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**TESTIMONY OF JEFF SCHMIDT ON BEHALF OF
THE SIERRA CLUB PENNSYLVANIA CHAPTER
BEFORE THE HOUSE ENVIRONMENTAL
RESOURCES AND ENERGY COMMITTEE ON
HB 1400, THE CONSERVATION AND NATURAL
RESOURCES ACT**

April 27, 1995

Thank you for the opportunity to testify today. Proposals to restructure our state's environmental agency have the potential to have profound impacts on our citizens' health, our environment and our public lands. The Sierra Club Pennsylvania Chapter believes much can be done to improve the effectiveness of DER. We do not believe, however, that the changing of an organizational chart structure will result in the improvements the public desires.

Reasonable people can differ on how our state's natural resources should be protected and managed. Structural changes alone are merely cosmetic. We must look to specific management objectives to determine more accurately the true goals of those proposing the changes.

As you know, the Sierra Club was formed in 1892 by naturalist John Muir and other outdoorspeople who wanted to protect some of the nation's more spectacular lands and ecosystems. Redwoods National Parks, the Grand Canyon, numerous other parks, wilderness areas and public forests are the legacy of those forward-thinking people. Muir once said, "Any time you pick something up, you find it is hitched to everything else in the universe". He was talking about the interconnectedness of our world; how a change in one part of an ecosystem could have a profound effect on its other parts.

The current structure of DER, to a certain point, reflects this interconnectedness of natural and environmental resources which require an integrated administration. No matter what changes might be made in administration, the need to bring these interconnected resources together in a unified context will remain. We would contend that devices should be explored to further integrate DER's various functions, not create additional artificial barriers.

A few months back I was debating the DER split with Richard Thorpe, retired State Forester. He contended; "If we could just split up the agency, the Environmental Protection folks could worry about the environment and we could focus on land manage-

ment." With all respect for my friend, Mr. Thorpe, I would submit that that statement is indicative of a major problem in the agency: specialization. There is a natural tendency for specialists in the two branches of DER to resist integration. The tendency in almost any bureaucracy, government or corporate, is "empire-building" and a larger view of the environment is required.

LAND, AIR, AND WATER ARE INTERRELATED

Pollution that is emitted from a coal-fired power plant can kill streams in our parks and forests. Decisions on timber cutting or oil and gas drilling on forest land can affect drinking water quality for people fifty miles downstream. A mining permit issue could result in loss of fishing opportunities downstream in a park that is critical to the tourism industry of a rural county. Moving these functions into completely separate cabinet-level agencies will create additional barriers to communication and fully-informed decision-making.

There may be those whose goals are just that: To remove the influence of water quality concerns from the decisions on timber cutting. Or perhaps, make it even more difficult to link a decline in our forest health to acid rain. Certainly, we are hearing from those who believe that our forests should be managed as tree farms at the expense of water quality, biodiversity, recreation and wildlife habitat.

Another concern related to the separation of these functions is that of enforcement. We would expect that DEP will become more enmeshed in interdepartmental turf battles over pollution problems created by DCNR decisions related to erosion and sedimentation, point source pollution, waste management, etc. just as DER has similar problems with PennDOT and General Services.

Separate from the serious philosophical disagreement with those who propose to create artificial barriers between the various environmental resource functions of DER, we have specific concerns related to language contained in HB 1400.

REDUCTION IN CITIZEN INVOLVEMENT IN ENVIRONMENTAL RULEMAKING

The environmental rulemaking process in Pennsylvania is unique. Within the last decade a significant impediment to the regulatory process was created. The Independent Regulatory Review Commission (IRRC) has created a substantial delay in the promulgation of almost every important environmental rule. With a process accessible only to Harrisburg insiders, the IRRC effectively eliminates meaningful public involvement in environmental regulatory development while adding many months, sometimes years, to the process.

We were shocked to find the Administration had decided to further erode public participation by eliminating the Environmental Quality Board (EQB) from the rulemaking process, claiming that it added unnecessary delays to rule development. The EQB currently is the only real avenue for public participation. Because the Board is made up of a broad cross-section of interests, it is more accessible to the public. The EQB can

force DER to allow more field hearings, something IRRC never does. It can also force DER to make changes to regulations in response to public comments.

While the EQB process is not perfect, it is preferable to IRRC, which is both redundant and unresponsive to the public. The most accurate criticism of the EQB is that it has too many Administration representatives. A reasonable alternative to eliminating the EQB would be to limit Administration participants to four or five representatives.

