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I. Introduction

Amici submit this brief focusing on Pennsylvania's Environmental Rights Amendment and urging the Court to reject Plaintiffs' perverse interpretation of the rights guaranteed by the Amendment. Article I, Section 27 of the Pennsylvania Constitution recognizes a fundamental public right to have the Commonwealth conserve and maintain public natural resources for the benefit of present and future generations. Plaintiffs' First Amended Complaint alleges, in effect, that Plaintiffs have public trust duties under Section 27 which require them to seek unconventional gas development in the Delaware River basin and convert those natural resources into money. Section 27 does no such thing. To the contrary, Section 27 obliges trustees to conserve and maintain public natural resources. This Honorable Court should not interpret a constitutional provision recognizing the rights of Pennsylvanians to a clean environment to require the development of an industrial practice that has been determined by the Commission to present a high risk of polluting the Delaware River Basin.

II. Summary of Argument

Article I, Section 27 of the Pennsylvania Constitution, the state's Environmental Rights Amendment (ERA), provides:

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.

Pa. Const. Art. I, § 27. Only a handful of other states have a similar provision in their constitutions, and there is nothing like it in the federal Constitution.

Pennsylvania Environmental Defense Fdn. v. Commonwealth, 161 A.3d 911, 918 (Pa. 2017) (hereinafter “*PEDF*”).

On February 25, 2021, the Delaware River Basin Commission (“Commission”) approved regulations banning high volume hydraulic fracturing (“fracking”) in the Delaware River Basin. 18 C.F.R. § 440.3(b); Commission Resolution No. 2021-01, *available at* https://www.state.nj.us/drbc/library/documents/Res2021-01_HVHF.pdf. It explained:

The Commission has determined that high volume hydraulic fracturing poses significant, immediate and long-term risks to the development, conservation, utilization, management, and preservation of the water resources of the Delaware River Basin and to Special Protection Waters of the Basin, considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values.

Id. § 440.3(a).

On March 31, 2021, Senators Gene Yaw, Lisa Baker, and the Pennsylvania Senate Republican Caucus, as well as the Township of Damascus, the Township of Dyberry, Carbon County, and Wayne County filed their First Amended Complaint asking this Court for a declaration that the Commission’s action is unlawful. The

complaint contains four causes of action, all based on alleged violations of federal and state law and the Delaware River Basin Compact. But Plaintiffs embed in the complaint a contention that the ERA, and particularly its public trust clause (the ERA's second and third sentences), supports and indeed requires their position. First Am. Compl. ¶¶ 27-31, 70-77, 91-97.

The Plaintiffs are asking this Court to ignore two landmark Pennsylvania Supreme Court decisions on the ERA. In the first, *Robinson Township v. Commonwealth*, a plurality of the Supreme Court found that several provisions of a state shale gas statute violated Article I, Section 27, and articulated a framework for applying Section 27. 83 A.3d 901 (Pa. 2013). In the second, *PEDF*, a majority of the Pennsylvania Supreme Court held that several state laws relating to the expenditure of royalties received from shale gas development on public land violated Article I, Section 27, using much of the framework articulated by the *Robinson Township* plurality. 161 A.3d 911.

In light of these cases, Plaintiffs are wrong for four reasons. First, the ERA recognizes rights in the public; it is not a grant of governmental authority. Second, the public trust clause of the ERA imposes specific limits on Commonwealth trustees; they must conserve and maintain public natural resources for the benefit of present and future generations. Even royalties from the sale of public natural resources must be used to conserve and maintain these resources. The ERA does

not authorize exploitation of public natural resources for public and private economic benefit. Third, the trust corpus in the ERA is primarily composed of public natural resources—actual physical resources. Many of these public natural resources are water resources in the Pennsylvania part of the Delaware River Basin. While the trust corpus includes royalties from the sale of public natural resources, the trust corpus is not primarily financial, and Plaintiffs’ demand that the Court focus on the financial aspects fundamentally misconstrues the nature of the trust resources and the ERA. Finally, although the Plaintiffs claim to be Section 27 trustees, there is no authority in Pennsylvania law for the claim that individual legislators or the Pennsylvania Republican Caucus are trustees under Section 27. The local government Plaintiffs are recognized as Section 27 trustees, but they are not acting as proper trustees in this case.

