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**ATTORNEYS FOR CITIZENS FOR
PENNSYLVANIA’S FUTURE, TOBYHANNA
CREEK/TUNKHANNOCK CREEK
WATERSHED ASSOCIATION, AND
TOBYHANNA CONSERVATION ASSOCIATION**

**IN THE COURT OF COMMON PLEAS
MONROE COUNTY, PENNSYLVANIA**

ORCHARD BJK COMPANY, LLC	:	
	:	
and	:	No. 003018-CV-2024
	:	
POCONO MOUNTAINS INDUSTRIES, INC.	:	CIVIL ACTION
	:	DECLARTORY JUDGMENT
Plaintiffs	:	
v.	:	
	:	
COOLBAUGH TOWNSHIP BOARD OF SUPERVISORS	:	
	:	
Defendant	:	

**PETITION TO INTERVENE OF
CITIZENS FOR PENNSYLVANIA’S FUTURE,
TOBYHANNA CREEK/TUNKHANNOCK CREEK WATERSHED ASSOCIATION,
AND TOBYHANNA CONSERVATION ASSOCIATION**

Pursuant to Pennsylvania Rule of Civil Procedure 2327, Citizens for Pennsylvania’s Future (“PennFuture”), Tobyhanna Creek/Tunkhannock Creek Watershed Association (“TCTCWA”), and Tobyhanna Conservation Association, Inc. (“TCA”), on behalf of themselves and their members (collectively, “Proposed Intervenors”), respectfully file this Petition to Intervene in opposition to the claims filed in the above-captioned matter.

The case has direct implications for the water quality of the Tobyhanna Creek and Tunkhannock Creek watersheds, Proposed Intervenors’ missions and efforts to preserve and protect those watersheds and all waters within Coolbaugh Township, and Proposed Intervenors’

members' interests in the preservation of the natural, scenic, and esthetic values of their environment.

In support of their Petition, Proposed Intervenors assert the following:

I. PROPOSED INTERVENORS

1. Proposed Intervenors are Pennsylvania nonprofit corporations seeking intervention to protect and represent their interests and the constitutionally protected environmental rights of their members, which interests and rights are directly and immediately affected by the ordinance at issue in this litigation.

2. PennFuture is a Pennsylvania 501(c)(3) nonprofit environmental advocacy organization with an office at 1539 Cherry Lane Road, East Stroudsburg, Pennsylvania 18301. PennFuture's mission includes protecting Pennsylvania's air, land, and water through outreach and advocacy, including litigation.

3. TCTCWA is a Pennsylvania 501(c)(3) nonprofit environmental organization with an address of P.O. Box 796, Pocono Lake, Pennsylvania 18347. TCTCWA's mission is preserving the quality and integrity of the waters, land, and wildlife within the Tobyhanna Creek and Tunkhannock Creek watersheds.

4. TCA is a Pennsylvania nonprofit corporation with an address of 2040 Lakeside Dr, Tobyhanna, Pennsylvania 18466. TCA's mission is to conserve and improve the Tobyhanna Creek Watershed for future sportsmen and sportswomen alike.

II. PROCEDURAL HISTORY

5. On August 2, 2023, Coolbaugh Township amended its Storm Water Management Ordinance to require a 300-foot buffer adjacent to all wetlands, vernal ponds, lakes, ponds, streams and natural watercourses in the Township ("Amendment").

6. On May 3, 2024, two owners/developers of land within Coolbaugh Township, Orchard BJK Company, LLC (“Orchard”) and Pocono Mountains Industries, Inc. (“PMI,” collectively with Orchard, “Plaintiffs”), initiated this action by filing a Complaint against the Coolbaugh Township Board of Supervisors (“Board” and/or “Township”) challenging the Amendment.

7. The Complaint alleges that the Amendment is invalid special legislation and is unconstitutionally arbitrary, irrational, and confiscatory.

8. On June 13, 2024, the Board filed Preliminary Objections to the Complaint.

III. FACTUAL BACKGROUND

9. Approximately 30,000 acres, more than half of the land area of Coolbaugh Township, is located in the Tobyhanna Creek Watershed. *See* Complaint (“Co,”) Exhibit B, p 5 (Figure III-1 Tobyhanna Creek Watershed).

10. The portion of the Tobyhanna Creek/Tunkhannock Creek watershed in Coolbaugh Township is approximately 36%, of the total watershed area.

11. An approximately 5-mile stretch of Tobyhanna Creek in Coolbaugh Township is among the few publicly-accessible stocked trout streams in the region.

12. The majority of Plaintiffs’ properties as identified in the Complaint, totaling hundreds of acres, are located in the Tobyhanna Creek watershed, including Orchard’s “Lot #1” and “Lot 2” properties and the majority of PMI’s Corporate Center East and Corporate Center South properties *See* Co. ¶¶ 11–12, 20–21.

13. Nearly every stream in Coolbaugh Township, including Tobyhanna Creek and its tributaries, is designated by the Pennsylvania Department of Environmental Protection as an Exceptional Value (“EV”) or High Quality (“HQ”) water. *See, e.g.*, 25 Pa. Code §§ 93.9c, 93.9d.

14. EV is the most protective water use under Pennsylvania’s water quality standards. It is the higher of the two “Special Protection Water” uses, with the second being HQ. *See* 25 Pa. Code § 93.3 (Table 1).

