

January 29, 2016

*Via electronic mail*

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**Re: Comments about Draft 2015 State Forest Resource Management Plan**

Dear Mr. Devlin:

We, the undersigned members of the Save the Loyalsock Coalition (Coalition), write to request that the Department of Conservation and Natural Resources (DCNR or the Department) incorporate into its Draft State Forest Resource Management Plan (Draft SFRMP) policies and procedures that will be sufficient to protect the Loyalsock State Forest, and all state forest lands, from environmental destruction caused by the industrial practices of natural gas extraction.

The Coalition, comprised of statewide and local conservation, environmental, recreation, fishing and outdoors organizations representing over 100,000 Pennsylvanians, has worked since 2012 to protect the Clarence Moore Lands of the Loyalsock State Forest from natural gas development. Members of Coalition organizations attended and participated in most of the eleven statewide Draft SFRMP meetings and have submitted constructive comments aimed at strengthening the Draft SFRMP.

The 25,000 acres of the Clarence Moore Lands epitomize the best of Pennsylvania's remaining unfragmented forest lands and include Old Loggers Path, the Exceptional Value watersheds of Rock Run and Pleasant Stream, and a National Audubon Society-designated Important Bird Area. As you are aware, legal decisions by the Commonwealth Court and Board of Claims give DCNR unusually strong ability to protect the surface of the Clarence Moore lands from oil and gas development.

As noted in the Draft SFRMP, "[t]he SFRMP is the primary instrument that the bureau uses to plan, coordinate, and communicate its management of the state forest system." The Department's annual 2015 report also notes that "[t]he 2015 SFRMP revision process continues the agency's ongoing adaptation to changing ecological, social and economic conditions." The Coalition commends the Department for its efforts to update its State Forest Resource Management Plan and appreciates the opportunity to provide comment on this instrument used by DCNR to guide the forest management process. We also commend DCNR for extending the comment period to ensure that the public had adequate opportunity to participate.

Properly managing the Commonwealth's state forests for the benefit of all of Pennsylvania's citizens – both present and future – is one of the Department's most important responsibilities. Many of the goals laid out by the Department are laudable, and we support the Department's efforts to strengthen its state forest management program. Among other things, we

are encouraged by the Department's acknowledgement of – and planning for – the effects of global climate change. We believe, however, that the SFRMP can be improved. We offer the following comments to support the Department's efforts to strengthen the SFRMP.<sup>1</sup>

**I. The SFRMP should include greater emphasis on the Department's obligations under Article I, Section 27 of the Pennsylvania Constitution.**

The Department's greatest obligation with regard to managing the Commonwealth's state forests comes from the Pennsylvania Constitution. The Environmental Rights Amendment states that "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 (and thus its constituent agencies, including DCNR) has a fiduciary duty to "conserve and maintain them for the benefit of all the people."<sup>2</sup> The State Forest system – including all of the natural resources contained therein – is included in the public natural resources covered by the constitutional trusteeship obligations. As a result, the Department must work to preserve the state forests entrusted to it and ensure that the principal of that trust is conserved and maintained for future generations.

Although the Draft SFRMP makes reference to the Environmental Rights Amendment, it does not discuss at length the Department's obligations that arise from it. Considering the critical importance of the Department's constitutional obligations, the final SFRMP should place a greater emphasis on the Environmental Rights Amendment. The final SFRMP should emphasize the Department's efforts to "conserve and maintain" Pennsylvania's state forest resources. Further, for any actions where the Department plans to allow for the economic development of any of these resources (e.g., timber, surface access for natural gas extraction), it should clearly and expressly explain how the proposed development will prevent material damage to, and preserve the natural, scenic, historic, and esthetic values of, the trust principal. If it is not able to provide such an explanation, the Department should not allow for the development activity, out of deference to its constitutional obligations.

In order to adequately evaluate the effect of development on state lands, we recommend that the Department institute a version of an environmental impact analysis process similar to the one used under the National Environmental Policy Act. Such a process would allow for public participation and ensure that all environmental impacts of a proposed action are accounted for and evaluated. In light of the intense public interest in the unique natural, scenic, historic, and esthetic attributes of the Clarence Moore lands, and the significant legal issues surrounding the subsurface mineral owners' rights to access the surface of those lands, the Coalition believes that it is especially important to perform such a public environmental analysis as part of any decision whether to enter into a surface drilling management agreement that would allow natural gas development to occur on the Clarence Moore lands.

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<sup>1</sup> Many Coalition members submitted separate comments about many different aspects of the Draft SFRMP. This Coalition letter is intended to highlight a just a few of the most salient items contained in those individual letters and address them from the Coalition's perspective. The Coalition supports our members' initiative to engage in this process, and we encourage the Department to give full consideration to each recommendation contained in submissions from our member organizations and individuals.

<sup>2</sup> Pa. Const. art I, § 27. See *Belden and Blake Corp. v. DCNR*, 969 A.2d 528, 532 (Pa. 2009); *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 978 (Pa. 2013); *PEDF v. Wolf*, 108 A.3d 140, 167 (Pa. Commw. 2015).

