



TESTIMONY OF MARK SZYBIST CONCERNING HOUSE BILL 2318
PENNSYLVANIA HOUSE DEMOCRATIC POLICY COMMITTEE HEARING
JULY 28, 2014

Chairman Sturla, Representative Mirabito, Honorable members of the Committee, good afternoon and thank you for the invitation to testify today about House Bill 2318, legislation that would establish a role for Pennsylvania's citizens in oil and gas development decisions on State Forest and State Park lands and vindicate their rights under Article I, Section 27 of the Pennsylvania Constitution.

My name is Mark Szybist, and I am a staff attorney for Citizens for Pennsylvania's Future, or PennFuture. PennFuture is a statewide, public-interest membership that works to create a just future where nature, communities, and the economy thrive, and our members hike, fish, hunt, and otherwise recreate on Pennsylvania's State Forests and Parks throughout the Commonwealth.

House Bill 2318 is an important and timely bill, and PennFuture welcomes its introduction. We also have a few recommendations for revisions, and I will discuss those briefly at the end of my testimony. I will devote the bulk of my time today to a discussion of some of the bill's historical background and context. Ms. Kilgour and Mr. Childe will provide additional background and context in their testimony.

DCNR exists today essentially as a result of Pennsylvania's first extraction industry: logging in second half of 19th century and early 20th century, much of it in the Williamsport area.

Most of this logging was of the clear-cut variety, and when the trees were gone, there was nothing to hold the soil in place and no way for the ground to absorb rain. The result was floods, wildfires, dirt-choked streams, and a landscape commonly known as the Pennsylvania Desert.

It wasn't pretty, or good for the animals – but the main problem for the government was that it was dangerous to public health, safety, and property – and there was a clear financial cost. It turned out that forest lands were – to use a phrase that started to appear in U.S. court decisions around this time – “affected with a public interest,” regardless of who owned them.

To protect watersheds, control flooding, prevent fires, and otherwise further and protect the public interest, Pennsylvania got into the game of acquiring, reforesting, and conserving forest lands.

In 1895, Joseph Rothrock was named Pennsylvania's first Commissioner of Forestry. In 1900, the Commonwealth established the Department of Forestry, the first incarnation of the DCNR, which in 1923 became the Department of Forests and Waters. In 1971, the same year that Pennsylvania ratified Article I, Section 27 of State Constitution, the Department of Forests and Waters was absorbed into a new agency, the Department of Environmental Resources, which was also tasked with issuing permits under new environmental laws like the Clean Air Act. Then, in 1995, the DER was split into two agencies, the DEP and the DCNR, with the DCNR becoming, like its predecessors, again primarily a conservation agency. The DCNR's powers and duties were codified in a new statute, the Conservation and Natural Resources Act, which devotes only a few words to oil and gas leasing, giving the DCNR the power to lease oil and gas under State Forests and Parks when leasing is in the "best interests" of the Commonwealth.

Since 1995, the Act has been amended only five times. None of those amendments has had anything to do with oil and gas development. Meanwhile, although section 313 of the Act gives the DCNR the authority to promulgate regulations, the DCNR has never promulgated regulations to guide oil and gas leasing and development on State Forests and State Parks.

In the 119 years since DCNR and its predecessors have been in existence, the DCNR has done a great many things well. We owe to the DCNR – to the vision of its past leaders like Joseph Rothrock and Gifford Pinchot, and to decades of hard work by DCNR staff – the excellent State Forest and State Park systems that we have today. But one thing the DCNR does not do well, at least where oil and gas decisions are concerned, is to engage Pennsylvania's citizens – the owners of the lands that the DCNR holds in trust – in the DCNR's decision-making. Again, the DCNR has no regulations at all concerning oil and gas development. It follows that the DCNR has no regulations that establish public notice and participation requirements.

This has become an issue, of course, because there is a great deal of shale under the DCNR's State Forests and State Parks, and oil and gas companies have fairly recently learned how to bully gas out of that shale; and because, as development on Pennsylvania's State Forests over the past five years has shown, that development has great costs, fundamentally altering the forests and their watersheds, converting them from undeveloped public places to semi-industrialized, practically privatized ones.

