Figure 1.1

2. The approximately 1.5 million acres of State Forest in northcentral Pennsylvania contains the largest area of almost contiguous undeveloped natural forest in northeastern United States. The unique and wild character of this forest is the basis for the branding of this region of the Commonwealth as the Pennsylvania Wilds.¹

3. The Commonwealth began taking steps in the early 1900s to acquire and restore forest land in northcentral Pennsylvania that had been decimated by industrial logging at the turn of the last century. As the State Forest lands in northcentral Pennsylvania began to recover, pressure increased, especially after World War II, to authorize multiple uses of the natural resources of the forest, including commercial oil and gas development, commercial natural gas storage, commercial utility and communications rights-of-way, commercial timber sales, and the extensive development of roads and other infrastructure to support these commercial uses, as well as private and public recreation. As authorization of these multiple uses increased, extensive acreage of forest was converted to non-forest, native plant and animal habitats and species were lost, invasive plants and forest

¹ The State Forest Districts within northcentral Pennsylvania include the Susquehannock, Tioga, Loyalsock, Elk, Moshannon, Sproul, and Tiadaghton. The State Forest lands in the northern portion of the Bald Eagle District are also part of this region. However, information reported for this district is not separated into northern and southern forest areas and thus are generally not included in the material facts set forth in this Petition for the State Forest of northcentral Pennsylvania.

pests dramatically increased, and the natural ecology of the State Forest in northcentral Pennsylvania was again threatened.

4. In 1971, the people of Pennsylvania recognized the need to preserve their public natural resources, including the natural resources and ecology of the State Forest in northcentral Pennsylvania. They voted overwhelmingly to place their commonly owned natural resources in a trust to be conserved and maintained by their state government as trustee to guarantee their rights to clean air, pure water and the preservation of the natural, scenic, historic and esthetic values of their environment.

5. Given the extensive multiple uses of the natural resources State Forest in northcentral Pennsylvania already authorized by 1971, progress in restoring the ecology of the forest has been slow and expensive, but progress was made nonetheless in the decades that followed adoption of the ERA.

6. One of the multiple uses of the natural resources of the State Forest authorized after World War II was oil and gas development and natural gas storage. In recognition of the fact that the money derived from these authorized uses came from the State Forest, these funds were dedicated to projects on State Forest and State Park lands through legislation enacted in 1955. By the turn of this century, the commercial extraction and sale of oil and natural gas from the State Forest had been declining as these natural resources were depleted from known geologic

formations that could produce them in profitable quantities with technologies commercially available.

7. In 2009 and 2010, a sea change occurred when new State Forest oil and gas leases were authorized in northcentral Pennsylvania to take advantage of new directional drilling and hydraulic fracturing technology commercially available to extract natural gas from shale formations, particularly Marcellus Shale, thousands of feet beneath the surface of the forest. The commercial natural gas development that followed fundamentally altered the ecology of the forest.

8. To that end, the Commonwealth Trustees have diverted the money derived from State Forest oil and gas leases in northcentral Pennsylvania from projects to restore the natural resources and ecology of the forest to funding general government operations in place of tax revenue from the General Fund for non-trust purposes.

9. The Supreme Court of Pennsylvania has declared, as a matter of law, that all proceeds from State Forest oil and gas leases, which are deposited by statute into the Oil and Gas Lease Fund, remain part of the corpus of the trust established by the ERA and must be used solely for the trust purpose of conserving and maintaining our public natural resources. Our Supreme Court has also declared, as a matter of law, that legislative provisions enacted in 2009 and 2010 authorizing the transfer of \$383 million from the Oil and Gas Lease Fund to the

General Fund to pay for general state government operations are facially unconstitutional under the ERA.

10. Since 2009, DCNR and its Secretary, at the direction of the Governor, have spent over \$1.1 billion in ERA trust funds derived from the degradation, diminution and depletion of the natural resources and ecology of our State Forest in northcentral Pennsylvania to replace revenue from the General Fund needed to pay annual costs incurred by DCNR for its many programs and activities authorized for purposes other than conserving and maintaining the natural resources and ecology of our State Forest in northcentral Pennsylvania or any other public natural resources. The Commonwealth Trustees have not spent these trust funds to remedy the degradation, diminution and depletion of the natural resources of our State Forest in northcentral Pennsylvania from the many uses that have been authorized. The Commonwealth Trustees have also spent an additional \$250 million of these ERA trust funds through transfers to the Marcellus Legacy Fund without accounting for the spending of these ERA trust funds and again without remedying the harm to the State Forest in northcentral Pennsylvania from the multiple uses that have been authorized.

11. The Commonwealth Trustees have breached and continue to breach the ERA trust and have infringed on the constitutional rights of PEDF's members and the people of Pennsylvania, including future generations, in violation of Article

I, Section 25 of the Pennsylvania Constitution, by spending trust funds derived from the State Forest in northcentral Pennsylvania without ensuring these trust funds were spent for trust purposes, particularly without ensuring first and foremost that they were spent to remedy the losses of trust assets from this forest to preserve the corpus of the trust.

12. Based on the material facts and law set forth in this Petition, including the as-applied analyses of the actual spending by the Commonwealth Trustees of ERA trust funds derived from the State Forest in northcentral Pennsylvania since 2009, PEDF is asking this Honorable Court, among other things:

- To declare that the Commonwealth Trustees have not accounted for or remedied the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized;
- To declare that the Governor has breached the ERA trust by repeatedly approving executive budgets to spend ERA trust funds as General Fund revenue without ensuring these trust funds were spent for trust purposes;
- To declare that the Commonwealth trustees have breached the ERA trust by spending almost \$1.7 million in ERA trust funds derived from

our State Forest in northcentral Pennsylvania, specifically \$383 million from the Oil and Gas Lease Fund transferred to the General Fund, \$1.1 billion from the Oil and Gas Lease Fund spent for DCNR operations the same as General Fund revenue, and \$250 million transferred from the Oil and Gas Lease Fund to the Marcellus Legacy Fund, all without ensuring these ERA trust funds were spent for trust purposes, in particular without ensuring first and foremost that these trust funds were spent to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania;

- To compel the Commonwealth Trustees to fully and transparently account for the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized, as well as the trust funds derived from those losses and the actions necessary to remedy them;
- To stop the Commonwealth Trustees from further spending ERA trust funds derived from the losses of trust assets from our State Forest in northcentral Pennsylvania without fully and transparently accounting for these losses and the actions needed to remedy them; and

- To impose a surcharge on the Commonwealth to repay the ERA trust beneficiaries for ERA trust funds derived from losses to the natural resources and ecology of our State Forest in northcentral Pennsylvania so those funds can be used to restore and/or mitigate the losses of these unique and high value public natural resources that have occurred and continue to occur to preserve the corpus of the ERA trust.

II. STATEMENT OF JURISDICTION

13. The Commonwealth Court has original jurisdiction over this civil action against the Commonwealth as trustee of the natural resources of our State Forest and State Parks under Article I, Section 27 of the Pennsylvania Constitution, as well as the officers of the Commonwealth acting in their official capacity to carry out the Commonwealth's trustee duties, under Section 761 of the Judicial Code, 42 Pa.C.S. 761; Section 7712(a) of the Uniform Trust Act, 20 Pa.C.S. § 7712(a); Section 7532 of the Declaratory Judgments Act, 42 Pa.C.S. § 7532 (“Courts of record, within their respective jurisdictions, shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed ...”), and Section 7535 of the Declaratory Judgments Act, 42 Pa.C.S. § 7535 (Any person interested, as or through ... [a] trustee, ... in the administration of a trust, ... may have a declaration of rights or legal relations in

respect thereto: ... [t]o direct the ... administrators, or trustees to do or to abstain from doing any particular act in their fiduciary capacity [or] [t]o determine any question arising in the administration of the ... trust, including questions of construction of ... writings.”).

III. PARTIES

14. Petitioner PEDF is a non-profit organization incorporated under the laws of Pennsylvania since 1986 for the purposes of protecting and preserving the environmental interests of its members in Pennsylvania. PEDF President, Cynthia Bower, resides at 2753 Sugar Camp Road, Trout Run, PA 17771, and can be contacted at 570-998-8244.

15. Respondent Commonwealth of Pennsylvania is the constitutionally designated trustee under the ERA of the Commonwealth’s public natural resources, which are owned in common by the people of Pennsylvania, including future generations, and are to be conserved and maintained as the corpus of the trust for their benefit.

16. Respondent Josh Shapiro, in his official capacity as the Governor of the Commonwealth (“Governor”), has the supreme executive power to carry out the Commonwealth’s trustee duties under the ERA. He cannot infringe upon the declared Article I constitutional rights of people established in the ERA when exercising the supreme executive power granted to him under Article IV, Section 2

of the Pennsylvania Constitution, or when exercising his budget and financial planning duties under Article VIII, Section 12 of the Pennsylvania Constitution. The Governor appoints the Secretary, Deputy Secretaries, and policy and legislative directors of DCNR, as well as the General Counsel who in turn appoints the Chief Counsel and assistant counsel for DCNR. These appointed public officials serve at the pleasure of the Governor.

17. Respondent DCNR is an agency of the Commonwealth established in 1995 by the Conservation and Natural Resources Act, 71 P.S. §§ 1340.101-1340.1103, to administer the natural resources of our publicly owned lands acquired to establish our State Forest and State Parks, which are ERA trust assets that must be preserved as part of the trust corpus under the ERA.

18. 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. STATEMENT OF MATERIAL FACTS AND LAW

19. The Commonwealth Court and Supreme Court have made determinations relevant to this Petition during their review of prior facial challenges by PEDF to the constitutionality under the ERA of legislation authorizing the appropriation and spending of money derived from natural gas development on our State Forest in northcentral Pennsylvania since 2009, which is deposited into the Oil and Gas Lease Fund. PEDF incorporates relevant law from those prior determinations applicable to its as-applied challenges to the constitutionality under the ERA of the actions of the Commonwealth Trustees set forth in this Petition that have degraded, diminished and depleted the natural resources and ecology of our State Forest in northcentral Pennsylvania.²

A. The Commonwealth Trustees Have the Constitutional Duty Under Article I, Section 27 of the Pennsylvania Constitution to Conserve and Maintain the Natural Resources and Ecology of Our State Forest in Northcentral Pennsylvania

20. Article I, Section 27 of the Pennsylvania Constitution, commonly known as the Environmental Rights Amendment (“ERA”), establishes “a public trust, pursuant to which the natural resources are the corpus of the trust, the Commonwealth[] is the trustee, and the people are the named beneficiaries.” *PEDF*

² For the convenience of this Honorable Court, PEDF has summarized the history of its relevant prior cases since 2012 in **Exhibit A**.

v. Commonwealth, 161 A.3d 911, 932-933 (Pa. 2017) (“*PEDF II*”).³ Our Supreme Court has established that “when reviewing challenges to the constitutionality of Commonwealth actions under [the ERA], the proper standard of judicial review lies in the text of [the ERA] itself as well as the underlying principles of Pennsylvania trust law in effect at the time of its enactment.” *Id.* at 930.⁴

21. The “public natural resources” that comprise the corpus of the ERA trust include the natural resources of our State Forest and State Parks, including oil and natural gas resources acquired as part of these public lands. *Id.* at 931. The natural resources of our State Forest and State Parks are owned in common by the people of Pennsylvania, including future generations. Our Supreme Court has stated that the ERA’s “express inclusion of generations yet to come in ‘all the people’ establishes that current and future Pennsylvanians stand on equal footing and have identical interests in the environmental values broadly protected by the ERA.” *PEDF v. Commonwealth*, 255 A.3d 289, 310 (Pa. 2021) (“*PEDF V*”). Thus, the Commonwealth, as the trustee of these public natural resources, “cannot

³ In the omitted footnote, our Supreme Court states that the ERA trustee obligations “are not vested exclusively in any single branch of Pennsylvania’s government, and instead all agencies and entities of the Commonwealth government, both statewide and local, have a fiduciary duty to act toward the corpus with prudence, loyalty and impartiality.” *Id.* at 932, n. 23.

⁴ The plain text of the ERA states: “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.” Pa. Const. art. I, § 27.

prioritize the needs of the living over those yet to be born ... [and] may not succumb to ‘the inevitable bias toward present consumption of public resources by the current generation, reinforced by a political process characterized by limited terms of office.’” *Id.*

22. As our Supreme Court has observed, the people of Pennsylvania “formally and forcefully recogniz[ed] their environmental rights as commensurate with their most sacred political and individual rights” in 1971 when they ratified by a margin of nearly four to one the inclusion of the ERA in their Declaration of Rights in Article I of the Pennsylvania Constitution *Id.* at 916.

23. The Commonwealth Trustees have the sole duty under the ERA to conserve and maintain the natural resources of our State Forest and State Parks by preserving their clean air, pure water and natural, scenic, historic and esthetic values as part of the corpus of the ERA trust.

24. As fiduciaries, the Commonwealth Trustees are “obligated to comply with the terms of the trust and with standards governing a fiduciary’s conduct. ... The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources. As a fiduciary, the Commonwealth has a duty to act toward the corpus of the trust—the public natural resources—with prudence, loyalty, and impartiality.”

PEDF II at 932 (quoting *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 956-957) (Pa. 2013).

25. Our State Forest in northcentral Pennsylvania is a unique and high value public natural resource that encompasses approximately 1.5 million acres of largely contiguous forest. This forest is a natural ecosystem of trees, other plants, and wildlife supported by its soil and mycorrhizae, its exceptional value and high quality streams, wetlands and vernal ponds, and its climate, geology and topography. Our State Forest in northcentral Pennsylvania is the core public natural resource of the Commonwealth initiative appropriately named the “Pennsylvania Wilds”, which is supported by 12 counties in this region.⁵

26. In the early 1900s, the Commonwealth began acquiring large tracts of undeveloped forest land in Pennsylvania, which now comprise our State Forest. These forest lands had been decimated by extensive industrial logging and were acquired to ensure they would be reforested. *1895 to 1995, The Legacy of Penn’s Woods, A History of the Pennsylvania Bureau of Forestry*, Lester A. DeCoster, Pennsylvania Historical and Museum Commission, 1995 (“*Legacy of Penn’s Woods*”), pages ix and 27, excerpts incorporated as **Exhibit B**.

⁵ The history of the Pennsylvania Wilds initiative is available at <https://www.pawildscenter.org/the-pa-wilds-region/history-of-the-pa-wilds/>.

27. Our Supreme Court has held that “[b]ecause state parks and forests, including the oil and gas minerals therein, are part of the corpus of Pennsylvania’s environmental public trust, ... the Commonwealth, as trustee, must manage them according to the plain language of [the ERA], which imposes fiduciary duties consistent with Pennsylvania trust law.” *PEDF II*, 161 A.3d at 916.

28. As recognized by our Supreme Court, the adoption of the ERA was due in part to the general knowledge that our State Forest was established out of devastation, not preservation, which the court described as follows:

It is not a historical accident that the Pennsylvania Constitution now places citizens’ environmental rights on par with their political rights. *Approximately three and a half centuries ago, white pine, Eastern hemlock, and mixed hardwood forests covered about 90 percent of the Commonwealth’s surface of over 20 million acres. Two centuries later, the state experienced a lumber harvesting industry boom that, by 1920, had left much of Pennsylvania barren.* “Loggers moved to West Virginia and to the lake states, leaving behind thousands of devastated treeless acres,” abandoning sawmills and sounding the death knell for once vibrant towns. *Regeneration of our forests (less the diversity of species) has taken decades.*

Id. at 916-917 (quoting *Robinson Twp.*, 83 A.3d at 960) (emphasis added).

29. Our Supreme Court has also explained the significance of the intent of the people of Pennsylvania when they included the ERA as part of their inalienable rights in Article I of their state constitution and imposed trustee duties on all branches of the Commonwealth’s government under Article I, stating:

That Pennsylvania deliberately chose a course different from virtually all of its sister states speaks to *the Commonwealth's experience of having the benefit of vast natural resources whose virtually unrestrained exploitation, while initially a boon to investors, industry, and citizens, led to destructive and lasting consequences not only for the environment but also for the citizens' quality of life.* Later generations paid and continue to pay a tribute to early uncontrolled and unsustainable development financially, in health and quality of life consequences, and with the relegation to history books of valuable natural and esthetic aspects of our environmental inheritance. *The drafters and the citizens of the Commonwealth who ratified the Environmental Rights Amendment, aware of this history, articulated the people's rights and the government's duties to the people in broad and flexible terms that would permit not only reactive but also anticipatory protection of the environment for the benefit of current and future generations.* Moreover, public trustee duties were delegated concomitantly to all branches and levels of government in recognition that the quality of the environment is a task with both local and statewide implications, and to ensure that all government neither infringed upon the people's rights nor failed to act for the benefit of the people in this area crucial to the well-being of all Pennsylvanians.

Id. at 918-19 (quoting *Robinson Twp.*, 83 A.3d at 963) (emphasis added)).

30. At the time the ERA was added to our state constitution in 1971, the General Assembly established a new Commonwealth agency, the Department of Environmental Resources ("DER"), and transferred to this agency all state government functions related to environmental resources, including management of our State Forest and State Parks.⁶

⁶ See Act of December 3, 1970, P.L. 834, No. 275, which amended the act of April 9, 1929 (P.L. 177, known as "The Administrative Code of 1929," and transferred the Bureau of Forestry and

31. While the natural resources and ecology of our State Forest had improved significantly since the time when most of the forest had been acquired in the early 1990s, multiples uses of the forest had been authorized for purposes other than conserving and maintaining the forest when DER was given the fiduciary obligation to administer these public natural resources as part of the corpus of the trust established by the ERA. Such uses included commercial oil and gas development, commercial natural gas storage, commercial rights-of-way, private camp leases, commercial timber harvesting, and roads and other infrastructure needed for these and other authorized uses.

32. By 1995, the General Assembly recognized the need for a separate agency to fulfill the constitutional trustee mandates to conserve and maintain the natural resources and ecology of our State Forest and State Parks. The Conservation and Natural Resources Act (“CNRA”) was enacted to create a separate Commonwealth agency, DCNR, to carry out the day-to-day trustee duties of the Commonwealth to preserve these constitutionally protected trust assets under the ERA.⁷

33. In establishing DCNR, the General Assembly recognized that our State Forest and State Parks “contain some of our State’s most precious and rare

the Bureau of State Parks, as wells as their statutory powers and duties, from the Department of Forest and Waters, which was eliminated, to DER.

⁷ Act of June 28, 1995, P.L. 89, No. 18 (71 P.S. §§ 1340.101-1340.1103).

natural areas,” that conservation and maintenance of our State Forest and State Parks had “taken a back seat” to other environmental problems, that “not enough time, energy and money” was being devoted to solving the problems facing our State Forest and State Parks, and that a “cabinet-level advocate” was needed to highlight these and other conservation issues for the public. CNRA § 101, 71 P.S. § 1340.101.

34. In consideration of the renewed emphasis on administering our State Forest consistent with its ERA trustee duties, the Bureau of Forestry adopted a new strategic plan upon its transfer to the newly created DCNR in 1995 entitled *Penn’s Woods—Sustaining Our Forests* (“*Penn’s Woods Strategic Plan*”), excerpts incorporated as **Exhibit C**.⁸ In this plan, DCNR recognized the need to administer the multiple uses of the natural resources of our State Forest authorized by its predecessors, both before and after the adoption of the ERA, to conserve and maintain the natural resources and ecology of our State Forest. To achieve that end,

⁸ The full text of the *Penn’s Woods Strategic Plan* is available on DCNR’s website at https://elibrary.dcnr.pa.gov/GetDocument?docId=1741347&DocName=sf-Penns_Woods_Strategic_Plan.pdf. Dr. James R. Grace, the State Forester and director of the Bureau of Forestry in 1995, oversaw the preparation of this new strategic plan. Dr. Grace earned his Ph.D. in Forest Resources from the Pennsylvania State University in 1978, with a focus on forest ecology. He also earned a B.S. in forest management at the University of Vermont in 1970 and a master’s degree in forest science at Yale University in 1972. After serving from 1987-2010 as DER deputy secretary for forestry, state parks, and geological survey, DCNR state forester, and DCNR deputy secretary for forests and parks, he served as the Maurice K. Goddard Chair of Forestry and Environmental Resource Conservation at the Pennsylvania State University from 2010-2014.

the Bureau of Forestry adopted the goal to “*manage State Forests under sound ecosystem management, to retain their wild character and maintain biological diversity while providing pure water, opportunities for low density recreation, habitats for forest plants and animals, sustained yields of quality timber, and environmentally sound utilization of mineral resources.*” *Penn’s Woods Strategic Plan*, page 23 (emphasis added).

35. Given the long history of authorizing multiple uses of the State Forest under the broad statutory powers and duties that had been given to DCNR and its predecessors, DCNR faced the challenge of implementing changes needed to conserve and maintain the natural resources and ecology of the State Forest and achieve the goals set in the *Penn’s Woods Strategic Plan*.

36. As our Supreme Court has stated, the “explicit terms of the trust require the government to ‘conserve and maintain’ the corpus of the trust. The plain meaning of the terms conserve and maintain implicates a duty to prevent and remedy the degradation, diminution, or depletion of our public natural resources.” *PEDF II*, 161 A.3d at 932 (quoting *Robinson Twp.*, 83 A.3d at 956-57)). Thus, the ERA imposes both the duty to prevent uses of the State Forest that cause degradation, diminution and depletion of its natural resources and the duty to account for and remedy the harm from multiple uses previously authorized. *Id.* at 918-919 (“the government’s duties to the people are stated in broad and flexible

terms that would permit not only reactive but also anticipatory protection of the environment for the benefit of current and future generations.”)

37. Our Supreme Court has stated that “[a]s a fiduciary, the Commonwealth has a duty to act toward the corpus of the [ERA] trust—the public natural resources—with prudence, loyalty, and impartiality. ... First, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties. ... Although a trustee is empowered to exercise discretion with respect to the proper treatment of the corpus of the trust, that discretion is limited by the purpose of the trust and the trustee’s fiduciary duties, and does not equate ‘to mere subjective judgment.’ ... The trustee may use the assets of the trust ‘only for purposes authorized by the trust or necessary for the preservation of the trust; other uses are beyond the scope of the discretion conferred, even where the trustee claims to be acting solely to advance other discrete interests of the beneficiaries.’” *Id.* at 932-933.⁹

⁹ See also 20 Pa.C.S. § 7771 (“the trustee shall administer the trust in good faith, in accordance with its provisions and purposes and the interests of the beneficiaries in accordance with applicable law”); 20 Pa.C.S. § 7772 (“A trustee shall administer the trust solely in the interests of the beneficiaries.”); 20 Pa.C.S. § 7773 (“the trustee must treat beneficiaries equitably in light of the purposes of the trust”); and 20 Pa.C.S. § 7774 (“A trustee shall administer the trust as a prudent person would, by considering the purposes, provisions ... and other circumstances of the trust and by exercising reasonable care, skill and caution.”).

38. This Honorable Court has further “caution[ed] the Commonwealth that the failure to remedy the degradation, diminution, or depletion of the State forest and parks impacted by Marcellus wells—the very public resources harmed in order to generate [the money in the Oil and Gas Lease Fund]—may constitute a failure to preserve the trust and a dereliction of its fiduciary duty under [the ERA].” *PEDF v. Commonwealth*, No. 358 M.D. 2018, unreported memorandum opinion and order by Judge Wojcik filed on October 22, 2020 (“*PEDF IV*”), page 20, n.16.

39. As set forth in detail below in Section IV.B. of this Petition, multiple uses of our State Forest in northcentral Pennsylvania have expanded significantly since 2009 and have caused and continue to cause degradation, diminution and depletion of the natural resources and ecology of the forest. The Commonwealth Trustees have not accounted for or remedied the losses of trust assets from this forest caused by these expended uses or the uses previously authorized.

40. As set forth below in the detailed as-applied analysis of actual spending by the Commonwealth Trustees in Section IV.C. of this Petition, the Commonwealth Trustees have spent almost \$1.7 billion in ERA trust funds generated since 2009 from the natural gas development on our State Forest in northcentral Pennsylvania without accounting for or remedying the losses of trust

assets within this forest, or otherwise conserving and maintaining our public natural resources.

B. The Commonwealth Trustees Have Not Accounted for or Remedied the Degradation, Diminution and Depletion of the Natural Resources and Ecology of Our State Forest in Northcentral Pennsylvania Caused By the Multiple Uses That Have Been Authorized

41. As the Commonwealth began acquiring large tracts of undeveloped lands that had been cleared of their forests by industrial logging in the early 1900s, the General Assembly enacted laws that gave broad powers and duties to the Commonwealth agencies responsible for restoring the forests on these lands, which are now our State Forest.¹⁰ These powers and duties were consolidated into the Administrative Code of 1929 and remain the basis for many of the forestry powers and duties currently vested in DCNR.¹¹ *See, e.g.,* CNRA § 302, 71 P.S. § 1340.302.

42. In addition to granting to the Commonwealth agencies administering our State Forest the powers needed to restore the forest, the General Assembly also has granted powers to these agencies to authorize multiple uses that could degrade, diminish and deplete the natural resources and ecology of the forest, including the

¹⁰ In 1885, the Division of Forestry within the Department of Agriculture was responsible for managing Pennsylvania's forests. This division reported to the Pennsylvania Forestry Commission. In 1901, this division became the Department of Forestry. In 1923, this department was reorganized into the Department of Forest and Waters. *Legacy of Penn's Woods* (Exhibit B), pages 27, 31 and 67.

¹¹ Act of April 9, 1929, P.L. 177, No. 175, Article XVIII, Powers and Duties of the Department of Forests and Waters, its Officers, and Departmental Administrative and Advisory Boards and Commission; copy incorporated as **Exhibit D** (these powers and duties were transferred to DER by the act of Dec. 3, 1970, P.L. 834, No. 275, and then to DCNR by the CNRA).

authority to lease State Forest lands for commercial oil and gas development and commercial natural gas storage; to grant commercial rights-of-way across State Forest lands for commercial electric transmission lines, natural gas pipelines, and other commercial enterprises; to lease State Forest land for private camps; to authorize the use of motorized recreational vehicles such as snowmobiles and ATVs on the State Forest; to authorize commercial timber sales within the State Forest; to construct and maintain an extensive network of roads to support the multiple uses authorized by the agencies; and to construct and maintain a wide range of other infrastructure on the State Forest to support and administer the multiple uses authorized by the Commonwealth agencies.

43. By the time the ERA was adopted in 1971, extensive multiple uses of the natural resources of our State Forest had been authorized. DER, the new Commonwealth agency responsible for administering our State Forest as a trustee beginning in 1971, was also responsible for administering a broad array of new and expanding environmental laws within the Commonwealth. Thus, DER was not able to devote the significant resources needed to prevent and remedy the degradation, diminution and depletion of the natural resources and ecology of our State Forest from the multiple uses that had been authorized. In fact, DER authorized new uses of the State Forest that increased losses of trust assets within the forest.

44. For example, DER authorized the use of snowmobiles on the State Forest beginning in 1971 and the use of ATVs in 1985 pursuant to new statutory authority granted by the Snowmobile and ATV Law even though these uses further degraded, diminished and depleted the natural resources and ecology of the State Forest.¹² Likewise, DER continued to lease State Forest land for oil and gas development, with largest acreage of State Forest land ever offered for leasing occurring in the mid-1980s in response to commercial interest in developing natural gas in the Upper Devonian formations. 2016 State Forest Resource Management Plan, DCNR (“2016 State Forest Plan”), page 157, excerpts incorporated as **Exhibit E**.

45. In 1995, in recognition of the need for a cabinet level advocate for the policies and resources needed to fulfill the Commonwealth’s trustee duties to conserve and maintain the natural resources of our State Forest and State Parks, administration of these public natural resources was transferred to the newly created DCNR through the Conservation and Natural Resources Act. That same year, DCNR adopted the *Penn’s Woods* Strategic Plan, which adopted the principles of ecosystem management to guide its efforts to conserve and maintain the natural resources of our State Forest.

¹² See 75 Pa.C.S. Chapter 75 (Snowmobiles and All-Terrain Vehicles).

46. DCNR made progress in adopting plans, policies and guidelines for administering ongoing existing uses of the natural resources of the State Forest to reduce the degradation, diminution and depletion caused by these uses. However, DCNR continued to lack adequate funds to fully account for and remedy the degradation, diminution and depletion of forest resources caused by authorized existing uses.

47. Then in 2009 and 2010, a sea change occurred when new State Forest oil and gas leases were authorized in northcentral Pennsylvania in response to industry and legislative demands to extract the large quantities of natural gas now commercially available from the Marcellus Shale formation using directional drilling and hydraulic fracturing technologies. The money generated for the sale of these leases was spent for the first time through legislative transfers to the General Fund to pay for general state government expenses for fiscal years 2009-2010 and 2010-2011. The rapid expansion of commercial natural gas development in the State Forest of northcentral Pennsylvania that followed fundamentally altered the ecology of the forest.

48. The multiple uses of our State Forest in northcentral Pennsylvania that are causing degradation, diminution and depletion of the natural resources and ecology of the forest include commercial oil and gas development and natural gas storage, commercial rights-of-way, snowmobile and ATV recreational riding,

private camp leases, commercial timber harvesting, and the development of roads and other infrastructure needed for these and other authorized uses.

49. As stated by Roy Siefert, retired manager of the Tioga State Forest District in northcentral Pennsylvania and PEDF member, the “impacts to the state forest from both the past and current activities that harm the ecology need to be remediated. Many have not. Our state forest ecosystem, in my opinion, is at a tipping point. Our forest ecosystem cannot absorb any more degrading activities. The time has come to start a concerted effort to restore our forest ecosystem.” Affidavit of Roy A. Siefert, incorporated as **Exhibit F**.

50. Siefert has testified that actions needed to remedy the State Forest “both from past and present activities that harm the ecology” include:

- Plugging abandoned oil and gas wells and restoring old well pads to natural forest;
- Restoring to natural forest a multitude of old pipelines and unused rights of way to eliminate the fragmenting;
- Restoring to natural forest the roads and pipelines and well pads that were newly constructed or expanded to allow the extraction of the oil and gas;
- Reestablishing aquatic organism passage on streams;
- Reestablishing stream floodplains;
- Improving road drainage to prevent stream siltation;
- Establishing forest cover along streams that were impacted by prior wholesale logging;

- Restoring to natural forest over 2000 miles of illegal ATV trails in the forest;
- Restoring to natural forest areas of the forest subject to coal mining activities and damage from acid mine drainage;¹³
- Eliminating invasive species that have damaged the forest, and restoring the areas damaged to natural forest;
- Purchasing private lands that are within the boundaries of the State Forest that would conserve and protect the ecology of the forest;
- Buying out leased cabins in the State Forest;
- Buying out private oil and gas rights on State Forest land;
- Developing protection for and enhancement of existing core forest areas of the state forest, and restoring impacts to existing core forest areas from the current and future oil and gas extraction in the state forest;
- Establishing an ongoing monitoring for air pollution impact on the state forest from the oil and natural gas activities including methane releases;
- Establishing ongoing research to understand how to enhance the state forest as a means of absorbing climate change pollutants in the air by carbon sequestration and carbon impoundment;
- Establishing an ongoing research program to understand the existing and potential future impacts to our state forest from climate change.

Id.

