

COMMONWEALTH COURT OF PENNSYLVANIA

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

**PETITIONER’S MOTION FOR DETERMINATION
THAT LEASE AND BONUS PAYMENTS
FOR OIL AND GAS EXTRACTION
ARE PART OF THE PUBLIC TRUST**

Under Rule 123 of the Pennsylvania Rules of Appellate Procedure, Petitioner Pennsylvania Environmental Defense Foundation (PEDF) respectfully moves this honorable court to find and determine, in compliance with the remand order of the Pennsylvania Supreme Court in the Opinion of June 20, 2017, that funds received from the lease and bonus payments for the extraction of oil and gas from Pennsylvania State Forests are part of the corpus of the environmental public trust.

The Supreme Court, at Pages 37-3 of the posted opinion of June 20, 2017, stated,

“In construing Sections 1604-E and 1605-E, to the extent that the lease agreements reflect the generation of revenue streams for amounts other than for the purchase of the oil and gas extracted, it is up to the Commonwealth Court, in the first instance and in strict accordance and fidelity to Pennsylvania trust principles, to determine whether these funds belong to the corpus of the section 27 trust.”

“In this regard, it must be remembered that the Commonwealth as trustee, has a constitutional obligation to negotiate and structure leases in a manner consistent with its Article I Section 27 duties. Oil and gas leases may not be drafted in ways that remove assets from the corpus of the trust or otherwise deprive the trust beneficiaries (the people, including future generations) of the funds necessary to conserve and maintain the public natural resources.”

“On remand, the parties should be given the opportunity to develop arguments concerning the proper classification, pursuant to trust law, of any payments called “rental payments” under the lease terms. To the extent such payments are consideration for the oil and gas that is extracted, they are proceeds from the sale of trust principal and remain in the corpus. These proceeds remain in the trust and must be devoted to the conservation and maintenance of our public natural resources, consistent with the plain language of Section 27.”

The PEDF contends that bonus payments for oil and gas development are the result of the bid process established to determine who should be given a lease for a specifically identified part of the State Forest for the development and extraction natural gas. It is thus a cost directly related to the sale of the natural gas.

Nothing in Article I § 27 public trust provisions establishes distribution of income from the trust corpus. As stated in *Stephens v. Lewistown Trust* 481A.2d 313, 316, “As in any matter involving interpretation of a trust the intent of the testator... must prevail.” There is no indication that the people of Pennsylvania intended to distribute any income from rents or otherwise. Section 8145 of the Restatement, 20 Pa.C.S § 8145, dealing with rental income, does not apply to the environmental trust.

DCNR does not consider leasing of our forests as rent, similar to renting a pavilion or a cabin. When DCNR signs a lease for oil and gas, the lease authorizes the conversion of the forest to industrial development for the purpose of extracting the natural gas or oil. The lease permits haul roads to be built, well pads to be constructed, pipelines to be installed, compression stations, storage ponds, and many other structures to be built to allow the lease holder to extract and treat and move the gas and oil from the ground to distribute the product to its destination. (See Exhibit A hereto, Affidavit of John Quigley.)

This development directly impacts the corpus of the trust, and the beneficiary's uses thereto. Secretary Quigley has accurately described those impacts in his affidavit. They "significantly affect habitats, recreation, aesthetics, historical and cultural resources, and watersheds in affected areas and at landscape and ecosystem levels. These cumulative impacts pose the greatest challenge to the conservation of **Pennsylvania's public lands.**"

Both the lease rental and the bonus payments are directly related to the sale of the oil and gas. They are consideration for the authorization to find and extract the natural gas and oil from the ground and to treat and pump that gas to distribution points outside of the State Forests. The royalty money is for payment of the oil and gas based on the amount of gas extracted.

As a direct result of the construction of the new and expanded roads, well pads, pipe lines, water lines, compression stations, and other industrial development on our State Forest land, that land is no longer part of our public natural resources. That land has been taken from the public trust corpus. Thousands of acres of State Forest land are no longer available to the people of the Commonwealth. The lease and bonus payments directly result in the conversion of the corpus of the public trust to private industrial development. The funds from the lease and bonus payments must remain in the trust and must be devoted to the conservation and maintenance of our public natural resources, consistent with the plain language of Section 27.

Respectfully submitted,

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