

COMMONWEALTH COURT OF PENNSYLVANIA

PENNSYLVANIA ENVIRONMENTAL	:	
DEFENSE FOUNDATION,	:	
 Petitioner	:	
	:	No. 228 M.D. 2012
 v.	:	
	:	
TOM CORBETT, GOVERNOR;	:	
COMMONWEALTH OF	:	
PENNSYLVANIA,	:	
 Respondent	:	

**PETITIONER’S BRIEF IN REPLY TO
RESPONDENTS’ JOINT BRIEF IN RESPONSE TO PETITIONER’S
APPLICATION FOR SPECIAL RELIEF IN THE NATURE OF
PRELIMINARY INJUNCTION**

**A. THE ACTIONS OF THE GOVERNOR, NOT THE GENERAL
ASSEMBLY, MUST BE ENJOINED**

The Pennsylvania Environmental Defense Foundation (PEDF) filed its Petition for Review against the Governor of the Commonwealth and not the General Assembly because the primary focus of the petition, the leasing of State Forest land for extraction of natural gas and the use of the money generated by such leasing (*i.e.*, the Oil and Gas Lease Fund), is the duty and responsibility of the Department of Conservation and Natural Resources (DCNR) under the Conservation and Natural Resources Act (CNRA), which was enacted in 1995. Under Article IV, Section 2 of the Pennsylvania Constitution (Article IV § 2), the

Governor is vested with the supreme executive power, and with “the duty to take care that the laws are faithfully executed.” The Governor appoints the Secretary of DCNR, and exercises that supreme executive authority over the Secretary and DCNR. The Governor also has the duty to faithfully execute the Conservation and Natural Resources Act. The General Assembly has no such control or responsibility over DCNR, or the implementation of the law.

It was the Governor, then Governor Ed Rendell, who violated CNRA, as well as the Oil and Gas Lease Fund Act, in his February 4, 2009 Executive Budget, in spite of being informed by the Secretary of DCNR of the requirements of the Oil and Gas Lease Fund Act. *See* Petitioner’s Brief in Support of Motion for Summary Judgment (Petitioner's Brief) at 55; Deposition Testimony of Michael DiBerardinis at 37-44; Deposition of Dr. James Grace at 36-44; Petitioner's Exhibit X (Quigley Memorandum of September 4, 2008); and Petitioner's Exhibit OO (Affidavit of former Secretary of DCNR, John Quigley).

It was the Governor who violated the Conservation and Natural Resources Act and the Oil and Gas Lease Fund Act, in spite of being warned by the Secretary of DCNR these statutory duties, by ordering DCNR to lease (initially) an additional 80,000 acres of State Forest land for the purpose of obtaining \$240,000,000 for the General Fund. *See* Petitioner’s Brief at 57-60; Petitioner's Exhibit CC (DiBerardinis Memo of March 27, 2009); DiBerardinis Deposition at

49-55; Petitioner's Exhibit DD (Quigley Memo of May 6, 2009); and Petitioner's Exhibit OO (Affidavit of John Quigley.)

And now again, it is the Governor (this time Governor Tom Corbett), who is ordering DCNR to lease State Forest and/or Park land for the purpose of obtaining another \$75,000,000 for the General Fund; and who decided to recommend to the General Assembly that \$117,000,000 from the Oil and Gas Lease Fund be used by DCNR for its annual operating expenses rather than use the General Fund.

It is also the Governor, and not the General Assembly, who as the Supreme Executive, has the duty to ensure that DCNR fulfills its obligations under the Conservation and Natural Resources Act to conserve and maintain the public natural resources of our State Forests and Parks as the designated trustee under Article I, Section 27 of the Pennsylvania Constitution (Article I § 27) for those public natural resources. The Respondents recognize DCNR's obligations in their Brief (page 6). It is therefore the Governor's constitutional duty under Article IV § 2 to insure that DCNR has the ability to meet those duties.