¹³ DCNR has estimated that “30,000 acres of mine scarred lands in the state forest system would benefit from reclamation” but contends that “funds do not exist within the state system to begin reclaiming all these lands.” 2016 State Forest Plan (Exhibit E), page 168. In addition, DCNR also has reported that 226 miles of streams within the State Forest have been degraded by acid mine drainage from past mining operations that have not been remedied. *Id.*, page 141.

51. For over fifty years, authorized uses that cause the degradation, diminution and depletion of the natural resources and ecology of our State Forest in northcentral Pennsylvania have continued in large part because of pressure to meet other current needs. However, as our Supreme Court has cautioned, the Commonwealth Trustees “may not succumb to ‘the inevitable bias toward present consumption of public resources by the current generation, reinforced by a political process characterized by limited terms of office.’” *PEDF V*, 255 A.3d at 310 (quoting *Robinson Twp.*, 83 A.3d at 959 n. 46).

52. Detailed below are the losses of trust assets within our State Forest in northcentral Pennsylvania caused by commercial oil and gas development and natural gas storage, commercial rights-of-way, snowmobile and ATV recreational riding, private camp leases, commercial timber harvesting, and the development of roads and other infrastructure needed for these and other authorized uses, as well as the actions needed to account for and remedy the losses caused by the multiple uses that have been authorized, which the Commonwealth Trustees have not taken.

1. Authorized Commercial Oil and Gas Development

53. Although statutory authority to lease State Forest lands for commercial oil and gas development through competitive bidding has existed since

at least 1929,¹⁴ the first commercial State Forest oil and gas leases were issued in the late 1940s after World War II. 2016 State Forest Plan (Exhibit E), pages 157. Tracts of State Forest land have been offered for commercial oil and gas development through competitive bidding as industry exploration has generated interest in specific geologic formations. Prior to the 1970s, the commercial development of natural gas occurred in the Oriskany Sandstone formation located 6,000 to 10,000 feet below the surface. *Id.* In the late 1970s through the early 1990s, the Commonwealth Trustees leased State Forest tracts through competitive bidding in response to commercial interest in natural gas in shallower formations. *Id.* They also leased State Forest tracts in 2002 for natural gas development in the deeper Trenton-Black River formation (11,000-16,000 feet below the surface), which proved unsuccessful. *Id.*, pages 157-158.

54. In response to industry interest in extracting natural gas from the Marcellus Shale formation, approximately 106,000 acres of State Forest in northcentral Pennsylvania was leased for commercial oil and gas development through competitive bidding in 2009 and 2010 to satisfy legislative pressure for such leasing. *Id.*, page 159.

¹⁴ Administrative Code of 1929, § 1802(g) (Exhibit D); CNRA § 302(a)(6), 71 P.S. § 1340.302(a)(6).

55. In addition, approximately 150,000 acres of State Forest in northcentral Pennsylvania were already subject to natural gas development within this formation under existing leases. *Id.*, page 162, Table 8.2. When State Forest land is leased for commercial oil and gas development, the lessee is authorized to develop oil or natural gas from any geologic formation on the leased tract, provided oil or gas is initially produced within a certain number of years and has continued. Thus, new industrial development to extract natural gas from the Marcellus Shale formation can occur under any State Forest lease still actively producing oil or natural gas from another formation, even if the lease was executed decades earlier before technology was commercially available to extract natural gas from shale formations.

56. In addition to leasing State Forest tracts through competitive bidding, statutory authority has existed since at least 1971 to execute non-competitive leases for the commercial development of oil, natural gas and other mineral deposits to owners or lessees of oil and gas rights “in the same area as lands owned or leased by the Commonwealth.”¹⁵ In 2010, the Commonwealth Trustees executed oil and gas leases pursuant to this statutory authority on almost 33,000 additional acres of State Forest land in northcentral Pennsylvania. The Commonwealth Trustees have

¹⁵ Act of December 3, 1970, P.L. 834, No. 275, § 20 (adding § 1902-A(13) to the Administrative Code of 1929, which is now CNRA § 302(a)(13), 71 P.S. § 1340.302(a)(13).

also executed and continue to execute leases using this statutory authority for the commercial development of natural gas from shale formations beneath publicly owned streambeds, including such streambeds on the State Forest in northcentral Pennsylvania.¹⁶ As of July 2020, 34 leases authorized commercial natural gas development beneath 8,272 acres of publicly owned streambeds.¹⁷

57. As of 2016, the DCNR Bureau of Forestry reported administering 123 oil and gas leases on the State Forest encompassing “approximately 301,136 acres, primarily in northcentral Pennsylvania.” 2016 State Forest Plan (Exhibit E), page 162.

58. Approximately 300,000 acres of additional State Forest lands in northcentral Pennsylvania are also subject to the commercial development of natural gas from the Marcellus Shale and other formations because ownership of the oil and gas resources beneath the forest has been severed from surface ownership and the subsurface oil and gas resources on this acreage have not been acquired.¹⁸ These oil and gas rights are privately owned and can be developed without any approval from the Commonwealth Trustees regarding use of the

¹⁶ See Shale Gas and Publicly-Owned Streambeds on DCNR’s website at <https://www.dcnr.pa.gov/Business/StreambedGasLeasing/Pages/default.aspx>.

¹⁷ See DCNR Oil & Gas Program Status Update (July 2020) on DCNR’s website at https://elibrary.dcnr.pa.gov/GetDocument?docId=3414549&DocName=Oil%20%26%20Gas%20Program%20Update_9-8-2020.pdf.

¹⁸ Statutory authority to acquire State Forest land subject to the reservation of mineral rights has existed since at least 1929. See Administrative Code of 1929, § 1802(a) (see Exhibit D); CNRA § 302(a)(1), 71 P.S. § 1340.302(a)(1).

forest.¹⁹ The Commonwealth Trustees do not receive any money from the commercial development of oil and gas that has occurred and continues to occur on these State Forest lands, even though this commercial development has caused and continues to cause degradation, diminution and depletion of the natural resources and ecology of the forest the same as the commercial development occurring on the State Forest lands that have been leased for such development.²⁰

59. Currently, commercial oil and gas development has been authorized on over 600,000 acres of the approximately 1.5 million acres of State Forest in northcentral Pennsylvania either by leasing or by acquiring State Forest land

¹⁹ See *Belden & Blake Corp. v. Commonwealth*, 969 A.2d 528 (Pa. 2009) (finding that the private owner of subsurface oil and gas rights beneath a State Park has the right to reasonable use of the surface, and that DCNR's trustee duties under the ERA do not give it the ability to require an agreement with the subsurface owner to define reasonable use of the surface of the State Park prior to development of the subsurface oil and gas).

²⁰ Counties within the Commonwealth are authorized to impose a fee on gas wells drilled in certain shale and other geologic formations (termed "unconventional" wells) within their counties, including unconventional wells drilled on the State Forest in northcentral Pennsylvania. 58 Pa.C.S. § 2302. However, none of these fees, which are deposited into the Unconventional Gas Well Fund, are disbursed directly to DCNR to remedy impacts from gas wells drilled on the State Forest. 58 Pa.C.S. § 2314. A portion of these fees is disbursed to the Marcellus Legacy Fund, which also receives transfers of ERA trust funds derived from the State Forest that are deposited into the Oil and Gas Lease Fund, as discussed in Section IV.C.5. of this Petition. The Marcellus Legacy Fund is then disbursed to certain Commonwealth agencies and authorities, counties, and other Commonwealth funds and accounts, including the Environmental Stewardship Fund. 58 Pa.C.S. § 2315. DCNR receives disbursements from the Environmental Stewardship Fund for certain purposes, none of which are to remedy impacts from gas wells on the State Forest. 27 Pa.C.S. §§ 6104-6105. Thus, both the Unconventional Gas Well Fund and the Marcellus Legacy Fund receive funds derived from natural gas development on the State Forest in northcentral Pennsylvania, but neither of these funds is used to remedy losses of trust assets from this forest.

without acquiring the rights to the oil and gas resources.²¹ Shale Gas Monitoring Report, 2018, DCNR (“2018 Shale Gas Report”), page 12, Table 1.2, excerpts incorporated as **Exhibit G**.²²

60. As of 2016, “approximately 2,400 wells [have been] drilled to all depths and horizons for both exploration and development on state forest lands. About 1,066 wells have been properly plugged and abandoned over time, leaving about 1,334 wells active on state forest lands. Approximately 250 are in gas storage operations, with 1,084 in gas production in all depths and horizons. The Marcellus play has about 640 horizontal wells drilled to the end of 2016, leaving approximately 444 vertical legacy wells producing from other horizons (Oriskany and Upper Devonian).” *Id.*, page 16. Natural gas development in the State Forest of northcentral Pennsylvania has continued to expand since 2016.

61. In the seven-year period of 2010-2016, almost two trillion cubic feet of natural gas from the Marcellus Shale and other shale formations has been depleted from leased State Forest tracts in northcentral Pennsylvania. *Id.*, page 33, Table 3.2. In the seven years since 2016, the depletion of natural gas from these

²¹ The State Forest Districts in northcentral Pennsylvania and their acreage subject to oil and gas development as of 2016 are as follows: Sproul (127,532 acres), Susquehannock (119,945 acres), Elk (76,122 acres) Moshannon (76,016 acres), Loyalsock (61,575 acres), Tioga (58,451 acres), and Tiadaghton (51,054 acres). These State Forest Districts are referred to as the core gas districts. 2018 Shale Gas Report (Exhibit G), page 23, Figure 2.2.

²² The 2018 Shale Gas Report is available in its entirety on DCNR’s website at: <https://www.dcnr.pa.gov/Conservation/ForestsAndTrees/NaturalGasDrillingImpact/ShaleGasMonitoring/Pages/default.aspx>.

leased State Forest tracts has continued, potentially doubling the amount of natural gas reported as depleted from the State Forest through 2016.

62. As of 2019, DCNR has reported the development of the following industrial infrastructure on the Sproul State Forest alone to support the commercial natural gas development:

- 188 miles of interstate natural gas transmission lines
- 272 miles of gathering lines
- 70 miles of storage field transmission lines
- 38 Marcellus Shale well pads, including four reclaimed undrilled pads
- 75 Marcellus Shale gas wells
- 736 shallow gas wells
- 113 plugged shallow gas wells
- 40 storage field wells
- 10 plugged storage field wells
- 3 fresh water impoundments
- 7 natural gas compressor stations
- 26 miles of mostly water distribution lines

Sproul State Forest Resource Management Plan, April 2019, DCNR (“Sproul State Forest Plan”), page 59-60, excerpts incorporated as **Exhibit H**.²³

63. DCNR estimated that only 30 to 35 percent of the natural gas from the Marcellus Shale and other shale formations on the leased tracts of State Forest in northcentral Pennsylvania had been commercially developed through 2016, and that full development of these tracts could result in as many as 1,475 wells. 2018 Shale Gas Report (Exhibit G), pages 4, 19. When extended to the over 600,000

²³ The Sproul State Forest Plan is available in its entirety on the DCNR website at: <https://www.dcnr.pa.gov/StateForests/FindAForest/Sproul/Pages/default.aspx>.

acres of State Forest in northcentral Pennsylvania subject to commercial natural gas development from the Marcellus Shale and other shale formations, the estimated number of wells for full development of natural gas on this acreage increases to over 3,300.²⁴

64. DCNR states in the 2018 Shale Gas Report that “[s]ince 2010, no new leases have been issued for natural gas development in state forests” and notes that an executive order issued by the Governor currently prohibits DCNR from further leasing of State Park and State Forest lands for oil and gas development. *Id.*, Preface.²⁵ However, executive orders issued by the Governor provide no long-term assurance that additional tracts of State Forest in northcentral Pennsylvania will not be leased for commercial oil and gas development at some time in the future.²⁶ Even with the current limitations on further leasing, DCNR acknowledges that “significant tracts of state forest land remain subject to development due to severed mineral rights or leasing prior to 2011.” *Id.*

²⁴ DCNR based its estimate of 1,475 total wells in the 2018 Shale Gas Report on the assumption that shale gas wells drain the natural gas beneath 180 acres and that 266,000 acres are currently leased for commercial development. However, the 2018 Shale Gas Report also reports the acreage of State Forest currently leased for commercial development as 312,893 acres and the total acreage of State Forest subject to gas development as 612,166 acres. *Id.*, page 12, Table 1.2.

²⁵ Executive Order 2015-03 was issued on January 15, 2015 by Governor Wolf and states that “subject to future advice and recommendations made by DCNR, no State Park or State Forest lands owned and/or managed by DCNR shall be leased for oil and gas development.” A copy is available at https://www.oa.pa.gov/Policies/eo/Documents/2015_03.pdf.

²⁶ Governor Rendell issued Executive Order 2010-05 on October 26, 2010 placing a moratorium on further leasing of State Forest and State Park land for oil and gas development similar to the current moratorium, and Governor Corbet rescinded that executive order in 2011 shortly after taking office. Similarly, the current executive order could be rescinded by a future Governor.

65. In the 2018 Shale Gas Report, DCNR documents some of the degradation, diminution and depletion of the natural resources and ecology of our State Forest in northcentral Pennsylvania caused by the commercial development of natural gas from the Marcellus Shale and other shale formations through 2016, including but not limited to the harm set forth below.

(a) DCNR reported the depletion of 1,770 acres of the State Forest from 2008-2016 through the conversion of forest to infrastructure constructed for commercial shale gas development (*id.*, page 43), including 265 shale gas well pads (*id.*, page 50), 260 miles of industrial haul roads (either completely new roads or expansion of existing scenic State Forest roads) (*id.*, page 44), and 188 miles of gas pipeline (*id.*, page 55).

(b) DCNR reported that “noticeable changes to the forest landscape are evident” with the largest increase overall resulting from “an additional 9,913 acres of forest edge (a 35 percent increase in the Elk State Forest alone)” from 2008-2016. *Id.*, page 64.

(c) DCNR reported the loss from 2008-2016 of over 15,000 acres of large intact core blocks of State Forest in northcentral Pennsylvania (*i.e.*, blocks of 500 acres or more of unfragmented forest).²⁷ *Id.*, page 65-67. The fragmentation of

²⁷ The monitoring report uses the metric unit of hectares. Large forest blocks are those containing more than 200 hectares, which is equivalent to 494 acres (1 hectare = 2.47 acres).

these large core forest blocks resulted in increases in the category of smaller core forest blocks in almost all State Forest Districts in northcentral Pennsylvania, with the Loyalsock State Forest experiencing a 41% increase in smaller core forest blocks of 250-500 acres and a 30% increase in core forest blocks less than 250 acres in size. *Id.*

(d) Approximately 3,500 miles of streams flow through the State Forest in northcentral Pennsylvania, “including many of the best-know fishing and boating waters in Pennsylvania.” *Id.*, page 79. DCNR acknowledges that “maintaining and protecting the quality of water in these streams is one of [its] highest priorities.” *Id.* DCNR reports that within the State Forest of northcentral Pennsylvania, “most of the streams (> 70%) are first-order streams,” which “means that the steams on state forest land are generally small, headwater streams that can be influenced greatly by the surrounding forest” and “have the potential to affect many others downstream.” *Id.* DCNR reports that over 3,000 miles (over 85%) of the streams in the State Forest of northcentral Pennsylvania are classified as either exceptional value or high quality. *Id.*, pages 80-81.

(e) DCNR reports that its main concerns regarding water quality in the State Forest of northcentral Pennsylvania from the commercial natural gas development in the Marcellus Shale and other shale formations “are from chemicals and salts that can be spilled during transportation or during drilling activities.” *Id.*, pages 81-

82. Other concerns include “increases in water temperature, soil, sedimentation, and turbidity” from the construction of infrastructure (*e.g.*, gas well pads, impoundments, tanks, pipelines, compressor stations) and industrial roads that can accommodate heavy hauling. *Id.* Fracturing fluids “can pose a potential spill risk during transportation or during well development operations.” *Id.* DCNR reported that macroinvertebrates were surveyed in 37 stream segments to assess stream health in the State Forest of northcentral Pennsylvania and over one third of these segments (13) fell outside of the range of tolerance for their classification. *Id.*, page 78.

(f) DCNR has reported the degradation of the State Forest in northcentral Pennsylvania from the spread of invasive species by the commercial development of natural gas from shale formations. DCNR surveyed 238 shale gas well pads and observed invasive species at all but 29 of these pads. *Id.* DCNR’s program to provide early detection and response to the spread of invasive species from commercial shale gas development “has detected 71 populations of high-threat invasive species.” *Id.* DCNR has reported that from 2011 to 2016, “it is evident from the pad surveys that many invasive plant species populations have spread to new sites on state forest land and populations first found from 2011-2013 have expanded at many sites.” *Id.*, page 130. DCNR further states that the “proliferation

and colonization of invasive plant species is one of the greatest threats to the health and viability of state forest ecosystems.” *Id.* at 138.

66. In its 2016 State Forest Plan, DCNR also states that four surface water intakes and one groundwater well have been installed on the State Forest in northcentral Pennsylvania to supply water to conduct hydraulic fracturing necessary to develop shale gas wells, which at that time required approximately five million gallons of water for each well. 2016 State Forest Plan (Exhibit E), page 140-141. Since 2016, the length of horizontal well bores drilled through deep shale gas formations has increased significantly, as has the amount of water needed to hydraulically fracture these longer horizontal well bores. As of 2016, DCNR also reported “30 surface water impoundments on state forest land for shale-gas development, covering 148 acres.” *Id.*

67. PEDF President Cynthia Bower has directly experienced the degradation, diminution and depletion of the natural resources and ecology of the State Forest in northcentral Pennsylvania from commercial oil and gas development. She has “hiked miles upon miles of trails, explored State forestry roads from dawn through dark, canoed rivers and creeks throughout the region, camped and picnicked at State Parks, and enjoyed vistas with family and friends.” Affidavit of Cynthia Bower on the effects of both shale gas development and ATVs

on the State Forest of northcentral Pennsylvania (“Bower State Forest Degradation Affidavit”), incorporated as **Exhibit I**.

68. Bower has experienced that “[g]ravel highways and pipelines carve once contiguous forests into patchwork. Thousands of acres are scraped bare of trees and topsoil, and coated with impervious gravel, concrete, and both fresh and wastewater impoundments. Thousands of pieces of infrastructure, from small valves to mammoth well pads and compressor stations mark the land.” *Id.*

69. Bower has experienced significant degradation of the wild character and solitude in the State Forest that she has cherished for over 50 years stating that “[t]oday, if I drive to hike into formerly favorite places in the State Forest, I find roads on public lands gated, with signs forbidding entry to any vehicles not approved by DCNR. I find formerly accessible scenic views cut off from public access. I find traditional narrow forestry roads expanded into wide gravel highways, and additional new gravel highways build where none existed before. I find the natural topography terraced for gas industry infrastructure, acres upon acres, in formerly roadless areas. Once forested lands now pocked and scarred with well pads, compressor stations, impoundments, roads, and pipelines are off limits, with signs warning ‘Danger,’ as if someone would really want to go there for peace and solitude amidst the noise and emissions of the industry.” *Id.*

70. While Bower has observed that “thousands of acres have already been lost” to the shale gas industry, she points to the fact that the DCNR Bureau of Forestry in its 2016 State Forest Plan “estimated that the Marcellus Shale is *appropriately 16 percent developed* on [State Forest] lands currently leased.” *Id.* (emphasis added); *see also* 2016 State Forest Plan (Exhibit E), page 163.

71. While DCNR’s recent reporting of the degradation, diminution and depletion of the natural resources and ecology of the State Forest in northcentral Pennsylvania from commercial oil and gas development has focused on natural gas extraction from shale gas formations, commercial development of natural gas from shallower geologic formations has also resulted in harm to the natural resources and ecology of the forest. When Robert Davey, Jr. became the manager for the Sproul State Forest in 1982, an extensive shallow gas well field was being developed within his district on leased State Forest tracts. Affidavit of Robert Davey, Jr., incorporated as **Exhibit J**. The Sproul State Forest District has the largest acreage of State Forest in northcentral Pennsylvania (over 300,000 acres) and is central to the 1.5 million acres of State Forest within this region. 2016 State Forest Plan (Exhibit E), pages 25-26. While Davey was successful in getting more input into administration of the well drilling program to reduce impacts to the State Forest, that input “did not stop the well-drilling program and environmental damage still occurred. Hundreds of wells were drilled, and continuous forest was

fragmented into wood lots surrounded by wells, roads and pipelines. Many of these problems still exist today.” Affidavit of Robert Davey, Jr. (Exhibit J).

72. Doug D’Amore followed Davey as the manager of the Sproul State Forest just as the shale gas boom began and experienced that “[i]ncreasingly, political forces have viewed the state forests as an asset to be managed for the monetary benefits it can supply to the citizens of the Commonwealth. As a result, I was required to manage activities that are inimical to the ecology of the forest. These include natural gas shale leasing of thousands of acres of the State Forest to extract natural gas.” Affidavit of Douglas J. D’Amore, retired manager of the Sproul State Forest District, incorporated as **Exhibit K**.

73. Roy Siefert also experienced the same difficulty, as the manager of the Tioga State Forest District in northcentral Pennsylvania, in trying to manage activities that impacted his ability to protect the ecology of the forest. He states that “[a]s long as I had worked at DCNR to manage our state forest I was never asked whether leasing our forest to extract oil and natural gas, or developing recreational motorized ATV trails would impact our ability to protect the ecology of the forest. I worked towards trying to minimize diminishment and degradation of public natural resources that were being depleted. We were simply told to do our best to do both, to manage the ecology and to manage the diminishment of the oil and gas extraction and the degradation caused by ATV use. These activities have caused

and continue to cause severe damage to the ecology of the forest.” Retired State Forest Manager Siefert Affidavit (Exhibit F).

74. The leasing of over 300,000 acres of State Forest in northcentral Pennsylvania for commercial oil and gas development and the acquisition of over 300,000 acres of State Forest in northcentral Pennsylvania with severed oil and gas rights have caused and continue to cause significant degradation, diminution and depletion of the natural resources and ecology of the forest by, among other things, depleting natural gas resources from the forest; converting forest to non-forest; fragmenting core forest areas critical to the overall health of the State Forest; increasing invasive species and forest pests within core forest areas; reducing the quality of exceptional value and high quality streams; disturbing, compacting and damaging forest soil and mycorrhizae within the soil essential to forest health; disturbing and reducing wildlife habitat; disrupting the wild character and solitude of the forest vital to both wildlife and recreational users; and increasing methane and other greenhouse gas emissions that reduce the forest’s capacity to mitigate climate change, the details of which are discussed below in Section IV.B.9. of this Petition.

75. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to account for the losses of trust assets from the State Forest in northcentral Pennsylvania caused by the commercial oil and gas

development authorized on over 600,000 acres by accounting for, among other things, the amount of natural gas resources lost from the forest; the acreage of forest depleted by conversion to non-forest; the acreage of core forest degraded by fragmentation; the acreage of forest degraded by invasive species and forest pests; the amount of increased runoff and pollutants degrading exceptional and high value forest streams; the acreage of forest with disturbed, compacted or otherwise damaged soil and soil mycorrhizae essential to forest health; the acreage of forest with degraded, diminished or depleted wildlife habitat; the acreage of forest with degraded, diminished or depleted wild character and solitude essential to both forest wildlife and recreational users; the quantity of methane and other pollutants released into the clean forest air; and the amount of carbon that could have been sequestered and stored to mitigate climate change had these losses not occurred.

76. While the Commonwealth Trustees have accounted for some of the degradation, diminution and depletion of the natural resources and ecology of the State Forest in northcentral Pennsylvania from shale gas development, as set forth above, they have not provided a complete accounting of the losses of trust assets caused by the commercial oil and gas development.

77. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to remedy the losses of trust assets from the State Forest in northcentral Pennsylvania caused by the commercial oil and gas development

authorized on over 600,000 acres by, among other things, acquiring unfragmented forest land proximate to the forest acreage depleted and degraded by commercial oil and gas development and managing the acquired forest land solely to enhance its natural resources and ecology; acquiring subsurface oil and gas rights beneath State Forest land in northcentral Pennsylvania with severed rights and preventing future development on these forest lands; eliminating the release of methane and other pollutants from natural gas wells and other natural gas infrastructure and equipment on the State Forest in northcentral Pennsylvania; eliminating roads and other infrastructure constructed for commercial oil and gas development on the State Forest in northcentral Pennsylvania and restoring these disturbed lands to forest; controlling invasive species and forest pests spread by this and other authorized uses of the State Forest in northcentral Pennsylvania and imposing access restrictions to prevent further spread; plugging abandoned oil and gas wells on the State Forest in northcentral Pennsylvania; restoring legacy abandoned mine lands on the State Forest in northcentral Pennsylvania to forest; and treating legacy acid mine drainage within the State Forest of northcentral Pennsylvania to restore water quality in forest streams.

78. The Commonwealth Trustees have developed few if any plans to remedy the losses of trust assets on over 600,000 acres of State Forest in

northcentral Pennsylvania caused by the commercial oil and gas development that has been authorized, and have taken few if any actions to remedy these losses.

2. Authorized Commercial Natural Gas Storage

79. Commercial natural gas storage has been authorized on over 65,000 acres of our State Forest in northcentral Pennsylvania. Over 31,000 acres of State Forest in this region have been leased for this commercial use since 1953.²⁸ In addition, this commercial use is occurring on over 34,000 acres of State Forest in this region with severed gas rights. 2018 Shale Gas Report (Exhibit G), page 12, Table 1.2.²⁹

80. The commercial storage of natural gas on over 65,000 acres of State Forest in northcentral Pennsylvania has required an extensive amount of industrial infrastructure to be constructed on the State Forest to support this commercial use, including extensive networks of permanent roads, gas wells, gas pipelines, and large compressor stations. The Leidy Gas Storage Field within the Sproul State Forest is the largest commercial natural gas storage field east of the Mississippi

²⁸ The power to lease State Forest land for natural gas storage was granted by the act of July 29, 1953, P.L. 1010, No. 256 (amending the Administrative Code of 1929 to add § 1803(j), which is now CNRA § 302(b)(10), 71 P.S. § 1340.302(b)(10)).

²⁹ This table indicates that natural gas storage leases exist on State Forest tracts with severed gas rights as well; however, the nature of those leases is not discussed in the report. Note that on the over 68,000 acres of State Forest land subject to this commercial use, the natural gas is stored in the Oriskany Sandstone formation. The natural gas was commercially developed from these State Forest lands beginning in the 1950s and subsequently converted to natural gas storage because of the high porosity and permeability of this formation. 2016 State Forest Plan (Exhibit E), page 157-158.

River and can store over 100 billion cubic feet of natural gas. Sproul State Forest Plan (Exhibit H), page 51.

81. The industrial activity needed to support the commercial storage of natural gas on the State Forest in northcentral Pennsylvania has caused and is continuing to cause degradation, diminution and depletion of the natural resources and ecology of the State Forest similar to that described above for commercial oil and gas development by, among other things, converting forest to non-forest; fragmenting core forest areas critical to the overall health of the State Forest; increasing invasive species and forest pests within core forest areas; reducing the quality of exceptional value and high quality streams; disturbing, compacting and damaging forest soils and mycorrhizae within the soil essential to forest health; disturbing and reducing wildlife habitat; disrupting the wild character and solitude of the forest vital to both wildlife and recreational users; and increasing methane and other greenhouse gas emissions that reduce the forest's capacity to mitigate climate change.

82. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to account for the losses of trust assets within the State Forest of northcentral Pennsylvania from the commercial natural gas storage authorized on over 65,000 acres by accounting for, among other things, the acreage of forest depleted by conversion to non-forest; the acreage of core forest degraded

by fragmentation; the acreage of forest degraded by invasive species and forest pests; the amount of increased runoff and pollutants degrading exceptional and high value forest streams; the acreage of forest with disturbed, compacted or otherwise damaged soil and soil mycorrhizae essential to forest health; the acreage of forest with degraded, diminished or depleted wildlife habitat; the acreage of forest with degraded, diminished or depleted wild character and solitude essential to both wildlife and recreational users; the quantity of methane and other pollutants released into the clean air of the forest; and the amount of carbon that could have been sequestered and stored to mitigate climate had these losses not occurred.

83. The Commonwealth Trustees have not accounted for the losses of trust assets caused by commercial natural gas storage on over 65,000 acres of State Forest in northcentral Pennsylvania.

84. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to remedy the losses of forest trust assets from commercial natural gas storage on over 65,000 acres of State Forest in northcentral Pennsylvania by, among other things, acquiring unfragmented forest land proximate to the forest acreage depleted and degraded by the commercial natural gas storage and managing the acquired forest land solely to enhance its natural resources and ecology; acquiring subsurface oil and gas rights beneath State Forest land in northcentral Pennsylvania with severed rights and preventing future

development of these resources; eliminating releases of methane and other pollutants from natural gas wells and other natural gas infrastructure and equipment on the State Forest in northcentral Pennsylvania; eliminating roads and other infrastructure constructed for commercial natural gas storage on the State Forest in northcentral Pennsylvania and restoring these disturbed lands to forest; controlling invasive species and forest pests spread by this and other authorized uses on the State Forest in northcentral Pennsylvania and imposing access restrictions to prevent further spread; plugging abandoned oil and gas wells on the State Forest in northcentral Pennsylvania; restoring legacy abandoned mine lands on the State Forest in northcentral Pennsylvania to forest; and treating legacy acid mine drainage on the State Forest in northcentral Pennsylvania to restore water quality in forest streams.

85. The Commonwealth Trustees have not remedied the losses of trust assets on over 65,000 acres of State Forest of northcentral Pennsylvania caused by the commercial natural gas storage.

3. Authorized Commercial Rights-of-Way

86. Commercial rights-of-way have been authorized on State Forest land and lands subject to existing commercial rights-of-way have been acquired as part

of the State Forest since at least 1929.³⁰ Many of these commercial rights-of-way are large linear corridors cleared through core forest areas for electric transmission lines and natural gas pipelines pursuant to this statutory authority.

87. Commercial rights-of-way on the State Forest have also been authorized “to bring public utilities to camps and cottages in State forest lands and in other homes and farms adjacent to State forest lands” pursuant to statutory authority granted in 1951.³¹

88. Commercial rights-of-way on the State Forest have also been authorized for “the privilege to erect, construct, maintain and operate ... antennas, towers, stations, cables and other devices and apparatus, helpful, necessary or required for broadcasting, telecasting, transmission, relaying or reception of television” pursuant to statutory authority granted in 1952.³²

89. DCNR reports in the 2016 State Forest Plan that it administers rights-of-way on the State Forest for natural gas pipeline corridors and related facilities, electric transmission line corridors and related facilities, water/sewage line corridors and related facilities, communication lines and tower facilities, as well as

³⁰ Administrative Code of 1929, §§ 1802(a) & 1803(c) (Exhibit D); CNRA § 302(a)(1) & (b)(3), 71 P.S. §§ 1340.302(a)(1) & 1340.302(b)(3).

³¹ Act of August 24, 1951, P.L. 1362, No. 332 (adding § 1803(h) to the Administrative Code of 1929, which is now § CNRA § 302(b)(8); 71 P.S. § 1340.302(b)(8).

³² Act of July 28, 1953, P.L. 662, No. 200 (adding § 1803(i) to the Administrative Code of 1929, which is now CNRA § 302(b)(9); 71 P.S. § 1340.302(b)(9)).

offices and maintenance buildings, but does not report on the extent of this commercial use on the State Forest. 2016 State Forest Plan (Exhibit E), page 216.

