**SUMMARY OF PENNSYLVANIA ENVIRONMENTAL DEFENSE FOUNDATION’S EFFORTS TO PROTECT AND PRESERVE STATE PARKS AND FORESTS**

For over 10 years, the Pennsylvania Environmental Defense Foundation (PEDF) PEDF has been fighting to have the government fulfill its responsibilities under Article 1, Section 27 of the PA Constitution. Namely, *As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.* Since 2009, has engaged in legal actions to force government at all levels to fulfill its responsibilities to conserve and protect PA’s state forests and parks under this Constitutional Amendment. This is a summary of current actions.

**Threat**

The Governor and the General Assembly view the state’s forests as a commodity to be used as they see fit. This has been especially damaging with leasing our State forest to extract oil and natural gas in the Marcellus Shale region of the state, and taking all the money from the leasing and extraction to replace general fund money.

**Background**

* Under Governor Rendell in 2009-2010 over 120,000 acres of our State forest in the Pennsylvania Wilds region has been leased by DCNR for the extraction and sale of oil and gas from Marcellus Shale.
* Added to these new leases there are approximately 240,000 acres of existing DCNR oil and gas leases on Sate forest land.
* There are additionally another 312,000 acres of State forest land under severed rights leases.
* That makes at least 650,000 acres of State forest land currently under lease and being developed.
* In the Pennsylvania Wilds region there are 1.6 million acres of State Forest land. That means over one third of all State forest land in the northcentral part of the State is currently under lease.
* Oil and gas extraction is extremely damaging to our State Forest, creating fragmentation and numerous sources of contamination.
* Starting with the Rendell administration approximately $1,200,000,000.00 (billion!) have been taken out of the public trust to protect our State forest and diverted to the General Fund

**2017 Supreme Court Opinion**

In 2017, the Supreme Court ruled in PEDF’s favor in a landmark decision. The court ruled that under Article I Section 27 of Pennsylvania’s Constitution state public lands and the natural resources within those lands are owned by the citizens of the commonwealth as a trust, and the government, at all levels, are trustees of this trust, not proprietors of the resources. As trustees, the responsibility of government is to protect and preserve the trust.

**THE CURRENT THREAT TO OUR STATE FOREST IS THAT ALL 3 BRANCHES OF STATE GOVERNMENT, THE GOVERNOR, THE GENERAL ASSEMBLY AND THE COMMONWEALTH COURT, ARE IGNORING THE SUPREME COURT DECISION**

**Threat**

In spite of the 2017 decision, The Governor and the Legislature have continued to divert money from the Oil and Gas Lease Fund to balance the budget by funneling the money into the General Fund, and specifically for the operational costs for DCNR, This has occurred in the past four annual appropriations, 2017-2018, 2018-2019, 2019-2020, and the current budget for 2020-2021 calls for another $61 million to be diverted from the Fund. This is in clear defiance of the Supreme Court decision, and brings the total to approximately $1.2 billion being diverted from the fund since 2008. The Commonwealth Court has up to now refused to make a decision on these new appropriations.

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**Results** The case on funding DCNR’s operations has now been fully briefed and argued before the Commonwealth Court on September 11, 2019, 5 months ago. PEDF is awaiting a decision. It will undoubtedly be appealed to the Supreme Court.

**Threat**

**Bonus and rental Payments**

In the 2017 Opinion the Supreme Court determined that royalty payments for oil and gas extraction are part of the corpus of the public trust under Article I Section 27 and must be used to conserve the public natural resources. The Supreme court ordered the Commonwealth Court to determine whether bonus and rental payments under the oil and gas leases are part of the public trust. Bonus and rental payments are worth hundreds of millions of dollars to the trust.

It has taken PEDF two and a half years to get a decision from the Commonwealth Court on the issue. In that decision, published in July of 2019, the Commonwealth Court has challenged the Supreme Court rather than deciding the issue in compliance with the Supreme Court Opinion. The Commonwealth Court determined that a 1947 Statute must be applied to determine the bonus and rental payment issue. The 1947 law breaks down the money from the oil and gas leases into “income” one third of which the State can use for the General fund. This determination completely redefines the meaning of the public trust under Article I Section 27.

