



Ohio Environmental Council

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**Testimony before
Ohio House Agriculture and Natural Resources Committee
129th Ohio General Assembly**

**Regarding
House Bill 133 – Oil and Gas Extraction on State Lands**

**By
Jack Shaner, Deputy Director, Ohio Environmental Council**

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Chairman Hall, Vice-Chair Derickson, Ranking Minority Member Fedor, and Members of the Committee:

Thank you for this opportunity to present opponent testimony on House Bill 133 (As Introduced), which proposes to create the Oil and Gas Leasing Board to consider nominations for oil and natural gas extraction on state-owned and state-controlled lands, including Ohio's State Parks.

My name is Jack Shaner and I am Deputy Director for the Ohio Environmental Council. The OEC is a non-profit network of more than 100 local and state environmental-conservation groups and several thousand individual citizen members. Our mission is to secure clean air, land, and water for all who call Ohio home.

The OEC strongly opposes House Bill 133. We simply believe that industrial development such as oil and gas extraction is unfit, unsafe, unsightly, unnecessary, and unwanted on Ohio's state parks and other state lands with significant ecological, natural, scenic, recreational, geological, or archeological features. Instead, we respectfully recommend that the General Assembly and the Administration consider other options for providing adequate resources for protection and administration of our state lands.

Here is a more detailed presentation of our opposition and concerns with House Bill 133 (As Introduced):

1. Inappropriate industrial development

Oil and gas extraction is incompatible with the mission to protect and preserve Ohio's state parks and other state lands with significant natural, ecological, scenic, recreational, geological, or archeological features.

There is a serious philosophical problem with industrial activity such as oil and gas development on state lands. It is wrong to open to any industrial activity, Ohio's most treasured stand lands,

including its state parks, state nature preserves, state historic sites, and other state lands with significant ecological, natural, scenic, recreational, geological, or archeological features. These lands have been set aside for preservation and for the enjoyment of the public—not for the profit of industry.

This is not just our philosophical bias; it is a basic and official purpose for our State Parks and certain other state lands, as codified in Ohio law:

- By law¹, Ohio's State Parks are not authorized for oil and gas extraction; in fact, they are expressly prohibited from any damage, alteration, destruction, removal, or change to any tree or land.
- By law², Ohio's State Nature Preserves along with its lone state-designated wilderness Area—the Shawnee Wilderness Area—and other especially significant lands, including State Historic Sites, are expressly protected by law from industrial development or other alteration, including oil and gas extraction.
- By law³, Ohio's State Forests are to be managed for the proper planting, growing, protecting, harvesting, and managing of trees for such purposes as watershed and soil protection, timber production and utilization, recreation, aesthetics, wildlife habitat development, and urban enhancement and for all benefits that forests provide.
- By law⁴, Ohio's State Wildlife Areas are to be managed for the general care, protection, and supervision of the wildlife.

Oil and gas extraction would be incompatible at best for ecologically fragile and aesthetically significant areas and areas managed for recreational activities, including intact sections of old-growth forest, prairie remnants, wetlands, and parkland, and in direct conflict at worst with the purpose and use established under Ohio law for the state's 131 State Nature Preserves (O.R.C. 1517.05) and for the nearly 8,000-acre Shawnee State Wilderness Area (O.R.C. 1503.43). It also would conflict with the management goals of other state lands, including State Parks and State Historic Sites.

House Bill 133 is a promise breaker. It breaks faith with the public's expectation that their state parks, nature preserves, historic sites, and, potentially, forests and wildlife areas, will forever be managed in the public interest and protected from industrial and development activities.

2. Safety risks and unavoidable impacts

Oil and gas extraction involves potential but significant risks to public safety and groundwater and also less destructive but virtually unavoidable impacts that simply are not suited to visitors of public lands and public lands with sensitive or significant ecological, natural, scenic, recreational, geological, or archeological features. These risks include:

- Risk of fire and explosion: Lightning strikes to oil storage tanks and explosive blowouts during drilling are rare but very real risks.

¹ O.R.C. Sec. 1541.20

² O.R.C. Sec. 1517.05, 1517.06, and 1503.43

³ O.R.C. Sec. 1503.011

⁴ O.R.C. Sec. 1531.04

- Risk of groundwater water contamination: Groundwater contamination from hydraulic horizontal fracturing is a potential risk; the United States EPA is undertaking a study of this practice to better understand any potential impacts of hydraulic fracturing on drinking water.
- Unavoidable habitat destruction: Rights-of-way and well pads are necessarily cleared of trees to make way for seismic work, pipelines, access roads, and wells, fragmenting wildlife habitat.
- Unavoidable siltation and soil compaction: Stream crossings and the placement of heavy equipment impact soil and water resources.
- Unavoidable odors and noise: The temporary drilling process and the permanent operation of compression equipment can release strong odors and noise.