90. The Sproul State Forest District reports administering over 640 miles of rights-of-way, including:

- 188 miles of interstate natural gas transmission lines
- 272 miles of natural gas gathering lines
- 70 miles of natural gas storage field transmission lines
- 69 miles of main electrical transmission lines
- 39 miles of residual electrical distribution lines
- 2 miles of water main lines
- 1 mile of sewer line

Sproul State Forest Plan (Exhibit H), pages 59-60.

91. Given the miles of commercial rights-of-way reported in the Sproul State Forest District alone, this authorized use has caused and continues to cause the degradation, diminution and depletion of the natural resources and ecology of an extensive acreage of State Forest in northcentral Pennsylvania by, among other things, converting forest to non-forest; creating corridors and forest edge that fragment the forest; increasing the spread of invasive species and forest pests; increasing erosion and sedimentation by removing the forest cover on steep slopes above exceptional value and high quality streams; reducing wildlife habitat and creating barriers to the migration of sensitive forest species, particularly species such as frogs, salamanders, and mycorrhizal fungi; disturbing, compacting and

damaging forest soil; disrupting scenic forest vistas; and increasing the release of greenhouse gases and other pollutants into the air, water and soil of the forest.

92. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to account for the losses of trust assets on the extensive acreage of State Forest in northcentral Pennsylvania authorized for commercial rights-of-way by accounting for, among other things, the acreage of forest depleted by conversion to non-forest; the acreage of core forest degraded by fragmentation; the acreage of forest degraded by invasive species and forest pests; the amount of increased runoff and pollutants degrading exceptional and high value forest streams; the acreage of forest with disturbed, compacted or otherwise damaged soil and soil mycorrhizae essential to forest health; the acreage of forest with degraded, diminished or depleted wildlife habitat; the acreage of forest with degraded, diminished or depleted wild character and solitude essential to both wildlife and recreational users; the quantity of methane and other pollutants released into the clean forest air; and the amount of carbon that could have been sequestered and stored to mitigate climate had these losses not occurred.

93. The Commonwealth Trustees have not accounted for the losses of trust assets on the extensive acreage of State Forest in northcentral Pennsylvania authorized for commercial rights-of-way.

94. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to remedy the losses of trust assets on the extensive acreage of State Forest in northcentral Pennsylvania authorized for commercial rights-of-way by, among other things, acquiring interior holdings of forest land proximate to the forest acreage degraded, diminished and depleted; eliminating rights-of-way whenever possible and restoring these disturbed lands to forest; controlling invasive species and forest pests spread by this development; reducing the size of rights-of-way corridors whenever possible and restoring forest vegetation and forest wildlife habitat; eliminating erosion on these rights-of-way corridors and the discharge of sediment and other pollutants to exceptional and high value forest streams; and eliminating releases of methane and other pollutants into the clean air of the forest.

95. The Commonwealth Trustees have not remedied the losses of trust assets from the extensive acreage of State Forest in northcentral Pennsylvania authorized for commercial rights-of-way.

4. Authorized Snowmobile and ATV Recreational Riding

96. Outdoor recreation has been a long supported use of the State Forest. In 1995, however, DCNR recognized in its *Penn's Woods* Strategic Plan the need to limit recreational use of the forest to dispersed, low density outdoor activities to conserve and maintain the natural resources and ecology of the forest. *Penn's*

Woods Strategic Plan (Exhibit C), pages 21, 24.

97. At that time, motorized recreational vehicle use had been authorized on our State Forest in northcentral Pennsylvania; specifically the use of snowmobiles had been authorized since 1971 and ATVs since 1985 pursuant to statutory powers now codified in Section 7724(b) of the Vehicle Code, 75 Pa.C.S. § 7724(b).³³

98. Beginning in the early 2000s, DCNR announced a policy against further designation of ATV roads within the State Forest for ATV recreational riding because the Bureau of Forestry had identified significant problems with this recreational use of the forest. These problems included ATV riders driving their vehicles through forest areas accessed from designated roads; degradation of the natural resources and ecology of the forest from ATV recreational riding, both on

³³ The act of Aug. 12, 1971, P.L. 299, No. 75, § 4(c), prohibited the operation of a snowmobile “on any street or highway which is not designated and posted as a snowmobile road by the governmental agency having jurisdiction.” The act of Oct. 3, 1973, P.L. 274, No. 77, § 15(5), specifically granted to the DER Secretary “the authority to designate any road within a State Park or State Forest over which the department has jurisdiction as a snowmobile road and may in his discretion, determine whether such road shall be closed to vehicular traffic or whether snowmobiles may share this designated road with vehicular traffic: Provided, That adequate notices are sufficiently and prominently displayed.” The act of July 1, 1976, P.L. 161, No. 81, revised, compiled and codified these provisions as Section 7724(b) of the Vehicle Code, 75 Pa.C.S. § 7724(b). The act of July 11, 1985, P.L. 220, No. 56, amended Section 7724(b) of the Vehicle Code to also prohibit the operation of an ATV “on State-owned property except on clearly marked and previously designated snowmobile *or ATV* routes” and to authorize the DER Secretary to “designate any roads within a State Park or State Forest over which the department has jurisdiction as a snowmobile road *or an ATV road, or both.*” See also CNRA § 308(c), 71 P.S. § 1340.308(c), which transferred the powers and duties related to snowmobiles and ATVs given to DER by Chapter 77 of the Vehicle Code to DCNR in 1995.

designated roads and within the forest accessed from such roads; and unsafe ATV riding that had caused serious injuries, including several fatalities. A survey of the State Forest conducted by the bureau in 2000 found “over 10 times as many illegal trails as legal trails” with the “total miles of unauthorized trails estimated to be 2535 miles.” See DCNR ATV Policies & Related Documents incorporated as **Exhibit L**.

99. In 2016, DCNR reported that “unauthorized [ATV] riding on state forest land has remained near the top of recreational forest management problems identified by staff ... [and] continues to impact many of the core functions these forest lands were acquired to address—protection of clean water, clean air, wildlife habitat, scenic beauty, rare and significant ecosystems, and wild plants.” 2016 State Forest Plan (Exhibit E), page 200.

100. As of 2016, the Commonwealth Trustees had designated 1,775 miles of roads within the State Forest as available for snowmobile recreational riding during the winter and had designated 273 miles of roads within the State Forest as exclusively available for ATV recreational riding primarily during the summer. *Id.*, page 200-201.

101. In 2018 and 2020, the General Assembly enacted Section 1720-E of the Fiscal Code, 72 P.S. § 1720-E, which requires DCNR to significantly expand

ATV recreational riding on the State Forest in northcentral Pennsylvania.³⁴ To comply with these new statutory mandates, DCNR issued a new ATV policy in 2020 that rescinded its moratorium on expansion of ATV recreational riding within the State Forest, as well as its prohibition of ATV riding within State Parks, notwithstanding its more than 30 years of experience demonstrating that this use has caused and continues to cause the degradation, diminution and depletion of the natural resources and ecology of our State Forest.

102. DCNR prepared a report to the General Assembly on the expansion of ATV recreational riding on the State Forest in northcentral Pennsylvania mandated by Section 1720-E of the Fiscal Code, which was due under this legislation by December 31, 2023 (“DCNR ATV Expansion Report”).³⁵ DCNR reported that it has developed an expanded route for ATV recreational riding through the State Forest in northcentral Pennsylvania consistent with the mandates of Section 1720-

³⁴ The act of June 22, 2018, P.L. 281, No. 42, § 17, added Section 1720-E(a) to the Fiscal Code, which mandates that DCNR, in consultation with the Department of Transportation (“PennDOT”), expand ATV recreational riding on the State Forest in northcentral Pennsylvania by using existing State roads and State Forest roads to open ATV routes to connect the Bloody Skillet and Whiskey Springs ATV trails in the Sproul State Forest and to connect Clinton County to the New York State border. The act of Nov. 23, 2020, P.L. 1140, No. 114, § 7, added Section 1720-E(b) of the Fiscal Code, which mandates that DCNR further expand ATV recreational riding on State Forests in northcentral Pennsylvania by providing regional connections to local communities through a pilot program beginning in 2021.

³⁵ The DCNR ATV Expansion Report is available on DCNR’s website at:

https://elibrary.dcnr.pa.gov/GetDocument?docId=8035943&DocName=Final_ATV_Pilot_2023_General_Assembly_Report.pdf.

E of the Fiscal Code.³⁶ DCNR reported that the length of this route was 154 miles in 2021, increased to 230 miles in 2022, and increased to 374 miles in 2023. DCNR ATV Expansion Report, page 2. On January 18, 2024, DCNR issued a press release announcing that it will continue this program to expand ATV recreational riding in the State Forest of northcentral Pennsylvania through 2025.³⁷

103. Of the 374-mile route developed in 2023 for ATV recreational riding through the State Forest of northcentral Pennsylvania, DCNR has authorized ATV recreation riding on 163 miles of roads under its jurisdiction within the State Forest, including both new roads constructed exclusively for ATVs and State Forest roads opened to ATVs for the first time. *Id.* In addition, PennDOT has authorized joint use by ATVs and motorized vehicles registered by PennDOT on 33 miles of state roads, and local townships have authorized joint use on 177 miles of township roads, all to facilitate expanded ATV recreational riding through the State Forest in northcentral Pennsylvania. *Id.*

104. ATV recreational riding has been significantly expanded since 2021 and will continue to be expanded despite over 30 years of experience demonstrating that ATV recreational riding within the State Forest of northcentral

³⁶ This expanded route also authorizes ATV use for the first time within a State Park—Lyman Run State Park, which is embedded within the Susquehannock State Forest. DCNR ATV Expansion Report, page 9.

³⁷ Available at https://www.media.pa.gov/pages/dcnr_details.aspx?newsid=1049.

Pennsylvania has caused and continues to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and despite a long-standing determination to prohibit such expansion because of the losses of trust assets with the State Forest caused by this authorized use.

105. Based on preliminary assessments conducted along the ATV expansion route through the State Forest in northcentral Pennsylvania, DCNR has identified 201 areas with sensitive habitats, including wetlands, stream access areas and sensitive plant communities, and 470 existing populations of invasive species. *Id.*, page 13-16. DCNR has also identified 43 areas within the State Forest where unauthorized ATV recreational riding has previously occurred along the ATV expansion route. *Id.*

106. The authorization of the ATV expansion route through the State Forest in northcentral Pennsylvania has resulted in a significant increase in ATV recreational riding. DCNR requires the purchase of an annual pass for ATV recreational riding on the authorized ATV expansion route and sold 1,894 passes in 2021, 3,650 passes in 2022, and 5,255 passes in 2023. *Id.*

107. The Commonwealth Trustees have incurred costs to administer the expansion of ATV recreational riding in the State Forest of northcentral Pennsylvania that significantly exceed the revenue generated by this use. DCNR reports that its sale of passes for ATV recreational riding on the ATV expansion

route generated \$429,702 in revenue from 2021-2023 and that it spent \$2.4 million to develop and operate the expanded ATV route during this period. *Id.* DCNR does not report on the source of the additional funds spent to administer this program.

108. Both ATV and snowmobile recreational riding have caused and continue to cause degradation, diminution and depletion of the natural resources and ecology of our State Forest in northcentral Pennsylvania. Because ATVs are designed with high clearances and special tires that allow riding off-road through rough terrain, ATV riders have accessed remote parts of the forest not designated for ATV recreational riding and not accessible by other motorized vehicles. Both snowmobile and ATV recreational riding within our State Forest has created significant noise that disrupts the wild character and solitude of the forest essential to wildlife and other recreational uses such as hiking and bird watching. Both snowmobile and ATV recreational riding have spread invasive species and forest pests within core forest areas. ATV recreational riding has eroded the surface of State Forest roads causing increased surface water accumulation and concentrated runoff damaging to the forest and its exceptional and high value forest streams. ATV recreational riding has emitted pollutants into the air including both dust and exhaust emissions that degrade the clean air of the forest, particularly when large groups of ATVs, sometimes numbering in the hundreds, travel through the forest.

Snowmobile recreational riding also has emitted air pollutants that degrade the clean air of the forest.

109. Roy Siefert, the retired manager of the Tioga State Forest District has observed that both ATV recreational riding and oil and gas development on the State Forest “have caused and continue to cause severe damage to the ecology of the forest.” Affidavit of Roy A. Siefert (Exhibit F).

110. PEDF President Cynthia Bower states that “[f]rom years of use and misuse, the miles of DCNR ATV trails I have walked at Susquehannock State Forest, Haneyville, and Bloody Skillet are deeply rutted, with extensive pools of standing water and mud holes. To avoid the worst areas, ATV riders have created bypasses (causing more destruction) and yet more bypasses causing even more destruction as they attempt to avoid the now massive and all-but-obliterated original trails. This has caused further devastation to the integrity of the surrounding forest as the trails split and divide into pieces of what had been undisturbed ground; introduce invasive species into the vegetation; send sediment into the streams; compact the soil; and fill the air with dust, noise and exhaust.” Bower State Forest Degradation Affidavit (Exhibit I).

111. Unlike many of the existing uses of our State Forest in northcentral Pennsylvania authorized through binding contractual agreements (*e.g.*, oil and gas leases, natural gas storage leases, rights-of-way agreements, private camp leases),

the Commonwealth Trustees are not bound to allow snowmobile and ATV recreational riding on the State Forest in northcentral Pennsylvania. Thus, the Commonwealth Trustees can remedy the extensive harm to the State Forest in northcentral Pennsylvania from snowmobile and ATV recreational riding by discontinuing these uses of the State Forest and restoring the natural resources and ecology of the forest degraded, diminished and depleted by these uses. However, the Commonwealth Trustees have not done so; nor have they accounted for or remedied the losses of trust assets within the State Forest of northcentral Pennsylvania from these authorized uses.

5. Authorized Private Camp Leases

112. The Commonwealth Trustees administer over 4,000 leases on our State Forest and State Parks that have been developed by private individuals or groups for their recreational use pursuant to statutory authority first granted in 1913. 2016 State Forest Plan (Exhibit E), page 204; *see also History of Pennsylvania's State Parks*, 1984, William C. Forrey, DER Bureau of State Parks. ("State Park History"), page 11, excerpts incorporated as **Exhibit M** (describing the history of private camp leasing on the State Forest). While no new private camp leases have been authorized since 1970 as a matter of policy, this statutory

authority remains and existing leases continue to be renewed.³⁸ Most, if not all, of these leases have terms of 35 years.³⁹ Thus, these private camp leases have all been renewed since the natural resources of our State Forest and State Parks became trust assets under the ERA in 1971.

113. The over 4,000 private camp leases on our State Forest and State Parks have caused and continue to cause degradation, diminution, and depletion of the natural resources and ecology of the forest by converting forest to non-forest through the construction of buildings and other facilities on the leased forest land, the construction and maintenance of roads through the forest to provide access to these private camps, and the construction and maintenance of rights-of-way through the forest for the transmission of electricity and other utilities to these

³⁸ Most of these private camp leases were authorized pursuant to Section 1803(a) of the Administrative Code of 1929 (Exhibit D). The powers to lease State Forest and State Park lands for private camp leases are now granted to DCNR through CNRA §§ 302(b)(1) and 303(a)(4), respectively, 71 P.S. §§ 1340.302(b)(1) and 1340.303(a)(4)).

³⁹ When the powers and duties to authorize private camp leases were transferred to DER in 1971 by the act of Dec. 3, 1970, P.L. 834, No. 275, § 20, which add Sections 1903-A(1) and 1906-A(4) to the Administrative Code of 1929, these provisions authorized private camp leases for up to 25 years on State Forest and State Park land, respectively, if the camp had made a substantial capital investment; otherwise, the lease term was for up to ten years. The maximum term was extended to 35 years in 1972 by the act of Feb. 17, 1972, P.L. 70, No. 23 (amending Sections 1903-A(1) and 1906-A(4) of the Administrative Code of 1929). In 1985, DER was prohibited from terminating a camp lease on the State Forest when a “cabin has been destroyed or seriously damaged by fire, storm, flood or other natural causes” by the act of July 11, 1985, P.L. 232, No. 57, § 1 (amending Section 1903-A(1) of the Administrative Code of 1929). This amendment also required DER to allow a destroyed or damaged cabin to be rebuilt and to allow renovations and additions to any existing cabin with DER’s approval. In 1995, these powers and duties were transferred to DCNR through CNRA §§ 302(b)(1) and 303(a)(4), 71 P.S. §§ 1340.302(b)(1) and 1340.303(a)(4).

private camps. Like all private development within the forest, these private camps, many of which are within core forest areas, also spread invasive species and forest pests inimical to the ecology of the forest; disturb, compact, erode and otherwise degrade forest soil and soil mycorrhizae essential to forest health; increase surface water runoff and the discharge of sediment and other pollutants into exceptional value and high quality forest streams; and emit pollutants into the clean air of the forest as exhaust from motorized vehicles, camp heating systems, and other equipment.

114. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to account for the losses of forest trust assets from these private camp leases by accounting for, among other things, the acreage of forest depleted by conversion to non-forest; the acreage of core forest degraded by fragmentation; the acreage of forest degraded by invasive species and forest pests; the amount of increased runoff and pollutants degrading exceptional value and high quality forest streams; the acreage of forest with disturbed, compacted or otherwise damaged soil and soil mycorrhizae essential to forest health; the acreage of forest with degraded, diminished or depleted wildlife habitat; the acreage of forest with degraded, diminished or depleted wild character and solitude essential to both forest wildlife and recreational users; the quantity of pollutants from vehicles, camp heating and other equipment released into the clean forest air; and

the amount of carbon that could have been sequestered and stored to mitigate climate change if such losses had not occurred.

115. The Commonwealth Trustees have not accounted for the losses of trust assets from the over 4,000 private camp leases authorized, many of which are within the State Forest of northcentral Pennsylvania.

116. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to prevent further harm to the forest from this use by terminating private camp leases when their terms expire and restoring the leased area to forest. In addition, they have a non-discretionary fiduciary obligation under the ERA to remedy the losses of forest trust assets from private camp leases that will continue until these leases are terminated by, among other things, prohibiting further development of leased areas; acquiring interior holdings of forest land proximate to leased areas; controlling invasive species and forest pests spread by private camp use; eliminating the discharge of pollutants from private camps into exceptional value and high quality forest streams; and eliminating releases of pollutants from private camps into the clean forest air.

117. The Commonwealth Trustees have not remedied the losses of trust assets from the over 4,000 private camp leases authorized, many of which are within the State Forest of northcentral Pennsylvania.

6. Authorized Commercial Timber Harvesting

118. The Commonwealth Trustees currently authorize the sale and harvesting of timber on over 10,000 acres of the State Forest in northcentral Pennsylvania each year, which represents 70% of the total acreage of State Forest harvested for timber annually. 2016 State Forest Plan (Exhibit E), page 98, Table 3.4 (Timber harvest acreage goals from the harvest allocation model by district).⁴⁰

119. Although statutory authority to sell timber from the State Forest to advance “reforesting, and the betterment of the State forest” has existed since at least 1929,⁴¹ the production of timber from the State Forest began to increase substantially during World War II. *Id.*, page 85-86 (*History of Timber in Pennsylvania*); *Legacy of Penn’s Woods* (Exhibit B), page 77.

120. The Commonwealth Trustees have authorized and continue to authorize the commercial sale and harvesting of timber from the State Forest in northcentral Pennsylvania to benefit the Commonwealth’s lumber industry. In 1995, the General Assembly found that our “forest products industry employs over

⁴⁰ The total State Forest acres allocated annually for commercial timber harvesting in northcentral Pennsylvania includes approximately 2,400 acres in the Susquehannock District 15; 2,000 acres in the Moshannon District 9; 1,500 acres in the Sproul District 10; 1,400 acres in the Tioga District 16; 1,100 acres in the Tiadaghton District 12; 1,000 acres in the Elk District 13; and 800 acres in the Loyalsock District 20. The areas of the Susquehannock State Forest that have been subject to timber sales in the last ten years are shown in red and yellow on the map in **Exhibit N**.

⁴¹ Administrative Code of 1929, § 1802(g) (Exhibit D); now CNRA § 302(a)(6), 71 P.S. § 1340.2(a)(6).

100,000 people and contributes over \$4.5 billion a year to our economy, making it the State's fourth largest industry." CNRA § 101(a)(5), 71 P.S. § 1340.101(a)(5). As of 2016, DCNR reported that the forest products industry contributed \$19 billion per year to the state's economy and employed nearly 58,000 people. 2016 State Forest Plan (Exhibit E), page 84.

121. The forests that historically covered northcentral Pennsylvania prior to the extensive industrial logging that occurred in the late 1800s and early 1900s were mature forests of hemlock, white pine and various hardwoods such as oak, beech, maple, hickory, ash, and birch. The tree species that dominated these vast forests can live 300-400 years or more and the massive size of the trees in this region logged through the early 1900s indicates these mature forests had been largely undisturbed for centuries.

122. Most of the trees in the State Forest of northcentral Pennsylvania are now 80-130 years old, depending on when the industrial logging occurred. *Id.*, page 89, Figure 3.3.

123. DCNR has zoned 50% of the State Forest as available for commercial timber harvesting. *Id.*, page 55 (*see* Multiple Resource Management Zone). Another 11% of the State Forest may also be considered for commercial timber harvesting. *Id.* (*see* Aesthetics/Buffer Management Zone). Over 700,000 acres of

the State Forest in northcentral Pennsylvania have been zoned for commercial timber harvesting.⁴²

124. DCNR employs a 140-year planning horizon to develop its commercial timber harvest allocations on the State Forest, meaning that most of the trees of marketable size in these forests will be removed every 140 years on a rotation that will “contribute to the goals associated with stable volumes, stable revenues, extended rotation acres (older forest), dispersed age classes within forest types/site, and future commercial value of unharvested (remnant) cutting units.” *Id.*, pages 93-94 (*Timber Harvest Scheduling*). The forest areas managed for commercial timber harvesting will eventually have stands of approximately 100 acres ranging from 0-140 years in age (*i.e.*, a forest with an overall median age of approximately 70 years) to provide a continuous supply of marketable timber. *Id.*, page 91 (maximum State Forest acreage allowed for a commercial timber sale is 125 acres).

125. DCNR considers “sustainability” to be achieved, in theory, by its rate of timber harvesting from the State Forest “when the volume harvested from the

⁴² The total acreage zoned for commercial timber harvesting in each State Forest District in northcentral Pennsylvania is approximately as follows: Sproul (177,000), Moshannon (131,200), Tioga (126,500), Susquehannock (120,900), Loyalsock (80,150), Elk (79,000), and Tiadaghton (73,650). The acreage identified for each State Forest District is the combined total of the acreage reported as M&C (multiple resource zone, commercial) for each district landscape management unit in the State Forest Resource Management Plan for each district. The plan for each State Forest District can be accessed through DCNR’s website at: <https://www.dcnr.pa.gov/StateForests/FindAForest/Pages/default.aspx>.

forest equals the forest's growth." *Id.*, page 96 (*Growth and Harvest Volume*). DCNR collects data on the types and volume of tree growth in the State Forest through its Continuous Forest Inventory. *Id.*, page 87. DCNR acknowledges that because most of the State Forest land zoned for commercial timber harvesting "is in older age classes, total growth of the forest is currently decreasing" but will reach "a perpetual state of sustainability" when enough older trees are harvested to allow the faster rate of growth of younger trees to establish an annual rate of forest growth that equals the annual volume of trees harvested. *Id.*, page 96.

126. DCNR's current commercial timber harvesting allocations are dependent upon forest regeneration after timber harvesting. The Bureau of Forestry acknowledges that "[r]egenerating the forest has been a continuing challenge on state forest lands. Many stands have inhibiting factors ... [that] include [over browsing by] deer, inhibiting vegetation, exotic invasive vegetation, lack of seed source, mortality, thick duff, site limitation, and potential climatic variables." *Id.*, page 88-89 (*Regeneration*). The Commonwealth Trustees currently allocate ten percent (10%) of the revenue generated from State Forest commercial timber sales to improving forest regeneration. *Id.*

127. DCNR has zoned 34% of our State Forest for management that will allow the forest to potentially reach its full maturity with trees 300-400 years old

more akin to the forests that historically existed in northcentral Pennsylvania prior to the industrial logging that cleared the forest by the early 1900s.⁴³

128. Commercial timber harvesting on the over 700,000 acres of State Forest in northcentral Pennsylvania zoned for this use has caused and continues to cause the degradation, diminution and depletion of the natural resources and ecology of the forest. Large industrial equipment and vehicles are used to construct haul roads and landing areas, to cut down trees, and to transport logs from the forest. This industrial activity reduces the natural ecological cycle of the forest zoned for commercial timber harvesting by, among other things, permanently converting forest cleared for haul roads and landing areas to non-forest; disturbing, compacting or damaging forest soil and the mycorrhizae in the soil essential to forest health; concentrating surface water flow on roads needed to transport logs from the forest; eroding soil and transporting sediment to exceptional value and high quality forest streams; increasing forest edge and fragmentation that spread invasive species and forest pests to core forest area, particularly when forest regeneration after a timber harvest is inadequate; increasing the emission of

⁴³ Of this total, 23% are forest areas with steep slopes or other qualities that limit their viability for commercial timber harvesting. The remaining are forest natural areas with unique scenic, historic, geologic or ecological value (4%) or forest wild areas with no permanent development managed to retain their natural character and ecological resources (7%). *Id.*, page 55. Note that hardwood tree species dominate our State Forest in northcentral Pennsylvania today. These species, while present, were not the dominant species prior to the extensive clear cutting at the turn of the last century. The forest at that time was dominated by hemlocks and white pine, which continue to be present but are not the dominant species today. *Id.*, page 87.

pollutants into the air from heavy equipment and vehicle exhaust; and disrupting the wild character and solitude of the forest essential to wildlife and recreational users. By reducing to natural ecological age of the forest areas subject to commercial timber harvesting, the ability of the forest to sequester and store carbon to mitigate climate change is also reduced.

129. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to account for the losses of forest trust assets from the over 700,000 acres of State Forest in northcentral Pennsylvania authorized for commercial timber harvesting by accounting for, among other things, the acreage of forest depleted by conversion to non-forest; the acreage of core forest degraded by fragmentation; the acreage of forest degraded by invasive species and forest pests; the amount of increased runoff and pollutants degrading exceptional and high value forest streams; the acreage of forest with disturbed, compacted or otherwise damaged soil and soil mycorrhizae essential to forest health; the acreage of forest with degraded, diminished or depleted forest wildlife habitat; the acreage of forest with degraded, diminished or depleted wild character and solitude essential to both forest wildlife and recreational users; the quantity of pollutants released into the clean forest air; and the amount of carbon that could have been sequestered and stored to mitigate climate change if such losses had not occurred.

130. The Commonwealth Trustees have not accounted for the losses of trust assets on the over 700,000 acres of State Forest in northcentral Pennsylvania authorized for commercial timber harvesting.

131. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to remedy the losses of trust assets on the over 700,000 acres of State Forest in northcentral Pennsylvania authorized for commercial timber harvesting by, among other things, reducing the acreage subject to timber harvesting, particularly in areas where forest regeneration has been inadequate; restoring existing haul roads and other cleared areas to forest; improving forest regeneration in areas where timber sales have occurred, as well as other forest areas subject to over browsing by deer, invasive species, forest pests or other stressors that have limited or prevented natural regeneration; acquiring additional core forest and inholdings proximate to areas with reduced forest regeneration and not authorizing commercial timber harvesting on these forest areas; controlling invasive species and forest pests spread by timber harvesting; restoring forest wildlife habitat; eliminating discharges of pollutants into exceptional value and high quality forest streams; and eliminating releases of pollutants into the clean forest air.

132. The Commonwealth Trustees have not remedied the losses of trust assets on the over 700,000 acres of State Forest in northcentral Pennsylvania authorized for commercial timber harvesting.

7. Extensive Roads Authorized for Multiple Uses

133. Over 6,000 miles of roads have been constructed within our State Forest to support the multiple uses of the forest that have been authorized, including over 3,800 miles of roads in the State Forest of northcentral Pennsylvania. 2016 State Forest Plan, page 199. These roads have been constructed, operated and maintained pursuant to statutory authority that has existed since at least 1929.⁴⁴

134. As of 2016, the Commonwealth Trustees operated and maintained 2,184 miles of roads in the State Forest for public use (*i.e.*, open to the use of motor vehicles licensed by PennDOT the same as state roads), 427 miles of roads with less maintenance also open for public use but not recommended for low-clearance vehicles, and 3,570 miles of roads of constructed primarily for commercial timber harvesting that are not open for public use, with certain

⁴⁴ Administrative Code of 1929, § 1802(f) (Exhibit D); now CNRA § 302(b)(6), 71 P.S. § 1340.302(b)(6); *see also* CNRA § 304, 71 P.S. § 1340.304 (granting DCNR broad authority to “design, construct, improve, maintain and repair those lands and facilities which it deems necessary or appropriate in the exercise of the powers and duties transferred by [the CNRA]”).

exceptions during hunting season. *Id.*⁴⁵ The roads open to the public have 521 bridges over exceptional and high value streams in the State Forest. *Id.*, page 216. As set forth above in Section IV.B.4 of this Petition, the Commonwealth Trustees have authorized joint recreational use of 1,775 miles of these roads within the State Forest by snowmobiles in the winter and have authorized both joint and exclusive recreational use of over 400 miles of roads within the State Forest by ATVs in the summer with continuing expansion of this use.⁴⁶ *Id.* at 200-201; DCNR ATV Expansion Report, page 2.

135. The construction, operation and maintenance of over 3,800 miles of roads in the State Forest of northcentral Pennsylvania has caused and continues to cause the degradation, diminution and depletion of the natural resources and ecology of the forest by, among other things, converting forest to non-forest on a significant acreage of forest,⁴⁷ altering the natural flow of water on a substantial

⁴⁵ Within the State Forest Districts of northcentral Pennsylvania (Moshannon, Sproul, Tiadaghton, Elk, Susquehannock, Tioga, and Loyalsock), the Commonwealth Trustees operated and maintained, as of 2016, 1,272 miles of public roads (58%), 280 miles of less maintained public roads (66%), and 2,296 miles of roads constructed primarily for commercial timber harvesting (64%). *Id.*

⁴⁶ Within the State Forest Districts of northcentral Pennsylvania, 964 miles of roads have been authorized for recreational use by snowmobiles in the winter (54%) and 316 miles of roads have been authorized for recreational use by ATVs in the summer (72%). *Id.* The miles of State Forest roads authorized for ATV recreational riding includes the miles reported in the 2016 State Forest Plan, page 201 (Table 11.3) and the miles reported in the DCNR ATV Expansion Report, page 2.

⁴⁷ DCNR has not reported this acreage; however, if the average width of the over 3,800 miles of roads in the State Forest of northcentral Pennsylvania is 25 feet, over 11,000 acres of forest has been converted to non-forest.

acreage of forest;⁴⁸ eroding forest soil by concentrating surface water flow; discharging sediment and other pollutants into the over 3,000 miles of exceptional value and high quality forest streams in this region;⁴⁹ fragmenting a significant acreage of forest; promoting and increasing the spread of invasive species and forest pests in core forest areas through vehicle traffic; degrading habitat for forest species by significantly increasing forest edge; interfering with the continuity of soil mycorrhizal functions essential to forest health; disrupting the wild character and solitude of the forest essential to wildlife and recreation use; and reducing the ability of the forest to sequester and store carbon to mitigate climate change.

136. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to account for the losses of trust assets from the over 3,800 miles of roads in the State Forest of northcentral Pennsylvania by accounting for, among other things, the acreage of forest depleted by conversion to non-forest; the acreage of core forest degraded by fragmentation; the acreage of forest degraded by invasive species and forest pests; the amount of increased runoff and pollutants degrading exceptional value and high quality forest streams; the acreage of forest with disturbed, compacted or otherwise damaged soil and soil

⁴⁸ Road cuts necessary to construct these roads have altered the natural topography of the forest, increased the quantity of rain that directly reaches road surfaces devoid of forest vegetation, leaf litter or duff, and concentrated surface water flow in roadside ditches and culverts.

⁴⁹ DCNR has reported that over 3,000 miles of streams within the State Forest of northcentral Pennsylvania are classified as Exceptional Value (EV) and high quality (HQ). 2018 Shale Gas Report (Exhibit F), page 81 (Table 5.2).

mycorrhizae essential to forest health; the acreage of forest with degraded, diminished or depleted forest wildlife habitat; the acreage of forest with degraded, diminished or depleted wild character and solitude essential to both forest wildlife and recreational users; the quantity of pollutants released into the clean forest air; and the amount of carbon that could have been sequestered and stored to mitigate climate change if these losses to the forest had not occurred.

137. The Commonwealth Trustees have not accounted for the losses of trust assets from the over 3,800 miles of roads within the State Forest in northcentral Pennsylvania.

138. The Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to remedy the losses of trust assets from the over 3,800 miles of roads within the State Forest of northcentral Pennsylvania by, among other things, eliminating roads to the extent possible and restoring these disturbed areas to forest; acquiring unfragmented core forest tracts proximate to existing State Forest in northcentral Pennsylvania and maintaining these tracts as roadless areas; controlling invasive species and forest pests spread by these roads and limiting access by motorized vehicles to prevent further spread; improving stormwater controls on these roads to eliminate erosion and the transport of sediment to exceptional value and high quality forest streams; and by rehabilitating bridges and species.

139. The Commonwealth Trustees have not remedied the losses of trust assets from the over 3,800 miles of roads within the State Forest in northcentral Pennsylvania.

8. Extensive Additional Infrastructure Authorized for Multiple Uses

140. Extensive infrastructure in addition to roads has been constructed within the State Forest of northcentral Pennsylvania to support the multiple uses that have been authorized, including offices, maintenance buildings, parking lots, visitor centers, picnic and camping areas, dams and reservoirs, shooting ranges, correctional facilities, industrial facilities, existing railroads, wastewater treatment facilities, and recreational trails. Statutory authority to construct, operation and maintain such infrastructure has existed since 1929.⁵⁰ In addition to the authorized uses of the State Forest discussed above, extensive infrastructure has been constructed to promote and support recreational uses of the forest, as well as State Parks in this region, some of which were originally managed as part of the State Forest.⁵¹

⁵⁰ Administrative Code of 1929, § 1802(b) (Exhibit D) (granting broad powers and duties to utilize and develop State Forest lands and their resources); CNRA, § 302(a)(3), 71 P.S. § 1340.302(a)(3); *see also* CNRA, § 302(b)(11), 71 P.S. § 1340.302(b)(11) (granting power to lease certain industrial facilities constructed on State Forest land in what is now the Quehanna Wild Area within the Moshannon State Forest District).

⁵¹ State Parks within the State Forest of northcentral Pennsylvania include Cherry Springs State Park, Denton Hill State Park, Hyner Run State Park, Hyner View State Park, Kettle Creek State Park, Lyman Run State Park, Ole Bull State Park, Peterson State Park, Prouty Place State Park, Sinnemahoning State Park, Sizerville State Park, Parker Dam State Park, Black Moshannon State

141. DCNR does not report on the extent of infrastructure constructed within the State Forest of northcentral Pennsylvania or State Parks within this forest. However, some information is available about the total amount of infrastructure operated and maintained by DCNR. A significant portion of the State Forest infrastructure reported within the Commonwealth is within northcentral Pennsylvania. As of 2016, infrastructure operated and maintained on our State Forest by the DCNR Bureau of Forestry includes 684 buildings, 31 dams and reservoirs (20 of which are subject to municipal water supply agreements), 27 picnic areas, two wastewater treatment facilities, 798 miles of hiking trails, one shooting range, one golf course, 336 communication towers and 50 fire towers. 2016 State Forest Plan (Exhibit E), page 216.

142. A smaller portion of the State Park infrastructure reported within the Commonwealth is within the State Forest of northcentral Pennsylvania, but the extent of this infrastructure is nonetheless substantial. As of 2018, infrastructure operated and maintained within our State Parks by the DCNR Bureau of State

Park, S.B. Elliot State Park, Ravensburg State Park, Colton Point State Park, Hills Creek State Park, Leonard Harrison State Park, Little Pine State Park, and Upper Pine Bottom State Park. While certain State Forest lands were managed as parks since they were first acquired, specific statutory authority to set aside State Forest land for exclusive use for parks was granted in 1970 when Section 1902-A(12) was added to the Administrative Code of 1929 by the legislation that created DER (act of Dec. 3, 1970, P.L. 834, No. 275, § 20). This authority was transferred to DCNR in 1995 as CNRA § 302(a)(12), 71 P.S. § 1340.302(a)(12). *See also History of State Parks*, pages 10-19 (Exhibit M) (early history of recreational use of parks within the State Forest).

Parks includes 100 dams and associated reservoirs, 180 boat ramp, 56 swimming beaches, 50 fishing piers, 137 docks, 10 marinas with almost 4,000 boat slips, 18 swimming pools, 5 wading pools, 5 water playgrounds, over 4,000 buildings, 6,500 camp sites, 4 ski areas, 280 cabins, 69 cottages, 2 inns, 126 drinking water treatment systems, 70 wastewater treatment plants, 2 shooting ranges, 2 golf courses, and 2 model airplane airports. *The Legacy of Pennsylvania's State Parks and Forests: The Future Is In Our Hands*, Pennsylvania Parks & Forest Foundation, 2018 ("PPFF Park & Forest Infrastructure"), page 18, excerpt provided **Exhibit O**.

143. Over 47,000 acres of State Forest land in northcentral Pennsylvania now known as the Quehanna Wild Area was set aside in 1955 for the development of industrial facilities for nuclear testing to promote industrial use of nuclear technology.⁵² Moshannon State Forest Resource Management Plan, March 2020, DCNR ("Moshannon State Forest Plan"), pages 33-34, 127, 136, excerpts

⁵² The statutory authority to lease and sell these lands was granted by the act of June 3, 1955, P.L. 140, No. 43. These lands were leased and sold to the Curtis-Wright Corporation, which constructed nuclear testing facilities on approximately ten acres of the almost 8,600 acres in the center of this area that the Commonwealth sold to the company. The company terminated its project several years later and Commonwealth purchased this acreage back from the company for management again as part of the State Forest. In 1967, the Department of Forest and Waters was granted the power to lease the nuclear testing facilities that had been constructed on this State Forest land "for industrial and economic development purposes." Act of July 25, 1967, P.L. 183, No. 55 (this power was transferred to DER in 1970 through Section 1903-A(11) of the Administrative Code of 1929 (now repealed) and then to DCNR by CNRA, § 302(b)(11), 71 P.S. § 1340.302(b)(11).

incorporated as **Exhibit P**.⁵³ After Commonwealth spending of more than \$40 million to clean up radioactive contamination from facilities constructed on these lands, which are now demolished, DCNR has reported that five sites continue to test positive for low levels of strontium 90 and cobalt 60. *Id.*, page 34.

144. The Commonwealth Trustees have not provided a complete accounting of the infrastructure constructed, operated and maintained within the State Forest of northcentral Pennsylvania, including infrastructure within State Parks in this region; nor have they accounted for the acreage of forest converted to non-forest or otherwise degraded, diminished or depleted by this extensive infrastructure, or other natural resources within the forest degraded, diminished or depleted to construct, operate and maintain this extensive infrastructure.

9. Cumulative Harm to the State Forest’s Ability to Mitigate Climate Change

145. DCNR recognizes that our State Forest can sequester and store a significant amount of carbon from the atmosphere to mitigate climate change. 2016 State Forest Plan (Exhibit E), page 40. DCNR reports that in 2015, our State Forest “sequestered an estimated 4.7 million tons of carbon, while storing (above ground) approximately 143 million tons” of carbon. *Id.*

146. PEDF President Cynthia Bower further explains the critical function

⁵³ The entire plan is available on DCNR’s website at https://elibrary.dcnr.pa.gov/GetDocument?docId=1753454&DocName=dcnr_20033705.pdf.

of the forest in storing carbon, stating: “the increase in carbon dioxide (CO₂) in the atmosphere is the primary contributor to climate change ... [and] the easiest, best, and least expensive CO₂ antidote has been around for likely longer than humanity. It’s called a tree.” Affidavit of Cynthia Bower testifying to role of the State Forest in mitigating climate change, incorporated as **Exhibit Q**, page 1. PEDF President Cynthia Bower has worked actively with the Western Pennsylvania Conservancy to improve the capacity of the forest on her own property to capture carbon dioxide over the long term and points to the conservancy’s explanation of the importance of forests in this effort, stating, “[t]rees capture and use CO₂ when they perform photosynthesis. When a tree pulls CO₂ out of the air, the gas combines with water and sunlight to make sugar, and during this food-making process, oxygen is released helping to clear the air. One mature tree can absorb approximately 48 pounds of CO₂ a year. Trees also release CO₂, though slowly, through decomposition. This makes trees and forests essential in the fight against climate change.” *Id.*, page 2 (emphasis in original).

147. Bower also points to the work of the Northeast Wilderness Trust, an organization focused on protecting forests in the northeast region of the United States, which explains that “[a]s a forest’s age increases, so too does the amount of carbon it stores. It was once believed that old-growth forests were sources of carbon (giving off carbon into the atmosphere) but we now know that they are

*more often carbon sinks, continuing to absorb carbon even when they are centuries-old.” Id. (emphasis in original).*⁵⁴

148. Bower further notes the importance of reforestation and extending the harvest cycles in the State Forest, which had been identified as one of the natural strategies for increasing carbon sequestration in the Pennsylvania Climate Action Plan. *Id.*, pages 3-4; *see also* Pennsylvania Climate Action Plan, Department of Environmental Protection, September 2021, page 95.⁵⁵

149. Recently published research estimates that temperate continental forests of northeastern United States, which include our State Forest, have the potential to significantly increase their carbon storage.⁵⁶ These forests are estimated to have a current median age of 105 years, which is consistent with the age of our State Forest, and a current capacity to store approximately 40 tons of carbon per acre. These forests are estimated to reach a maximum carbon storage capacity of 107 tons/acre by the median age of 320 years—a 260% increase.⁵⁷

⁵⁴ *See also* Stephenson, N.L. et al. 2014. *Rate of tree carbon accumulation increases continuously with tree size*. Nature, Vol. 507, 90. Macmillan Publishers Limited, www.nature.com/doi/10.1038/nature12914.

⁵⁵ Available at <https://www.dep.pa.gov/Citizens/climate/Pages/PA-Climate-Action-Plan.aspx>.

⁵⁶ Birdsey, R., Castanho, A., Houghton, R., Savage, K. *Middle-aged forests in the Eastern U.S. have significant climate mitigation potential*. Forest Ecology and Management 548 (2023). Published by Elsevier B.V. <https://doi.org/10.1016/j.foreco.2023.121373>.

⁵⁷ DCNR has estimated that our 2.2 million acres of State Forest stored approximately 143 million tons of carbon above ground in 2015, which equates to a carbon storage rate of 65 tons/acre. While this rate exceeds the rate estimated for forests in the temperate continental ecozone of northeastern United States (40 tons/acre), it remains significantly less than maximum

150. The DCNR Bureau of Forestry recognizes that mitigating climate change is also essential to maintaining the health of Pennsylvania's forests, observing that "Pennsylvania has undergone a long-term warming of more than 1°C (1.8°F) over the past 110 years" causing "parts of Pennsylvania [to move from growth] Zone 6 to Zone 7, similar to Tennessee and Virginia." 2016 State Forest Plan (Exhibit E), page 39.

151. Warming from climate change is increasing stress on Pennsylvania's forests, which "will become increasingly unsuitable for many of the tree species that are now present, especially those generally associated with northern hardwood ecosystems. ... The state will also become increasingly suitable for some species that are currently rare or not present in the state, such as loblolly and shortleaf pines, common persimmon, and red mulberry." *Id.*

152. The warming climate will make some tree species susceptible to increased mortality and decreased regeneration success; and "more susceptible to a host of other stressors, including acidic deposition and both native and non-native insects and diseases ... Tree mortality could also increase if climate change increases the frequency of severe storms, and fires may become more common as temperatures rise." *Id.*

rate of carbon storage (107 tons/acre) that research has shown mature forests may be able to achieve.

153. However, the DCNR Bureau of Forestry recognizes that “[d]espite the potential impacts of climate change on forest ecosystems, forests and their soils can play a role in mitigating factors causing climate change. They represent one of the largest terrestrial pools of carbon and actively sequester carbon from the atmosphere. With active management, it is possible to increase the rate at which carbon is sequestered.” *Id.*

154. According to DCNR, “many existing ecosystem management practices contribute to healthy forests that can resist and adapt to the stresses of climate change”, including:

- Protecting the forest from severe mortality events, such as insect and disease outbreaks.
- Promoting forest health, growth, and productivity.
- Maintaining and enhancing community, species, and genetic diversity.
- Improving forest connectivity and limiting fragmentation to facilitate species migration.
- Limiting forest conversion and promoting restoration.
- Acquiring key tracts of land to improve forest connectivity and limit forest loss.
- Ensuring diverse and rigorous regeneration following timber harvests and natural mortality events.
- Promoting a vibrant wood products economy to facilitate management activities while providing for long-term carbon storage in durable wood products.

Id., page 40.

155. Jim Weaver, a retired Tioga County Planner, biologist and PEDF Board member, further explains the critical functions of the State Forest, stating that the “only true definition of a working forest is the cycling of carbon and the community dynamics of the ecosystem ... the interactions of the forest biome with the atmosphere, watersheds, and species (plants and animals) within the forest on the landscape.” Affidavit of James Weaver, incorporated as **Exhibit R**. “Managing the state forest sustainably—protecting it from threats and mortality, promoting productivity, ensuring adequate regeneration, and limiting forest conversion—contributes to carbon sequestration and storage and provides society a valuable service in mitigating the impacts of climate change.” *Id.*

156. The Commonwealth Trustees have not accounted for the cumulative harm to our State Forest’s ability to sequester and store carbon from the multiple uses of the natural resources and ecology of the forest that have been authorized.

157. However, the cumulative harm to our State Forest from these multiple uses that have been authorized, including those set forth above, are substantial. The overall health of the forest has been degraded, diminished and depleted by, among other things, converting a significant acreage of forest to non-forest; fragmenting a significant acreage of core forest; reducing the ecological age of a significant acreage of forest; increasing invasive species and forest pests on a significant acreage of forest—all of which have reduced the forest’s ability to regenerate, to

reach maturity, to maintain its clean air and pure water, to support diverse communities of forest plants and animals, and to sequester and store carbon to mitigate climate change.

C. The Commonwealth Trustees Have Spent ERA Trust Funds Derived From Losses of Trust Assets From Our State Forest in Northcentral Pennsylvania Without Ensuring These Trust Funds Were Spent for Trust Purposes, Particularly Without Ensuring First and Foremost that These Trust Funds Were Spent to Remedy the Losses of Trust Assets From Our State Forest in Northcentral Pennsylvania

1. Fiduciary Obligation to Spend Available Funds to Conserve and Maintain the Natural Resources and Ecology of Our State Forest

158. Under the trust established by the ERA in 1971, the natural resources of our State Forest are trust assets that are part of the corpus of the trust. Funds derived from existing authorized uses of our State Forest trust assets that degrade, diminish or deplete these trust assets remain part of the corpus of the trust under long-established Pennsylvania trust law and can only be spent for trust purposes.⁵⁸

159. The Commonwealth Trustees have the fiduciary obligation to spend ERA trust funds derived from losses of our State Forest trust assets to prevent or remedy the losses of State Forest trust assets caused by existing authorized uses.

⁵⁸ See *PEDF II*, 161 A.3d at 932 (citing a 1908 case explaining that Pennsylvania trust law imposes a fiduciary obligation on trustees “to manage the corpus of the trust so as to accomplish the trust’s purposes for the benefit of the trust’s beneficiaries”); *id.* at 933 (citing a 1910 case explaining that a trustee’s discretion under Pennsylvania trust law “with respect to the proper treatment of the corpus of the trust ... is limited by the purpose of the trust and the trustee’s fiduciary duties, and does not equate ‘to mere subjective judgment.’”); and *id.* at 934 (citing a 1919 case explaining that “Pennsylvania trust law dictates that proceeds from the sale of trust assets are trust principal and remain part of the corpus of the trust.”).

They cannot spend these trust funds to administer existing authorized uses of the forest that degrade, diminish or deplete State Forest trust assets, *i.e.*, for costs incurred for non-trust purposes that do not preserve the corpus of the ERA trust.

160. The losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized and the actions needed to remedy them are substantial, as set forth in Section IV.B. of this Petition. Likewise, the ERA trust funds generated from these multiple uses of our State Forest in northcentral Pennsylvania and disbursed to the Commonwealth Trustees since 2009 also have been substantial, as set forth in the as-applied analysis below of actual spending by the Commonwealth Trustees of these ERA trust funds; however, the Commonwealth Trustees have not ensured that these ERA trust funds have been spent for trust purposes, particularly first and foremost to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania to preserve the corpus of the ERA trust.

161. Since 2009, over \$1.7 billion in proceeds have been derived from commercial natural gas development on the State Forest in northcentral Pennsylvania.⁵⁹ These proceeds remained part of the corpus of the trust established

⁵⁹ The Commonwealth Trustees have reported actual receipts deposited into the Oil and Gas Lease Fund totaling over \$1.7 billion since fiscal year 2008-2009 in the Governor's Executive Budgets for fiscal years 2010-2011 through 2024-2025 (*see* Oil and Gas Lease Fund (*Actual Receipts*)).

by the ERA,⁶⁰ and these ERA trust funds have been deposited by law into the Oil and Gas Lease Fund.⁶¹ Thus, the Commonwealth Trustees had and continue to have the fiduciary obligation to spend ERA trust funds disbursed from the Oil and Gas Lease Fund solely for the purpose authorized by the ERA, which is to conserve and maintain our public natural resources to preserve the ERA trust corpus.⁶²

162. To date, the Commonwealth Trustees have spent \$383 million in ERA trust funds derived from our State Forest through legislatively authorized transfers from the Oil and Gas Lease Fund to the General Fund in 2009 and 2010, which our Supreme Court held to be unconstitutional in 2021.⁶³ They have also spent over \$1.1 billion in ERA trust funds derived from our State Forest that have been appropriated and disbursed from the Oil and Gas Lease Fund for DCNR operations

⁶⁰ *PEDF II*, 161 A.3d at 935 (“royalties—monthly payments based on the gross production of oil and gas at each well—are unequivocally proceeds from the sale of oil and gas resources. [] They are part of the corpus of the trust and the Commonwealth must manage them pursuant to its duties as trustee.”); *PEDF v. Commonwealth*, 255 A.3d 289, 314 (Pa. 2021) (“*PEDF V*”) (“income generated from bonus payments, rentals, and late fees must be returned to the corpus to benefit the conservation and maintenance of the public resources for all the people.”).

⁶¹ Section 1601.2-E of the Fiscal Code, 72 P.S. § 1601.2-E, which was added by the act of Oct. 30, 2017, P.L. 725, No. 44; deposits to the Oil and Gas Lease Fund were previously required under the act of Dec. 15, 1955, P.L. 865, No. 256.

⁶² See also 20 Pa.C.S. § 7775 (“In administering a trust, the trustee may incur only costs that are reasonable in relation to the trust property, the purposes of the trust and the skills of the trustee.”); *PEDF II*, 161 A.3d at 934 (“The [ERA] phrase ‘for the benefit of all the people’ may not be read in isolation and does not confer upon the Commonwealth a right to spend [ERA trust funds] on general budgetary items.”).

⁶³ *PEDF V*, 255 A.3d at 314 (holding Section 1604-E and 1605-E of the Fiscal Code and Section 1912 of the Supplemental General Appropriations Act of 2009 to be facially unconstitutional).

since fiscal year 2008-2009, as set forth below in the as-applied analysis of this actual spending in Section IV.C.4. of this Petition;⁶⁴ and they have spent \$250 million in ERA trust funds derived from our State Forest through legislatively authorized transfers from the Oil and Gas Lease Fund to the Marcellus Legacy Fund, as set forth below in the as-applied analysis of this actual spending in Section IV.C.5. of this Petition.

163. The Commonwealth Trustees have spent the over \$1.7 billion in ERA trust funds derived from commercial oil and gas development on our State Forest in northcentral Pennsylvania without ensuring these trust funds have been spent for trust purposes, including first and foremost to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania.

164. In addition to the funds derived from natural gas development on the State Forest, the Commonwealth Trustees have deposited over \$800 million into the General Fund since fiscal year 2008-2009 derived from other authorized uses of our State Forest and State Parks that have caused and continue to cause degradation, diminution and depletion of these public natural resources, including commercial timber sales, commercial rights-of-way, private camp leases, and fees

⁶⁴ This Honorable Court previously determined that an as-applied analysis of the Commonwealth Trustees' spending of these trust funds is required to determine the constitutionality of their spending. *PEDF IV*, page 17 (this Court also previously stated that it was "unprepared to grant the Commonwealth's sweeping request that its current usage [of the Oil and Gas Lease Fund] is wholly consistent with its [ERA] trustee responsibilities. Such a declaration requires an as-applied analysis ...). Section IV.C.4. of this Petition provides that as-applied analysis.

for various recreational uses, as summarized in **Exhibit S** (“State Forest & Park Actual Receipts”).

165. These and other proceeds derived from the multiple uses of our State Forest and State Parks authorized by the Commonwealth Trustees that have caused and continue to cause losses of these trust assets are ERA trust funds, the same as the proceeds derived from commercial oil and gas development on our State Forest, and the Commonwealth Trustees have the same fiduciary obligation to account for and spend these ERA trust funds for trust purposes, particularly first and foremost to remedy the losses of forest and park trust assets caused by their authorizations of these uses.⁶⁵

166. While proceeds from commercial timber sales on our State Forest and recreational uses of our State Parks are disbursed to DCNR through restricted accounts within the General Fund,⁶⁶ the proceeds from commercial rights-of-way

⁶⁵ *PEDF II*, 161 A.3d at 935 (“Pennsylvania trust law dictates that proceeds from the sale of trust assets are trust principal and remain part of the corpus of the trust. [] When a trust asset is removed from the trust, all revenue received in exchange for the trust asset is returned to trust as part of its corpus.”). *PEDF V*, 255 A.3d at 314 (“Although the trustee (the Commonwealth) is authorized to generate income from trust assets in its discretion, it does not follow that the beneficiaries are entitled to distribution of those monies through allocation to the general fund. Such distribution is not supported by the purpose of the trust: to conserve and maintain the public natural resources ... [and] would permit the Commonwealth to use trust income to advance a non-trust purpose, an outcome we previously rejected. Private trust law principles preclude that outcome.”).

⁶⁶ See CNRA, § 319(a) (authorizing the transfer of fund from DER to DCNR in the State Parks User Fees Restricted Receipts Account and the Forestry Stumpage Sales Restricted Receipts Account) and § 319(c) (authorizing transfers of certain funds from the Forestry Stumpage Sales

and private camp leases are not deposited into such account and are disbursed for general government spending, which is not limited to the trust purpose of conserving and maintaining our public natural resources.⁶⁷

167. The Commonwealth Trustees have not accounted for the proceeds derived from our State Forest or State Parks deposited into the General Fund or the Oil and Gas Lease Fund as ERA trust funds and, therefore, have not ensured the spending of these funds for trust purposes, particularly to remedy the losses of trust assets from our State Forest and State Parks caused by the uses authorized to generate these funds.

2. Fiduciary Obligation to Separate Trust from Non-Trust Activities and to Account for and Spend Trust Funds Solely for Trust Purposes

168. The General Assembly created DCNR in 1995 to serve as a cabinet-level advocate not just for our State Forest, but also for State Parks, rivers, trails, greenways and community recreation and heritage conservation programs.⁶⁸ The General Assembly granted DCNR broad powers to continue authorizing multiple

Restricted Receipts Account to the Forest Regeneration Restricted Revenue Account and for forestry research.

⁶⁷ The Commonwealth Trustees generate funds from other authorized uses of the natural resources of our State Forest and State Parks that degrade, diminish and deplete these public natural resources that are not included in Exhibit S but are likewise deposited into the General Fund, either directly or into restricted accounts (*e.g.*, funds from regulating snowmobiles and ATVs are deposited into the Snowmobile Management Restricted Account and the ATV Management Restricted Account (*see* 75 Pa.C.S. § 7706(a))). Because the Governor does not account for receipts and disbursements of these funds as ERA trust funds in his executive budgets, PEDF members and other trust beneficiaries cannot identify the full extent to which trust funds are being spent for non-trust purposes.

⁶⁸ CNRA § 101(b)(1), 71 P.S. § 1340.101(b)(1).

uses that degrade, diminish and deplete the natural resources and ecology of our State Forest, as set forth in Section IV.B. of this Petition. The Commonwealth Trustees cannot spend ERA trust funds for costs incurred for such activities. Such costs must be paid through unrestricted funding sources such as the General Fund.

169. DCNR has likewise been granted broad powers to authorize multiple uses of our State Parks that degrade, diminish and deplete the natural resources and ecology of these parks, including many of the same powers granted to administer uses of the State Forest.⁶⁹ DCNR administers extensive recreational uses and infrastructure on our State Parks that, like the extensive uses and infrastructure authorized on our State Forest, degrade, diminish and deplete the natural resources and ecology of the parks. DCNR's administration of such uses are not activities carried out for trust purposes under the ERA. Thus, the Commonwealth Trustees cannot spend ERA trust funds for costs incurred for such activities.

170. In addition to administering our State Forest and State Parks, DCNR has been given broad powers and duties to promote outdoor recreation across the Commonwealth on lands not administered by DCNR, including powers and duties to provide grants and technical assistance to municipalities and non-profit organizations to promote outdoor recreational use and development of local parks and heritage areas, recreational access to rivers, and recreational trails and

⁶⁹ *See, e.g.*, CNRA § 303 (Parks), 71 P.S. § 1340.303.

greenways.⁷⁰ Activities to promote and fund the development of recreational facilities and infrastructure across the Commonwealth—like activities to authorize and manage the extensive uses and infrastructure on our State Forest—degrade, diminish and deplete the natural resources and ecology of the lands being developed for recreational use. DCNR’s administration of such recreational uses are not activities carried out for trust purposes under the ERA. Thus, the Commonwealth Trustees cannot spend ERA trust funds for costs incurred for such activities.

171. DCNR has been granted the powers and duties to administer many other statewide programs to promote the use and development of natural resources within the Commonwealth, including programs to register ATV and snowmobile dealers, to register and title snowmobiles and ATVs, to regulate the operation of snowmobiles and ATVs, to survey geologic formations for the development of their mineral and water resources, to license water well drillers, to license whitewater outfitters, and to provide education and training on use and

⁷⁰ *See, e.g.*, CNRA § 304 (Facility development), § 306 (Community recreation and heritage conservation), § 307 (Rivers conservation); § 308 (Trails and greenways), and § 321(a)(2) (transferring the Bureau of Recreation and Conservation from the Department of Community Affairs to DCNR), 71 P.S. §§ 1340.304, 1340.306-1340.308, and 1340.321(a)(2). Note that CNRA § 304 grants DCNR broad powers and duties “to design, construct, improve, maintain and repair those lands and facilities which it deems necessary or appropriate in the exercise of the powers and duties transferred by this act,” and allows DCNR to authorize and manage the extensive facilities and infrastructure on forest and park lands across the Commonwealth.

development of our natural resources.⁷¹ DCNR's activities to administer such programs are not activities carried out for trust purposes under the ERA. Thus, the Commonwealth Trustees cannot spend ERA trust funds for costs incurred for such activities.

172. Given the extensive activities carried out by DCNR for purposes other than conserving and maintaining trust assets under the ERA, the Commonwealth Trustees have the fundamental fiduciary obligation to provide detailed accounts of activities carried out for trust purpose and the costs incurred for those activities. This Honorable Court has declared that “the Commonwealth, as trustee of Pennsylvania’s public natural resources, is required to keep detailed accounts of the trust monies derived from the [State Forest] oil and gas leases and track how they are spent as part of its administration of the trust.”⁷²

173. The Commonwealth Trustees can only ensure that ERA trust funds are spent solely for trust purposes by maintaining detailed accounts that explain the trust purpose associated with the specific activities funded and explain the costs necessary to carry out those activities. Without such accounting, the

⁷¹ See, e.g., 75 Pa.C.S. Chapter 77 (Snowmobile and All-Terrain Vehicles and CNRA § 305 (Ecological and geological services), § 309 (Youth conservation programs), § 310 (Volunteers), § 311 (Environmental education), and § 312 (Whitewater recreation), 71 P.S. §§ 1340.305, 1340.309-1340.312.

⁷² *PEDF IV*, pages 36-37 (also noting that “[b]ased upon a rough estimate of the monies deposited into and diverted from the [Oil and Gas Lease] Fund, we are extremely concerned that the Commonwealth may not be administering the trust funds with ‘loyalty, impartiality, and prudence.’”).

Commonwealth Trustees cannot demonstrate to the trust beneficiaries that they have fulfilled their constitutional duty under the ERA to conserve and maintain the natural resources of our State Forest and State Parks by spending available ERA trust funds derived from losses of these trust assets to remedy those losses.

174. The Commonwealth Trustees have not maintained such accounts notwithstanding their knowledge of the need to maintain them. To the contrary, the Commonwealth Trustees have treated ERA trust funds derived from losses to our State Forest trust assets they have authorized the same as revenue from the General Fund, which is not subject to the restrictions on spending that apply to ERA trust funds, as set forth below in Section IV.C.4. of this Petition.

175. When the Commonwealth Trustees and their predecessors became the trustees of the natural resources of our State Forest in 1971, well-established Pennsylvania trust law established their fiduciary obligation under the ERA to account for the proceeds from commercial oil and gas development from the State Forest in northcentral Pennsylvania and to account for their spending of those proceeds solely for the purpose of the trust.

176. Even prior to adoption of the ERA in 1971, the Commonwealth spent proceeds from State Forest oil and gas leases, which were deposited into the Oil and Gas Lease Fund, primarily to acquire additional lands for our State Forest and State Parks. 2018 Shale Gas Report (Exhibit G), page 34. However, in the 1980s,

DER began using these proceeds to pay for costs incurred for general State Forest operations, first for vehicles and then for computers. *Id.*

177. In 1991, the Attorney General provided informal guidance on spending from the Oil and Gas Lease Fund in response to concerns raised by the State Treasurer.⁷³ Although the Attorney General only focused on the statutory restrictions on use of this fund, he nonetheless concluded that “[i]t is not enough that expenditures from the [Oil and Gas Lease] Fund should relate to conservation, recreation, dams or flood control. If it were, then the Oil and Gas Lease Fund would be little more than a general funding source for the broad range of statutory functions performed by DER; and the [Oil and Gas Lease Fund] Act, while imprecise in its expression of intent, certainly suggests otherwise.” 1991 AG Letter (Exhibit T), pages 2-3.

