

December 14, 2009

Bureau of Oil & Gas Regulation
NYSDEC Division of Mineral Resources
625 Broadway, Third Floor
Albany, NY 12233-6500

Dear Sirs:

We are writing on behalf of the Finger Lakes Land Trust regarding the draft Supplemental Generic Environmental Impact Statement (dSGEIS) concerning natural gas extraction from the Marcellus Shale and other formations. We are quite concerned about the draft Impact Statement's failure to adequately address potential impacts associated with exploitation of this resource.

Since it was established in 1989, the Land Trust has worked cooperatively with landowners and local communities to permanently protect 11,000 acres of significant open space lands within the Finger Lakes Region and New York's Southern Tier. Our organization owns and is responsible for the protection of a network of 26 public conservation areas, and we monitor and enforce the terms of more than 70 conservation easements on lands that remain in private ownership. The Land Trust is supported by 1,900 members from across the region.

After a thorough review, we believe that the dSGEIS fails to ensure water quality within the Finger Lakes and the Upper Susquehanna Watershed while also failing to address cumulative environmental impacts. In addition, the document's emphasis on a combination of self-reporting and suggested (as opposed to required) mitigation measures, along with the state's limited staffing resources, does not instill confidence that sensitive environmental resources will receive the protection they deserve.

In particular, our concerns are as follows:

Water Quality Protection

Each of the Finger Lakes serves as a public drinking water supply. Collectively, they serve as the basis for the region's high quality of life and a tourism industry that generates \$2.6 billion per year. The Chemung and Susquehanna Rivers also serve as public drinking water supplies and ultimately provide water to the Chesapeake Bay – the nation's largest estuary.

The dSGEIS fails to adequately address the threats associated with Marcellus gas production to these water resources. For example, a complete list of chemicals added to fracking fluids and toxicity data are not provided in the dSGEIS. The document also presumes capacity for treatment of flow-back fluids that is currently lacking. Hydraulic fracturing is expected to ultimately require the utilization of billions of gallons of water per year. The dSGEIS fails to analyze the impact of these withdrawals.

The dSGEIS proposes several different setback requirements for drilling in proximity to public water supplies, wetlands, streams, and rivers. Greater setbacks are proposed for the New York City Watershed

than other public water supplies. Other public drinking water supplies, including the Finger Lakes, should be afforded an equal degree of protection.

Cumulative Environmental Impacts

The dSGEIS fails to address the cumulative environmental impact of expected drilling within the Marcellus Shale Formation. This is clearly inadequate. The development of thousands of gas wells, the use of hydraulic fracturing techniques, and the development of infrastructure associated with production, will collectively have a profound impact upon the region. In particular, the effects of forest fragmentation and hydrological impacts upon small streams and wetlands are likely to be significant. These impacts can only be effectively addressed on a cumulative basis and are just the types of impacts that development of a generic Environmental Impact Statement is meant to address.

Significant Land Resources & Habitats

The impact statement highlights the special treatment of state regulated wetlands, state parks, and land within the New York City Watershed. The document fails to recognize other significant land resources that are likely to be adversely affected by gas drilling. These include, but are not limited to, priority projects of the New York State Open Space Plan, sites of ecological significance identified by the New York Natural Heritage Program, Important Bird Areas recognized by Audubon New York, and permanently protected open space lands and conservation easements held by land trusts and other conservation organizations.

Forest Fragmentation

The dSGEIS fails to adequately address the impact of drilling and associated infrastructure on the region's forests – both in terms of plant communities and wildlife. Those birds that rely on interior forest habitat will be affected by the combination of well sites, pipelines, access roads, and compressor stations. This infrastructure will fragment the region's forests, likely leading to increased mortality and population declines among species such as the scarlet tanager and ovenbird. In addition, the creation of these corridors will lead to increased invasion by non-native plants. While the state is to be applauded for specifying control measures for invasive plants, our own experience with efforts to control these plants across the region makes us skeptical that these controls will be effective in the long run.

Self Reporting and Suggested Mitigation Measures

As mentioned earlier, the dSGEIS relies on self-reporting by gas companies to considerable degree. This is a particular cause for concern given the New York State Department of Environmental Conservation's limited staff capacity – particularly in the Division of Mineral Resources. In addition, many mitigation measures are suggested but not required. We are afraid that this approach, with a lack of adequate oversight, will lead to unnecessary impacts upon the environment that could be avoided by stronger state oversight and clear mandatory mitigation standards and regulations.

Creation of a Regional Mitigation Fund

While it is critical that the state require the highest performance standards for drilling, and also call for site specific mitigation, the fragmentation of forests and the disruption of local hydrological conditions across the region calls for mitigation on a regional scale. The state should work with the gas industry to create a state administered fund that would be used to mitigate the cumulative impacts of gas drilling relating to forest fragmentation and degradation of streams and wetlands.

The fund would be used by state conservation agencies, non-profit land trusts and local communities to purchase land and conservation easements on high quality habitats, with a particular emphasis on creating networks of protected open space as identified in the New York State Open Space Plan. The fund should be designed so that it receives initial start-up funding from the gas industry as well as ongoing payments that are linked to ongoing gas production.

A similar model has already been established in the Jonah gas fields of eastern Wyoming. There, 500 gas wells have had a significant impact upon 30,000 acres of rangeland and adversely affected local wildlife populations. In 2006, gas producers in this area set up a \$24.5 million fund to mitigate associated impacts. Some of these funds have subsequently been used to purchase conservation easements on ranchland that was identified for its rich plant and wildlife communities.

Conclusion

The dSGEIS is clearly deficient in that it fails to address important issues such as cumulative impact and proposes a number of strategies that are not supported by adequate data. The Finger Lakes Land Trust recognizes that New York must diversify its energy sources. At the same time, we also recognize that the impressive natural resources of the Finger Lakes and the Southern Tier are the basis for the region's economy and its quality of life.

These resources must not be sacrificed in the name of energy production. The dSGEIS does not convince us that the region's cherished resources will be protected from significant adverse impacts associated with gas production. Consequently, we ask that the NYSDEC, as lead agency, withdraw the dSGEIS so that it can be substantially revised and a more intensive assessment of the aforementioned issues be completed for resubmission under the State Environmental Quality Review process.

Thank you very much for the opportunity to comment on this document. Please don't hesitate to call either of us if you have any questions about the points we've made above.

Sincerely,

Andrew E. Zepp
Executive Director

Chris Proulx
President