B. DCNR'S POST- LEASING MONITORING DOES NOT JUSTIFY THE GOVERNOR'S DECISION TO LEASE

The Respondents recognize that in accordance with the mandates of the Conservation and Natural Resources Act, DCNR's mission is to "manage state forests sustainably under sound ecosystem management, to retain their wild character and maintain biological diversity while providing pure water,

emphasizing opportunities for dispersed recreation, habitats for forest plants and animals, sustained yields of quality timber, and environmentally sound utilization of mineral resources.” Respondents’ Brief at 6. But then Respondents argue that retaining the wild character of the State Forests may not always be compatible with the utilization of mineral resources from those forests, and then imply that the wild character of our State Forests and Parks must give way to utilization of mineral resources from those forests. Respondents’ Brief at 7, 38, 41. Respondents imply that this is a justifiable balancing of natural resource uses with reasonable development.

That is not what this Court or the Pennsylvania Supreme Court meant by balancing competing interests. This Respondents point to the following statements by this Court to support their position: “We hold that Section 27 was intended to allow the normal development of property in the Commonwealth, while at the same time constitutionally affixing a public trust concept to the management of public natural resources of Pennsylvania. The result of our holding is a controlled development of resources rather than no development.” *Payne v. Kassab*, 312 A.2d 86, 94 (Pa. Cmwlth. 1973). These statements must be read in the context of the facts in that case. The Pennsylvania Department of Transportation (PennDOT) needed to take a small portion of a community park to widen an existing road. The widening was essential to the flow of traffic. The evidence established that there

was no alternative to avoid the intrusion on the park. The intrusion was minimal. PennDOT mitigated the minimal damage by replacing 23 trees that were removed with 28 new trees. The structures that had to be torn down to construct the widening were replaced with new structures of similar quality. The dedication of the park did not preclude a road. PennDOT had conducted its review and decision in compliance with a statute passed to insure protection of environmental resources. *Id.* at 88-94.

From the facts of the case in *Payne*, this Court enunciated the following three prong test to determine a constitutional challenge to a governmental action that impacted the public natural resources: (1). Was the action in compliance with existing statutes and regulations relevant to the protection of the Commonwealth's public natural resources? (2). Does the record demonstrate a reasonable effort to reduce the environmental incursion to a minimum? (3) Does the environmental harm which will result from the challenged decision or action so clearly outweigh the benefits to be derived therefrom that to proceed further would be an abuse of discretion?

In Petitioner's case before this Court, the Respondent Governors made no effort prior to announcing their decisions to require DCNR to lease additional State Forest land and to take Oil and Gas Lease Fund monies out of DCNR's control to determine whether those decisions would be in compliance with Article I § 27, the

Conservation and Natural Resources Act, or the Oil and Gas Lease Fund Act. The Governors made no effort prior to making their decisions to evaluate the impacts of their decisions so that they could make a reasonable effort to reduce the environmental incursions to a minimum or determine what would be required to mitigate any harm that could not be avoided. Finally, the Governors made no effort prior to making their decisions to evaluate the harm to the public natural resources that would result; nor did they evaluate the specific benefits of those decisions so that they could determine whether the harm would outweigh the benefits.

The Respondent Governors did not consider the impact of their decisions to take away from DCNR its responsibility to determine when, where and how much State Forest or State Park land to lease, and its control of the funds from the leases, on DCNR's ability to meet its statutory and constitutional obligations to conserve and maintain the natural resources of our State Parks and Forests.

Respondents did not consider the impacts of those decisions on DCNR's mission to sustain each and all of the functions of the State Forests through ecosystem management or "to retain the wild character, maintain the biological diversity, while providing pure water, emphasizing opportunities for dispersed recreation, habitats for forest plants and animals, sustained yields of quality timber, and environmentally sound utilization of mineral resources." See Petitioner's Exhibit P (*Penn's Woods, Sustaining Our Forests*).