III. The ERA Recognizes Publicly Enforceable Environmental Rights as a Limit on Governmental Power; It is Not a Grant of Governmental Authority.

Plaintiffs admit that, under Article I, Section 27, “the public natural resources of the Commonwealth are held in trust for the benefit of the people....” First Am. Compl. ¶ 27. The complaint, however, is utterly silent about vindication of these public environmental rights; it asks for no relief that would in any way protect the public’s environmental rights. Instead, Plaintiffs repeatedly assert their rights as trustees, as if the ERA is a grant of power or authority to them to seek the

exploitation of natural resources for economic benefit. But the ERA was not adopted for that purpose; it was adopted to guarantee specific *environmental* rights to the public by limiting governmental power.

As the Pennsylvania Supreme Court has recognized, the ERA is located in Article I, which contains Pennsylvania's Declaration of Rights, the state's analogue to the U.S. Bill of rights. *PEDF*, 161 A.3d at 916, 918. "The Declaration of Rights is that general part of the Pennsylvania Constitution which limits the power of state government; additionally, 'particular sections of the Declaration of Rights represent specific limits on governmental power.'" *Robinson Twp.*, 83 A.3d at 948 (citations omitted). The placement of Section 27 in Article I, along with such rights as the right to property (Section 1), religious freedom (Section 3), freedom of speech (Section 7), and security from searches and seizures (Section 8), was no accident.¹ As then Rep. Franklin Kury, the chief legislative sponsor of the

¹ In Pennsylvania law, legislative history is a relevant consideration in interpreting constitutional provisions if the words are not explicit. *Zauflik v. Pennsbury School Dist.*, 104 A.3d 1096, 1126 (Pa. 2014), *quoting Robinson Township v. Commonwealth*, 83 A.3d 901, 946 (Pa. 2013) (plurality). The legislative history for Section 27 discussed in this brief is assembled at John C. Dernbach & Edmund J. Sonnenberg, *A Legislative History of Article 1, Section 27 of the Constitution of the Commonwealth of Pennsylvania, Showing Source Documents*, WIDENER LAW SCHOOL LEGAL STUDIES RESEARCH PAPER SERIES no. 1418 at 71, (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2474660 (hereinafter "*Legislative History*").

amendment, explained when he introduced the resolution that would become Article I, Section 27:

Mister Speaker, I rise to introduce a natural resource conservation amendment to Pennsylvania's Bill of Rights. I do so because I believe that the protection of the air we breathe, the water we drink, the esthetic qualities of our environment, has now become as vital to the good life -- indeed to life itself -- as the protection of those fundamental political rights, freedom of speech, freedom of the press, freedom of religion, of peaceful assembly and privacy.

1969 Pa. Legislative Journal-House at 485-86 (statement of Rep. Franklin Kury), in *Legislative History* at 7-8.²

A different form of Section 27 could have been placed in other articles of the state constitution. The most obvious alternatives are Articles II or III (The Legislature and Legislation), Article IV (The Executive), Article VIII (Taxation and Finance, where other environmental provisions (Sections 15 and 16) in the Constitution are located), or even Article IX (local government). In fact, most states with environmental provisions in their state constitutions have them in places other than their bill of rights. *Robinson Twp.*, 84 A.3d at 962-63. Pennsylvania

² The legislative history, in fact, is replete with references to the importance of Section 27's placement in Article I. See, e.g., *Legislative History* at 14-15, 66-68. Under the Pennsylvania Constitution, a constitutional amendment must be passed by both houses of the legislature in one session, passed by both houses in the next legislative session, and then approved in a public referendum. Pa. Const. Art. XI, § 1. The ERA was adopted by a vote of nearly four to one in 1971. *PEDF*, 161 A.3d at 918.

chose a different path, indicative of its choice to recognize environmental rights in the public, rather than treat the environment as a matter of governmental power.

The text of the amendment itself further underscores the recognition of environmental rights in the public. Each of the three sentences in the ERA refers to “the people.” The Pennsylvania Supreme Court in *PEDF* explained that the amendment recognizes two sets of rights in the people. 161 A.3d at 930-31. Each of these sets of rights imposes a limit on the power of the Commonwealth. The first sentence or clause provides: “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.” Art. 1, § 27. This sentence, the Court said, “places a limitation on the state’s power to act contrary to this right, and while the subject of this right may be amenable to regulation, any laws that unreasonably impair the right are unconstitutional.” 161 A.3d at 931.