178. The Attorney General expressed the view that “establishment of this special fund ... reflects the intent that revenues derived from the depletion of the Commonwealth’s natural resources should be dedicated directly to the physical enhancement of conservation of the Commonwealth’s natural resources.” *Id.*, page 3.⁷⁴

⁷³ Letter dated February 7, 1991 from the Attorney General to the State Treasurer with a copy provided to the DER Secretary and others (“1991 AG Letter”); incorporated as **Exhibit T**.

⁷⁴ Although the Attorney General only analyzed the statutory restrictions on spending from the Oil and Gas Lease Fund in his letter, his advice is consistent with the fiduciary obligation of the

179. To facilitate the State Treasurer’s ability to conduct a pre-audit review of expenditures from the Oil and Gas Lease Fund, the Attorney General recommended that the State Treasurer “call upon the Secretary of DER to identify the projects that he presently considers to be projects properly supported by [Oil and Gas Lease] Fund receipts.” He also found that the General Counsel’s recognition of “the need to correlate expenditures with projects” supported his recommendation. *Id.*, pages 3-4.

180. While preparation of a list of specific projects that conserve and maintain the natural resources of our State Forest and State Parks was an important step in accounting for expenditures of ERA trust funds in the Oil and Gas Lease Fund, a list of projects without explanation of how those projects achieved trust purposes proved inadequate.

181. In 2004, the Auditor General identified deficiencies in DCNR’s accounting for receipts into and expenditures from the Oil and Gas Lease Fund. The Auditor General found that while DCNR’s functions are narrower than its

Commonwealth, as trustee, under Pennsylvania trust law in that he advises that proceeds derived from the depletion of a trust asset (the natural resources of the State Forest) be dedicated to the physical enhancement of those assets, which is consistent with the trust purpose established by the ERA to conserve and maintain those trust assets.

predecessor, DER, “*the proper uses of the [Oil and Gas Lease] Fund remain limited and specific and are not as broad as DCNR’s overall responsibilities.*”⁷⁵

182. The Auditor General concluded that the Oil and Gas Lease Fund “should not be used by DCNR’s management to fill general administration, personnel and equipment needs that should or could be paid for through general fund appropriations or from other sources.” The Auditor General made the following two findings in his 2004 audit:

Finding No. 1: DCNR failed to exercise reasonable oversight concerning royalty payments to the Oil and Gas Lease Fund by neglecting to conduct audits and allowing a previously established program of contract audits to lapse during the past five years.

Finding No. 2: DCNR failed to ensure and document that purchases made with revenue from the Oil and Gas Lease Fund were for purposes allowed under [the Oil and Gas Lease Fund Act].

183. In response to the 2004 audit, the DCNR Secretary defended the agency spending but advised that DCNR was “receptive to the need to closely examine the direction and focus of our annual spending plans” and “will use this audit report as an opportunity to review the spending under this program to ensure

⁷⁵ *A Special Audit of: The Pennsylvania Department of Conservation and Natural Resources’ Oil and Gas Lease Fund Program*, August 2004, Auditor General (“2004 Audit”), page 23 (emphasis in original); incorporated as **Exhibit U**. The Auditor General’s review of expenditures from the Oil and Gas Lease Fund was based on the statutory limitations articulated in the 1991 Attorney General letter. As noted in the prior footnote, the Attorney General did not incorporate into his informal guidance the constitutional limitations imposed on expenditures of these ERA trust funds, but his guidance was consistent with those limitations. Likewise, the 2004 audit did not review the Oil and Gas Lease Fund expenditures based on these additional constitutional limitations, but the Auditor General findings are nonetheless also instructive.

expenditures comport with the letter and spirit of [the Oil and Gas Lease Fund Act].” 2004 Audit (Exhibit U), page 30.

184. Notwithstanding this pledge to closely examine the direction and spending of proceeds from commercial oil and gas development on our State Forest in northcentral Pennsylvania in 2004, the Commonwealth Trustees continued to prepare annual spending plans that simply listed proposed expenditures of disbursements from the Oil and Gas Lease Fund without any explanation as to how those expenditures were for ERA trust purposes, as detailed in the as-applied analysis of actual spending by the Commonwealth Trustees set forth below in Section IV.C.4. of this Petition.

185. In 2010, the Commonwealth Trustees began spending proceeds from commercial oil and gas development on the State Forest in northcentral Pennsylvania disbursed from the Oil and Gas Lease Fund for general government expenses unrelated to trust purposes under the ERA through transfers to the General Fund. The Commonwealth Trustees did not attempt to identify the specific projects associated with that spending or to account for specific expenditures of those funds. Likewise, when the Commonwealth Trustees began spending increased disbursements from the Oil and Gas Lease Fund for DCNR operations in place of revenue from the General Fund, they did not attempt to identify the

specific projects associated with that spending in their annual spending plans or to account for specific expenditures of those funds.

186. The as-applied analysis in Section IV.C.4. of this Petition of actual spending by the Commonwealth Trustees of ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations shows that the Commonwealth Trustees spent over \$637 million in ERA trust funds disbursed for DCNR operations for fiscal years 2008-2009 through 2021-2022 as administrative transfers not assigned to any specific expenditures the same as General Fund disbursements for DCNR operations to augment those General Fund disbursements, *i.e.*, without providing any accounting for how these ERA trust funds were spent. This \$637 million represents 78% of the total spending by the Commonwealth Trustees of almost \$818 million in ERA trust funds for DCNR operations through fiscal year 2021-2022. Thus, the Commonwealth Trustees cannot demonstrate that they spent any of these ERA trust funds for trust purposes.

187. The as-applied analyses in Section IV.C.4. of this Petition of the actual spending by the Commonwealth Trustees of ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations also shows that the Commonwealth Trustee assigned over \$180 million (22%) of the ERA trust funds disbursed for DCNR operations for fiscal years 2008-2009 through 2021-2022 to specific expenditures; however, they did not identify the activities carried out through these

specific expenditures. To the extent these specific expenditures were made to items proposed by the Commonwealth Trustees in their annual spending plans, most of those items were for the general administration of DCNR bureaus and executive offices or for activities carried out for purposes other than conserving and maintaining the natural resources of our State Forest or State Parks, or any other public natural resource. Thus, the Commonwealth Trustees cannot demonstrate that they spent any of these ERA trust funds for trust purposes.

188. The Commonwealth Trustees have continued to spend ERA trust funds from the Oil and Gas Lease Fund for DCNR operations in the same way they spent these trust funds for fiscal years 2008-2009 through 2021-22. By the end of this current fiscal year, the Commonwealth Trustees will have spent over \$1.1 billion in ERA trust funds for DCNR operations without any accounting to demonstrate that they have spent these trust funds for trust purposes and without accounting for or remedying the losses to our State Forest in northcentral Pennsylvania authorized to generate these funds, as set forth in Sections IV.B. of this Petition.

189. The Commonwealth Trustees also have spent \$250 million in ERA trust funds disbursed from the Oil and Gas Lease Fund since fiscal year 2013-2014 through transfers to the Marcellus Legacy Fund, as set forth in Section IV.C.5. of

this Petition, without accounting for their spending of these trust funds for trust purposes.

3. Governor's Repeated Approval of Executive Budgets to Spend ERA Trust Funds as General Fund Revenue Without Ensuring These Trust Funds Were Spent For Trust Purposes

190. The Governor has a critical role in the Commonwealth's annual budgetary process. The Governor has a constitutional duty to submit a proposed balanced operating budget to the General Assembly for the upcoming fiscal year, known as the Governor's Executive Budget, from which legislation is developed and enacted to appropriate funds to operate the state government. Pa. const. art. VIII, § 12.

191. Commonwealth agencies within the executive branch identify their funding needs to the Governor's budget staff as part of the development of the Governor's Executive Budget, but the Governor makes the final recommendations to the General Assembly on not only funding levels for the executive branch but for all state government. These recommendations are an important part of the annual budget process.

192. Since fiscal year 2009-2010, the Governor and his predecessors have recommended spending ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations to offset reductions in recommended spending from the

General Fund for these operations without accounting for the spending of these ERA trust funds for trust purposes.

193. By continuing to recommend the spending of ERA trust funds from the Oil and Gas Lease Fund for DCNR operations in the Governor’s Executive Budget each year and not requiring DCNR to identify specific projects to be carried out with these trust funds and explain how those projects would achieve trust purposes, including how they would remedy the losses to the State Forest in northcentral Pennsylvania that had been authorized to generate these funds, the Governor repeatedly authorized the spending of ERA trust funds for non-trust purposes and failed to spend available ERA trust funds to remedy the degradation, diminution and depletion of the natural resources and ecology of our State Forest in northcentral Pennsylvania, as set forth in Section IV.B. of this Petition.

4. As-Applied Analysis of Actual Spending of ERA Trust Funds Disbursed to DCNR from the Oil and Gas Lease Fund

a. No Accounting to Demonstrate Spending for Trust Purposes

194. In 2018, DCNR reported that from 2008-2016, a total of \$1,039,193,317 was spent from the Oil and Gas Lease Fund as follows:

General Fund Transfers	\$383,000,000	(37%)
Marcellus Legacy Fund Transfers	\$105,000,000	(10%)
DCNR Parks Operation	\$223,978,000	(22%)
DCNR Forestry Operations	\$173,315,000	(17%)
DCNR General Govt. Operations	\$47,135,050	(5%)

Other DCNR General Expenses ⁷⁶	\$93,614,195	(9%)
Land Purchases	\$6,992,968	(<1%)
Grants	\$6,158,676	(<1%)

2018 Shale Gas Report (Exhibit G), page 35.

195. As of the filing of this Petition, a total of over \$1.7 billion has been disbursed from the Oil and Gas Lease Fund since fiscal year 2008-2009, including the funds available for disbursements in fiscal year 2023-2024, with overall disbursements as follows:

General Fund Transfers	\$383,000,000	(22%)
Marcellus Legacy Fund Transfers	\$250,000,000	(14%)
DCNR Operations (total):	\$1,118,025,000	(64%)
DCNR State Forest Operations	\$201,252,000	(12%)
DCNR State Parks Operations	\$287,855,000	(17%)
DCNR General Operations	\$460,918,000	(26%)
DCNR Park/Forest Infrastructure Projects	\$56,000,000	(3%)
DCNR Park/Forest/Recreation Grants	\$112,000,000	(6%)

196. The transfers to the General Fund were authorized by Sections 1604-E and 1605-E of the Fiscal Code and Section 1912 of the Supplemental General Appropriations Act of 2009, which our Supreme Court held to be unconstitutional in *PEDF V*.⁷⁷

⁷⁶ DCNR itemized these general expenses by the following categories: vehicles & equipment; services; personnel services; IT equipment, software & hardware; aggregate, fuel, signs, uniforms, vehicle repair; supplies; printing, postage, freight; rent/lease; capital improvements; utilities, fixtures & other equipment; other; training; and travel.

⁷⁷ *PEDF V*, 255 A.3d at 314 (holding Section 1604-E and 1605-E of the Fiscal Code and Section 1912 of the Supplemental General Appropriations Act of 2009 to be facially unconstitutional); see Exhibit A for further details.

197. Details regarding the transfers to the Marcellus Legacy Fund are set forth below in Section IV.C.5. of this Petition.

198. A detailed summary of the disbursements from the Oil and Gas Lease Fund for DCNR operations, as reported in Governor's Executive Budgets 2010-2011 through 2024-2025, is incorporated in **Exhibit V**.⁷⁸ Copies of the statements of cash receipts into and disbursements from the Oil and Gas Lease Fund from the Governor's Executive Budgets are provided at Attachment A to this exhibit. Financial reports provided by the Commonwealth Trustees summarizing total expenditures of funds disbursed from the Oil and Gas Lease fund by major appropriation categories are also provided for reference in Attachment B of this exhibit.

199. The Commonwealth Trustees have provided PEDF with financial reports for fiscal years 2008-2009 through 2021-2022 that PEDF has also relied upon in developing the as-applied analyses of their actual spending of ERA trust funds disbursed from the Oil and Gas Lease Fund. They have provided financial reports on actual expenditures from the Oil and Gas Lease Fund by fiscal year, as well as a financial report presenting actual expenditures by DCNR offices and

⁷⁸ For purposes of this as-applied analysis, the \$56 million disbursed for infrastructure projects on State Parks and the State Forest and the \$112 million available for disbursement for park, forest and recreation grants are included as disbursements for DCNR General Government Operations in Exhibit V, Table 2, as explained in endnotes 32 and 34.

bureaus. PEDF has summarized these financial reports of actual expenditures in a set of tables incorporated as **Exhibit W**, which includes the following:

(a) Table 1 summarizes total expenditures from the Oil and Gas Lease Fund for each fiscal year through transfers (legislative transfers to the General Fund and Marcellus Legacy Fund and administrative transfers for DCNR operation) and through specific expenditures for major categories of DCNR operations (personnel, operations, fixed assets and grants), as reported in the financial reports provided by the Commonwealth Trustees, which are included as Attachment A to this exhibit.

(b) Table 2 provides a comparison of total expenditures from the Oil and Gas Lease Fund for DCNR operations by fiscal year reported by the Commonwealth Trustees in their financial reports of expenditures for each fiscal year (Attachment A) and their financial report of expenditures by DCNR office/bureau (Attachment B). This table compares the reporting of both total expenditures from the Oil and Gas Lease Fund for DCNR operations and total spending for DCNR operations through administrative transfers. These comparisons show that the reporting by the Commonwealth Trustees in their financial report of expenditures by DCNR office/bureau (Attachment B) is incomplete and includes the percentage of actual expenditures reported by DCNR office/bureau for both categories compared.

(c) Tables 3-5 provide various summaries of total administrative transfers and specific expenditures from the Oil and Gas Lease Fund for DCNR operations by DCNR office/bureau and fiscal year as reported in the financial report of expenditures by DCNR office/bureau (Attachment B).

(d) Attachment A includes the financial reports provided for each fiscal year summarizing the total expenditures from the Oil and Gas Lease Fund for major appropriation categories and for DCNR operation categories (personnel services, operational expenses, fixed asset expenses, grants, and statutory and administrative transfers).

(e) Attachment B includes the financial report of the actual expenditures from the Oil and Gas Lease Fund for DCNR operations by DCNR offices and bureaus.

(f) Attachments C and D include the full sets of financial reports on expenditures from the Oil and Gas Lease Fund provided by the Commonwealth Trustees for fiscal years 2010-2011 and 2020-2021, respectively. Expenditures for these two fiscal years are discussed in more detail in the as-applied analyses provided below and are representative of the financial reports provided for the other fiscal years.

200. The Commonwealth Trustees also provided a financial report on the revenue deposited into the Oil and Gas Lease Fund from FY2008-09 through FY2021-2022, which is incorporated as **Exhibit X**.

201. The Commonwealth Trustees also provided PEDF with plans prepared by DCNR and approved by the DCNR Secretary and Governor for each fiscal year from 2007-2008 through 2022-2023, except for fiscal year 2021-2022, listing activities and purchases that the Commonwealth Trustees proposed to fund with anticipated appropriations to DCNR from the Oil and Gas Lease Fund (“Annual Spending Plans”). These plans are summarized and incorporated in **Exhibit Y**.⁷⁹

202. From fiscal years 2008-2009 through 2023-2024, a combined total of almost \$2.5 billion has been disbursed to DCNR for its operations from the General Fund and the Oil and Gas Lease Fund. OGLF Disbursements for DCNR Operations, Table 1 (Exhibit V-001). Of these total disbursements for DCNR operations, over \$1.1 billion (approximately 45%) has been disbursed from the Oil and Gas Lease Fund. *Id.*

203. The almost \$1.7 billion deposited into the Oil and Gas Lease Fund from fiscal years 2008-2009 through 2023-24 are all ERA trust assets that remain

⁷⁹ The proposed expenditures in the Annual Spending Plans for the DCNR Bureaus of Forestry, State Parks, Facility Design and Construction, and Geologic Survey are summarized in Table 1 of Exhibit Y. The proposed expenditures for the DCNR Secretary/Executive Offices, Bureau of Recreation and Conservation, General Administration, and other expenditures are summarized in Table 2 of Exhibit Y. The Annual Spending Plans provided by the Commonwealth Trustees are also included in Exhibit Y following Tables 1 and 2.

part of the corpus of the ERA trust that must be spent solely for ERA trust purposes.⁸⁰ Approximately 99% of the deposits reported by the Commonwealth Trustees through September 23, 2022 (Exhibit X) were direct payments made pursuant to State Forest oil and gas leases in northcentral Pennsylvania (*i.e.*, royalties, rents, bonus, and interest penalties). The remaining deposits included interest and investment income, payments under oil and gas leases on other Commonwealth-owned lands, and money from the sale of vehicles purchased using money from the Oil and Gas Lease Fund.⁸¹

204. The Commonwealth Trustees began to increase spending of ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations in fiscal year 2008-2009 and continued to increase such spending through fiscal year 2014-2015 in proportion to decreases in General Fund disbursements made for DCNR operations. OGLF Disbursements for DCNR Operations, Table 1 (Exhibit V-001). By fiscal year 2014-2015, approximately 94% of the disbursements for DCNR

⁸⁰ The Commonwealth Trustees report deposits of almost \$1.5 million into the Oil and Gas Lease Fund in their financial report entitled Oil and Gas Revenue for FY2008-09 through FY2022-23 (Exhibit X). The amount reported for fiscal year 2022-2023 included deposits made as of September 22, 2023. In the Governor’s Executive Budget 2024-2025, page H-86 (Oil and Gas Lease Fund), the Commonwealth Trustees report that the total receipts deposited into the Oil and Gas Lease Fund for fiscal years 2022-23 and 2023-24 were \$180,339,000 and \$83,233,000, respectively. Thus, the Commonwealth Trustees have reported total receipts of \$1,697,796,146.50 deposited into the Oil and Gas Lease Fund from fiscal year 2008-2009 through fiscal year 2023-2024.

⁸¹ Note that the category “Act 147 Lease Pmt” in Exhibit X refers to the Indigenous Mineral Resources Development Act, act of October 8, 2012, P.L. 1194, No. 147 (Act 147 of 2012).

operations were ERA trust funds disbursed from the Oil and Gas Lease Fund. Since fiscal year 2014-2015, the actual disbursements of ERA trust funds appropriated from the Oil and Gas Lease Fund for DCNR operations have generally fluctuated with corresponding fluctuations in actual disbursements from the General Fund for DCNR operations.

205. Because General Fund disbursements for DCNR operations are unrestricted and can be spent for any lawful costs incurred by DCNR to carry out its statutory powers and duties, the Commonwealth Trustees do not need to account for specific expenditures paid with disbursements from the General Fund.

206. The Commonwealth Trustees, as established by their financial reports, spent over \$637 million of the ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations from fiscal years 2008-2009 through 2021-2022 (approximately 78%) without assigning these disbursements to specific expenditures, which is the same way they spent General Fund disbursements for DCNR operations.⁸²

207. The Commonwealth Trustees, as established by their financial reports, spent the remaining ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations from fiscal years 2008-2009 through 2021-2022—more than

⁸² Exhibit W, Table 1 (*Transfers from the Oil and Gas Lease Fund - Transfers for DCNR Operations* (Exhibit W-001)).

\$180 million (approximately 22% of the total amount disbursed)—by assigning these disbursements to specific expenditures for DCNR personnel, operations and fixed assets.⁸³ However, the Commonwealth Trustees have not reported the specific activities funded with these specific expenditures or provided any evidence that they can identify the specific activities funded with these specific expenditures. Thus, these specific expenditures, like the administrative transfers, are also spent like disbursements from the General Fund without consideration of ERA trust purposes.

208. The Commonwealth Trustees contend that the specific expenditures from the Oil and Gas Lease Fund for DCNR operations were spent for activities and purchases proposed in their Annual Spending Plans (Exhibit Y). However, the Commonwealth Trustees do not identify in their financial reports the extent to which their reported specific expenditures were made to fund specific activities proposed in their Annual Spending Plans.

209. Even if the Commonwealth Trustees can link the reported specific expenditures to activities and purchases proposed in the Annual Spending Plans, these plans do not explain how the listed activities and purchases will conserve and maintain the natural resources of our State Forest or State Parks, or other public

⁸³ Exhibit W, Table 1 (*Expenditures from the Oil and Gas Lease Fund for Specific DCNR Operations - Personnel, Operations, Fixed Assets, and Grants* (Exhibit W-001)).

natural resources, *i.e.*, are consistent with the purpose of the ERA trust. In many instances, the proposed activities and purchases in these plans are to administer the multiple authorized uses of the State Forest that have caused and continue to cause degradation, diminution and depletion of the natural resources and ecology of our State Forest, particularly the unique high value State Forest trust assets in northcentral Pennsylvania. The costs of administering these uses for non-trust purposes are not costs to administer the ERA trust and must be paid from unrestricted funding sources, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

210. In other instances, the activities and purchases proposed by the Commonwealth Trustees in their Annual Spending Plans are for the administration of programs statutorily authorized for purposes other than conserving and maintaining a public natural resource, such as programs that promote and support the use and development of natural resources on both public and private lands, and statewide programs to promote and support outdoor recreational use of public natural resources. Again, the costs incurred to administer these programs are not reasonable costs incurred to administer the ERA trust and must be paid from unrestricted funding sources, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

211. Based on the financial reports and Annual Spending Plans prepared by the Commonwealth Trustees and reasonable inferences that can be drawn from them, the Commonwealth Trustees spent over \$1.1 billion disbursed from the Oil and Gas Lease Fund for DCNR operations in the same manner that they spent General Fund disbursements—primarily through administrative transfers not assigned to any specific expenditures and through specific expenditures not assigned to any specific activity. The Commonwealth Trustees have provided no evidence that they spent any of these ERA trust funds for ERA trust purposes. Their reporting demonstrates that they spent these ERA trust funds to augment decreased General Fund disbursements without consideration of their fiduciary obligation to act toward the corpus of the trust with prudence, loyalty and impartiality and without consideration of their fundamental duty as trustees to preserve the State Forest trust corpus in northcentral Pennsylvania by remedying the losses to these trust assets caused by the existing multiple uses of the forest that have been authorized, including the losses caused by the commercial oil and gas development authorized to generate these trust funds.

212. The above summary of the as-applied analysis of actual overall spending by the Commonwealth Trustees of ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations is supported by the detailed as-applied analyses of actual spending for specific DCNR offices and bureaus below.

b. Actual Spending for DCNR State Forest Operations

213. Disbursement from the Oil and Gas Lease Fund for DCNR operations have been authorized through separate appropriation categories: DCNR State Forests Operations, DCNR State Parks Operations, and DCNR General Operations.⁸⁴ As-applied analyses of each category of DCNR operations are presented below starting with this analysis of actual spending for DCNR State Forest Operations. The disbursements from the Oil and Gas Lease Fund appropriated as State Forest Operations are spent by the DCNR Bureau of Forestry.

214. However, the Commonwealth Trustees have also spent disbursements from the Oil and Gas Lease Fund appropriated as DCNR General Operations for expenditures by the Bureau of Forestry. The Commonwealth Trustees have reported in the Governor's Executive Budgets that a total of approximately \$155 million has been disbursed from the Oil and Gas Lease Fund for State Forest Operations from 2008-2009 through 2021-2022.⁸⁵ However, in their financial report of actual spending by DCNR office/bureau (Exhibit W, Attachment B), the

⁸⁴ During some fiscal years, disbursements from the Oil and Gas Lease Fund for DCNR operations were reported only as general operations or general government operations because the specific statutes authorizing these disbursements were general in nature. As explained in the endnotes in Exhibit V, these disbursements have been characterized in different ways in the Governor's annual executive budgets. When disbursements are only reported as general operations or general government operations, these disbursements are reported as part of DCNR General Operations for the purposes of this as-applied analysis.

⁸⁵ Exhibit V, Table 2 (*Oil and Gas Lease Fund Disbursement Details, DCNR State Forest Operations*) (Exhibit V-002). The total disbursements for fiscal years 2008-2009 through 2021-2022 are \$155,519,000.

Commonwealth Trustees have reported actual spending by the DCNR Bureau of Forestry from the Oil and Gas Lease Fund for this same period of almost \$251 million.⁸⁶

215. Thus, the Commonwealth Trustees have spent at least \$96 million appropriated and disbursed from the Oil and Gas Lease Fund from fiscal years 2008-2009 through 2021-22 as DCNR General Operations for expenditures made by the DCNR Bureau of Forestry. Actual spending of disbursements from the Oil and Gas Lease Fund appropriated as DCNR General Operations may be significantly higher given that the Commonwealth Trustees have significantly underreported total expenditures from the Oil and Gas Lease Fund by DCNR offices and bureaus in the financial report they provided. Most of this underreporting is attributable to spending through administrative transfers.

216. In their financial report of actual expenditures from the Oil and Gas Lease fund for DCNR offices and bureaus for fiscal years 2008-2009 through 2021-2022 (Exhibit W, Attachment B), the Commonwealth Trustees have underreported the total actual expenditures reported in their other financial reports

⁸⁶ Exhibit W, Table 3 (*Total OGLF Expenditures Reported in Attachment B – Bureau of Forestry*) (Exhibit W-003) and Table 4 (*Bureau of Forestry*) (Exhibit W-004).

for this same period (Exhibit W, Attachment A) by over \$300 million (63%).⁸⁷ They have also underreported administrative transfers for DCNR operations during this same period by over \$278 million (56%).⁸⁸ While this underreporting has made the as-applied analysis of actual spending by the Commonwealth Trustees for expenditures by specific DCNR offices and bureaus more complicated, PEDF has addressed these discrepancies in the as-applied analyses set forth in this Petition.

217. The DCNR Bureau of Forestry incurs significant costs to administer the multiple authorized uses of the natural resources of our State Forest in northcentral Pennsylvania that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest, as set forth in Section IV.B. of this Petition, including commercial oil and gas development, commercial natural gas storage, commercial rights-of-way, snowmobiles and ATV recreational riding, private camp leases, commercial timber harvesting, and the extensive roads and other infrastructure necessary to support these and other uses of the forest for non-trust purposes. The costs incurred for activities to administer these multiple uses of our State Forest for non-trust purposes, including costs for staff, offices, vehicles, equipment, supplies, services

⁸⁷ Exhibit W, Table 2 (*Total OGLF Expenditures for DCNR Operations - Total*). Note that this underreporting has varied by fiscal year with full reporting in fiscal years 2008-2009 through 2010-2011 and only 24-25% reporting in fiscal years 2020-2021 and 2021-2022.

⁸⁸ Exhibit W, Table 2 (*Total OGLF Administrative Transfers for DCNR Operations - Total*). Note that this underreporting has varied by fiscal year with full reporting in fiscal years 2008-2009 through 2012-2013 and only 12-13% reporting in fiscal years 2020-2021 and 2021-2022.

and other expenses, are not reasonable costs incurred to administer the ERA trust and must be paid from unrestricted funding sources, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

218. However, the Commonwealth Trustees have reported spending a total of almost \$251 million in ERA trust funds from the Oil and Gas Lease Fund for costs incurred by the Bureau of Forestry for fiscal years 2008-2009 through 2021-2022,⁸⁹ which include the significant costs incurred by the bureau to administer the multiple authorized uses of the State Forest for non-trust purposes, without accounting for the activities funded through these expenditures. Approximately 67% of the \$251 million spent for costs incurred by the Bureau of Forestry (over \$167 million) are reported as administrative transfers not assigned to any specific expenditures.⁹⁰ The remaining 33% of these ERA trust funds (almost \$84 million) have been reported for specific expenditures not assigned to any specific activity.⁹¹

219. However, as explained above, the Commonwealth Trustees' financial report on actual expenditures by DCNR office/bureau (Exhibit W, Attachment B) only reported on 63% of the total expenditures from the Oil and Gas Lease Fund for DCNR operations reported during this same period (Exhibit W, Attachment A)

⁸⁹ Exhibit W, Table 3 (*Total OGLF Expenditures Reported in Attachment B – Bureau of Forestry*) (Exhibit W-003).

⁹⁰ Exhibit W, Table 4 (*Administrative Transfers - Bureau of Forestry*) (Exhibit W-004).

⁹¹ Exhibit W, Table 4 (*Specific Expenditures - Bureau of Forestry*) (Exhibit W-004).

and most of the underreporting is attributable to the Commonwealth Trustees' failure to fully report administrative transfers.⁹² Thus, the actual percentage of ERA trust funds spent by the Bureau of Forestry through administrative transfers is likely to be significantly higher.

220. In further support of the above analysis of overall actual expenditures from the Oil and Gas Lease Fund by the Bureau of Forestry, specific as-applied analyses are set forth below for fiscal years 2010-2011 and 2020-2021. The analyses for these two fiscal years are representative of the actual spending during other fiscal years since 2008-2009. These additional as-applied analyses further support the overall conclusions that the Commonwealth Trustees have spent ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations the same as General Fund disbursements to augment their General Fund spending without providing any evidence that they spent these ERA trust funds for trust purposes.

i. Fiscal Year 2010-2011

221. In fiscal year 2010-2011, the most recent fiscal year in which the Commonwealth Trustees have reported 100% of their expenditures of ERA trust funds by DCNR office/bureau, the Commonwealth Trustees have reported spending \$10,827,000 from the Oil and Gas Lease Fund for costs incurred by the

⁹² Exhibit W, Table 2 (Exhibit W-002).

Bureau of Forestry through administrative transfers not assigned to any specific expenditures (88% of the total expenditures assigned to this bureau) and almost \$1,468,000 (12%) through specific expenditures.⁹³ The percentage of expenditures made through administrative transfers during this fiscal year (88%) supports the likelihood that actual overall spending for Bureau of Forestry through administrative transfers is significantly higher than the 67% reported by the Commonwealth Trustees in their financial report of expenditures by DCNR office/bureau for fiscal years 2008-2009 through 2021-2022.

222. The Commonwealth Trustees identified items that they proposed to fund with anticipated appropriations from the Oil and Gas Lease Fund for fiscal year 2010-2011 in their Annual Spending Plan for this fiscal year.⁹⁴ The following items were listed for or appear to be related to activities carried out by the Bureau of Forestry: Transfer to Forestry (\$10,827,000); Forestry PRR⁹⁵ for 12 positions (\$1,340,000); additional 15 positions to PRR (\$1,106,250); Oil & Gas Program

⁹³ Exhibit W, Table 4 (*Bureau of Forestry - Fiscal Year 2010*) (Exhibit W-004) and Attachment B (Exhibit W-040). Note that these expenditures have been highlighted in Table 4.

⁹⁴ Exhibit Y, Table 1 (*Bureau of Forestry – Fiscal Year 2010-2011*) (Exhibit Y-002) and Annual Spending Plan for fiscal year 2010-2011 (Exhibit Y-020).

⁹⁵ A Program Revision Request (PRR) is submitted to support new programs or major changes in existing programs and reflects guidance provided by the Governor’s Annual Program Policy Guidance, results obtained from special analytic studies, and needs or demands considered relevant by the Governor. *The Budget Process in Pennsylvania*, Appendix 1 (Common terms used in Pennsylvania state fiscal affairs), available at:

https://www.budget.pa.gov/Publications%20and%20Reports/Pages/The_Budget_Process_in_PA.aspx

Administration (\$1,100,000); PNDI⁹⁶ (\$1,600,000); Gas Monitoring in State Forest Land (\$1,500,000); State Forestry Operations and Equipment (\$1,500,000). The plan also lists several other items not assigned to any specific office or bureau that could relate to expenditures by the Bureau of Forestry.