The Governors did not ask whether the wild character or the biological diversity of our State Forests would be at risk by additional natural gas extraction. They did not ask whether requiring more leasing when DCNR advised against it would be an “environmentally sound development of our mineral resources”; or whether more leasing in this circumstance would be conserving and maintaining our public natural resources as required by Article I § 27.

The Respondent Governors have ignored since 2008 DCNR’s recommendation against further leasing until the continuing impacts of the existing leases could be understood. DCNR realized it had 660,000 acres of State Forest land subject to shale gas development, and it had serious concerns about the impacts. *See* Petitioner’s Brief at 57-60. DCNR has over 250,000 acres of State Park lands that are subject to oil and gas extraction because the Commonwealth does not own the oil and gas rights on these lands. In addition, the private lands adjacent to and within the boundaries of the State Parks and State Forests are being developed and will have direct and indirect impacts.

The leases and the monitoring protocol that DCNR has set into place cannot undo the decisions of the Respondents to lease more land and to take the money from those leases from DCNR. They are not relevant to whether the Governors’ actions/decisions were and are in violation of their duties as trustees, and in violation of Article I § 27.

C. PETITIONER’S REPLY TO RESPONDENTS’ ARGUMENTS

1. IMMEDIATE IRREPARABLE HARM

Petitioner’s harm to be enjoined is from leasing of State Forest land and extracting natural gas, a non-renewable natural resource, and in requiring DCNR use \$117,000,000 from this leasing and extraction to pay its annual operating expenses. Based on the Governor's decision in his February 4, 2014 Executive Budget to direct DCNR to lease State Forest and/or Park land to generate \$75,000,000 for the General Fund, DCNR must take action now, not when the General Assembly has enacted the budget.

The Governor has a constitutional mandate to submit a balance budget to the General Assembly and this budget is the framework for passing legislation to appropriate the funds necessary to carry out the budget. The Governor's choice to require additional leasing to generate \$75,000,000 for the General Fund, and to require DCNR to use \$117,000,000 from the Oil and Gas Fund for its annual operating expenses, are final decisions as far as the Executive Branch is concerned. DCNR is not waiting for the approval of General Assembly to begin the leasing process. DCNR has been authorized by the Governor to begin the leasing process and leases can be executed at any time. (See Exhibit DD to Motion for Summary

Judgment, Memo from Secretary John Quigley to Governor's Chief of Staff, Scott Roy.) After DCNR has entered into a lease with private industry, those leases cannot be rescinded and the Petitioner and its members will be irreparably harmed. Those leases must be executed before the legislature can appropriate the money. By requesting this Court to enjoin the Governor from directing further leasing until the issues of the Petition can be decided, the Petitioner is not asking for an advisory opinion on the enactment of the budget, as asserted by the Respondents. By the time the General Assembly enacts legislation to appropriate the money from the leasing, the leases will already be executed and a request to enjoin the leasing at that point would be too late.

2. ALTERING THE STATUS QUO

The Governor's decisions to require additional leasing of State Forest and/or State Park land for natural gas extraction, to sell more natural gas, a non-renewable public natural resource, and to take another \$192,000,000 from the public trust, all represent major changes to the status quo of the public trust.

Additionally, the status quo is changed by requiring DCNR to pay for its operational costs from the public trust. The Respondents make clear that their intention is to pay for all of DCNR operational expenses from the public trust funds. That decision is being made without any consideration of the requirements of the public trust.

3. GREATER INJURY WITH OR WITHOUT THE INJUNCTION

The Respondents did not make any attempt to evaluate the potential harm from the 2009, 2010 and now the 2014 leases that they have required DCNR to execute. Before the Governor can direct that additional land be leased, non-renewable resources be extracted, and \$192,000,000 be taken from the public trust, the Governor must know the existing and future impacts of those actions, and the costs of dealing with those impacts.