The second and third sentences, the Court said, create a constitutional public trust. *Id.* at 931-32. These sentences, the ERA’s public trust clause, provide: “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.” Art. I, § 27. The public trust clause, of course, is the part of the ERA being invoked by the Plaintiffs. Under this clause, the Court noted, the Commonwealth

is the trustee. 161 A.3d at 932. The corpus, or body of the trust, is public natural resources, which the Court held includes state parks and forests, as well as the oil and gas they contain. *Id.* at 916. The people, including present and future generations, are “the named beneficiaries” of this trust. *Id.* at 931-32. The Court also explained that “all agencies and entities of the Commonwealth government, both statewide and local,” have a constitutional trust responsibility. *Id.* at 931 n.23. Under this trust, the Pennsylvania Supreme Court said, the Commonwealth has two duties: “First, the Commonwealth has a duty to prohibit the degradation, diminution, and depletion of our public natural resources, whether these harms might result from direct state action or from the actions of private parties.... Second, the Commonwealth must act affirmatively via legislative action to protect the environment.” *Id.* at 933. These trust duties, of course, limit the Commonwealth’s power to act contrary to these duties.

The public has the right to have the Commonwealth perform these duties. These are actual rights under the Pennsylvania Constitution coequal to those of freedom of speech and religion. They cannot be denied, altered, or abridged by the state; and they are not mere considerations or statements of aspiration. As Article I, Section 25 (Reservation of Powers in People) states:

To guard against the transgressions of the high powers which we have delegated, we declare that everything *in this article* is excepted out of the general powers of government and shall forever remain inviolate.

Pa. Const. Art. I, § 25 (emphasis supplied).

Because Article I, Section 27 is (of course) in Article I, the rights it recognizes are “excepted out of the general powers of government and shall forever remain inviolate.”

The Commission’s decision to prohibit fracking in the Delaware River Basin is consistent with the protection of the public rights recognized in both parts of the ERA—at least insofar as the Pennsylvania part of the Basin is concerned. The Commission found that high volume hydraulic fracturing would pose an unacceptable risk to the “water resources of the Delaware River Basin,” including waters “considered by the Commission to have exceptionally high scenic, recreational, ecological, and/or water supply values.” 18 C.F.R. § 440.3(a). For the Pennsylvania part of the basin, this decision furthers the public rights in the first sentence of the ERA to “clean water” and to the “preservation of the natural, scenic, historic, and esthetic values of the environment.” It also furthers the public rights in the ERA’s public trust clause to have public natural resources—particularly water resources—conserved and maintained for the benefit of present and future generations. It is an affirmative action to protect the environment.

By contrast, there is nothing of protection of public environmental rights in the Plaintiffs’ First Amended Complaint. To the extent that they have trustee responsibilities (see Section V below), they are seeking to use their trustee position

to advance unconventional gas development in the Pennsylvania part of the Delaware River Basin and increase the public and private money received from the drawdown and exploitation of finite quantities of fossil fuels. ¶¶ 48-77. They are also seeking to undo a decision that protects the rights contained in the ERA. The ERA, however, does not grant plaintiffs any authority to promote economic exploitation of natural resources, let alone at the expense of clean air and pure water. It recognizes public rights as a limit on, and not a source of, governmental authority.

IV. The ERA Recognizes a Public Right to Have the Commonwealth Perform its Trustee Duty to “Conserve and Maintain” Public Natural Resources for the Benefit of Present and Future Generations, Not to Exploit Them for Economic Benefit.

The ERA was adopted in response to Pennsylvania’s long history of environmental degradation from the exploitation of natural resources. *PEDF*, 161 A.3d at 916-19. To curb that exploitation and degradation, the ERA makes the Commonwealth the trustee for “public natural resources.” Art. I, § 27. For the public trust clause, the terms of the trust are clear: the Commonwealth trustees must “conserve and maintain” the trust corpus—public natural resources—for the benefit of present and future generations.

Plaintiffs’ First Amended Complaint makes two fundamental and related errors about the ERA’s public trust. First, it utterly ignores the constitutional obligation of trustees to “conserve and maintain” these public natural resources.

Second, it describes the public trust almost entirely in terms of money received from the use or sale of natural resources, not the actual public natural resources themselves.