223. The first item listed in the Annual Spending Plan (Transfer to Forestry - \$10,827,000) is consistent with the administrative transfer to the Bureau of Forestry reported by the Commonwealth Trustees for this fiscal year. These ERA trust funds were spent without assigning them to any specific expenditures and were used to augment disbursements from the General Fund for general costs incurred to administer the Bureau of Forestry.

224. The remaining proposed expenditures identified in the Annual Spending Plan (\$8,146,250) far exceed the actual specific expenditures reported by the Commonwealth Trustees for the bureau in fiscal year 2010-2011 (\$1,468,000). The Commonwealth Trustees did not report the specific activities funded through these specific expenditures.⁹⁷

225. Neither the financial reports nor the Annual Spending Plan provided by the Commonwealth Trustees for fiscal year 2010-2011 provides any evidence

⁹⁶ The Pennsylvania Natural Diversity Inventory (PNDI) is administered by the Bureau of Forestry to provide information on endangered, threatened and rare species and their habitats for environmental review of development projects; available at: <https://conservationexplorer.dcnr.pa.gov/content/environmental-review>.

⁹⁷ Exhibit W, Attachment C (all financial reports provided by the Commonwealth Trustees for fiscal year 2010-2011).

that the actual administrative transfers or specific expenditures of ERA trust funds for the Bureau of Forestry for this fiscal year were spent for ERA trust purposes.

226. Even if the Commonwealth Trustees can provide additional information to show that their specific expenditures were related to proposed items listed in the Annual Spending Plan, most if not all those items are to administer authorized commercial oil and gas development on the State Forest in northcentral Pennsylvania that has caused and continues to cause the degradation, diminution and depletion of the natural resources and ecology of the forest, which is a non-trust purpose. Thus, costs incurred for these activities are not reasonable costs of administering the ERA trust that must be paid from unrestricted funding sources, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

227. Based on the above as-applied analysis of the Commonwealth Trustees' actual expenditures of ERA trust funds from the Oil and Gas Lease Fund for costs incurred by the Bureau of Forestry in fiscal year 2010-2011, the Commonwealth Trustees spent \$10,827,000 through administrative transfers and almost \$1,468,000 in specific expenditures the same as General Fund disbursements for costs incurred by the Bureau of Forestry to augment those General Fund disbursements without providing any evidence that these ERA trust funds were spent for trust purposes.

ii. Fiscal Year 2020-2021

228. In fiscal year 2020-2021—the most recent fiscal year in which the Commonwealth Trustees provided both financial reports and an Annual Spending Plan, the Commonwealth Trustees do not report any spending from the Oil and Gas Lease Fund by the Bureau of Forestry through administrative transfers in their financial report of expenditures by DCNR office/bureau (Exhibit W, Attachment B). They only report specific expenditures of almost \$4,272,000 from the Oil and Gas Lease Fund by the Bureau of Forestry for this fiscal year.⁹⁸

229. However, the Commonwealth Trustees have reported in the Governor’s Executive Budget for 2022-2023 that they disbursed a total of \$17 million from the Oil and Gas Lease Fund for State Forests Operations for fiscal year 2020-2021.⁹⁹ Thus, provided that the Commonwealth Trustees correctly reported specific expenditures of almost \$4,272,000 for fiscal year 2020-2021 by the Bureau of Forestry in their financial report of expenditures by bureau/office, the remainder of the \$17 million actually disbursed for State Forest Operations for this fiscal year (\$12,728,000) was likely spent through administrative transfers not assigned to any specific expenditure.

⁹⁸ Exhibit W, Table 4 (*Bureau of Forestry – Fiscal Year 2020*) (Exhibit W-004) and Attachment B (Exhibit W-070 – W-071). Note that total actual expenditures reported for fiscal year 2020-2021 are highlighted in Table 4.

⁹⁹ Exhibit V, Table 2 (*Oil and Gas Lease Fund Disbursement Details - DCNR State Forests Operations, Fiscal Year 2020-21*) (Exhibit V-002), endnote 28 (Exhibit V-010) and Attachment A (Exhibit V-027).

230. In further support of spending through administrative transfers for costs incurred by the Bureau of Forestry, the Commonwealth Trustees reported total administrative transfers of \$38,823,000 from the Oil and Gas Lease Fund for DCNR operations in their financial reports for fiscal year 2020-2021.¹⁰⁰ However, they only reported total expenditures through administrative transfers for this fiscal year of \$4,823,000 in their financial report of expenditures by DCNR office/bureau,¹⁰¹ which means they underreported \$34 million in administrative transfers for this fiscal year in their financial report of expenditures by DCNR office/bureau. At least \$12,728,000 of that underreporting can be attributed to administrative transfers for costs incurred by the Bureau of Forestry.

231. The Commonwealth Trustees have also reported in the Governor's Executive Budget the disbursement of \$11,644,000 from the Oil and Gas Lease Fund for DCNR General Government Operations in fiscal year 2020-2021.¹⁰² Most of these disbursements also were likely spent as part of the \$38,823,000 attributed to administrative transfers during this fiscal year, some of which may have been for costs incurred by the Bureau of Forestry.

¹⁰⁰ Exhibit W, Table 1 (*Transfers for DCNR Operations – Fiscal Year 2020*) (Exhibit W-001), Attachment A (Exhibit W-032) and Attachment C (Exhibit W-088) (these administrative transfers are labelled “Misc Exp Transfers – Not assigned” in the financial report provided by the Commonwealth Trustees).

¹⁰¹ Exhibit W, Table 2 (*Total OGLF Administrative Transfers, Fiscal Year 2020*) (Exhibit W-002) and Attachment B (Exhibit W-029 – Exhibit W-071).

¹⁰² Exhibit V, Table 2 (*Oil and Gas Lease Fund Disbursement Details – DCNR General Gov. Operations – Fiscal Year 2020-21*) (Exhibit V.002).

232. Regarding the reported specific expenditures of almost \$4,272,000 from the Oil and Gas Lease Fund for costs incurred by the Bureau of Forestry in fiscal year 2020-2021, the Commonwealth Trustees did not identify in their financial reports the specific activities carried out with these specific expenditures.¹⁰³

233. In their Annual Spending Plan for 2020-2021, the Commonwealth Trustees proposed spending from the Oil and Gas Lease Fund for a list of Forestry items totaling \$6,234,694.¹⁰⁴ The largest item of proposed spending by the Bureau of Forestry in this plan is \$1,774,000 for “BOF, 8180-Minerals Personnel”. No explanation of this item is provided in the plan, but the Commonwealth Trustees appear to propose spending for staff to administer the commercial oil and gas development authorized on the State Forest in northcentral Pennsylvania. Costs incurred to administer this program are for a non-trust purpose because this use has caused and continues to cause degradation, diminution and depletion of these State Forest trust assets, as set forth in Section IV.B. of this Petition. Thus, costs incurred for this item are not reasonable cost of administering the ERA trust and must be

¹⁰³ Exhibit W, Attachment D (all financial reports provided by the Commonwealth Trustees for fiscal year 2020-2021).

¹⁰⁴ Exhibit Y, Table 1 (*Bureau of Forestry – Fiscal Year 2020-2021*) (Exhibit Y-007-008) and Annual Spending Plan for 2020-2021, Forestry (Exhibit Y-063).

paid with unrestricted sources of funding, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

234. The second largest expenditure from the Oil and Gas Fund proposed by the Commonwealth Trustees for the Bureau of Forestry in the Annual Spending Plan for 2020-2021 is \$1,700,000 for “BOF, Ops/Rec-Vehicles/Equipment”. No explanation of this item is provided in the Annual Spending Plan, but the Commonwealth Trustees appear to propose spending to purchase vehicles and equipment for general bureau operations and for the administration of recreational use of the forest. Proposed spending for general bureau operations are not reasonable costs of administering the ERA trust given the extensive activities carried out by the bureau to administer the multiple authorized uses of the State Forest that have caused and continue to cause the degradation, diminution, and depletion of the natural resources and ecology of the forest, as set forth in Section IV.B. of this Petition, including commercial oil and gas development, commercial natural gas storage, commercial rights-of-way, snowmobile and ATV recreational riding, private camp leases, commercial timber harvesting and the roads and other infrastructure needed to support these and other uses, vehicle and equipment. Likewise, proposed spending to administer general recreational use of the forest is not a reasonable cost of administering the ERA trust given that this use and the extensive infrastructure associated with it causes the degradation, diminution and

depletion of the natural resources and ecology of the forest. The same is true for all other items listed for the Bureau of Forestry in the Annual Spending Plan for fiscal year 2020-2021. Thus, costs for these items must be paid with unrestricted sources of funding, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

235. Based on the above as-applied analysis of the Commonwealth Trustees' actual expenditures of ERA trust funds from the Oil and Gas Lease Fund for costs incurred by the Bureau of Forestry in fiscal year 2020-2021, the Commonwealth Trustees spent at least \$12.7 million (probably more) through administrative transfers and approximately \$4,272,000 in specific expenditures the same as General Fund disbursements for costs incurred by the Bureau of Forestry to augment those General Fund disbursements without providing any evidence that these expenditures of ERA trust funds were for trust purposes.

c. Actual Spending for DCNR State Parks Operations

236. Disbursements from the Oil and Gas Lease Fund appropriated as State Parks Operations are spent by the DNCR Bureau of State Parks.¹⁰⁵

¹⁰⁵ As discussed above in the as-applied analysis of spending for costs incurred by the Bureau of Forestry, the Commonwealth Trustees may have also expended funds appropriated for DCNR General Operations for costs incurred by the Bureau of Parks, as they have done for costs incurred by the Bureau of Forestry. However, unlike their reporting on spending for costs incurred for the Bureau of Forestry, the spending reported for costs incurred by the Bureau of State Parks does not appear to exceed the amount disbursed from the Oil and Gas Lease Fund through appropriations for State Park Operations.

237. DCNR has broad powers and duties to administer our State Parks under the Conservation and Natural Resources Act, including many of the same powers granted to authorize uses of parks that are exist for our State Forest and powers to authorize the development of extensive facilities and infrastructure on our State Parks to promote and support outdoor recreational uses. *See, e.g.*, CNRA § 303, 71 P.S. § 1340.303.

238. The extensive facilities and infrastructure that has been constructed, operated and maintained on our State Parks to promote and support recreational uses have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of our parks, including the types of losses to trust assets set forth in Section IV.B. of this Petition.

239. Costs incurred to administer the extensive facilities and infrastructure constructed, operated and maintained on our State Parks and the recreational use of these facilities are costs incurred for non-trust purposes and must be paid with unrestricted sources of funding, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

240. The Commonwealth Trustees have reported in the Governor's Executive Budgets that almost \$288 million has been disbursed from the Oil and Gas Lease Fund based on appropriations for State Park Operations since fiscal year

2008-2009.¹⁰⁶ The disbursements for fiscal years 2008-2009 through 2021-2022, which is the period that they have reported on expenditures by DCNR offices and bureaus, have been reported as over \$235 million.

241. In their financial report on expenditures by DCNR office/bureau (Exhibit W, Attachment B), they only reported \$81 million in actual expenditures for costs incurred by the Bureau of State Parks for these fiscal years, thus underreporting actual spending for such costs by approximately \$154 million.¹⁰⁷ Most of this underreporting is attributable to spending for costs incurred by the Bureau of State Park through administrative transfers that do not assign spending to any specific expenditure, which is the same way revenue from the General Fund is spent.

242. Of the \$81 million in actual expenditures that the Commonwealth Trustees have reported for the Bureau of State Parks, they have reported that 60% of these expenditures (almost \$49 million) have been administrative transfers not

¹⁰⁶ Exhibit V, Table 2 (*Oil and Gas Lease Fund Disbursement Details – DCNR State Parks Operations*) (Exhibit W-002). This spending for State Parks Operations includes appropriations currently available for disbursement in fiscal year 2023-2024.

¹⁰⁷ Exhibit W, Table 3 (*Total OGLF Expenditures Reported in Attachment B - Bureau of State Parks*) (Exhibit W-003). As discussed in the as-applied analysis of spending for costs incurred by the Bureau of Forest, the Commonwealth Trustees have underreported total expenditures in Exhibit W, Attachment B by over \$300 million and most of this underreporting is attributable to spending through administrative transfers (*see* Exhibit W, Table 2). The underreporting of \$154 million in expenditures for State Parks is a significant portion of this underreporting.

assigned to any specific expenditure.¹⁰⁸ Assuming that the \$154 million that the Commonwealth Trustees underreported has also been also spent through administrative transfers, this percentage increases to 86%, which is consistent with the Commonwealth Trustees reported spending for the Bureau of State Parks in fiscal year 2010-2011 set forth below (a fiscal year when they fully reported on spending by DCNR bureau/office).

243. In further support of the above analysis of overall actual expenditures from the Oil and Gas Lease Fund for State Park Operations, specific as-applied analyses are set forth below for fiscal years 2010-2011 and 2020-2021. The analyses for these two fiscal years are representative of the actual spending during other fiscal years since 2008-2009. These additional as-applied analyses further support the overall conclusions that the Commonwealth Trustees have spent ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations the same as General Fund disbursements to augment their General Fund spending without providing any evidence that they spent these ERA trust funds for trust purposes.

i. Fiscal Year 2010-2011

244. In fiscal year 2010-2011, the most recent fiscal year in which the Commonwealth Trustees report 100% of their expenditures from the Oil and Gas

¹⁰⁸ Exhibit W, Table 4 (*Administrative Transfers - Bureau of State Parks*) (Exhibit W-004).

Lease Fund by DCNR office/bureau, the Commonwealth Trustees reported spending \$5,748,000 from the Oil and Gas Lease Fund for costs incurred by the Bureau of State Parks through administrative transfers not assigned to any specific expenditures (83% of the total expenditures assigned to this bureau) and over \$1,209,000 (17%) through specific expenditures.¹⁰⁹ The Commonwealth Trustees do not report on the specific activities funded with the specific expenditures for costs incurred by the Bureau of State Parks.¹¹⁰

245. In their Annual Spending Plan for fiscal year 2010-2011, the Commonwealth Trustees proposed spending from the Oil and Gas Lease Fund for the Bureau of State Parks on the following items:¹¹¹ Transfer to Parks (\$5,748,000) and State Park Operations and Equipment (\$1,500,000). The plan also lists several other items not assigned to any specific office or bureau that could relate to expenditures by the Bureau of State Parks.

246. The first item listed in the Annual Spending Plan for State Parks (Transfer to Parks - \$5,748,000) is consistent with the administrative transfers for expenditures by the Bureau of State Parks reported by the Commonwealth Trustees

¹⁰⁹ Exhibit W, Table 4 (*Bureau of State Parks*) (Exhibit W-004) and Attachment B (Exhibit W-039 – W-040). These expenditures are identified under “Bur Directors Office” in Attachment B, which are expenditures for the Bureau of State Parks that are not assigned to a specific State Park Region.

¹¹⁰ Exhibit W, Attachment C (all financial reports provided by the Commonwealth Trustees for fiscal year 2010-2011).

¹¹¹ Exhibit Y, Table 1 (*Bureau of State Parks – Fiscal Year 2010-2011*) (Exhibit Y-002) and Annual Spending Plan for fiscal year 2010-2011 (Exhibit Y-020).

for this fiscal year.¹¹² These administrative transfers are not assigned to any specific expenditures and are spent in the same manner that revenue from the General Fund is spent.

247. The second item listed in the Annual Spending Plan for State Parks (State Park Operations and Equipment - \$1,500,000) exceeds the specific expenditures from the Oil and Gas Lease Fund reported for the Bureau of State Parks (\$1,209,000). The Commonwealth Trustees provide no explanation of this item in their Annual Spending Plan, but they appear to propose spending for costs incurred for general State Park operations and the purchase of equipment to support those general operations. Costs incurred for the general administration of our State Parks are not reasonable costs of administering the ERA trust given the extensive facilities and infrastructure constructed, operated and maintained on our State Parks to promote and support recreational uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of our parks, including the types of losses of trust assets set forth in Section IV.B. of this Petition. Costs incurred for the general administration of State Parks must be paid with unrestricted sources of funding, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

¹¹² Exhibit W, Table 4 (*Administrative Transfers – Bureau of State Parks*) (Exhibit W-004).

248. Based on the above as-applied analysis of the Commonwealth Trustees' actual expenditures of ERA trust funds from the Oil and Gas Lease Fund for costs incurred by the Bureau of State Parks in fiscal year 2010-2011, the Commonwealth Trustees spent \$5,745,000 through administrative transfers and \$1,209,000 in specific expenditures the same as General Fund disbursements for State Parks Operations to augment those General Fund disbursements without providing any evidence that these ERA trust funds were spent for trust purposes.

ii. Fiscal Year 2020-2021

249. In fiscal year 2020-2021—the most recent fiscal year in which the Commonwealth Trustees provided both financial reports and an Annual Spending Plan, the Commonwealth Trustees do not report any spending for the Bureau of State Parks through administrative transfers. They report specific expenditures of over \$1,070,000 from the Oil and Gas Lease Fund for the Bureau of State Parks.¹¹³

250. However, the Commonwealth Trustees reported total actual disbursements of \$17 million from the Oil and Gas Lease Fund for State Parks Operations in fiscal year 2020-2021 in the Governor's Executive Budget 2022-

¹¹³ Exhibit W, Table 4 (*Bureau of State Parks – Fiscal Year 2020*) (Exhibit W-004) and Attachment B (Exhibit W-070). The total specific expenditures in Table 4 are the sum or expenditures for Bur Directors Office, Park Region #1, Park Region #2, Park Region #3 and Park Region #4 in Attachment B.

2023.¹¹⁴ Thus, provided that the Commonwealth Trustees correctly reported the specific expenditures for the Bureau of State Parks as approximately \$1,070,000 for fiscal year 2020-2021, the Commonwealth Trustees likely spent the remainder of the \$17 million disbursed for State Parks Operations this fiscal year (almost \$16 million) through administrative transfers.

251. As discussed in the as-applied analysis of spending by the Bureau of Forestry for fiscal year 2020-2021, the Commonwealth Trustees also reported total administrative transfers of \$38,823,000 from the Oil and Gas Lease Fund for DCNR operations in fiscal year 2020-2021.¹¹⁵ However, in their financial report of expenditures identified by DCNR office/bureau, the Commonwealth Trustees only report total administrative transfers of \$4,823,000 for this fiscal year, which means they underreported spending through administrative transfers by \$34 million for this fiscal year.¹¹⁶ Approximately \$16 million of this underreporting can be attributed to administrative transfers for the Bureau of State. This underreporting, along with the underreporting for the Bureau of Forestry for this same fiscal year

¹¹⁴ Exhibit V, Table 2 (*Oil and Gas Lease Fund Disbursement Details - DCNR State Parks Operations, Fiscal Year 2020-2021*) (Exhibit V-002), Attachment A (Exhibit V-027).

¹¹⁵ Exhibit W, Table 1 (*Transfers for DCNR Operations*) (Exhibit W-001), Attachment A (Exhibit W-032) and Attachment D (Exhibit W-088) (these administrative transfers are labeled “Misc Exp Transfers – Not assigned” in the financial report provided by the Commonwealth Trustees).

¹¹⁶ Exhibit W, Table 2 (*Total OGLF Administrative Transfers for DCNR Operations – Fiscal Year 2020*) (Exhibit W-002).

(\$12,728,000) accounts for a significant portion of the total underreporting of \$34 million.

252. Regarding the specific expenditure of \$1,070,000 from the Oil and Gas Lease Fund reported by the Commonwealth Trustees for the Bureau of State Parks in fiscal year 2020-2021, the Commonwealth Trustees proposes spending for Parks in their Annual Spending Plan for this fiscal year on a list of items totaling \$2,075,000.¹¹⁷ The financial reports provided by the Commonwealth Trustees did not identify the specific activities that were funded by these specific expenditures.¹¹⁸

253. The largest proposed expenditures for the Bureau of State Parks in the Annual Spending Plan for fiscal year 2020-2021 is \$850,000 for “BSP, Vehicles and Heavy Equipment”. The Commonwealth Trustees did not provide any explanation of this item in the Annual Spending Plan, but they appear to propose spending to purchase vehicles and equipment for the general administration of State Parks. As explained above, costs incurred for the general administration of State Parks are not reasonable costs of administering the ERA trust given the extensive facilities and infrastructure constructed, operated and maintained to promote and support recreational uses of our State Parks that have caused and

¹¹⁷ Exhibit Y, Table 1 (*Bureau of State Parks – Fiscal Year 2020-2021* (Exhibit Y-007, Exhibit Y-064)

¹¹⁸ Exhibit W, Attachment D (all financial reports provided by the Commonwealth Trustees for fiscal year 2020-2021).

continue to cause the degradation, diminution and depletion of the natural resources and ecology of our parks, including the types of losses of trust assets set forth in Section IV.B. of this Petition. Costs incurred to purchase vehicles and equipment for the general administration of State Parks must be paid with unrestricted sources of funding, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund. The same is true for all other items listed for the Bureau of State Parks in the Annual Spending Plan for fiscal year 2020-2021 (computer related items, radios, computer network upgrades, education staff, outdoor recreation gear).

254. Based on the above as-applied analysis of the Commonwealth Trustees' actual expenditures of ERA trust funds from the Oil and Gas Lease Fund for costs incurred by the Bureau of State Parks in fiscal year 2020-2021, the Commonwealth Trustees spent approximately \$16 million through administrative transfers and \$1,070,000 in specific expenditures the same as General Fund disbursements for State Parks Operations to augment those General Fund disbursements without providing any evidence that these ERA trust funds were spend for trust purposes.

d. Actual Spending for DCNR General Operations

255. In addition to administering our State Forest and State Parks through the Bureau of Forestry and Bureau of State Parks, DCNR has statutory powers and duties to administer numerous programs unrelated to our State Forest or State Parks, many of which are authorized for non-trust purposes that promote and support developing and using natural resources within the Commonwealth, not the ERA trust purpose of conserving and maintaining public natural resources. These programs are carried out primarily through DCNR's Bureau of Recreation and Conservation, Bureau of Geologic Survey, and Bureau of Facility Design and Construction and funded in large part if not fully through appropriations for DCNR General Operations. DCNR also incurs significant costs to provide general administrative services through its executive offices and Bureau of Administrative Services, which are also funded largely through appropriations for DCNR General Operations.¹¹⁹

¹¹⁹ As explained in the as-applied analyses of spending for the Bureau of Forestry and Bureau of State Park, the Commonwealth Trustees also have expended funds appropriated for DCNR General Operations for costs incurred by the Bureau of Forestry and possibly for the Bureau of State Parks. Thus, their reporting of both disbursements and expenditures from the Oil and Gas Lease Fund for DCNR operations through the appropriation categories of General Operations, State Forest Operations and State Park Operations do not effectively account for their actual spending for programs and activities that DCNR is statutorily authorized to administer. Nonetheless, their reporting has been sufficient to show, as set forth in the as-applied analyses in this Petition, that the Commonwealth Trustees have spent ERA trust funds the same as General Funds without consideration of their trustee duty to spend these trust funds solely for trust purposes.

256. For fiscal years 2008-2009 through 2023-2024, the Commonwealth Trustees have reported the disbursement of almost \$629 million from the Oil and Gas Lease Fund for DCNR General Operations through the Governor’s Executive Budgets, which is significantly more than they have reported as being disbursed from the Oil and Gas Lease Fund for State Forests Operations (\$201 million) and State Parks Operations (\$288 million) combined.¹²⁰

257. In their financial report identifying actual expenditures of ERA trust funds by DCNR office/bureau for fiscal years 2008-2009 through 2021-2022 (Exhibit W, Attachment B), the Commonwealth Trustees report expenditure totaling approximately \$184 million for DCNR executive offices and its bureaus other than the Bureau of Forestry and Bureau of State Parks.¹²¹ The Commonwealth Trustees have reported total actual disbursements of

¹²⁰ Exhibit V, Table 2 (Exhibit V-002). The Commonwealth Trustees have reported disbursements for DCNR General Operations in several ways since fiscal year 2008-2009, which are reflected in Table 2. They have reported disbursements as lump-sum executive authorizations to DCNR (first column under Executive Authorization), executive authorizations for DCNR General Operations (second column under Executive Authorizations), and as appropriations for DCNR General Government Operations to augment General Fund appropriations to DCNR. Since fiscal year 2008-2009, the total disbursements from the Oil and Gas Lease Fund for DCNR General Operations is the total of these three columns in Table 2 (appropriate adjustments have been made to avoid double counting as explained in endnote 36 of Exhibit V). The disbursements for “parks, forests, and recreation projects” reported in fiscal years 2022-2023 and 2023-2024 have been included in Table 2 with the amounts disbursed for DCNR General Operations for these fiscal years, as further explained in endnotes and in this as-applied analysis of spending from the Oil and Gas Lease Fund through appropriations for DCNR General Operations.

¹²¹ Exhibit W, Table 3 (*Total OGLF Expenditures Reported in Attachment B – Bureau of Administrative Services, Secretary Office, Bureau of Geologic Survey, Bureau of Facility Design & Construction, Bureau of Recreation and Conservation, Chief Counsel Office, Deputy Secretary Offices*).

approximately \$426 million for DCNR General Operations for this same period in the Governor's Executive Budgets.¹²² Thus, the Commonwealth Trustees have underreported spending from the Oil and Gas Lease Fund for DCNR General Government Operations by \$242 million (43%) in their financial report of expenditures by DCNR office/bureau.

258. A portion of this underreporting by the Commonwealth Trustees can be attributed to the \$96 million spent on for costs incurred by the Bureau of Forestry that exceeded the funds disbursed from the Oil and Gas Lease Fund for State Forest Operations, as set forth above in Section IV.C.4.b. of this Petition. However, that still leaves \$146 million in spending for DCNR General Operations not reported by the Commonwealth Trustees in their financial report of expenditures by DCNR bureau/office.

259. Of the actual expenditures reported by the Commonwealth Trustees for DCNR offices and bureaus other than the Bureau of Forestry and the Bureau of State Parks for fiscal years 2008-2009 through 2021-2022, 78% of these expenditures were through administrative transfers.¹²³ The remaining 22% were assigned to expenditures that were not associated with any specific activity. Thus, although the Commonwealth Trustees underreported their actual expenditures for

¹²² Exhibit V, Table 2 (Exhibit V-002).

¹²³ Exhibit W, Table 5 (Exhibit W-005).

DCNR General Operations for fiscal years 2008-2009 through 2021-2022, the reporting they did provide for these expenditures is consistent with the overall analysis of their spending provided in Section IV.C.2.a. of this Petition showing that they spent 78% of all the ERA trust funds disbursed from the Oil and Gas Lease Fund for DCNR operations through administrative transfers not assigned to any specific expenditure and the remaining 22% through expenditures not associated with any specific activity.

260. In further support of the above analysis of overall actual expenditures from the Oil and Gas Lease Fund for DCNR General Operations, specific as-applied analyses are set forth below for the DCNR Bureau of Administration, DCNR Executive Offices, DCNR Bureau of Recreation and Conservation, DCNR Bureau of Geologic Survey, and DCNR Bureau of Facilities Design and Construction. These additional as-applied analyses further support the overall conclusion that the Commonwealth Trustees ERA trust funds disbursed since fiscal year 2008-2009 from the Oil and Gas Lease Fund for DCNR operations the same as General Fund disbursements to augment their General Fund spending for the Bureau of State Parks without providing any evidence that they spent these ERA trust funds for trust purposes.

i. DCNR Bureau of Administrative Services

261. The DCNR Bureau of Administrative Services incurs significant costs to provide general administrative services to the DCNR executive offices and bureaus, including budgeting, procurement, contracting, personnel, and information technology services.¹²⁴

262. The DCNR Bureau of Administration incurs significant costs for the general administration of DCNR personnel. DCNR has averaged just under 2,400 employees since 2012.¹²⁵

Date	Salaried Employees	Wage Employees	Total
July 15, 2012	1,300	1,075	2,375
July 15, 2013	1,304	1,139	2,443
July 15, 2014	1,325	1,148	2,473
July 15, 2015	1,333	1,180	2,513
July 15, 2016	1,287	1,207	2,494
July 15, 2017	1,276	1,211	2,487
July 15, 2018	1,251	1,161	2,412
July 15, 2019	1,259	1,152	2,411
July 15, 2020	1,235	984	2,219
July 15, 2021	1,235	1,016	2,251
July 15, 2022	1,259	977	2,236
July 15, 2023	1,312	1,066	2,378
Average	1,279	1,114	2,391

¹²⁴ Information technology services include services related to computer hardware, computer software, computer networks, computer data storage, geographic information systems, etc.

¹²⁵ State agency monthly employee count data beginning July 15, 2021 reported at: <http://pennwatch.pa.gov/employees/Pages/Employee-Count-by-Agency.aspx>.

263. Many, if not most, of DCNR's employees carry out activities for purposes other than conserving and maintaining the natural resources of our State Forest or State Parks, or other public natural resources that are part of the corpus of the trust established by the ERA, including activities to manage the multiple authorized uses of our State Forest and State Parks that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of these forests and parks, and activities to administer other statutorily authorized programs for non-trust purpose that promote the development and use of the natural resources of the Commonwealth.

264. The DCNR Bureau of Administrative Services incurs significant costs for the general administration of DCNR procurement activities, including the purchase of vehicles, information technology equipment, communications equipment, radio and other communication systems, mailing and shipping supplies, office supplies, fuel, furniture, utilities, educational supplies, recreational equipment, uniforms, aggregate and other road materials, mowing equipment, road maintenance equipment, surveying equipment, and more. The bureau also supports the procurement of specialized services, including engineering and environmental consulting services, information technology support services, road maintenance services, legal services, construction services, communication/media services,

auditing services, agricultural services, marketing services, printing services, and many other services.¹²⁶

265. The costs incurred by the Bureau of Administrative Services for general administrative services to support DCNR activities carried out for purposes other than conserving and maintaining the natural resources of our State Forest and State Parks or other public natural resources, including the costs of staff, equipment, supplies, contracts, offices and other facilities needed for such activities, are not reasonable costs incurred to administer the ERA trust. Costs for general administrative services incurred by DCNR must be paid from unrestricted funding sources, such as the General Fund, not ERA trust funds from the Oil and Gas Lease Fund.

266. However, the Commonwealth Trustees have reported expenditures totaling over \$92 million by the Bureau of Administrative Services from the Oil and Gas Lease Fund for fiscal years 2008-2009 through 2021-2022.¹²⁷ Of these expenditures, approximately 93% (over \$85 million) were administrative transfers

¹²⁶ See Exhibit W, Attachments C and D (full set of financial reports provided by the Commonwealth Trustees showing the types of purchases made by DCNR).

¹²⁷ Exhibit W, Table 3 (*Bureau of Administrative Services*) (Exhibit W-003). As noted in Table 3, these expenditures include those reported by the Commonwealth Trustees in their financial report of expenditures by DCNR office/bureau (Exhibit W, Attachment B) under the column labeled "Funds Center Level 3" for the Bureau of Administration, the Bureau of Information Technology Services, General Purpose Account, and General Government Operations.

not assigned to any specific expenditure.¹²⁸ Of the almost \$7 million assigned to specific expenditures (7%), the Commonwealth Trustees did not identify the specific activities funded through these specific expenditures.

