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PA Government Is Ignoring the State Supreme Court

Reportedly, when Andrew Jackson disagreed with a decision of the Supreme Court, he said, "John Marshall has made his decision. Now let him enforce it". All three branches of Commonwealth government seem to be saying something similar regarding a ruling the PA Supreme Court made in June, 2017. At that time the court ruled in favor of the Pennsylvania Environmental Defense Foundation (PEDF) who was suing the governor for not enforcing the environmental amendment of the PA Constitution. Article 1, Section 27 of the Constitution 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."*

PEDF's suit specifically contended that the Governor and legislature were ignoring the amendment in the management of state parks and forests. The governor and the legislature have viewed and continue to view the state's forests as a commodity to be used as they see fit. The Supreme Court decision in PEDF's case clearly stated that the amendment means state lands and the resources on these lands are owned by the citizens of the Commonwealth in the form of a public trust. In addition to the trust including public lands and the natural resources contained in the land, the trust includes any money gained from the sale of the resources. The court ruled that the role of government at all levels is to act as a trustee of the public trust by conserving and maintaining public lands and resources.

The legislative and executive branches' abrogation of their responsibilities as trustees becomes especially damaging with the rush to drill for natural gas in the Marcellus Shale region of the state. In the Pennsylvania Wilds region of PA there are 1.6 million acres of State Forest land. Over one third of the public land in the northcentral part of the State is currently under lease. The governor and legislature have not permanently banned additional drilling on public lands, even though the Department of Conservation and Natural Resources has stated that any additional drilling will endanger fragile ecologies.

Starting with the Rendell administration approximately \$1.2 billion have been taken out of the public trust and diverted to the General Fund. The Oil and Gas Lease Fund was established to pay for any mitigation needed to repair damages caused by the extraction of natural resources. Currently the Fund contains fees from drilling leases and royalties for the natural gas extracted. The Supreme Court deemed that the Oil and Gas Lease Fund is part of the public trust (state parks and forests) and can only be used to conserve and protect the public trust. Governor Wolf and the legislature continue to ignore the Supreme Court

decision by diverting \$61 million from the Oil and Gas Lease Fund to the General Fund for the 2020-21 budget.

Consequently, PEDF filed another suit specific to the diversion of Oil and Gas Lease Fund money to the General Fund. After a 2 year wait, Commonwealth Court has ignored the decision of the Supreme Court by ruling that some of the Oil and Gas Lease Fund can be used to fund the operation of state departments and agencies. Now all three branches of state government are complicit in ignoring the Supreme Court decision in the PEDF case. PEDF is appealing the ruling to the Supreme Court.

The Department of Conservation and Natural Resources (DCNR), the agency charged with conserving and protecting public lands is ignoring the Supreme Court. In 1995, DCNR's Bureau of Forestry developed an overall strategy for the state forests. In the strategy, the Bureau undertook a significant change in philosophy. It rejected the philosophy of multiple use which had guided the Bureau's policies and decisions to that point. Instead of multiple use the strategy adopted the philosophy of ecosystem management. Multiple use means that a variety of activities, including extraction of natural resources, are legitimate uses of the forests and the resources within the forests. The adoption of a philosophy of ecosystem management is a 180 degree change from multiple use. Ecosystem management means meeting ecological and human needs. In other words, an activity that meets a human need but damages the ecology is antithetical to sound ecosystem management. The 2016 Plan for state forests reverts to a multiple use approach in which DCNR functions more like an owner of the resources, not as a trustee as mandated by the Supreme Court. The plan states that oil and gas extraction is a legitimate use of public natural resources. This 2016 Plan flies in the face of the Supreme Court Opinion, which mandates that DCNR both prevent and restore any degradation, depletion or diminishment of the state forests. Initially PEDF engaged in discussions with DCNR to get them to change the plan to be consistent with the Supreme Court decision. DCNR refused to make the change so PEDF is challenging the plan in court.

Lastly, many acres of state forest land in the Pennsylvania Wilds in North Central PA is lost to recreation as a result of the drilling for oil and gas. This loss violates the federal law because the forest lands were purchased in part with federal money. To mitigate the loss, DCNR proposed to use the land purchased in Chester County, Pennsylvania, which in no way mitigates the loss of recreation in the northcentral State forest. DCNR's proposal to use Chester County land to mitigate the losses in Northcentral PA sets a bad precedent. 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. We hope that DCNR drops its proposal and instead mitigates in the region of the state incurring the damage.

In 1976, the legislature passed, the governor signed and the citizens ratified a visionary amendment to the Commonwealth's constitution. For 40 years, state government largely ignored its responsibility to act as a trustee of a public trust consisting of public lands and resources. In 2017 the Supreme Court made an unambiguous ruling mandating that government fulfill its trustee responsibilities. However, all three branches continue to ignore the ruling. As citizens and owners of the public trust, we cannot allow this undemocratic challenge to a Supreme Court decision to persist. (For more information on PEDF's legal actions go to PEDF.org)

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