A. The ERA Requires Trustees to “Conserve and Maintain” Public Natural Resources, not to Exploit Them for Economic Benefit.

The core obligation of Commonwealth trustees in the ERA’s public trust clause is to “conserve and maintain” public natural resources. The Plaintiffs’ First Amended Complaint is utterly silent on this obligation. Although a trustee is empowered to exercise discretion with respect to the proper treatment of the corpus of the trust, that discretion is limited by the purpose of the trust and the trustee’s fiduciary duties.” *PEDF*, 161 A.3d at 933 (citing *Struthers Coal & Coke Co. v. Union Trust Co.*, 75 A. 986, 988 (Pa. 1910); *In re Sparks’ Estate*, 196 A 48, 57 (Pa. 1938)). Even when the trustee says it is acting in other ways to protect the beneficiaries, the Court said, the trustee cannot use trust assets in these other ways. *Id.*

The Pennsylvania Supreme Court articulated the Commonwealth’s trust responsibilities in greater detail in *PEDF*. The *PEDF* Court held that “the proper standard of judicial review lies in the text of Article I, Section 27 itself as well as the underlying principles of Pennsylvania trust law in effect at the time of its enactment.” *Id.* at 930. The use of trust language in the public trust clause, the Court stated, indicates the value of drawing on pre-existing trust law principles to

determine their meaning. *Id.* at 932. Thus, in exercising its public trust duties, the Commonwealth is bound by the trust duties of prudence (exercising “such care and skill as a man of ordinary prudence would exercise in dealing with his own property”), loyalty (managing the trust corpus “so as to accomplish the trust’s purposes for the benefit of the trust’s beneficiaries”), and impartiality (managing “the trust so as to give all of the beneficiaries due regard for their respective interests in light of the purposes of the trust”). *Id.* at 932-33 (citations omitted).

A recurring theme in the Court’s opinion is that the Commonwealth must hold public natural resources as a trustee, and not as a proprietor. *Id.* at 932, 935, 939. Using an analysis prepared by Professor Robert Broughton in 1970 during the legislative process that led to the adoption of Section 27, the Court explained the difference:

As a trustee, the Commonwealth must deal “with its citizens as a fiduciary, measuring its successes by the benefits it bestows upon all its citizens in their utilization of natural resources under law.” Under Section 27, the Commonwealth may not act as a mere proprietor, pursuant to which it “deals at arms[’] length with its citizens, measuring its gains by the balance sheet profits and appreciation it realizes from its resources operations.”³

³ 161 A.3d at 932, citing Robert Broughton, *The Proposed Pennsylvania Declaration of Environmental Rights, Analysis of HB 958*, 41 PA. BAR ASS’N Q. 421, 425 (1970), reprinted in Pa. L. Journal, 154th General Assembly, No. 118, Reg. Sess., 2269, 2273 (1970)) (internal citations in quotation omitted); *Legislative History* at 32.

Under trust law in effect at the time of the enactment of Article I, Section 27, the Court held, “proceeds from the sale of trust assets are trust principal and remain part of the corpus of the trust.” *Id.* at 935. Royalties received from the sale of oil and gas are such proceeds, the Court held, and must therefore be managed as public natural resources. *Id.*

Based on that analysis, the Court held unconstitutional under Section 27 state legislation that transferred a substantial share of royalty proceeds from oil and gas leasing on public lands to the Commonwealth’s General Fund, where it could be spent for a variety of unrelated purposes. The Court said: “Without any question, these legislative enactments permit the trustee to use trust assets for non-trust purposes, a clear violation of the most basic of a trustee’s fiduciary obligations.” *Id.* at 938 (citing *Robinson Twp.*, 83 A.3d at 950). The Court then stated: “To the extent the remainder of the Fiscal Code amendments transfer proceeds from the sale of trust assets to the General Fund, they are likewise constitutionally infirm.” *Id.* at 938. A fundamental problem with the state’s position, the Court reasoned, is that the state was acting as a proprietor and not as a trustee of public natural resources:

By arguing that proceeds obtained from the sale of our natural resources are not part of the corpus of the trust, the Commonwealth improperly conceives of itself as a mere proprietor of those public natural resources, rather than as a trustee. In the Commonwealth’s view, it may dispose of our public natural resources as it so chooses and for any purpose it so conceives, so long as such disposition broadly benefits the

public (apparently without regard to “generations yet to come”)....As such, it urges us to substantially diminish its fiduciary obligation to prevent and remedy the degradation of our natural resources. We decline to do so.