Another supposed alternative to the EQB is regulatory negotiation or reg-neg. Reg-neg, formal or otherwise, allows a handful to decide the future of a regulation, freezing out the average citizen from having input. While it may be a useful exercise in a very limited number of cases, it should not be used as a replacement for citizen participation, public hearings, comment-response documents, which are parts of our tradition of openness. In those instances where reg-neg is used, it must be carefully balanced to ensure that private economic interests and the public interest are evenly represented.

In the past, DER has used an informal process of "Roundtables", to bring together diverse interests to discuss a specific environmental issue. This process has been useful in identifying areas of misunderstanding. We believe a greater use of these informal Roundtables, would help to resolve many regulatory debates by narrowing areas of disagreement. This could occur without eliminating the EQB or creating a formal reg-neg process.

OVERSIGHT OF ENVIRONMENTAL AND NATURAL RESOURCE PROGRAMS

While we disagree with the proposal to split DER into DEP and DCNR, we believe that, if in the wisdom of the General Assembly, they choose to split the agency, they should not split the oversight committee. The Citizens Advisory Council to DER has done an excellent job of overseeing and advising DER over the last two decades. We believe it is important that at least one entity have a "holistic" approach to environmental resources. If the agencies are to be split, someone should be responsible for ensuring that the fragmentation and poorly-informed decision-making that we predict will be minimized.

One CAC instead of two separate CACs could, at least, monitor the effectiveness of the artificial division between natural resources created by HB 1400.

DEVELOPMENT IN PARKS AND FORESTS

Sections 302 (Forests) and 303 (Parks) of HB 1400 both contain loopholes that, we believe, could allow inappropriate activity in our forests and parks. These provisions 302 (b)(1) and 303 (a)(4) allow development on state public lands by private entities. DER, in the development of its STATE PARKS/2000 plan held hearings and surveyed the public on this issue. A majority of the public, the Citizens Advisory Council, Pennsylvania Federation of Sportsmens Clubs, Sierra Club and numerous other organizations oppose private development on public lands.

The recent public furor against the proposal to build a \$3 million lodge in Cook Forest State Park is an excellent example of the problem with this loophole. We believe these sections should be deleted.

LAW ENFORCEMENT IN PARKS AND FORESTS

One of the most common complaints we hear from those who spend time in our state parks and forests is the failure of DER to enforce its rules and regulations. Off-road vehicle (ORV) enthusiasts often ignore the rules and ruin the outdoor experience for others or, even worse, do serious environmental damage with their machines. DER consistently says they do not have enough staff to monitor these problems. Stream pollution, illegal destruction of trees and plants, vandalism, graffiti, and other criminal activities are growing problems on our public lands.

We support the proposal to give parks and forests staff reciprocal law enforcement authority. We urge the administration to provide adequate funding to allow for staff to be available on high-usage days when the above-mentioned problems are greatest.

FOREST REGENERATION ACCOUNT

Section 319 (c) allocates a minimum of 10% of the previous years' "Forestry Stumpage Sales Restricted Receipts Account to a 'Forest Regeneration Restricted Revenue Account'". This touches on a critical issue in forest management in Pennsylvania. As you know, forests are more than trees. A healthy forest is a diverse ecosystem, rich in a variety of species of wildlife, plants, insects, etc.

We support the concept of a Forest Regeneration Account, but believe the language should be modified to make it clear that the management goal is to provide for regeneration of a healthy forest ecosystem.

TWO-WAY SPLIT, THREE-WAY SPLIT?

As you already know, we respectfully disagree with those who promote the artificial division between the management of our air, water, and lands. We have even greater concern about proposals to further carve-up DER into even smaller components.

In the past such proposals have included creating a separate Department of Energy. These proposals would have the same agency that regulates the extraction of mineral resources (coal, oil and gas) also be responsible for the promotion of the use of these energy sources. These are fundamentally contradictory responsibilities that would result in the "fox guarding the hen house."

We support the Administration's decision to maintain mineral resource extraction regulation within the Environmental Protection Agency.

In summary, the Sierra Club urges you not to support efforts to dismantle DER, such as HB 1400. However, if you do decide to support this proposal, we hope you will work to ensure that the final version ends up protecting the public and the environment. This also means making sure sufficient funding is available to do the job.

We look forward to working cooperatively with you to ensure the long term viability of "Penns Woods".