267. In their Annual Spending Plans for fiscal years 2009-2010, 2010-2011, 2011-2012 and 2013-2014, the Commonwealth Trustees proposed administrative transfers for General Government Operations (GGO) totaling \$10,379,000.¹²⁹ In subsequent years, the Commonwealth Trustees no longer included the proposed amounts for administrative transfers for General Government Operations in their Annual Spending Plans (or administrative transfers for State Forests or State Parks), although these transfers continued to occur.

268. The Commonwealth Trustees proposed spending from the Oil and Gas Lease Fund in their Annual Spending Plans to purchase of many items for DCNR bureaus (*e.g.*, vehicles, heavy/large equipment, computers and related items and other specialized equipment), as well to procure various services, all of which were likely administered by the Bureau of Administrative Services as part of the general administrative services it provides for all DCNR bureaus and executive offices.

¹²⁸ Exhibit W, Table 3 (*Bureau of Administrative Services*) (Exhibit W-003) and Table 4 (*Administrative Transfers - Bureau of Administrative Services*) (Exhibit W-004).

¹²⁹ Exhibit Y, Table 2 (*DCNR General Administration – Fiscal Years 2009-2010, 2010-2011, 2011-2012 and 2013-2014*) (Exhibit Y-009). Proposed expenditures for a GIS Center of Excellence in 2010-2011 and the general administration of the Office of Conservation Science (OCS) in 2011-2012 are also included as general administration costs. To the extent these items were funded, they were likely reported as part of the specific expenditures for these fiscal years.

269. In most cases, the Commonwealth Trustees did not identify in their Annual Spending Plans the specific activities they proposed to perform with the equipment, vehicles or services to be procured. If activities were identified or discernable to some extent, the Commonwealth Trustees did not explain how the proposed activities would conserve and maintain the natural resources of our State Forest or State Parks, or other public natural resources.

270. Thus, based on an as-applied analysis of the actual expenditures from the Oil and Gas Lease Fund for costs incurred by the DCNR Bureau of Administrative Services, the Commonwealth Trustees spent over \$85 million through administrative transfers and almost \$7 million through specific expenditures not assigned to any specific activities the same as General Fund disbursements for DCNR General Operations to augment those General Fund disbursements without providing any evidence that these ERA trust funds were spend for trust purposes.

ii. DCNR Executive Offices

271. DCNR executive staff and their offices provide direct administrative oversight of the activities carried out by DCNR, including the extensive activities carried out to administer the multiple authorized uses of our State Forest and State Parks that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of these forests and parks and the

extensive activities carried out to administer other statutorily authorized programs for that promote the development and use of the natural resources of the Commonwealth—all of which are activities carried out for purposes other than conserving and maintaining the natural resources of our State Forest and State Parks, or other public natural resources, under the ERA, *i.e.*, for non-trust purposes.

272. DCNR executive staff are directly supervised by the Governor's Office and their primary responsibility is to ensure that DCNR activities are carried out consistent with the Governor's political objectives. Persons in positions appointed by the Governor or those in his office include the DCNR Secretary and three Deputy Secretaries, the DCNR Chief Counsel and Assistant Counsel, the DCNR Policy Director, the DCNR Legislative Director, the DCNR Communications Director, and various additional advisors. DCNR's budget staff are also directed by the Governor's Office of Budget.

273. The costs incurred by the DCNR executive offices to administer the extensive activities carried out by DCNR for non-trust purposes, including the costs of staff, equipment, supplies, contracts, offices and other facilities necessary to administer these uses and programs, are not reasonable costs of administering the ERA trust. Such costs must be paid from unrestricted funding sources, such as the General Fund, not with ERA trust funds from the Oil and Gas Lease Fund.

274. However, the Commonwealth Trustees have reported expenditures from the Oil and Gas Lease Fund totaling almost \$62 million for costs incurred by the DCNR executive offices for fiscal years 2008-2009 through 2021-2022.¹³⁰ Most of these expenditures (almost \$54 million) are assigned to the office of the DCNR Secretary. The remaining expenditures (almost \$8 million) are assigned to the offices of the DCNR Deputy Secretaries and Chief Counsel. Overall, 71% of the total expenditures by DCNR executive offices (almost \$44 million) were through administrative transfers not assigned to any specific expenditure. The remaining expenditures (almost \$18 million) were for specific expenditures not associated with any specific activities.

275. Although the Commonwealth Trustees have not proposed spending from the Oil and Gas Lease Fund in their Annual Spending Plans (Exhibit Y) for the DCNR Executive Offices that correlates with the specific expenditures for these offices reported in their financial report of expenditures by DCNR office/bureau (Exhibit W, Attachment B), they have proposed spending in these plans on items specifically attributable to the DCNR Secretary since fiscal year

¹³⁰ Exhibit W, Table 5 (*Executive Offices*) (Exhibit W-005). The total expenditures provided in Table 5 for Executive Offices include expenditures by the offices of the Secretary, Deputy Secretaries and Chief Counsel, which are summarized in Table 4 (*Secretary Office, Deputy Secretary Offices, Chief Counsel Office*) (Exhibit W-003 – W-004). Note that the financial reports provided by the Commonwealth Trustees refer to expenditures by the office of the DCNR Chief Counsel as “General Counsel”.

2017-2018.¹³¹ The review of these items below shows that most if not all items listed are either general costs of administering DCNR or costs incurred for purposes other than conserving and maintaining the natural resources of our State Forest or State Parks, or other public natural resources, *i.e.*, for non-trust purposes under the ERA.

276. In their Annual Spending Plan for fiscal year 2017-2018, the Commonwealth Trustees proposed spending \$56,000 from the Oil and Gas Lease Fund on an initiative of the DCNR Secretary entitled “Gear for Water-Based Recreation in State Parks—water initiative” (Exhibit V-053). Through this initiative, the Commonwealth Trustees proposed to purchase 45 kayaks, paddles, personal floatation devices (PFDs), safety and storage gear and fly fishing gear “to increase the opportunities for visitors to recreate” at State Parks, which is a non-trust purpose. The Commonwealth Trustees also proposed to spend ERA trust funds from the Oil and Gas Lease Fund on other initiatives of the DCNR Secretary for activities that promote and support the development and use of our State Forest, State Parks or other public natural resources, as well as for the general administration of DCNR, which are likewise non-trust purposes. These initiatives

¹³¹ Exhibit Y, Table 2 (*Secretary/Executive Offices*) (Exhibit Y-009 – Exhibit Y-011). Items listed in this table under Secretary/Executive Offices for Annual Spending Plans prior to fiscal year 2017-2018 primarily relate to marketing and communications, discretionary spending for unspecified items, or items not specifically associated with another DCNR bureau. Note that the Commonwealth Trustees did not provide an Annual Spending Plan for fiscal year 2021-2022.

included \$85,000 on well drilling training and online tools, \$10,000 to market urban tree planting, \$29,000 to market urban wood use, \$68,000 for media services to promote outdoor recreation, \$56,000 for DCNR display panels for the lobby of the Rachel Carson State Office Building (RCSOB)); \$12,000 for employee recruitment, \$200,000 for electric vehicles, \$25,000 for diversity training, \$25,000 for website redesign, and \$17,500 for a RCSOB environmental display (Exhibit Y-010, Exhibit Y-054 – Y-055). Any expenditures made for these proposed Secretary initiatives for non-trust purposes are not reasonable costs of administering the ERA trust.

277. In fiscal year 2018-2019, the Commonwealth Trustees proposed spending for DCNR Secretary initiatives for Lyme Timber (\$2,157,000), dual fuel vehicles and charging stations (\$140,000), staff diversity training (\$100,000), several items related to educational programs (totaling \$28,000), and the collection of data on private landowners in the southcentral and northeast part of the state to market riparian tree planting on private property (\$21,000) (Exhibit Y-060). No explanation is provided for the Lyme Timber initiative; however, this initiative appears to have been proposed to promote proper timber harvesting on private land and outdoor recreation.¹³² While these are worthwhile purposes, they do not

¹³² The Lyme Timber Company reports acquiring approximately 160,000 acres of private forest land in northcentral Pennsylvania in 2017 and 2018 and, among other things, donating a

conserve and maintain public natural resources and thus are not being carried out for ERA trust purposes. The descriptions provided by the Commonwealth Trustees for the other Secretary initiatives proposed to be funded from the Oil and Gas Lease Fund likewise do not demonstrate that these initiatives are proposed for ERA trust purposes. Thus, any expenditures made for these initiatives are not reasonable costs of administering the ERA trust.

278. In the Annual Spending Plan for fiscal year 2019-2020, the Commonwealth Trustees proposed spending over \$1 million from the Oil and Gas Lease Fund on a list of Secretary Initiatives without providing any explanation of the listed items (Exhibit Y-062). As with the previous fiscal years, most if not all these initiatives (educational programs, staff support and training, vehicle and equipment purchases) are for purposes other than conserving and maintaining the natural resources of our State Forest or State Parks, or other public natural resources.

279. In the Annual Spending Plan for 2020-2021, the Commonwealth Trustees proposed spending almost \$700,000 from the Oil and Gas Lease Fund on a list of Secretary Initiatives again without providing any explanation of the items listed (Exhibit Y-064). These items all appear to propose spending ERA trust funds

conservation easement to DCNR on approximately 9,400 acres of its private forest land to secure state funding for its acquisitions through the Pennsylvania Infrastructure Investment Authority (<https://www.lymetimber.com/portfolio/lyme-pennsylvania-headwaters/>).

for the general administration of DCNR, which is not a trust purpose. The Commonwealth Trustees proposed to spend \$178,125 under the first item, “SEC, IT Staff Augs”, which appears to propose augmenting General Fund disbursements for DCNR information technology staff. The remaining items proposed by the Commonwealth Trustees are for vehicle purchases, staff support and training, and marketing activities to support the general administration of DCNR, not specific activities that conserve and maintain the natural resources of our State Forest or State Parks, or other public natural resources. Thus, any expenditures made for these proposed initiatives are not reasonable costs to administer the ERA trust.

280. In the Annual Spending Plan for fiscal year 2022-2023 (Exhibit Y-065), the Commonwealth Trustees proposed to spend almost \$10 million from the Oil and Gas Lease Fund (94%) mostly for the general administration of specific DCNR bureaus as follows: Bureau of Forestry (Forestry) - \$5,558,295; Bureau of State Parks (Parks) - \$2,119,020; Bureau of Geologic Survey (Survey) - \$450,736; and Bureau of Recreation and Conservation (BRC) - \$88,303. They also proposed spending on a list of other items (most described with one word) without any explanation of how these items would conserve and maintain the natural resources of our State Forest or State Parks, or other public natural resources, including \$60,675 for undefined diversity activities (Diversity), which in the past have been related to diversity training; \$940,000 for undefined buffer activities (Buffers),

which in the past have been related to riparian tree planting initiatives on private lands; \$143,108 for electric vehicles and solar equipment (“Green (EV/Solar)”; \$22,641 for undefined forest activities (Forests), which in the past have been related to urban tree planting initiatives; \$22,264 for undefined youth activities (Youth), which in the past have been activities to educate youth; \$15,620 for an undefined water activities (Water), which in the past have been for purchasing water recreation gear; \$30,000 for undefined climate activities (Climate), which in the past have been for undefined climate plan implementation initiatives; \$15,620 for undefined recreation activities (Recreation), which in the past have been for marketing outdoor recreation; and \$265,235 for other undefined priorities. *Id.*¹³³

281. The Commonwealth Trustees have not demonstrated that the proposed spending from the Oil and Gas Lease Fund in their Annual Spending Plan for fiscal year 2022-2023 for the general operations of the listed DCNR bureaus or for the other undefined items listed would be costs incurred to conserve and maintain the natural resources of our State Forest or State Parks, or other public natural resources. Thus, expenditures made for these items are not reasonable costs of administering the ERA trust.

¹³³ The Commonwealth Trustees listed these items under DCNR’s two deputates: Deputy Secretary for Conservation & Technical Services and the Deputy Secretary for Parks & Forests; however, they are consistent with items listed in prior plans as Secretary initiatives. The items are included under Secretary/Executive Offices for this fiscal year in Exhibit Y, Table 2 (Exhibit Y-011).

282. Based on the above as-applied analysis of the actual expenditures of ERA trust funds totaling over \$61 million for fiscal years 2008-2009 through 2021-2000 by the DCNR executive offices, the Commonwealth Trustees have not provided any evidence that they spent these ERA trust funds for trust purposes.

iii. DCNR Bureau of Recreation and Conservation

283. DCNR has been granted the statutory powers and duties to administer numerous statewide grant and technical assistance programs to provide state funding to counties, municipalities, and non-profit organizations to plan, acquire and develop outdoor recreational facilities at local parks. CNRA § 306, 71 P.S. § 1304.306. DCNR carries out these programs through its Bureau of Recreation and Conservation, which was transferred to DCNR in 1995 from the Department of Community Affairs. CNRA § 321(a)(2), 71 P.S. § 1340.321(a)(2).

284. The DCNR Bureau of Recreation and Conservation awards tens of millions in state grant funds every year to develop recreation facilities on the over 6,000 local parks across the Commonwealth.¹³⁴ Local parks are typically smaller than State Parks and encompass approximately 200,000 acres statewide. Many of these local parks have extensive infrastructure and facilities to promote and support outdoor recreation in their local communities, including over 300 outdoor

¹³⁴ Lists of grants awarded by DCNR are available at: http://elibrary.dcnr.pa.gov/GetDocument?docId=4077164&DocName=2007_2020_pdf_ofgranta_nouncements.pdf; *see also* Local Parks on DCNR's website at <https://www.dcnr.pa.gov/Communities/LocalParks/Pages/default.aspx>.

swimming pools, almost 2,400 outdoor playgrounds, athletic fields on over 2,000 parks, roads, parking lots, restrooms and other comfort facilities, utilities, lighting, and other buildings, infrastructure and facilities.¹³⁵

285. Various statutes establish the sources of state funds for outdoor recreation grants awarded by the Bureau of Recreation and Conservation, including the Keystone Recreation, Park and Conservation Act (authorizing the use of proceeds from the sale of bonds and monthly transfers of 15% of the realty transfer tax), 32 P.S. § 2014, 72 P.S. § 1106-C; the Environmental Stewardship and Watershed Protection Act (authorizing the use of municipal landfill fees and proceeds from the sale of bonds), 27 Pa.C.S. §§ 6104, 6112, 6116; and the Snowmobile and ATV Law (authorizing the use of moneys collected under the law and certain gas taxes), 75 Pa.C.S. § 7706.¹³⁶

286. The purpose of constructing outdoor recreational facilities and infrastructure on public lands acquired for local parks is not to conserve and maintain the natural resources on these public lands but rather to promote and support outdoor recreation. Thus, the costs of administering outdoor recreational facilities and infrastructures are not costs of administering the ERA trust. Such

¹³⁵ See DCNR's *Good Natured* post, *A Greater Appreciation for Parks and Recreation*, July 8, 2020, available on its website at:

<https://www.dcnr.pa.gov/GoodNatured/Pages/Article.aspx?post=134>.

¹³⁶ Many of these same sources also have been uses to expand recreational facilities on State Parks, or to rehabilitate State Park facilities originally constructed with the proceeds of the sale of bonds. See *History of State Parks* (Exhibit M), pages 38 and 53.

costs must be paid with unrestricted funding sources such as those available through the Keystone Recreation, Park and Conservation Act, the Environmental Stewardship and Watershed Protection Act, the Snowmobile and ATV Law and the General Fund.

287. The costs of administering grants to municipalities and non-profit organizations to plan, construct and rehabilitate facilities and infrastructure for outdoor recreational uses of local parks, including the costs of staff, equipment, contracts, supplies, infrastructure and other facilities necessary for such administration, are not reasonable costs of administering the ERA trust.

288. However, in this current fiscal year 2023-2024, the Commonwealth Trustees have spent and are continuing to spend \$112 million from the Oil and Gas Lease Fund to award grants for parks, forests and recreation projects, including grants to plan, design, construct, rehabilitate and repair facilities and infrastructure to promote and support outdoor recreation in local communities.¹³⁷

¹³⁷ Section 1720-F.3 of the Fiscal Code requires that these funds from the Oil and Gas Lease Fund “be used for grants for projects to enhance parks, forest and recreation activities.” 72 P.S. § 1720-F.3. This provision was added to the Fiscal Code by the act of Dec. 13, 2023, P.L. 251, No. 34. Note that the Commonwealth Trustees have reported \$141,038,000 available for disbursement from the Oil and Gas Lease Fund in this current fiscal year 2023-24 for “Parks, Forests, and Recreation Projects.” As explained below in the as-applied analysis of actual spending for the DCNR Bureau of Facilities Design and Construction, the Commonwealth Trustees have conflated their reporting on disbursements from the Oil and Gas Lease Fund authorized for two separate activities.

289. The Commonwealth Trustees also have reported expenditures totaling over \$4,810,000 to the Bureau of Recreation and Conservation from the Oil and Gas Lease Fund for fiscal years 2008-2009 through 2021-2022.¹³⁸ Of these expenditures, approximately 49% were administrative transfers not assigned to any specific expenditure.¹³⁹ The remaining specific expenditures reported by the Commonwealth Trustees for this bureau were not associated with any specific activities.

290. In the Annual Spending Plans provided by the Commonwealth Trustees, they only proposed spending from the Oil and Gas Lease Fund on a limited number of items for the Bureau of Recreation and Conservation.¹⁴⁰ These proposed items relate primarily to the general administration of grants programs to promote and support outdoor recreation at local parks, including general bureau operations, development of electronic grant filing capabilities, and the development statewide outdoor recreations plans. Activities to promote and support the development and use of outdoor recreational facilities at local parks are not activities to conserve and maintain the natural resources of these parks or other public natural resources. Thus, expenditures for these activities are not reasonable costs of administering the ERA trust.

¹³⁸ Exhibit W, Table 3 (*Bureau of Recreation and Conservation*) (Exhibit W-003).

¹³⁹ Exhibit W, Table 4 (*Bureau of Recreation and Conservation*) (Exhibit W-005).

¹⁴⁰ Exhibit Y, Table 2 (*Bureau of Recreation and Conservation*) (Exhibit Y-009 – Y-011).

291. Based on the above as-applied analysis, the Commonwealth Trustees have spent and are continuing to spend almost \$117 million in ERA trust funds disbursed or available for disbursement since fiscal year 2008-2009 from the Oil and Gas Lease Fund for grant programs administered by the Bureau of Recreation and Conservation the same as disbursements from unrestricted funding sources to augment those unrestricted disbursements without providing any evidence that they spent these ERA trust funds for trust purposes

iv. DCNR Bureau of Facilities Design and Construction

292. DCNR has “all powers and duties ... to design, construct, improve, maintain and repair those lands and facilities which it deems necessary or appropriate in the exercise of the powers and duties transferred by [the CNRA].” CNRA § 304, 71 P.S. § 1340.304. DCNR carries out these powers and duties in part through its Bureau of Facilities Design and Construction, which manages the design and construction of many of the extensive facilities and infrastructure needed to support the multiple authorized uses of our State Forest and State Parks that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and parks, as set forth in this Petition.¹⁴¹

¹⁴¹ See DCNR Bureau of Facility Design and Construction at <https://www.dcnr.pa.gov/about/Pages/Facility-Design-and-Construction.aspx>.

293. The costs incurred by the Bureau of Facilities Design and Construction for activities carried out to design and construct infrastructure and facilities that support authorized uses of our State Forest and State Parks that degrade, diminish and deplete the natural resources and ecology of the forest and parks, including the costs of staff, equipment, supplies, contracts, offices and other facilities necessary for such administration, are not reasonable costs incurred to administer the ERA trust. Such costs must be paid from unrestricted sources of funding, such as the General Fund, not from ERA trust in the Oil and Gas Lease Fund.

294. However, the Commonwealth Trustees have spent and are continuing to spend \$56 million in disbursements from the Oil and Gas Lease Fund for “State parks and State forests infrastructure projects” authorized by Section 1601 of the General Appropriations Act of 2022.¹⁴²

295. The Commonwealth Trustees have reported the actual disbursement of almost \$17 million from the Oil and Gas Lease Fund for “Parks, Forests, and Recreation Projects” in fiscal year 2022-2023 in the Governor’s Executive Budget

¹⁴² Act of July 8, 2022, P.L. , No. 1A, § 1601, which authorized appropriations from the Oil and Gas Lease Fund for the first time for this separate category. Infrastructure projects on State Parks and the State Forest are administered through multiple DCNR bureaus; however, the actual spending of these ERA trust funds is discussed here given this bureau’s role in designing and constructing infrastructure facilities on State Parks and the State Forest.

2024-2025, page H-86 (Oil and Gas Lease Fund)¹⁴³ even though the Commonwealth Trustees did not propose any specific projects for such funding in their Annual Spending Plan for fiscal year 2022-2023 (Exhibit Y-065).

296. On or about August 12, 2022, the DCNR Secretary publicly announced that DCNR had acquired 5,600 acres in Weiser State Forest in Schuylkill and Luzerne Counties that DCNR would open in two years as the first State Park dedicated to ATV recreational riding.¹⁴⁴ To the extent the Commonwealth Trustees spent or are continuing to spend any of the ERA trust funds disbursed from the Oil and Gas Lease Fund to plan, design and construct infrastructure to promote and support ATV recreational riding on the State Forest—a use that has caused and continues to cause the degradation, diminution and depletion of the natural resources and ecology of our State Forest, as set forth in Section IV.B.4. of this Petition—such expenditures are not for ERA trust purposes.

297. The Commonwealth Trustees have reported \$141,038,000 available for disbursement from the Oil and Gas Fund in this current fiscal year 2023-2024 for “Parks, Forests, and Recreation Projects”. Governor’s Executive Budget 2024-2025, Oil and Gas Lease Fund, page H-86. This reported amount includes the remaining ERA trust funds available from the \$56 million authorized in fiscal year

¹⁴³ Copy available in Exhibit V, Attachment A (Exhibit V-029).

¹⁴⁴ See newspaper article at <https://www.readingeagle.com/2022/08/12/atv-dirt-bike-park-coming-to-eastern-pa-state-forest/>.

2022-2023 for “State parks and State forests infrastructure projects” and the \$112 million in ERA trust funds authorized in fiscal year 2023-2024 for grants for “parks, forests and recreation activities” discussed above in the as-applied analysis of actual spending by the DCNR Bureau of Recreation and Conservation.¹⁴⁵ By conflating the disbursements of ERA trust funds for these two distinct activities, both of which are for non-trust purposes, the Commonwealth Trustees’ reporting lacks transparency in addition to failing to provide any evidence that they have spent these ERA trust funds for ERA trust purposes.

298. In addition to the above spending of \$56 million for infrastructure on our State Forest and State Parks, the Commonwealth Trustees have reported expenditures totaling over \$5 million to the Bureau of Facility Design and Construction from the Oil and Gas Lease Fund for fiscal years 2008-2009 through 2021-2022.¹⁴⁶ Of these expenditures, the Commonwealth Trustees have reported

¹⁴⁵ The Commonwealth Trustees reported in the Governor’s Executive Budget 2024-2025, page H-86, a total of \$158 million in actual and available disbursements for “Parks, Forests, and Recreation Projects” in fiscal years 2022-2023 and 2023-2024, which is \$10 million less than the total of the \$56 million appropriated for state forest and park infrastructure projects and the \$112 million appropriated for park, forest and recreation grants. This remaining \$10 million is reported as actually disbursed or available for disbursement for DCNR General Government Operations in fiscal years 2022-2023 and 2023-2024, as explained further in Exhibit V, endnotes 32 and 34 (Exhibit V-010 – V-011).

¹⁴⁶ Exhibit W, Table 3 (*Bureau of Facility Design and Construction*) (Exhibit W-003).

spending approximately 62% (over \$3.1 million) of these funds through administrative transfers not assigned to any specific expenditure.¹⁴⁷

299. The Commonwealth Trustees have reported specific expenditures from the Oil and Gas Lease Fund totaling over \$1.9 million (38%) for the Bureau of Facility Design and Construction for fiscal years 2008-2009 through 2021-2022 without identifying the specific activities funded with these specific expenditures. In their Annual Spending Plans, they have proposed spending for this bureau almost exclusively for general operations and equipment, including \$896,000 for vehicles, \$920,922 for computers and related items, \$279,000 for surveying equipment, and \$104,000 for other general operation items.¹⁴⁸

300. Costs incurred for general administration are not reasonable costs of administering the ERA trust given that activities carried out by the Bureau of Facility Design and Construction are primarily for the design and construction of facilities and infrastructure to promote and support the multiple uses of our State Forest and State Parks that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and parks, as set forth in this Petition. Such costs must be paid with unrestricted

¹⁴⁷ Exhibit W, Table 4 (*Bureau of Facility Design and Construction*) (Exhibit W-004, 005).

¹⁴⁸ Exhibit Y, Table 1 (*Bureau of Facility Design & Construction*) (Exhibit Y-001 – Y-008). Note that the proposed spending items listed in these plans for this bureau are often labeled “FDC”.

funding sources, such as the General Fund, not with ERA trust funds from the Oil and Gas Lease Fund.

301. Based on the above as-applied analysis, the Commonwealth Trustees have spent and are continuing to spend over \$61 million in ERA trust funds disbursed since fiscal year 2008-2009 from the Oil and Gas Lease Fund for costs incurred by the Bureau of Facility Design and Construction, as well as other DCNR bureaus carrying out infrastructure projects on the State Forest or State Parks, the same as General Fund disbursements to augment those General Fund disbursements without providing any evidence that these ERA trust funds have been or are being spent for ERA trust purposes.

v. DCNR Bureau of Geologic Survey

302. DCNR is statutorily authorized to conduct “a thorough and extended survey of this Commonwealth ... elucidating the geology and topography of this Commonwealth.” CNRA § 305(a)(1)-(8), 71 P.S. §§ 305(a)(1)-(8).¹⁴⁹ As part of this survey, DCNR is directed to “disclose the chemical analysis and location of ores, coals, oils, clays, soils, fertilizing and of other useful minerals, and of waters, as shall be necessary to afford the agricultural, forestry, mining, metallurgical and other interests of this Commonwealth and the public a clear insight into the

¹⁴⁹ See DCNR Bureau of Geological Survey at <https://www.dcnr.pa.gov/about/Pages/Geological-Survey.aspx>.

character of its resources. It shall also disclose the location and character of such rock formations as may be useful in the construction of highways or for any other purpose.” *Id.* Thus, the purpose of the statewide geologic survey is to promote and support the development and use of geologic resources within the Commonwealth, which is an important purpose, but not a trust purpose under the ERA. Thus, costs incurred to carry out the statewide geologic survey are not reasonable costs to administer the ERA trust and must be paid from unrestricted funding sources, such as the General Fund, not from ERA trust funds in the Oil and Gas Lease Fund.

303. DCNR is also statutorily authorized to license well drillers within the Commonwealth for the purpose of ensuring that the groundwater resources of the Commonwealth be developed “in an orderly and reasonable manner, without waste, in order to assure sufficient supplies for continued population growth and industrial development of the Commonwealth.”¹⁵⁰ Thus, the purposes of licensing water well drillers is to promote the effective development and use our groundwater, which is an important purpose, but not a trust purpose under the ERA. Thus, costs incurred to carry out the statewide program to license water well drillers are not reasonable costs to administer the ERA trust and must be paid from

¹⁵⁰ CNRA § 305(b), 71 P.S. § 1340.305(b), and the Well Drillers License Act (act of May 29, 1956, P.L. (1955) 1840, No. 610), 32 P.S. §§ 645.1-645.13.

unrestricted funding sources, such as the General Fund, not from ERA trust funds in the Oil and Gas Lease Fund.

304. DCNR carries out its powers and duties relating to the statewide geologic survey and the licensing of water well drillers through its Bureau of Geologic Survey. The bureau incurs significant costs to carry out activities related to the statewide geologic survey and the statewide licensing of well drillers, including the costs of staff, contracts, equipment, testing, storage, supplies, infrastructure and other facilities necessary for such administration. Such costs are not reasonable costs incurred to administer the ERA trust.

305. However, the Commonwealth Trustees have reported expenditures totaling over \$20 million for the Bureau of Geologic Survey from the Oil and Gas Lease Fund for fiscal years 2008-2009 through 2021-2022.¹⁵¹ Of these expenditures, approximately 40% were reported as administrative transfers not assigned to any specific expenditure.¹⁵² The remainder were assigned to specific expenditures; however, the Commonwealth Trustees have not identified the specific activities carried out with these specific expenditures.

306. For the fiscal years 2008-2009 and 2009-2010, the Commonwealth Trustees reported spending over \$1.7 million in administrative transfers and over

¹⁵¹ Exhibit W, Table 3 (*Bureau of Geologic Survey*) (Exhibit W-003).

¹⁵² Exhibit W, Table 4 (*Bureau of Geologic Survey*) (Exhibit W-004 – W-005).

\$5 million in specific expenditures for costs incurred by the Bureau of Geologic Survey (over 33% of total spending from the Oil and Gas Lease Fund reported for this bureau).¹⁵³

307. The Commonwealth Trustees proposed spending of \$7 million from the Oil and Gas Lease Fund by the Bureau of Geologic Survey in the Annual Spending Plan for fiscal year 2008-2009 for a “Carbon Geologic Sequestration Project” (Exhibit Y-016); and the Annual Spending Plan for fiscal year 2009-2010 proposed spending another \$1.4 million for projects including carbon sequestration (Exhibit Y-018).¹⁵⁴ Neither plan provides any explanation of the carbon sequestration project.

308. However, DCNR issued several reports in 2009 assessing the viability of a geologic carbon dioxide sequestration network within the Commonwealth based on suitable geologic formations, costs, and public and environmental risks, as required by 66 Pa.C.S. § 2815(a).¹⁵⁵ As explained in the first report, the purpose of the geologic carbon sequestration being assessed was to capture “carbon dioxide emissions from coal-fired electric power plants and other industrial facilities to

¹⁵³ Exhibit W, Table 4 (*Bureau of Geologic Survey*) (Exhibit W-004) and Attachment B (Exhibit W-037, Exhibit W-039).

¹⁵⁴ The Bureau of Geologic Survey was previously the Bureau of Topographic and Geologic Survey, so items proposed in the Annual Spending Plans for this bureau are also labeled by this name, or as “TopoGeo” or “Topo”, in some instances.

¹⁵⁵ These reports are available on DCNR’s website at:

<https://www.dcnr.pa.gov/Conservation/ClimateChange/CarbonCaptureStorage/Pages/default.aspx>.

prevent them from going into the atmosphere, and then storing them permanently underground in safe geological formations.”¹⁵⁶

309. As set forth in Section IV.B.9. of this Petition, our State Forest has a significant capacity to sequester carbon dioxide and store carbon to mitigate climate change. However, the assessments performed by the Bureau of Geologic Survey in 2009 were performed for the purpose of assessing the potential for the sequestration and storage of carbon from industrial sources in geologic formations, not the enhancement of sequestration and storage of carbon from the atmosphere by our State Forest. The Commonwealth Trustees’ decision to spend ERA trust funds derived from commercial oil and gas development on our State Forest that has caused and continues to cause degradation, diminution and depletion of the natural resources and ecology of our State Forest, as well its ability to sequester and store carbon, to pay for a statewide project to support the continued emission of carbon from industrial sources is not consistent with their fiduciary obligation to conserve and maintain our State Forest trust assets.