A September 20, 2004 natural gas blowout and ensuing crude oil spill from the D.T. Atha Oil Company in Kingston Township in northern Delaware County had a significant impact:

- Spilled approximately 2000 to 3000 barrels for a total of 126,000 gallons of crude oil
- Required the removal and disposal of approximately 8,000 tons of contaminated soil.
- Resulted in the recovery of only 1206 barrels or 50,652 gallons of oil.
- Involved Ohio EPA, USEPA, ODNR Wildlife, ODNR Minerals & Mining, Columbus Water Division, Delaware Soil & Water Conservation, Delaware Health & EMA, Kingston Fire Department and other public agencies.
- Required over 120 hours of on-scene instruction.

This was an extreme incident. However, a review of weekly reports generated by the Ohio DNR over a two year period revealed dozens of reported incidents and other issues related to oil and gas activity in Ohio. (See excerpts, recited on the last page of this testimony.)

3. Unnecessary extraction

Virtually every Ohio citizen and Ohio business uses oil and natural gas. It is hard to overstate our reliance on this resource. But is it really necessary to open Ohio's state parks and other state lands with significant natural, ecological, scenic, recreational, geological, or archeological features to oil and gas extraction?

First, sufficient public lands already are open, under existing law, to development. The overwhelming majority—95 percent—of Ohio's landscape not covered by water already is open to oil and gas extraction. The overwhelming majority of private property (with the owner's permission) and even the vast majority of Ohio's public lands, including Ohio's state forests and state wildlife areas (which together comprise the vast majority of all ODNR lands) and the Wayne National Forest are, by law, open to oil and gas extraction.

Second, according to the Ohio Division of Geological Survey, because of new developments in technology, potentially trillions of cubic feet of gas and billions of barrels of oil exist in the deep shale deposits that underlie Ohio's surface may now be extracted.

Therefore, it simply is not necessarily to open the relative few acres of state parks and other lands with significant natural, ecological, scenic, recreational, geological, or archeological features, to oil and gas extraction.

4. Unwanted activity

Oil and gas extraction is simply unwanted by most visitors to Ohio's state parks and other state lands with significant natural, ecological, scenic, recreational, geological, or archeological features.

Ohioans travel to their favorite parks, nature preserves, historic sites, and other areas to “get away from it all”—not to encounter the unsightly prospect of encountering oil drilling equipment, brine collection ponds, access roads, forest clear-cuts, pipelines, compressor stations, collection tanks, etc.

5. Unsustainable and ever declining revenue

The oil and gas industry holds up Salt Fork State Park as a model for potentially significant reserves of oil and gas and potentially lucrative royalty payments to the state. But on closer examination, Salt Fork may be an outlier not an exemplar.

According to a basic petroleum engineering study⁵ of potential non-deep shale oil and gas reserves commissioned by the oil and gas industry for Salt Fork State Park and delivered to ODNR in March 2005:

- An estimated 13,749,200 CCF of natural gas potentially could be developed on the park property.
- This could yield \$12 million in potential royalty payments to the State (based on a 1/8th share).
- The royalty payments estimate is based on an average production of 185,800 MCFEQ at each of a necessary 74 separate drilling locations within the park.
- The production estimate is based on a 30 year production period and assumes an average of \$7.00 per MCF.

On first blush, this sounds like quite a windfall. When examined more closely, the study reveals that approximately one-fourth of the potential gas reserves would be recovered in the first year of production, yielding approximately \$2.9 million in royalty payments. Thereafter, the estimated production and annual royalty payments would fall off dramatically: By year 10, the royalty payments would total approximately \$298,865; at year 20, approximately \$136,479; and in the 30th year and final year, approximately \$82,670.

Further, the study “assumes that at least 74 sites of the quality of those drilled around the Park perimeter can be found on the 20,000 Park acres available.” The report suggests that this may be a challenge, acknowledging that the park includes “various recreational features” and advises that “Future oil and natural gas development plans inside the Park may need to be altered to accommodate these features.”