In order to evaluate the existing and future impacts from the existing leases, the Respondents would have to take into consideration the immediate and long term, direct and indirect, cumulative and synergistic impacts from the almost 700,000 acres of State Forest land currently under lease by DCNR or private owners of the oil and gas rights, as well as over 250,000 acres of State Park lands under private leases, which often are adjacent to the State Forest land, as well as all the private land adjacent to or within both State Park and Forest lands. They would have to consider the impacts to air, the water, the land, the trees and plants and wildlife, the uses of these resources by the beneficiaries of the trust, both now and for future generations, and to the rights of those beneficiaries, both now and for the future.

The leases will be active for many decades. The impacts that are occurring now will continue to impact, to change, and to grow. DCNR estimates that 3,000

additional shale gas wells may be drilled on State Forest lands to fully develop the 386,630 acres currently subject to DCNR leases. *Shale-Gas Monitoring Report* at 9, 22-23 (Exhibit C to Respondent's Brief). A total of 568 shale gas wells had been drilled on this acreage as of the end of 2013. Another 286,620 acres of State Forest have severed gas rights that can currently be developed for shale gas extraction. *Id.* at 22. Similarly, over 250,000 acres of State Park land have severed gas rights that can currently be developed.

In order to evaluate the impacts of the Governor's decisions, it is also necessary to include a determination of the existing needs of the State Forest and Parks beyond the impacts from oil gas extraction. Recent statements made by DCNR to the General Assembly estimated that Parks and Forestry have a backlog of over one billion dollars of projects necessary to repair, replace, add to existing structures such as dams and sediment behind dams, bridges, roads, visitor centers and facilities, trails, boat launchings, and many more.

There are also legacy impacts on both State Parks and Forest that have not been restored, such as acid mine drainage and abandoned oil and gas wells. The costs of restoring these impacts have not been considered by the Respondents.

Nor have Respondents tried to quantify the potential impacts to our State Parks from gas extraction. What is known is that over 80% of our State Parks have severed mineral rights. That means that they are privately owned. There are

297,000 acres of State Parks. Many are in the Marcellus Region. What is also known is that the Parks surrounded by gas extraction are directly and indirectly impacted, from noise, air pollution, traffic and esthetics. The costs to buffer these impacts, or to mitigate them, are unknown. *See* Petitioners Exhibit PP (Affidavit of John Norbeck, former Director of Pennsylvania State Parks (2006-2012)).

As a result of the Supreme Court decision in *Belden & Blake Corp. v. DCNR*, 600 Pa. 559, 969 A.2d 528 (2009), DCNR has no ability to protect the integrity of the State Parks with severed private mineral rights from impacts gas extraction, other than to resort to eminent domain. *Id.* at 568, 533. The costs of buying mineral rights or limiting their extraction will be enormous.

The Respondents have not tried to quantify what the costs will be to monitor, sample, study, buffer, replace, mitigate or restore the natural resources and their uses that will be impacted. But it is clear that the costs will be high.

Another cost that the Respondents have not considered or evaluated from leasing and gas extraction on our State Forest and State Parks is the cost to our tourist industry, to the outdoor recreational industry that serves hikers, wild trout fishermen, campers, bird watchers, people interested in pursuing the wilderness experience that the north central region and the Laurel Highlands offer.

The Oil and Gas Lease Fund, even though labeled a “special fund”, is a trust fund whose monies are being held for the purpose designated by the Oil and Gas

Lease Fund Act, consistent with Article I § 27. *Hospital and Healthsystem Assoc. of Pa. v. Commonwealth*, 77 A.3d 587, 603 (2013).

Courts have recognized that legislative bodies retain authority to control the fate of special funds in order to serve the changing needs of government, so long as doing so would not contravene a specific constitutional provision or breach a contractual obligation. *Id.* at 605. When the trustee (DCNR) no longer needs the funds held in trust, the legislature may use them for other public purposes. The costs of conserving and maintaining the public natural resources of our State Forests and State Parks, for which the monies from leasing and royalties from natural gas extraction on State lands must be used, are not yet even fully understood. These costs cannot be determined until all the needs cited above have been finally resolved.