310. The remaining proposed items in the Annual Spending Plans for the Bureau of Geologic Survey were primarily for the general administration of the bureau and to carry out statewide programs for purposes other than conserving and

¹⁵⁶ *Geologic Carbon Sequestration Opportunities in Pennsylvania*, DCNR, Rev. 1.1, 8/14/2009, page xii (available at above link).

maintaining our public natural resources (e.g., mapping of geologic formations on private lands, geologic studies for mineral development, database management for statewide geologic data, database management for statewide well drilling activities, etc.).¹⁵⁷

311. Based on the above as-applied analysis, the Commonwealth Trustees have spent over \$20 million in ERA trust funds disbursed since fiscal year 2008-2009 from the Oil and Gas Lease Fund for costs incurred by the Bureau of Geologic Survey the same as General Fund disbursements for this bureau to augment those General Fund disbursements without providing any evidence that these ERA trust funds were spent for ERA trust purposes.

5. No Accounting for \$250 Million in State Forest Trust Funds Transferred to the Marcellus Legacy Fund

312. Since fiscal year 2013-2014, the Commonwealth Trustees have reported the disbursement of \$250 million from the Oil and Gas Lease Fund through transfers to the Marcellus Legacy Fund, which also receives transfers from the Unconventional Gas Well Fund. Of this \$250 million, \$135 million has been disbursed to the Environmental Stewardship Fund and the remaining \$115 million has been disbursed to the Hazardous Sites Cleanup Fund.

¹⁵⁷ Exhibit Y, Table 1 (*Bureau of Geologic Survey*) (Exhibit Y-001 – Y-008).

313. The Commonwealth Trustees have reported the actual receipts into and disbursements from the Marcellus Legacy Fund in the Governor's Executive Budgets, which are summarized and incorporated in **Exhibit Z**. Table 1 of Exhibit Z summarizes the actual receipts for the Marcellus Legacy Fund, Environmental Stewardship Fund and Hazardous Sites Cleanup Fund. Tables 2 and 3 of Exhibit Z summarize the actual disbursements from the Environmental Stewardship Fund and Hazardous Sites Cleanup Fund, respectively. The statements of receipts into and disbursements from the Marcellus Legacy Fund, the Environmental Stewardship Fund and the Hazardous Sites Cleanup Fund in the Governor's Executive Budgets for fiscal years 2013-2014 through 2024-2025 are provided in Attachments A, B and C of Exhibit Z, respectively.

314. The Commonwealth Trustees have reported that from fiscal years 2013-2014 through 2018-2019, the Environmental Stewardship Fund had actual receipts from the Marcellus Legacy Fund totaling over \$181 million.¹⁵⁸ Of these receipts, \$135 million (74%) were from Oil and Gas Lease Fund transfers authorized first by 58 Pa.C.S. § 2505(b) and then by Sections 1608-E(a) and 1601.2-E(e) of the Fiscal Code. The Commonwealth Trustees have also reported actual receipts into the Environmental Stewardship Fund during this period from other sources totaling over \$430 million, including fees imposed on waste disposal

¹⁵⁸ Exhibit Z, Table 1 (*Environmental Stewardship Fund Receipts, Marcellus Legacy Fund*).

in municipal landfills, other fees, personal income taxes and interest.¹⁵⁹ Thus, the ERA trust funds from the Oil and Gas Lease Fund were comingled with non-trust funds and all expenditures from the Environmental Stewardship Fund from fiscal years 2013-2014 through 2018-2019 were comprised on average of approximately 22% of ERA trust funds from the Oil and Gas Lease Fund.

315. The Commonwealth Trustees have reported actual disbursements from the Environmental Stewardship Fund from fiscal years 2013-2014 through 2018-2019 for debt service on bonds (38%), easements on private agricultural lands (12%), DCNR local park grants (5.6%), DCNR facility rehabilitation (7.4%), DCNR wild resources grants (0.4%), water programs and grants administered by the Department of Environmental Protection (“DEP”) (0.3%) and grants to reduce the sewer and water rates for residential customers in communities borrowing state funds to construct or upgrade sewer and water facilities (18.3%).¹⁶⁰ Most if not all these disbursements are for purposes other than conserving and maintaining the natural resources of our State Forest of State Parks, or other public natural resources. To the extent the Commonwealth Trustees are authorized to spend funds from the Environmental Stewardship Fund for ERA trust purposes, they did not

¹⁵⁹ Exhibit Z, Table 1 (*Environmental Stewardship Fund Receipts, Other Sources*).

¹⁶⁰ Exhibit Z, Table 2 (*Disbursements from the Environmental Stewardship Fund*).

account for their spending of the \$135 million in ERA trust funds from the Oil and Gas Lease Fund to limit their spending to such purposes.

316. In addition to reporting actual receipts through transfers from the Marcellus Legacy Fund to the Environmental Stewardship Fund, the Commonwealth Trustees have also reported receipts from such transfers into the Hazardous Sites Cleanup Fund totaling almost \$149 million from fiscal years 2014-2015 through 2023-2024.¹⁶¹ Of these receipts, a total of \$115 million (77%) are from Oil and Gas Lease Fund transfers authorized by 58 Pa.C.S. § 2505(b) and Sections 1608-E and 1601.2-E(e) of the Fiscal Code. The Commonwealth Trustees have also reported actual receipts into the Hazardous Sites Cleanup Fund during this period from other sources totaling over \$207 million, including capital stock and franchise taxes, hazardous waste fees, cost recovery, interest and other receipts.¹⁶² Thus, the ERA trust funds from the Oil and Gas Lease Fund were comingled with non-trust funds and expenditures from the Hazardous Sites Cleanup Fund from fiscal years 2013-2014 through 2023-2024 were comprised on average of approximately 32% of ERA trust funds from the Oil and Gas Lease Fund.

¹⁶¹ Exhibit Z, Table 1 (*Hazardous Sites Cleanup Fund Receipts, Marcellus Legacy Fund*).

¹⁶² Exhibit Z, Table 1 (*Hazardous Sites Cleanup Fund Receipts, Other Sources*).

317. The Commonwealth Trustees have reported actual disbursements from the Hazardous Sites Cleanup Fund from fiscal years 2013-2014 through 2023-2024 primarily for the abatement of spills and other releases of hazardous substances and contaminants from past industrial activities within the Commonwealth.¹⁶³ While the cleanup of past industrial sites is important, the Commonwealth Trustees' spending of ERA trust funds derived from commercial oil and gas development that has caused and continues to cause the degradation, diminution and depletion of the unique and high value natural resources of our State Forest in northcentral Pennsylvania is not consistent with their fiduciary obligation to conserve and maintain these high value public natural resources. To the extent the Commonwealth Trustee are authorized to spend funds from the Hazardous Sites Cleanup Fund to remedy the degradation, diminution and depletion of our State Forest and State Parks, or other public natural resources, they did not account for their spending of the \$115 million in ERA trust funds from the Oil and Gas Lease Fund to limit their spending to such purposes.

¹⁶³ Exhibit Z, Table 3 (*Disbursements from the Hazardous Sites Cleanup Fund*).

V. RELIEF SOUGHT

A. Declaratory Relief Requested by PEDF (Counts I-VI)

1. **The Commonwealth Trustees Have the Non-Discretionary Fiduciary Obligation under the ERA to Conserve and Maintain the Natural Resources and Ecology of Our State Forest in Northcentral Pennsylvania (Count I)**

318. Based on the plain language of the ERA and Pennsylvania trust law as set forth in Section IV.A. of this Petition, the Commonwealth Trustees have the non-discretionary fiduciary duty to conserve and maintain the natural resources and ecology of our State Forest in northcentral Pennsylvania.

319. WHEREFORE, PEDF requests this Honorable Court to declare that the Commonwealth Trustees have a non-discretionary fiduciary obligation under the ERA to conserve and maintain the natural resources and ecology of our State Forest in northcentral Pennsylvania.

2. **Multiple Authorized Uses of Our State Forest in Northcentral Pennsylvania Have Caused and Continue to Cause the Degradation, Diminution and Depletion of the Natural Resources and Ecology of the Forest and Its Ability to Mitigate Climate Change (Count II)**

320. As set forth in Section IV.B. of this Petition, multiple uses of our State Forest in northcentral Pennsylvania have been authorized that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and its ability to sequester and store carbon to mitigate climate change, including commercial oil and gas development,

commercial natural gas storage, commercial rights of way, snowmobile and ATV recreational riding, private camp leases, commercial timber harvesting, and the extensive roads and other infrastructure that support these and other uses.

321. WHEREFORE, PEDF requests this Honorable Court to declare that multiple uses of our State Forest in northcentral Pennsylvania that have been authorized have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and its ability to sequester and store carbon to mitigate climate change, including authorized commercial oil and gas development, authorized commercial natural gas storage, authorized commercial rights-of-way, authorized snowmobile and ATV recreational riding, authorized private camp leases, authorized commercial timber harvesting, and the extensive roads and other infrastructure that have been authorized to support these and other uses of the forest.

3. The Commonwealth Trustees Have Not Accounted for or Remedied the Degradation, Diminution or Depletion of the Natural Resources and Ecology of Our State Forest in Northcentral Pennsylvania Caused by the Multiple Uses That Have Been Authorized (Count III)

322. As set forth in Section IV.B. of this Petition, the Commonwealth Trustees have the non-discretionary fiduciary obligation to account for and remedy the losses of trust assets from the State Forest of northcentral Pennsylvania caused by multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the

forest and its ability to sequester and store carbon to mitigate climate change, including commercial oil and gas development, commercial natural gas storage, commercial rights-of-way, snowmobile and ATV recreational riding, private camp leases, commercial timber harvesting, and the extensive roads and other infrastructure that support these and other uses. Notwithstanding their non-discretionary fiduciary obligation, the Commonwealth Trustees have not accounted for or remedied the losses of trust assets within our State Forest of northcentral Pennsylvania from the multiple uses of the forest that have been authorized.

323. WHEREFORE, PEDF requests this Honorable Court to declare that the Commonwealth Trustees have not accounted for or remedied the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and its ability to sequester and store carbon to mitigate climate change, including commercial oil and gas development, commercial natural gas storage, commercial rights of way, snowmobile and ATV recreational riding, private camp leases, commercial timber harvesting, and the extensive roads and other infrastructure that support these and other uses.

4. The Commonwealth Trustees Have Not Accounted for Funds Derived from Our State Forest and State Parks as Trust Funds to be Spent Solely on Specific Activities Carried Out for Trust Purposes (Count IV)

324. As set forth in Section IV.C. of this Petition, the Commonwealth Trustees have derived funds from the multiple uses that have been authorized on our State Forest and State Parks that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and parks. These funds remain part of the corpus of the trust established by the ERA and must be spent solely for trust purposes. Since 2009, they have derived almost \$1.7 billion from commercial oil and gas development that has been authorized on our State Forest in northcentral Pennsylvania, which has been deposited into the Oil and Gas Lease Fund. They have also derived over \$800 million from other authorized uses of our State Forest and State Parks, including commercial timber sales, commercial rights-of-way, private camp leases, and the use of recreational facilities, which has been deposited into the General Fund, some as restricted accounts. However, they have not accounted for these trust funds to ensure they have been spent solely on specific activities carried out to conserve and maintain our public natural resources, including first and foremost to remedy the natural resources of our State Forest and State Parks that have been degraded, diminished or depleted to generate these funds.

325. WHEREFORE, PEDF requests this Honorable Court to declare that the Commonwealth Trustees have not accounted for funds derived from the multiple uses authorized on our State Forest and State Parks that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and parks, which remain part of the corpus of the trust established by the ERA, or accounted for the spending of these trust funds solely for specific activities that conserve and maintain our public natural resources, including first and foremost specific activities to remedy the natural resources of our State Forest and State Parks that have been degraded, diminished or depleted to generate these funds.

5. The Governor Breached the ERA Trust by Repeatedly Approving Executive Budgets to Spend ERA Trust Funds Without Ensuring These Trust Funds Were Being Spent for Trust Purposes (Count V)

326. As set forth in Section IV.C.3. of this Petition, the Governor has the constitutional duty to propose a balanced operating budget to the General Assembly every year to aid in enacting annual legislation to appropriate funds to operate state government for the following fiscal year. Pa. const. art. VIII, § 12.

327. The Governor also has the constitutional duty to carry out his budgetary functions without infringing on the rights reserved to the people in Article I of the Pennsylvania Constitution, including their rights under the trust established by the ERA to have trust funds derived from losses of trust assets in our

State Forest in northcentral Pennsylvania spent solely for trust purposes and to have the losses of these trust assets remedied. Pa. const. art. I, § 25 (declaring that “everything in [Article I] is excepted out of the general powers of government and shall forever remain inviolate”).

328. Since fiscal year 2009-2010, the Governor has recommended through the Governor’s Executive Budgets spending ERA trust funds from the Oil and Gas Lease Fund for DCNR operations consistent with corresponding reductions in recommended spending of revenue from the General Fund for DCNR operations. As set forth in Section IV.C.4. of this Petition, actual spending of ERA trust funds appropriated and disbursed from the Oil and Gas Lease Fund for DCNR operations have corresponded to changes in actual spending of revenue from the General Fund appropriated and disbursed for DCNR operations.

329. Since fiscal year 2013-2014, the Governor has recommended through the Governor’s Executive Budgets transfers of ERA trust funds from the Oil and Gas Lease Fund to the Marcellus Legacy Fund and subsequent transfers of these ERA trust funds comingled with other revenue in the Marcellus Legacy Fund to the Environmental Stewardship Fund and Hazardous Sites Cleanup Fund.

330. The Governor has recommended spending ERA trust funds from the Oil and Gas Lease Fund the same as revenue from the General Fund for DCNR operations without requiring any accounting to ensure spending of these ERA trust

funds for trust purposes. As set forth in Section IV.C.4. of this Petition, over \$1.1 billion in ERA trust funds from the Oil and Gas Lease Fund has been spent for DCNR operations since fiscal year 2009-2010 the same as revenue from the General Fund without distinguishing between spending for activities for trust and non-trust purposes.

331. The Governor has recommended spending ERA trust funds from the Oil and Gas Lease Fund the same as revenue from other unrestricted funding sources through transfers to the Marcellus Legacy Fund without requiring any accounting to ensure the spending of these ERA trust funds for trust purposes. As set forth in Section IV.C.5. of this Petition, \$250 million in ERA trust funds from the Oil and Gas Lease Fund have been spent through transfers to the Marcellus Legacy Fund the same as revenue from other unrestricted sources since fiscal year 2013-2014 without distinguishing between spending for activities for trust and non-trust purposes.

332. WHEREFORE, PEDF requests this Honorable Court to declare that the Governor breached the ERA trust by approving Executive Budgets since fiscal year 2009-2010 to spend ERA trust funds from the Oil and Gas Lease Fund the same as unrestricted sources of funds without requiring any accounting to ensure these trust funds were spent for trust purposes.

6. The Commonwealth Trustees Breached the ERA Trust by Spending \$1.7 Billion in ERA Trust Funds Derived from Our State Forest in Northcentral Pennsylvania Without Ensuring These Trust Funds Were Spent for Trust Purposes and First and Foremost to Remedy the Losses of Trust Assets from Our State Forest in Northcentral Pennsylvania (Count VI)

333. For the reasons set forth above in Section V.A.1. of this Petition, the Commonwealth Trustees have the non-discretionary fiduciary obligation under the ERA to conserve and maintain the natural resources and ecology of our State Forest in northcentral Pennsylvania.

334. For the reasons set forth above in Section V.A.2. of this Petition, multiple uses of our State Forest in northcentral Pennsylvania have been authorized that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and its ability to mitigate climate change.

335. For the reasons set forth above in Section V.A.3. of this Petition, the Commonwealth Trustees have not accounted for or remedied the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple authorized uses of the forest that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest and its ability to mitigate climate change.

336. For the reasons set forth above in Section V.A.5. of this Petition, the Commonwealth Trustees have spent funds derived from authorized commercial oil

and gas development since 2009 on our State Forest in northcentral Pennsylvania, which have been deposited into the Oil and Gas Lease Fund and remain part of the corpus of the trust, without ensuring that these trust funds were spent for trust purposes, in particular by first and foremost spending these trust funds to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized, including the commercial natural gas development.

337. As set forth in the as-applied analyses in Section IV.C.4. of this Petition, the Commonwealth Trustees have spent over \$1.1 billion in ERA trust funds appropriated and disbursed from the Oil and Gas Lease Fund since fiscal year 2009-2010 for DCNR operations without ensuring these ERA trust funds were spent for trust purposes, in particular without ensuring these trust funds were spent first and foremost to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest. They have spent these ERA trust funds the same as unrestricted revenue appropriated and disbursed from the General Fund without distinguishing between activities carried out for trust and non-trust purposes, thus spending these funds for the extensive activities carried out by DCNR to administer the multiple authorized uses of our State Forest and State

Parks that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of this forest and state parks and to administer many statewide programs to promote the development and use of natural resources within the Commonwealth, all of which are non-trust purposes.

338. As set forth in the as-applied analyses in Section IV.C.5 of this Petition, the Commonwealth Trustees have spent \$250 million in ERA trust funds appropriated and disbursed from the Oil and Gas Lease Fund since fiscal year 2013-2014 through transfers to the Marcellus Legacy Fund without ensuring these ERA trust funds were spent for trust purposes, in particular without ensuring these trust funds were spent first and foremost to remedy the degradation, diminution and depletion of the natural resources and ecology of the State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized. They have spent these ERA trust funds the same as unrestricted revenue sources in the Environmental Stewardship Fund and Hazardous Sites Cleanup Fund without ensuring these ERA trust funds were spent for trust purposes, thus spending these trust funds for the extensive activities carried out with these funds for non-trust purposes.

339. In fiscal years 2009-2010 and 2010-2011, the Commonwealth Trustees spent \$383 million in ERA trust funds from the Oil and Gas Lease Fund appropriated and disbursed through transfers to the General Fund without ensuring

these trust funds were spent for trust purposes, in particular without ensuring first and foremost that these trust funds were spent to remedy the losses of trust assets from State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest. Our Supreme Court held these appropriations to be unconstitutional in 2021. *PEDF V*, 255 A.3d at 314 (holding Section 1604-E and 1605-E of the Fiscal Code and Section 1912 of the Supplemental General Appropriations Act of 2009 to be facially unconstitutional).

340. WHEREFORE, PEDF requests this Honorable Court to declare that the Commonwealth Trustees breached the ERA trust by spending almost \$1.7 billion in ERA trust funds appropriated and disbursed from the Oil and Gas Lease Fund since fiscal year 2008-2009, specifically the \$1.1 billion spent for DCNR operations, the \$250 million transferred to the Marcellus Legacy Fund, and the \$383 million transferred to the General Fund, without ensuring that these ERA trust funds were spent for trust purposes, in particular without ensuring these trust funds were spent first and foremost to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest, including the commercial oil and gas development authorized to generate these ERA trust funds.

B. Mandamus Relief Requested by PEDF (Count VII)

341. Under Section 7781(b) of the Uniform Trust Act, 20 Pa.C.S. § 7781, this Honorable Court may order any appropriate relief to remedy a breach of trust that has occurred or may occur, including compelling the trustee to perform the trustee's duties and ordering a trustee to file an account.

342. The Commonwealth Trustees, as trustees under the ERA, have a mandatory duty to conserve and maintain the natural resources of our State Forest in northcentral Pennsylvania, which are part of the corpus of the ERA trust.

343. The Commonwealth Trustees, as trustees under the ERA, have a mandatory duty to act toward our State Forest in northcentral Pennsylvania, as part of the corpus of the ERA trust, with prudence, loyalty and impartiality.

344. The Commonwealth Trustees, as trustees under the ERA, have a mandatory duty to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest.

345. The Commonwealth Trustees, as trustees under the ERA, have a mandatory duty to spend ERA trust funds derived from the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized for trust purposes and to spend them first and foremost to

remedy the losses of trust assets from our State Forest in northcentral Pennsylvania to preserve the corpus of the ERA trust.

346. The Commonwealth Trustees, as trustees under the ERA, have a mandatory duty to account fully and transparently account for the losses of trust assets from our State Forest in northcentral Pennsylvania and their expenditures of ERA trust funds derived from those losses to demonstrate to the trust beneficiaries—both PEDF’s members and current and future generations of Pennsylvanians—that these trust assets are being conserved and maintained.

347. For the reasons set forth above in Section V.A.7. of this Petition, the Commonwealth Trustees have breached the ERA trust by spending ERA trust assets in the Oil and Gas Lease Fund without ensuring those trust funds were spent for trust purposes, in particular without ensuring that those trust funds were spent first and foremost to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest, including the commercial natural gas development authorized to generate these trust funds.

348. Based on the as-applied analysis of the Commonwealth Trustees’ actual spending of ERA trust funds from the Oil and Gas Lease Fund for DCNR operations set forth in Section IV.C.4. of this Petition, as well as the reasons set

forth in Section V.A.7. of this Petition, the Commonwealth Trustees breached the ERA trust by failing to fully and transparently account for the losses of trust assets from our State Forest in northcentral Pennsylvania and their expenditures of ERA trust funds derived from those losses for trust purposes, particularly to remedy those losses, and thus failing to demonstrate to the trust beneficiaries that their State Forest trust assets in northcentral Pennsylvania have been conserved and maintained.

349. As set forth in this Petition and the affidavits of PEDF members included as exhibits, PEDF and its members, as trust beneficiaries, have been substantially and immediately harmed by the degradation, diminution and depletion of the natural resources and ecology of the State Forest in the northcentral Pennsylvania and by the loss of their constitutional rights under the ERA to have these State Forest trust assets conserved and maintained so they can benefit from the preservation of clean air and pure water of the forest and its natural, scenic, historic and esthetic values.

350. PEDF has no other adequate remedy at law to compel the Commonwealth Trustees to fulfill their mandatory duties under the ERA to conserve and maintain our State Forest trust assets in northcentral Pennsylvania by accounting for the losses of trust assets from the State Forest from the multiple authorized uses that have caused and continue to cause the degradation, diminution

and depletion of the natural resources and ecology of the forest, by accounting for the ERA trust funds derived from these losses, and by accounting for the spending of these ERA trust funds for trust purposes, particularly to remedy the losses of our State Forest trust assets in northcentral Pennsylvania.

351. WHEREFORE, PEDF asks this Honorable Court to order the Commonwealth Trustees to fulfill their mandatory duties under the ERA to conserve and maintain the natural resources of our State Forest in northcentral Pennsylvania by developing a plan and schedule for approval by the court to:

(a). Fully and transparently account for the existing and future losses of trust assets from the State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest, including commercial oil and gas development, commercial natural gas storage, commercial rights of way, snowmobile and ATV recreational riding, private camp leases, commercial timber harvesting, and the extensive roads and other infrastructure that support these and other uses; and

(b). Remedy the existing and future losses of trust assets from the State Forest in northcentral Pennsylvania identified through the above accounting by setting forth both current and future actions to restore and/or mitigate these losses

and their estimated costs to ensure the availability of current and future funds to implement the plan.

C. Injunctive Relief Requested by PEDF (Count VIII)

352. Under Section 7781(b) of the Uniform Trust Act, 20 Pa.C.S. § 7781, this Honorable Court may order any appropriate relief to remedy a breach of trust that has occurred or may occur, including enjoining the trustee from committing a breach of trust.¹⁶⁴

353. For the reasons set forth in Section V.A.7. of this Petition, the Commonwealth Trustees breached the ERA trust by spending over \$1.7 billion in ERA trust funds from the Oil and Gas Lease Funds without ensuring these trust funds were spent for trust purposes, in particular without first and foremost ensuring these trust funds were spent to remedy the extensive losses of trust assets from our State Forest in the northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest, including the commercial oil and gas development authorized to generate these trust funds.

¹⁶⁴ See also Pennsylvania Legislative Journal, House of Representatives, Vol. 1, No. 118, April 14, 1970, 2269-2291, 2276 (“If a governmental agency were to take action which itself damaged the environment, then the right given by the [ERA] would be violated, and the agency could be enjoined from continuing such action.”); available on the Pennsylvania General Assembly website at <https://www.legis.state.pa.us/WU01/LI/HJ/1970/0/19700414.pdf>.

354. The Commonwealth Trustees are proposing to spend almost \$75 million more in ERA trust funds from the Oil and Gas Lease Fund in fiscal year 2024-2025 in the same manner they have spent the \$1.7 billion in ERA trust funds to date.¹⁶⁵

355. Based on the as-applied analyses of the Commonwealth Trustees' actual spending of ERA trust funds from the Oil and Gas Lease Fund set forth in Sections IV.C.4. and IV.C.5. of this Petition, the Commonwealth Trustees have failed to establish a process to account fully and transparently to the ERA trust beneficiaries—both PEDF's members and all Pennsylvanians—for the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest; for all the ERA trust funds derived from these losses; and for their spending of these ERA trust fund for trust purposes, in particular first and foremost to remedy the past and ongoing losses of trust assets from the State Forest in northcentral Pennsylvania to preserve the corpus of the trust.

356. Without the full and transparent accounting set forth above to demonstrate that ERA trust assets in our State Forest in northcentral Pennsylvania

¹⁶⁵ Governor's Executive Budget, Oil and Gas Lease Fund (*2024-25 Estimated*), page H86; copy available in Exhibit V, Attachment A (Exhibit V-029).

are being conserved and maintained, the Commonwealth Trustees are continuing to breach the ERA trust and are infringing on the rights of PEDF's members and the people of Pennsylvania in violation of Article I, Section 25 of the Pennsylvania Constitution.

357. WHEREFORE, PEDF respectfully asks this Honorable Court to enjoin the Commonwealth Trustees from any further spending of ERA trust funds derived from the multiple uses of our State Forest in northcentral Pennsylvania that have been authorized, including any further spending of ERA trust funds from the Oil and Gas Lease Fund, until this court has approved the plan and schedule submitted by the Commonwealth Trustees to fully and transparently account for and remedy the losses of trust assets from our State Forest in northcentral Pennsylvania, as requested by PEDF above under Section V.B. of this Petition.

D. Surcharge Requested by PEDF (Counts IX-X)

358. Under Section 7781(b) of the Uniform Trust Act, 20 Pa.C.S. § 7781(b), this Honorable Court may order any appropriate relief to remedy a breach of trust, including compelling the trustee to redress a breach of trust by paying money, restoring property or other means.

359. An order directing a trustee to compensate beneficiaries for losses resulting from a breach of trust is also referred to as a surcharge. *In re: Stella Scheidmantel*, 868 A.2d 464 (Pa. Super. 2005) (“A surcharge is the equitable

penalty imposed when a trustee fails to exercise the requisite standard of care and the trust suffers. [] The purpose of a surcharge is to compensate beneficiaries for the loss caused by the fiduciary's want of the appropriate level of care ... Restatement [(Second) of Trusts] § 205 provides, 'If the trustee commits a breach of trust, he is chargeable with (a) any loss of depreciation in value of the trust estate resulting from the breach of trust; or (b) any profit made by him through the breach of trust, or (c) any profit which would have accrued to the trust estate if there had been no breach of trust.' Comment (a) explains that in choosing among these three remedies, the beneficiary has the option of pursuing the remedy that will place him [or her] in the position in which he [or she] would have been if the trustee had not committed the breach.'")

360. For the reasons set forth above in Section V.A.7. of this Petition, the Commonwealth Trustees breached the ERA trust by spending over \$1.7 billion in ERA trust funds from the Oil and Gas Lease Funds without ensuring these trust funds were spent for trust purposes, in particular without ensuring these trust funds were spent first and foremost to remedy the extensive losses of trust assets from our State Forest in northcentral Pennsylvania from the multiple authorized uses that have caused and continue to cause the degradation, diminution and depletion of the natural resources and ecology of the forest, including the commercial natural gas development authorized to generate these trust funds.

361. The Commonwealth Trustees have spent \$383 million in ERA trust funds from the Oil and Gas Lease Fund through legislative transfers to the General Fund in fiscal years 2009-2010 and 2010-2011 that our Supreme Court has declared to be unconstitutional under the ERA in 2021. *PEDF V*, 255 A.3d at 314 (holding Section 1604-E and 1605-E of the Fiscal Code and Section 1912 of the Supplemental General Appropriations Act of 2009 to be facially unconstitutional).

362. Based on the as-applied analysis of the Commonwealth Trustees' actual spending of ERA trust funds in the Oil and Gas Lease Fund for DCNR operations since fiscal year 2008-2010 set forth in Section IV.C.4. of this Petition, the Commonwealth Trustees have spent over \$1.1 billion in ERA trust funds to date for DCNR operations without ensuring these ERA trust funds were spent for trust purposes, in particular without ensuring first and foremost that these trust funds were spent to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized, including the commercial natural gas development authorized to generate these funds.

363. Based on the as-applied analysis of the Commonwealth Trustees' actual spending in Section IV.C.5. of this Petition, the Commonwealth Trustees have spent over \$250 million in ERA trust funds from the Oil and Gas Lease Fund to date through transfers to the Marcellus Legacy Fund without ensuring these

ERA trust funds were spent for trust purposes, in particular without ensuring first and foremost that these funds were spent to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized, including the commercial natural gas development authorized to generate these funds.

364. By spending over \$1.7 billion in ERA trust funds derived from the losses of trust assets from our State Forest in northcentral Pennsylvania without ensuring these ERA trust funds were spent for trust purposes, in particular without ensuring first and foremost that these trust funds were spent to remedy the losses of trust assets from our State Forest in northcentral Pennsylvania caused by the multiple uses that have been authorized, including the commercial natural gas development authorized to generate these funds, the Commonwealth Trustees are chargeable with both the loss of the trust funds, which remained part of the corpus of the trust, and the losses of trust assets from our State Forest of northcentral Pennsylvania.

365. WHEREFORE, PEDF respectfully asks this Honorable Court to impose the following surcharges on the Commonwealth Trustees to compensate PEDF's members and all trust beneficiaries for the losses caused by the Commonwealth Trustees' failure to exercise the appropriate level of care and their breach of the ERA trust:

(a). Surcharge to compensate the trust beneficiaries for the loss of over \$1.7 billion in ERA trust funds spent by the Commonwealth Trustees from the Oil and Gas Lease Fund to date without accounting for the spending of these trust funds to ensure spending for trust purposes, with interest (Count IX); and

(b). Surcharge requiring the restoration and/or mitigation of the losses of trust assets from our State Forest of northcentral Pennsylvania caused by the multiple authorized uses that have caused and continue to cause the degradation, diminution or depletion of the natural resources and ecology of the forest and its ability to sequester and store carbon to mitigate climate change (Count X).

E. Other Relief Requested by PEDF (Count XI)

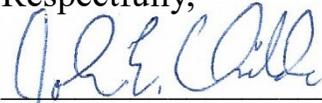
366. Under Section 7781(b) of the Uniform Trust Act, 20 Pa.C.S. § 7781(b), this Honorable Court may order any appropriate relief to remedy a breach of trust.

367. PEDF respectfully requests that this Honorable Court order the Commonwealth Trustees to pay the fees and expenses of PEDF's attorneys and grant any other relief the court deems appropriate (Count XI).

VI. CONCLUSION

368. For the reasons set forth in this Petition, including the as-applied analysis of the Commonwealth Trustees' actual spending of ERA trust funds from the Oil and Gas Lease Fund derived from the degradation, diminution and depletion of the natural resources of our State Forest in northcentral Pennsylvania, PEDF respectfully requests that this Honorable Court grant the relief requested.

Respectfully,



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