## **II. The SFRMP should better detail the impacts of shale gas development on Pennsylvania's state forest resources.**

One of the most significant impacts on Pennsylvania's state forest resources comes from the effects of natural gas extraction on and near state forest lands. Almost 400,000 acres of state forest land is currently under lease for natural gas extraction.<sup>3</sup> Natural gas extraction activities include, but are not limited to, the construction and operation of well pads to extract natural gas, the development of roads to access well pad sites, and the construction of pipelines and related infrastructure to move natural gas from well to market. Environmental impacts of these activities include, among other things: the potential for air and water contamination resulting from leaks; forest fragmentation caused by pipeline and road construction; erosion, sedimentation, and stormwater runoff from construction and maintenance; adverse impacts to habitat of threatened or endangered species; and loss of wetland functions and values within project areas.

The Department's 2014 *Shale Gas Monitoring Report* provided a preliminary assessment of impacts of natural gas extraction from shale formations underlying Pennsylvania's public lands. This report shows that the following impacts on state lands have been observed: forest conversion and fragmentation; invasive species; and fewer "remote," "wilderness-type" recreational opportunities.

The Draft SFRMP discusses some of the impacts of oil and gas activities on state forests, but it falls short of laying out a comprehensive plan for how all of these impacts will be avoided, minimized, or mitigated in a manner that will prevent the natural, scenic, historic, and esthetic values of Pennsylvania's state forests from being diminished. The final SFRMP should provide specific information about the current state of state forest leases. (Of the leased acres, how many have been developed? How many are left to be developed? How is the Department evaluating extraction practices and preventing industry from using practices that would degrade state forest resources?) The final SFRMP should also lay out specific plans for making sure that future oil and gas development on state land, if any, will ensure the long-term preservation of Pennsylvania's state forest resources. Specifically, the Coalition suggests that instead of using language like "minimize impacts",<sup>4</sup> the Department revise the Draft SFRMP to strive to "ensure no net loss" in the quantity or quality of state forest resources through "avoidance, minimization, or mitigation." The "no net loss" policy should apply not only to acres of state forest land as a whole, but to all natural resources within the state forest system (acres of wetlands, riparian buffers, acres of forested headwater watersheds, etc.) and the functions or values they provide.

By laying out a clear vision for protecting state forest lands from unnecessary damage caused by the natural gas industry, the Department will be able to better fulfill its constitutional obligations and preserve state forest resources for future generations.

## **III. The Department should restrict access to state forest lands for purposes of oil and gas extraction to the extent permitted by law.**

As discussed above, shale gas development has significant impacts on our state forest resources. Although the Department may not be legally entitled to prevent all surface access to

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<sup>3</sup> Draft SFRMP at 134.

<sup>4</sup> See, e.g., Draft SFRMP at 113 and 119.

state forest land<sup>5</sup>, it should use its considerable powers to prevent surface development of state forest land for oil and gas extraction whenever legally permissible.

DCNR may be able to limit access to state forest land in a situation where the owner of subsurface mineral rights can effectively access those resources from lands outside of state forests. Both the *Chartiers* and *Belden & Blake* courts recognized the necessity of surface access to extract minerals as a significant factor leading to their holdings that the owners of subsurface property rights have a limited right of access to the surface estate.<sup>6</sup> As extraction technology has improved in recent years, so too has the ability of the owners of subsurface resources to reach oil and gas deposits from greater lateral distances. The Draft SFRMP notes that horizontal components of oil and gas wells can extend from 5,000 to 8,000 feet in length.<sup>7</sup> Thus, there are many cases where it may no longer be impossible for subsurface owners to reach their oil and gas resources from surface outside of state forests. The Department should encourage the remote access to oil and gas deposits whenever possible and assert its legal rights to prevent surface access to state forest land when feasible.

Specific to the Clarence Moore lands of the Loyalsock State Forest, DCNR has even greater authority to prevent surface access. As we have expressed on several occasions (and would be happy to discuss in detail at your convenience), the deed that gives DCNR surface ownership more than 25,000 acres of the Loyalsock State Forest also gives DCNR an extraordinary degree of control over the use of most of that acreage. We ask that, consistent with its statutory mission and constitutional obligations, DCNR exercise this extraordinary control in a way that prevents unnecessary surface disturbance to our state forest resources.

Thank you for your time and consideration.

Sincerely,

*Michael Helbing*, Staff attorney  
PennFuture

*Richard A. Martin*, Coordinator  
PA Forest Coalition

*Carol Kafer*, President  
Loyalsock Creek Watershed Association

*James Slotterback*, President  
Responsible Drilling Alliance

*Brook Lenker*, Executive Director  
FracTracker Alliance

*Susan Carty*, President  
League of Women Voters Pennsylvania

*Joanne Kilgour*, Director  
Sierra Club Pennsylvania Chapter

*David Masur*, Executive Director  
PennEnvironment

*Nathan R. Sooy*, Central Pennsylvania  
Campaign Coordinator  
Clean Water Action

*David Brown*, Vice-President  
Lycoming Audubon Society

*Joseph Neville*, Executive Director  
Keystone Trails Association

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<sup>5</sup> See *Belden & Blake Corp. v. DCNR*, 600 Pa. 559, 969 A.2d 528 (2009); *Chartiers Block Coal Co. v. Mellon*, 152 Pa. 286, 25 A. 597, 598 (1893).

<sup>6</sup> See *Belden & Blake*, 600 Pa. at 566; *Chartiers*, 152 Pa. at 296.

<sup>7</sup> Draft SFRMP at 132.