**PEDF Response**

**Back to the Supreme Court**.

PEDF has appealed the Commonwealth Court’s decision on the bonus and rental payments to the Supreme Court.

**Results**

PEDF filed its Brief and Reproduced Record this January 28. The Governor must file its Brief on February 28. PEDF will file a reply brief. The Supreme Court will then set the date for oral argument.

**Threat**

**DCNR State Forest Resource Management Plan**

DCNR, as trustee for our State Forest, is required to have a management plan to meet its responsibilities both under Article I Section 27 of Pennsylvania’s Constitution, and its duties under the 1995 Conservation and Natural Resources Act, which created DCNR.

**Background**

In 2016 DCNR published a new State Forest Resource Management Plan to include oil and gas drilling for economic use as a new mission for DCNR. The 2016 Plan calls for DCNR to balance the economic benefits, which deplete and diminish the natural resources, with the need to protect those resources. This change ignores the 1995 Strategic Plan published by DCNR, named “Penn’s Woods, Sustaining Our State Forests.” The 1995 Plan is based on managing the forest as an ecosystem, not as a source of economic values. Ecosystem management is based on the concept to protect and enhance the diversity of both plan and animal species habitat. Any development of oil and gas extraction or timber sales must be limited to protection of the ecosystem. The 1995 Plan is intended to meet DCNR’s compliance with both Article I Section 27 and its statutory mandates under the Conservation and Natural Resources Act.

This 2016 Plan changes 1995 Plan, and flies in the face of the Supreme Court Opinion, which mandates that DCNR both prevent and restore any degradation, depletion or diminishment of the forest.

**PEDF Response**

**PEDF believes the issues raised in the 2016 Plan are just as important as the constitutional issues raised by the oil and gas leases.**

In 2019 PEDF file a lawsuit against DCNR and Secretary Dunn, challenging the 2016 Plan raising four specific issues:

-DCNR’s statement that using our State fore for oil and gas extraction is part of their mission

in managing our State forest. There is no justification for this change in mission;

-DCNR’s statement that they must balance the harm caused by oil and gas extraction with the

economic benefits, which depletes the natural resources;

-The failure to have a specific management plan for managing the impacts from the current

Gas leases;

-The failure to have a specific management plan for managing the forest as an ecosystem.

**Results**

PEDF filed its Amended Petition in Commonwealth Court in January, 2020. The Governor must respond to the Petition by February 20, 2020.

**Threat**

**Mitigation Proposal**

Many acres of State forest land in the Pennsylvania Wilds in North Central PA was lost recreation as a result of the drilling for oil and gas, which violates the federal law because the forest lands were purchased in part from federal money. To mitigate the loss, DCNR proposed to use the land purchased Chester County, Pennsylvania, which in no way mitigates the loss of recreation in the northcentral State forest.

**Background**

DCNR’s proposal to use Chester County land to mitigate the State forest sets a bad precedent.

**PEDF response**

PEDF has challenged the DCNR proposal in a written complaint to DCNR and to the federal government, stating that DCNR has violated its constitutional duty. It is hoped that DCNR has had to drop its proposal.

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**The Challenge**

If a private law firm litigated the issues, it would have cost millions of dollars which few organizations could afford. Consequently, the Environmental Amendment would have remained toothless. PEDF has been able to persevere because we have John Childe as our counsel. As those of you who are familiar with PEDF know, the legal actions resulting in the Supreme Court decision on Article 1, Section 27 would not have happened without John’s expertise, deep commitment, and unbelievable generosity.

When the US Supreme Court overturned a law proposed by Andrew Jackson, Old Hickory replied, “Let the Court enforce their decision”. It seems as if all branches of state government are saying, “Let the Supreme Court enforce its decision on Article 1, Section 27”. PEDF is absolutely committed to make sure the decision is enforced and we sure could use your continued help.