It is no accident that the industry is holding Salt Fork State Park up as a model—but is it really a representative model? Setting aside questions about whether oil and gas could be developed in a manner compatible with the recreational objectives of the park and with any significant natural,

⁵ March 21, 2005 letter from James Engineering Inc. to Ohio Oil and Gas Association, subject: “Potential of the Salt Fork State Park for Oil and Natural Gas Reserves and Royalties”

ecological, scenic, recreational, geological, or archeological features present in the park, Salt Fork State Park looks more like an exception than a rule for development of oil and gas reserves on state parks.

- Unlike many state parks, Salt Fork it is located in an area with known oil and gas reserves.
- At 20,000 acres, it is far and away one of the largest state parks in the state, giving it the potential for a relatively larger than usual potential oil and gas reserve.
- Salt Fork is located in an area with existing transmission pipelines.

6. Loss of visitor income and tax check-off designations risk

It is fair to suggest that without more careful analysis, it is not possible to definitively estimate what income may be possible from oil and gas extraction on Ohio's state parks. It also is fair to consider that when conducting a cost/benefit analysis, it would be prudent to consider what impact the specter of oil and gas extraction may have on income from park and public lands visitors.

Should park visitors experience actual negative events with oil and gas extraction while visiting a state park or other public land, or should the public perception be that such negative experiences are possible, this could have a negative effect on two important sources of income:

- state park revenue from camping fees and concession fees; and
- voluntary income tax designations to wildlife conservation and natural areas preservation.

Fee income collected from camping and other visitor fees accounts for 40% of budgeted revenue to support the operation of Ohio's state parks.

Each year, Ohio taxpayers voluntarily check off approximately half a million dollars for "endangered species and wildlife diversity" and "nature preserves and scenic rivers" on their state income tax return form. Since Ohio's tax check-off program began in 1984 and certain commemorative license plates became available in 1995, more than \$20 million has been raised to conserve natural areas and endangered wildlife throughout the state. The wholesale opening up of state lands, especially nature preserves and parks, to oil and gas extraction breaks faith with Ohio taxpayers who directed a portion of their tax return for the protection of natural areas and endangered wildlife – not the acquisition and maintenance of lands for the oil and gas industry to turn a profit while engaging in at best, disruptive, and at worst, destructive, activities. An abrupt change in how our state lands historically have been managed and a full-throttle opening up of all state lands to extractive activities may suppress taxpayer support of Ohio's outstanding nature preserves, parks, and other treasured public lands.

7. Unfairly tilted in favor of the oil and gas industry

We believe House Bill 133 is fundamentally flawed to favor the interests of the oil and gas industry. Existing Ohio law already authorizes several state departments and divisions to lease lands for oil and gas extraction. Why, then, is a new system for considering oil and gas extraction even necessary?

Existing Ohio law already authorizes several state departments and divisions to lease state land under their control for oil and gas development, including:

- ODNR Division of Forestry
- ODNR Division of Wildlife
- Department of Administrative Services
- Department of Mental Health
- Department of Rehabilitation and Correction
- Department of Mental Retardation and Developmental Disabilities
- Board of Directors of a State University

Existing Ohio law also authorizes timber sales on State Forest lands. For decades, the state has operated a timber sale program with no outcry by the timber industry for wholesale changes in how timber sales are administered. This begs the question of why oil and gas leases on appropriate state lands (other than state parks, state nature preserves, state wilderness areas, and state historic sites) cannot be administered without the “benefit” of a leasing board.

These facts beg some important questions:

- What is insufficient about the existing statutory authorization for oil and gas leasing?
- Why is it necessary to establish a separate Oil and Gas Leasing Board to consider oil and gas leases?
- Whose interests would best be served by forming such a new scheme to consider gas leases—the public or the industry?

The answer to these questions is obvious. It is in the best interests of the oil and gas industry, not the public, to establish an Oil and Gas Leasing Board.

The industry clearly wants to share authority to consider and determine which if any state lands should be considered for oil/gas extraction away from the state agency charged with care for that land in the public interest instead to a shared authority with private industry which, of course, has only its one interest: its own self-interest.

Why, otherwise, would House Bill 133 repeal the authority of the departments of Administrative Services, Mental Health, Rehabilitation and Correction, and Mental Retardation and Developmental Disabilities to lease any lands under their ownership and control for oil and gas extraction? And why, otherwise, would House Bill 133 repeal the specific directive in existing law that any leases entered into by the departments of Mental Health, Rehabilitation and Correction, and Mental Retardation and Developmental Disabilities shall be in the best interest of the state?