These evaluations must be made before consideration of requiring more natural gas extraction and taking an additional \$192,000,000 from DCNR to meet its statutory and constitutional obligations.

4. PREVAILING ON THE MERITS

The Respondents argue that the Petitioner cannot prevail on the merits because the General Assembly cannot be enjoined from future legislative acts. Respondents attempt to recast the Petitioner's request for injunctive relief against them as a request for injunctive relief against the General Assembly, and then

contend that any review of the legislative process by this Court is impermissible. In essence, the Petitioner attempts to use the same reasoning asserted in its preliminary objections when it claimed that Petitioner's challenges to the Fiscal Code amendments and certain provisions of Act 13 of 2012 raised non-justiciable political questions. In his Memorandum Opinion denying Respondents' preliminary objections, Judge Simpson states that "the issue of whether the challenged acts violate the Pennsylvania Constitution presents a justiciable question for this Court to resolve." Opinion at 27. He also concluded that "consideration of the constitutionality of the challenged enactments does not implicate a review of legislative policy, but rather a determination of whether the enactments are, in fact, consistent with the Pennsylvania Constitution." Opinion at 29.

The Petitioner does not seek to enjoin the General Assembly from enacting legislation to appropriate funds for fiscal year 2014-15. The Petitioner seeks to enjoin the Governor from demanding that DCNR lease additional State Forest land to raise \$75,000,000 for transfer from the Oil and Gas Lease Fund to the General Fund in fiscal year 2014-15. The Governor, not the General Assembly, is directing DCNR to lease State Forest land for oil and gas extraction to raise money for the fiscal year 2014-15 budget.

Likewise, the Petitioner seeks to enjoin the Governor from breaching his constitutional duties as trustee under Article I, § 27 by directing the unlawful use

of the Oil and Gas Lease Fund to pay for DNCR's annual operating expenses, as well as to pay for other Commonwealth operating expenses through the General Fund. The Governor, not the General Assembly, has the duty to ensure that DCNR evaluates the impact of oil and gas extraction under existing or proposed leases to our public natural resources, and the cost to mitigate those impacts, both now and in the future, to conserve and maintain the public natural resources for the people of the Commonwealth, including future generations. The Governor has the duty to direct DCNR to undertake this analysis prior to making any decision regarding future leasing or the use of the revenue generated from these leases in the Oil and Gas Fund. By the Respondents' own admissions, DCNR has just begun to do so.

Respondents attempt to point to DCNR's laudable efforts to minimize surface impacts from oil and gas development on State Parks and State Forests as evidence that their Article I, § 27 trustee duties to conserve and maintain public natural resources have been met. Yet the documents that Respondents provide clearly demonstrate that this industrial activity results in harm to these public natural resources and this harm is only now starting to be monitored to understand its full extent. This industrial activity will continue for decades. To suggest that DCNR has a full understanding of the harm to the public natural resources from shale gas extraction when the first approval to drill a shale gas well on State Forest land

occurred in 2008¹ is disingenuous. Likewise, to suggest that DCNR has "control" over oil and gas development through its leases overstates the provisions of those leases, particularly the over 200,000 acres of State Forest available for shale gas development under old DCNR leases. This characterization also fails to consider the harm from industrial oil and gas development on the 286,620 acres of State Forest and more than 250,000 acres of State Parks available for shale gas development because the Commonwealth does not own the rights to the oil and gas.