Id. at 935.

Like the state in *PEDF*, the Plaintiffs are seeking public financial benefits from unconventional gas drilling because they are “facing significant budgetary shortfalls” that impair “their ability to fund governmental programs.” First Am. Compl. ¶ 97. The First Amended Complaint fails to recognize that the Commonwealth’s central and overriding duty under the ERA is to conserve and maintain public natural resources. This central public trust responsibility is not even acknowledged in the First Amended Complaint. The Complaint expresses no interest in the conservation and maintenance of public natural resources, and does not acknowledge the trustee’s duties of prudence, loyalty, and impartiality toward those resources. If anything, the First Amended Complaint expresses loyalty toward those who would exploit public natural resources. The economic benefits from unconventional gas development in the Delaware River Basin that the Plaintiffs so plainly seek put them in the position of proprietors, measuring their gains “by the balance sheet profits” as well as “appreciation” realized from “resources operations.” *PEDF*, 161 A.3d at 932 (citation omitted).⁴ Just as the

⁴ Moreover, even if Plaintiff’s actions were proper, which they are not, the Pennsylvania Supreme Court’s holding in *PEDF* places a clear prohibition on

Pennsylvania Supreme Court did in *PEDF*, this Court should reject the Plaintiffs' claim to be acting properly as trustees under Section 27.

B. Public Natural Resources are Primarily Actual Physical Resources, Not Financial Receipts from the Use or Sale of These Resources.

Public natural resources⁵ under the ERA are primarily physical resources. These includes “not only state-owned lands, waterways, and mineral reserves, but also resources that implicate the public interest, such as ambient air, surface and groundwater, wild flora, and fauna (including fish) that are outside the scope of purely private property.” *Robinson Twp.*, 83 A.3d at 901. The term includes state

using funds received from natural resource exploitation to fund general non-environmental government programs, including filling budget shortfalls. As a result, Plaintiffs could not use funds obtained from natural resource exploitation in the way they want in any event. *Pennsylvania Environmental Defense Fdn. v. Commonwealth*, 214 A.3d 748, 774 (Pa. Commw. Ct. 2019), appeal docketed, No. 64 MAP 2019 (Pa. Aug. 12, 2019), does not support Plaintiffs' broad claims about expenditures. In that case, the Commonwealth Court decided that two-thirds of the proceeds from bonus and rental payments from drilling on state lands belong in the constitutional public trust, while one-third can be spent in any way the Commonwealth sees fit. (By contrast, all of the royalty proceeds must be spent for trust purposes under the Supreme Court's 2017 *PEDF* decision.) *PEDF* argues on appeal that all moneys from bonus and rental payments must be spent to conserve and maintain public natural resources. The case has been briefed and argued before the Pennsylvania Supreme Court, and a decision is pending.

⁵ While the First Amended Complaint occasionally refers to “public natural resources,” *see* ¶¶ 27, 94, both its caption and introduction refer to the plaintiffs as “trustees of the natural resources of the Commonwealth of Pennsylvania.” *See also id.* ¶ 28. There is no authority under Article I, Section 27 for this broader claim. The Section 27 public trust applies only to “public natural resources.”

forests and parks as well as the gas lodged in the shale under these forests and parks. *PEDF*, 161 A.3d at 931. Water resources in Pennsylvania protected by the Commission's decision are also public natural resources.

In *PEDF*, the Pennsylvania Supreme Court held that royalties paid to the state for oil and gas drilling on state forests and parks are also part of the trust corpus subject to the ERA. *Id.* at 935. Critically, however, these royalty moneys do not represent a net addition to the public trust. At most, royalty moneys are intended as a substitute for the natural trust resources extracted and lost to the people of the Commonwealth. The extraction of the gas, plus any environmental damage caused during the drilling and production processes, means a loss to the public—present and future generations—of public trust resources. At best, royalties and other proceeds received from the drilling process, which *must* be used to conserve public natural resources, result in a measure of counterbalance to the damage done to the public trust by the resource extraction and depletion.