The ultimate responsibility to determine what if any authorized commercial or industrial use is proper and appropriate for any particular state land rests with the respective state division charged with the land’s oversight. Should an oil and gas company cause an incident, it is the state department or agency with oversight over the damaged land that will forever suffer the lingering effects of any damage to the public’s investment in its state lands—not the offending industrial company which will comply with any mandated restoration or mitigation and then move on to the next drilling site.

8. Minimal consideration of important significant ecological, natural, scenic, recreational, geological, or archeological features

When making a decision about whether to accept or deny a nomination for oil and gas extraction or timber harvesting, House Bill 133 directs the Oil and Gas Leasing Board to consider all of the following:

- 1) The economic benefits, including the potential income from an oil or natural gas operation, that would result if the lease of a formation that is the subject of the nomination were approved;
- 2) Whether the proposed oil or gas operation is compatible with the current uses of the parcel of land that is the subject of the nomination;
- 3) Any objections to the nomination that are submitted to the Board by the state agency that owns or controls the land on which the proposed oil or natural gas operation would take place; and
- 4) Any other factors that the Board may establish in rules adopted under the bill.

Nowhere in the bill is there any specific directive that the Board shall equally consider:

- A) The economic costs to the state that may result from lost recreational activity as a result of oil and gas extraction on a tract of land;
- B) Whether the proposed oil and gas extraction would be incompatible, injurious, or destructive to any current or future, or known or unknown, significant ecological, natural, scenic, recreational, geological, or archeological feature or functions of the land;
- C) The cumulative impacts that oil and gas extraction may pose to a tract of land;
- D) Any objections submitted by the public.

Although the bill does provide for the Board to consider “any other factors” that it may establish by rule, this catch-all category does not appear to be accorded the same weight as the other specified considerations.

We are further concerned by the fact (to the best of our knowledge) that the practice of the ODNR is to rarely decline to issue a permit for oil and gas extraction.

NOTE: We also want to share the concerns of the Ohio Archaeological Council, which is especially concerned about the likely impact that such leases would have on archaeological sites, including Native American and Euroamerican cemeteries. Most of the land under the state's control has not been surveyed to identify archaeological sites eligible for inclusion in the State Registry of Archaeological Landmarks or the National Register of Historic Places. Therefore, the likelihood that important archaeological sites, including cemeteries, will be disturbed and possibly destroyed during oil and gas production, and timbering harvesting, on state property is very real.

9. Unknown mineral rights and unknown penalties from federal agencies

There are several practical concerns that complicate this issue.

First, it is our understanding that the state does not in fact own the mineral rights on all of the lands that it owns or controls. Second, it is our further understanding that the state does not even

possess a comprehensive, parcel-by-parcel tabulation of all of the mineral rights that attend its land holdings. Third, many of the lands owned or controlled by the state were purchased with federal funds (including the federal Land and Water Conservation Fund) that may require Ohio to reimburse the federal government by replacing any land developed for commercial or industrial activity.

We believe it is important for ODNR to produce this information to better inform this debate.

10. Risk of drinking and ground water contamination

Q: Will drilling for natural gas contaminate my drinking water well?

A: Gas and oil can migrate from a production well into an aquifer if a well casing is damaged, leaking or poorly constructed.

--Ohio EPA website <http://bit.ly/h3r2lx>

The natural gas aquifer invasion and resulting in-home explosion and well water contamination of several residents that occurred in Bainbridge Township, Ohio (Geauga County) on December 15, 2007 is stark evidence of the very real potential that oil and gas development may pose to water resources.

Despite laws and regulatory oversight, accidents happen. The advent of deep shale gas production (Marcellus and Utica) and the large quantities of water used to develop them make us especially concerned about water resources on and under our state lands.

In its February, 2011 report, "Ohio Hydraulic Fracturing State Review," STRONGER (State Review of Oil and Natural Gas Environmental Regulations, Inc) included this recommendation:

While ODNR has the authority to promulgate rules for the protection of public health and safety, including the use of natural resources, the scale of hydraulic fracturing operations in Ohio has not approached that in neighboring states where the Marcellus Shale is being developed, so there has not been a need to further evaluate the availability of water for hydraulic fracturing. Nonetheless, in light of the anticipated development of the Marcellus and Utica Shales in Ohio, the state should continue to evaluate the need and availability of surface and ground water for hydraulic fracturing in the context of all competing uses and potential environmental impacts resulting from the volume of water used for hydraulic fracturing. http://www.dnr.state.oh.us/Portals/11/oil/pdf/stronger_review11.pdf

We believe this is especially important, given the fact that the United States EPA is undertaking a study of hydraulic fracturing to better understand any potential impacts of hydraulic fracturing on drinking water and groundwater.