The cases cited by the Respondents to support their argument that Petitioner actually seeks to enjoin the General Assembly from enacting a budget simply fail to provide the claimed support. In *Delaware River Port Authority v. Thornburgh*, 500 Pa. 629, 634, 459 A.2d 717, 719 (1983), the petitioners were seeking a writ of mandamus to compel the appellees, which included the General Assembly, to take all steps necessary to ensure the construction of a new highway, as well as an injunction precluding them from taking any steps that would prevent such construction. The Supreme Court concluded that the Commonwealth Court had jurisdiction to consider the petition for review seeking to restrain the Governor, PennDOT and the PennDOT Secretary from interfering with the performance of the petitioner's statutory duties, and to enforce their compliance with their statutory

¹ See Shale-Gas Monitoring Report at 22-23, Exhibit C to Respondents' Joint Brief.

duties under the Delaware River Port Authority Compact. However, the petitioner could not seek an order directing the General Assembly to exercise or refrain from exercising its legislative power as such an order would violate the constitutional separation of powers. Contrary to the Respondents' assertions, Petitioner here is not seeking to have this Court issue an order directing the General Assembly to exercise or refrain from exercising its legislative power with respect to the budget for fiscal year 2014-15.

The Respondents' use of *Sears v. Corbett*, 49 A.3d 463 (Pa. Cmwlth. 2012) to support their position is also misplaced. In *Sears*, the petitioners sought declaratory, mandamus and injunctive relief from this Court against the Governor, the Budget Secretary and the General Assembly challenging the diversion of money that Pennsylvania received as a result of a settlement agreement with certain tobacco product manufacturers. Legislation had been enacted directing that this money be deposited into a specific fund for specific purposes. Through two Fiscal Code amendments, \$250 million was transferred from this fund to the General Fund. As part of their requested relief, the petition in *Sears* could be construed as seeking an order directing the General Assembly to take affirmative action, including enacting new legislation to ensure the money from the tobacco settlement was directed to the statutorily created fund and that the fund was reimbursed for the monies transferred to the General Fund. To the extent such

relief was sought, this Court granted the preliminary objections of the General Assembly asserting both sovereign immunity and the Speech and Debate Clause of Article II, section 15 of the Pennsylvania Constitution. Again, contrary to the Respondents' assertions, Petitioner here is not seeking to have this Court issue an order directing the General Assembly to exercise or refrain from exercising its legislative power.

Sears, in fact, provides support for Petitioner's requested relief against the Governor. The Governor and Budget Secretary had also asserted immunity from suit in *Sears*. This Court found that it had authority to consider the constitutionality of the Fiscal Code amendments that directed the transfer of the tobacco settlement money to the General Fund rather than the deposit of the money as statutorily directed. This Court observed that should it conclude that the Fiscal Code amendments were unconstitutional, it "could certainly direct Respondents Corbett and Zogby to refrain from enforcing this legislation." *Id.* at 473. Petitioner is asking this Court to review the constitutionality of uses of the Oil and Gas Lease Fund under Article I, § 27. If this Court determines that the Governor's proposed use of this fund to fill a General Fund deficit created by his proposed spending, or to pay for DCNR's annual operating expenses, to be unconstitutional, this Court can enjoin the Governor from using the Oil and Gas Lease Fund for these unconstitutional purposes.

Respondents fail to cite the recent Supreme Court decision in *Hospital and Healthsystem Assoc. of Pa., supra*. There the Supreme Court held that the MCare Fund is a trust fund, and that the monies in that fund cannot be transferred to the General Fund through a Fiscal Code Amendment of 2009.

5. ARTICLE I § 27 TRUST

The Oil and Gas Lease Fund Act (71 P.S. §§ 1331-1334) is not just a *de facto* appropriation to DCNR and its predecessors. *See* Respondents Brief at 30-31. The money in the Oil and Gas Lease Fund has been legislatively appropriated to DCNR and its predecessors since its enactment in 1955. The Oil and Gas Lease Fund Act specifically states that the monies are “appropriated” for the specific exclusive purposes of the Act.