To attempt to bolster their erroneous argument for unconventional gas development in the Delaware River Basin, Plaintiffs' First Amended Complaint describes the Section 27 trust primarily in financial and economic terms. They argue that the Commission's prohibition on fracking diminishes the value of public natural resources. First Am. Compl. Counts 2, 3. The complaint also identifies numerous other environmental funds that, it suggests, would receive more money

if the Commission’s prohibition on fracking is lifted. First Am. Compl. ¶¶ 48-77. Plaintiffs, who are all governmental officials or entities, even invoke private landowners to make this claim. The Commission’s action, they say, “is not only interfering with the reasonable investment-backed expectations of the landowners, but also directly and substantially impairing the growth of the Trust’s assets.” *Id.* ¶ 67.

These claims turn Section 27—the Environmental Rights Amendment—upside down. At its core, the public trust clause of the ERA is about public rights in actual public natural resources—land, water, minerals, and the like. The public trust clause is supported by the ERA’s first clause, which recognizes a public right to “clean air, pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.” Pa. Const. Art. I, § 27. This first clause also applies to public natural resources; that is, both clauses apply here. Thus, Section 27, including its public trust clause, is intended to protect physical public natural resources, including the values in those resources (“natural, scenic, historic, and esthetic”), as well as the quality of those resources (“clean air, pure water”). The First Amended Complaint is not arguing that the Commission’s action somehow fails to protect public water resources in the Pennsylvania part of the Delaware River Basin. Rather, to adopt Plaintiffs’ argument is to say that the ERA *requires* the liquidation of public natural resources for cash—that this actually improves the

public trust. If that is the case, the ERA means nothing. It cannot be overstated that the *Environmental* Rights Amendment is first and foremost directed at protection of actual public natural resources as a public right. Plaintiffs' argument is no different than saying that the First Amendment to the U.S. Constitution requires suppression of speech or that the Second Amendment requires the confiscation of arms. If this Court adopts that view, it would subvert the will of the Pennsylvania General Assembly and the voters, would turn Pennsylvania Supreme Court precedent on the ERA upside down, and would so corrupt the ERA as to make it meaningless in the protection of environmental constitutional rights of Pennsylvanians.

V. To the Extent Plaintiffs are Trustees, They are Bound by These Duties.

In the caption and in the introduction, the Plaintiffs describe themselves as “trustees” and claim to file their complaint “to prevent diminution of the Trust’s corpus,” and to “take reasonable steps to increase the value of the Trust’s assets.” First Am. Compl. at ¶ 30. The claimed trusteeship authority of the state-level Plaintiffs does not exist. To be sure, there is no question that the legislature—the General Assembly—is a trustee. *See PEDF*, 161 A.3d at 931 (stating that all statewide entities of the Commonwealth government have a trust responsibility), 933 (stating that this responsibility extends to the adoption of necessary legislation). The General Assembly is not a plaintiff here, however, and there is no

allegation that the state-level Plaintiffs are acting on behalf of the General Assembly. Senators Yaw and Baker are members of the General Assembly, but individual members acting on their own are not trustees. While the Plaintiff Senate Republican Caucus represents a majority of the state Senate, First Am. Compl. ¶ 11, the Senate is only one part of the state legislature; the House of Representatives is the other. Pa. Const. Art. I, § 1 (“The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.”). Thus, none of the state-level Plaintiffs is a Section 27 trustee.

The local government Plaintiffs are Section 27 trustees for public natural resources. *PEDF*, 161 A.3d at 932 n.23; *Robinson Twp.*, 83 A.3d at 913. Like the municipal plaintiffs in *Robinson Township*, the municipal Plaintiffs here have a constitutional duty to conserve and maintain public natural resources for the benefit of present and future generations. Unlike the municipal plaintiffs in *Robinson Township*, however, the municipal Plaintiffs here are acting in direct contradiction to that duty. To the extent that any of the Plaintiffs is a Section 27 trustee, the interests that they seek to vindicate through this lawsuit are not consistent with those of a Section 27 trustee.⁶

⁶ Even assuming *arguendo* the state-level Plaintiffs are Section 27 trustees, the same can be said of them.

VI. Conclusion

For the foregoing reasons, Plaintiffs' contentions regarding Pennsylvania's Environmental Rights Amendment should be rejected, and Defendant's and Defendant-Intervenors' motions to dismiss should be granted.

Respectfully submitted,

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