In the absence of a legislatively established public input process, opportunities for public participation in the DCNR's oil and gas decisions generally depend on two factors: first, whether the public chances to learn about oil and gas-related decisions before they are made, and second, how much noise the public makes after it finds out.

Ms. Kilgour will discuss the Sierra Club's experience when the DCNR proposed to lease half of a million acres of land in 2002, for drilling in the Trenton Black River formation.

My own experience in this area has revolved around the Clarence Moore lands, an ecologically sensitive area of more than 26,000 acres in the Loyalsock State Forest where,

although the Commonwealth does not own the oil and gas, it does appear to have extensive control over what happens on the surface.

The oil and gas under the Clarence Moore lands are ostensibly owned by Anadarko Petroleum Corporation and International Development Corporation, which has leased its interest to Southwestern Exploration and Production Company. These companies want to develop and oil and gas, and a coalition of conservation and environmental organizations that includes RDA, Sierra Club, PennFuture, Audubon Pennsylvania and the Keystone Trails Association (both of which will testify on the next panel), and several other organizations – learned about the possibility of development by stumbling upon seismic testing equipment in the middle of the forest.

After some research that revealed Anadarko's interest and the DCNR's unusual surface rights, we started to ask questions of the DCNR. In September, 2012 we sent a detailed letter to the Secretary seeking information and requesting a public input process. We waited until February, 2013 to receive a response, and that response was a one-page letter that did little more than thank us for our "recent" correspondence.

Meanwhile, we sought information from the DCNR through the Right to Know Law, and received a fair amount of it, mostly correspondence between the DCNR and Anadarko. However, the DCNR denied our request for Anadarko's proposed development plan for the Clarence Moore lands. PennFuture appealed this denial to the Office of Open Records, and several months and many pages of paper later, we won. The DCNR was allowed to redact information that it designated "confidential proprietary," and the plan was by now outdated in any case.

Public pressure for information about potential development on the Clarence Moore lands, and for input into that development, grew, and in April, 2013 the DCNR responded by hosting an informational meeting for a hand-picked group of "local stakeholders" in Lycoming County. Two months later, acknowledging that the Loyalsock State Forest belongs to all Pennsylvanians, not just those who live in Lycoming County, the DCNR held an informational meeting open to the general public here in Williamsport. Several hundred people attended and watched a powerpoint presentation by the DCNR. Many offered comments; several were still in line to comment when the meeting was ended. The DCNR did not make a formal record the comments received.

Currently, the DCNR and the companies are negotiating a "Surface Disturbance Management Agreement" concerning development of the Clarence Moore lands – essentially, an agreement about what use of the Commonwealth's surface is "reasonable." The DCNR has provided us with several updates on the status of these negotiations, but little substantive information; and, critically, the DCNR has *not* committed to allowing the public to review and comment on Anadarko's final development plan, the DCNR's environmental reviews, of a final draft Surface Disturbance Management Agreement.

If House Bill 2318 were a question, the question would be: what say should the public have in decisions to lease State Forests and Parks for unconventional gas development, or

otherwise allow such development? Both Ms. Kilgour and Mr. Childe are going to discuss Article I, Section 27 of the Pennsylvania Constitution, which gives all Pennsylvanians, including future generations, a constitutional right to clean air, pure water, and the preservation of the natural environment and makes the DCNR is the trustee of Pennsylvania's State Forests and Parks. Given Article I, Section 27, what role should the public play?

PennFuture supports the answer that House Bill 2318 currently gives to this question – that the DCNR must hold a public comment period, including at least one public hearing, and must provide access to proposed development plans and environmental reviews. We have one general recommendation for refining the bill and several particular recommendations. The general recommendation is that the scope of the bill be expanded to cover State Parks, as well as State Forests. Our particular recommendations, which we will be happy to elaborate, include adding to remove ambiguities, defining key terms, and explicitly requiring an analysis of leasing and development alternatives, including a no-development alternative.

Thank you very much for the opportunity to testify today.

Mark Szybist
szybist@pennfuture.org
570-208-4007