Article I § 27 was approved as a Constitutional Amendment in 1971. When DCNR was created by the Conservation and Natural Resources Act of 1995, the provisions for use of the Oil and Gas Lease Fund were reauthorized in DCNR, but under the specific limitations of the Constitutional Amendment. The Conservation and Natural Resources Act could not have reauthorized the leasing of our State Parks and Forests, which when leased will be negatively impact the public natural resources, without providing from the continuation of the appropriations of the funds from that leasing to DCNR for the purpose of conserving and maintain the public trust resources. For this and the other reasons cited in Petitioner’s Brief in

Support of Motion for Summary Judgment, it is clear that the funds from the leasing and extraction of natural gas are trust funds.

As cited previously, the Supreme Court has unequivocally articulated the principle that a fund that has been designated for a special fund is a trust fund if designated for a specific purpose by statute. *Hospital and Healthsystem Assoc. of Pa.*, 77 A.3d at 603. In making this finding, the Supreme Court cited the Governor's Office Manual of Accounting, which defines a trust fund as containing assets held in trust for someone else. The Oil and Gas Lease Fund, even though labeled a "special fund" is in fact a trust fund. The monies in the fund are from the conversion of public trust resources. They are being held for the purposes designated by the Oil and Gas Lease Fund, which are consistent with the purposes of Article I § 27.

The Petitioner does not maintain that the Governor or the General Assembly cannot amend the terms of the Oil and Gas Lease Fund. But any amendment must be consistent with the obligation to use the funds from the leasing to benefit those public natural resources that are impacted by the leasing. They cannot "rob Peter to pay Paul". They cannot take from the public natural resources of our State Forests and State Parks to pay for deficits in the revenue sources use for education or statewide environmental protection programs.

Courts have recognized that legislative bodies retain authority to control the fate of special funds in order to serve the changing needs of government, so long as doing so would not contravene a specific constitutional provision or breach a contractual obligation. *Hospital & Healthsystem Assoc. of Pa.*, 77 A.3d. at 605. In this case, the additional leasing of our State Forests and/or our State Parks for gas extraction required by the Governor, which requires converting a public natural resource to private industrial use and selling the natural gas—a non-renewable public natural resource, would violate the requirement of Article I § 27 to conserve and maintain the public natural resources for the benefit of all the people both now and for future generations. It would also violate the Governor's duty as trustee to protect the rights of the people to clean air, pure water, and the preservation of the natural, scenic, historic, esthetic values of our State Parks and State Forests. That is why the Oil and Gas Lease Fund was enacted, to insure that extracting the natural oil and gas from our State Parks and Forests would actually benefit those resources, by using the money therefrom for adding land for both State Parks and Forests, and by creating projects that would protect the natural resources and would improve the benefits of the people to the uses of those resources.

If at some point in the future it can be determined that the purposes of the trust have been fulfilled, and the trustee (DCNR or its possible successor) no

longer needs the funds held in trust, the legislature may use them for other public purposes.

However, the costs of conserving and maintaining the public natural resources and preserving the rights of the people to those resources are not yet fully understood. Whether or not there would be a surplus of funds cannot be determined until all the State Park and Forest needs discussed above have been finally resolved.

And yes, that does preclude the General Assembly and the Governor from taking the funds from leasing and royalties of natural gas from State Parks and Forests to be used for purposes outside of the trust. The General Assembly instituted this reality when it enacted the Conservation and Natural Resources Act.

The people of Pennsylvania created the constitutional trust to protect our public natural resources. That trust cannot be undone by legislation. Neither the Governor nor the General Assembly can treat the corpus of the trust, including the State Parks and Forests and the minerals that are part of their natural resources, as Commonwealth property for them to do with what they chose. Both the Governor and the Legislature must protect those resources for the purposes intended in the Article I § 27 trust, to conserve and maintain the public natural resources for the benefit of all the people, both now and for the future.

Respectfully submitted,

Date: May 12, 2014

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