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NOTICE OF INTENT TO SUE – HAND DELIVERY

Cindy Adams Dunn, Secretary
Ellen Schultzabarger, State Forester
Department of Conservation and Natural Resources
400 Market Street
Harrisburg, PA 17101

Dear Secretary Dunn and State Forester Schultzabarger:

I represent the Pennsylvania Environmental Defense Foundation (“PEDF”). I am writing about your proposal to amend the 20 separate district forest management plans in conformance with the State Forest Resource Management Plan (“State Forest Plan”) updated by the Department of Conservation and Natural Resources (“DCNR”) in 2016. The State Forest Plan, as updated in 2016, violates Article I, Section 27 of the Pennsylvania Constitution (“Article I § 27”) and your duties as trustees of our State Forest public natural resources thereunder.

PEDF hereby requests that you amend the 2016 State Forest Plan consistent with Article I § 27 before you proceed with updates to the separate district forest management plans. In addition, PEDF believes it is necessary for DCNR to publish an updated Shale-Gas Monitoring Report that includes the current impacts from shale gas extraction on our State forests and to incorporate those impacts into the amended State Forest Plan.

The 2016 State Forest Plan states that it “is the primary instrument that the bureau uses to plan, coordinate, and communicate its management of the state forest system. The plan has two primary roles. First, it provides a framework for bureau staff to approach its work and make management decisions ... that ensure sustainability across the state forest lands” (page 20). The second and equally important role is to communicate to stakeholders – the citizens of Pennsylvania, who are the owners of the state forest system – how their forest is being managed by DCNR, as the trustee.

The DCNR Environmental Reviews prepared for the oil and gas lease sales conducted in 2009 and 2010 approved leasing and extracting oil and gas on over 60,000 acres of State forest land in northcentral Pennsylvania even though DCNR had decided not to lease any more State forest land after leasing over 70,000 acres in 2008. Nothing in the State Forest Plan in existence at that time established appropriate criteria to evaluate whether such leasing would be consistent with the principles of ecosystem management essential to conserve and maintain the public natural resources of our State forests consistent with Article I § 27.

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The shale gas extraction conducted to date under the leases executed in 2009 and 2010 have already caused significant degradation, depletion and diminishment our public natural resources, both by industrial development in our state forests and by removing and selling our oil and gas reserves. Over 617,000 acres of State forest land in northcentral Pennsylvania are subject to oil and gas development. This acreage comprises the core public natural resources of the entire Pennsylvania Wilds. The 2016 State Forest Plan needs to recognize these existing and future impacts and how they will be addressed.

The 2016 State Forest Plan proposes for the first time that the extraction and sale of oil and gas is one of the basis values and uses of our State forest. The plan states that “State forest lands are *working forests*, belonging to the citizens of the commonwealth, and are *managed for multiple resources and values* consistent with the principles of ecosystem management. *The economic use and sound extraction and utilization of geologic resources is part of the bureau’s mission* in managing these lands. Managing geologic resources requires thorough analysis, strategic planning, and attentive oversight to *ensure that the value of geologic resources is balanced with other forest uses and values*. Development of geologic resources should occur when it is compatible with landscape goals and functions, avoids sensitive ecological and socially important areas, and minimizes adverse impacts” (page 156 (emphasis added)). None of the highlighted proposals are in conformance with Article I Section 27 or ecosystem management.

Nothing in the plain language of Article I § 27 allows the sale of our public natural resources for economic use or benefit; or for use of proceeds from the sale of our natural resources for operational expenses of DCNR. If a conflict exists between DCNR’s constitutional trustee duties and its statutory authority, the statutory authority must give way to the constitutional duties.

Nothing in the plain language of Article I § 27 allows “balancing” the economic gains from the extraction and sale of our State forest natural gas against the long-term quality and sustainability of our State forest, including our constitutional right “to clean air, pure water, and the preservation of the natural, scenic, historic and esthetic values of the environment.”

Since 1995, DCNR and the Bureau of Forestry have relied on the science of ecosystem management to ensure the sustainability of our State forest in compliance with Article I § 27. Nothing in the science of ecosystem management allows the balancing of the impacts from extraction and sale of our natural gas and oil with the integrity of the ecology of our State forest. In fact, ecosystem management rejects managing the forest, or parts of it, for specific values (e.g., oil, gas or timber extraction) and recognizes the need to manage the forest for its overall ecological integrity in order to sustain our forests.

Nothing in the 2016 State Forest Plan analyses whether industrial shale gas development in our State forest complies with Article I § 27; whether the sale of our State forest natural gas and oil for economic gain complies with Article I § 27; or whether such development and sale complies with the science of ecosystem management.

The 2014 Shale-Gas Monitoring Report discusses the monitoring needed to evaluate the impact of shale gas development occurring in our State forest and begins to assess the impacts

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from the exiting leases. The 2016 State Forest Plan acknowledges that only 16 percent of the shale gas development authorized by the 2009 and 2010 leases has occurred.

The recent Supreme Court decision issued in *PEDF v. Commonwealth*, 161 A.3d 911 (Pa. 2017) defines your duties as trustees of our State forests and parks, including our oil and natural gas. Your constitutional obligation under Article I § 27 is to conserve and maintain the corpus of the trust, our public natural resources, for the benefit of the people, who are the beneficiaries of the trust. To conserve and maintain means that you cannot deplete, diminish or degrade those resources. You have the duty to both prevent and remedy any degradation of those resources. It means that you must ensure that the resources are conserved for future generations. The 2016 State Forest Plan does not reflect that you have complied with those duties.

As trustees, you must comply with the fiduciary trust laws of Pennsylvania. One of your primary fiduciary duties is to provide the beneficiaries with a complete inventory of the public natural resources, including an inventory of the existing degradation of those resources. In addition, you have the duty to inform the beneficiaries of the management plans to prevent and remedy the degradation, and to ensure the sustainability of the corpus of the trust for future generations.

For DCNR to develop new management plans for each State forest district based on a 2016 State Forest Plan that fails to recognize DCNR's trustee duties under Article I § 27 and articulate management actions consistent with those duties further violates your duties as the trustees of our State forests public natural resources, which includes our oil and gas.

If you go ahead and approve the updated plans for the District Forests based on the 2016 State Forest Plan, PEDF will have to file an action in Commonwealth Court to protect its rights under Article I § 27 and ensure you comply with your duties as trustees thereunder. PEDF welcomes the opportunity to try to resolve the deficiencies in the 2016 State Forest Plan expressed above to avoid going to court for a resolution.

Sincerely,

John E. Childe, Esq.

cc: Audrey Miner, DCNR Chief Counsel, aminer@pa.gov
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