Conclusion

Long-standing Ohio law has deliberately distinguished between the values and uses and management objectives for our public lands. We have survived—and even thrived—without a wholesale tapping of the one-time asset of oil and gas reserves on our state lands. Ohio law

Better options exist to care for our state parks and public lands.

Today, the oil and gas industry is asking you to amend long-standing law to allow it to extract oil and gas from more of Ohio's state lands—principally our state parks. Previous General Assemblies contemplated that a day like today may arrive. They did their best to safeguard these precious natural resources. Now, the 129th General Assembly will decide whether to honor or cast aside this fundamental policy choice of your predecessors.

And why? So that Ohio can boost its production of energy resources? So that more resources can be generated to address the significant backlog of maintenance and other capital needs of Ohio's state parks and other state lands?

But at what cost? And for whose benefit?

Is it really such a deal to sell off Ohio's energy rights for 12-1/2 cents on the dollar? Is it worth it to risk permanent harm to our most significant ecological, natural, scenic, recreational, geological, and archeological features for this one-time fiscal pick up?

Ohio has set aside scores of its most revered public lands for **permanent protection**.

Scenic places like Old Man's Cave State Park and Conkle's Hollow State Nature Preserve in the Hocking Hills; important archeological and historic sites, like Serpent Mound State Historic Site in Southern Ohio and the Newark Earthworks State Historic Site in Central Ohio; important places for rare plants and wildlife, like Cedar Bog Nature Preserve in Western Ohio and Old Woman's Creek Nature Preserve on Lake Erie.

All of these places should continue to be protected—just as long-standing Ohio law and previous General Assemblies and Administrations have always contemplated.

We ask you: Please continue to protect—not develop industrially—our state parks and most important state lands.

Thank you for considering our perspective.

Here are some notable excerpts from oil and gas extraction incidents recorded by the Ohio DNR in 2004-2005:

- The Marathon Ashland Petroleum Co. has indicated they will plug a leaking well and associated water well, located in Wyandot County.
- Inspector Steve Ochs responded to a complaint filed by the Lawrence Co. EMA involving a leaking gas well near the Village of Athalia. The Rome Twp. VFD had previously responded and determined there was a significant health and safety risk.

- On April 22, 2005 the Uniontown Field Office received a complaint of oil oozing out of the ground. The landowner, Michael Grabnic of Cuyahoga County, excavated and discovered a 10" pipe approximately 3 feet below ground.
- Friday, 6-03-05 Cindy Shafer of Kent OH discovered a hole bubbling mud to the surface with a strong odor of oil on a park trail in Towner's Woods, part of the Portage County Park District system.
- Received call from Bill Snow, Bath Township Trustee, concerned that the fence was wide open at Belden & Blake's Austin #2 well, Summit County.
- Received noise complaint from Gilbert George; Broadview Heights, Cuyahoga County. Mr. George is the neighborhood representative and has received numerous complaints regarding the drilling noise.
- An 1890's O&G well was found in Sandusky Co. while a landowner excavated for a home foundation. Oil came to the surface.
- Plans made to prepare site in Walton Hills with well to be emergency plugged. Unusual situation in that high-pressure conditions expected upon clean out. Well is within 50 feet of an expensive new house.
- The Century Well Service drilling rig was a total loss after a fire on the evening of June 22nd. A hydraulic hose ruptured causing the fluid to contact an exhaust system. The fluids immediately erupted into flames.
- Hydrogen sulfide continues to be a concern while plugging and drilling wells in the South Region. A worker was briefly taken over by H₂S while plugging a well in Noble County, Monday, June 20th. The well "belched" while pulling pipe releasing the gas as a worker was approaching the well bore. He passed out and fell into the drilling pit and had to be rescued by his co-workers. In a short amount of time he was back to normal and did not require further treatment. Inspector Dave Ball was on site during the incident.
- Norton OH 44203; Summit County. An oil and gas well was drilled a few weeks ago and the neighbors suffered through unbearable noise 24/7 for 6 days straight. They have heard 5 more wells are going to be drilled.

PHOTOGRAPHS OF OIL AND GAS DEVELOPMENT FROM OTHER STATES