15. The water quality of EV streams “shall be maintained and protected” without exception. 25 Pa. Code § 93.4a(d).

16. Coolbaugh Township has the highest concentration of EV streams of any municipality in Monroe County.

17. HQ streams are also entitled to stringent protections. *See* 25 Pa. Code § 93.4a(d).

18. In addition to the multitude of Special Protection streams, numerous wetlands are located throughout Coolbaugh Township, including along these Special Protection streams. *See* Co. Exhibit B, Appx. D (figure III-8).

19. These wetlands intercept water runoff from adjacent lands; slow runoff flow rate; mitigate the effects of flooding; capture sediments; and filter out, store, and transform pollutants, nutrients, and heavy metals, thus protecting the quality of the Township’s Special Protection streams and helping to ensure healthful conditions for human water-contact activities.

20. Coolbaugh Township’s wetlands also provide habitat for a vast number of species, including endangered, threatened, and rare plant and animal species.

21. Natural vegetated buffers around water resources such as wetlands, especially forested buffers, protect those resources by enhancing water quality, providing flood control, removing pollutants, mitigating warming of waters, reducing overall watershed impervious coverage, improving separation areas between impervious cover and water resources, providing food and habitat for wildlife, and aiding in groundwater recharge. *See* Co. Exhibit C, p. 19.

IV. PETITIONERS HAVE STANDING TO INTERVENE

A. Standard for Intervention

22. A person not a party to a proceeding **shall be permitted** to intervene in the proceeding if the determination of the action may affect any legally enforceable interest of such person. Pa. R.C.P. 2327(4).¹

23. A court **may** refuse intervention only if “(1) the claim or defense of the petitioner is not in subordination to and in recognition of the propriety of the action; or (2) the interest of the petitioner is already adequately represented; or (3) the petitioner has unduly delayed in making application for intervention or the intervention will unduly delay, embarrass or prejudice the trial or the adjudication of the rights of the parties.” Pa. R.C. P. 2329.

24. Thus, if the possible intervenor is permitted to intervene under Rule 2327, the allowance of intervention is mandatory unless one of the grounds in Rule 2329 is present, in which case it is discretionary. *LaRock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 313 (Pa. Cmwlth. 1999).

25. The “exact boundaries of the ‘legally enforceable interest’ limitation . . . are not clear,” but they are “inextricably linked” to “the concerns animating the concept of standing.” *Allegheny Reprod. Health Ctr. v. Pa. Dep't of Hum. Servs.*, 309 A.3d 808, 843–44 (Pa. 2024); *In re Pa. Crime Com*, 309 A.2d 401, 406 (Pa. 1973).

26. In Pennsylvania, the doctrine of standing is a “prudential, judicially-created tool, affording discretion to courts.” *Firearm Owners Against Crime v. Papenfuse*, 261 A.3d 467, 481 (Pa. 2021).

¹ Other grounds for intervention provided in Rule 2327 are inapplicable here.

27. To determine whether a party has standing, Pennsylvania courts traditionally examine whether that party's interest in the outcome of the lawsuit is "substantial, direct, and immediate." *Id.*

28. "A party's interest is substantial when it surpasses the interest of all citizens in procuring obedience to the law; it is direct when the asserted violation shares a causal connection with the alleged harm; finally, a party's interest is immediate when the causal connection with the alleged harm is neither remote nor speculative." *Com., Office of Governor v. Donahue*, 98 A.3d 1223, 1229 (Pa. 2014).

29. An organization has standing on its own behalf if the organization itself has a substantial, direct, and immediate interest in the matter being litigated. *In re Friends of Marconi Plaza & Rich Cedrone*, 287 A.3d 965, 974 (Pa. Cmwlth. 2022); *Society Hill Civic Association v. Philadelphia Board of License & Inspection Review*, 905 A.2d 579, 586 (Pa. Cmwlth. 2006).

30. Such an interest exists where the organization exhibits a commitment to the improvement, preservation, and restoration of a specific resource, makes a substantial financial investment in that activity, and has participated in local proceedings relating to the matter being litigated. *See In re Friends of Marconi Plaza & Rich Cedrone*, 287 A.3d 965, 974 (Pa. Cmwlth. 2022); *Society Hill Civic Association v. Philadelphia Board of License & Inspection Review*, 905 A.2d 579, 586 (Pa. Cmwlth. 2006); *Pittsburgh Tr. for Cultural Res. v. Zoning Bd. of Adjustments*, 604 A.2d 298, 300, 304 (Pa. Cmwlth. 1992); *Applewhite v. Commonwealth*, 2014 Pa. Commw. Unpub. LEXIS 756, at *21 (Cmwlth. Jan. 17, 2014) (organizations concerned with protecting the right to vote of Pennsylvanians that diverted scarce resources from their core missions to educate the public about voter ID law had standing to challenge the law).

31. In addition, an organization has standing as representative of its members, even in the absence of injury to itself, if at least one of its members has a substantial, direct, and immediate interest in the matter to be litigated. *Pa. Med. Soc'y v. Dep't of Pub. Welfare*, 39 A.3d 267, 278 (Pa. 2012). This rule applies equally to nonprofit membership corporations. *Ams. for Fair Treatment, Inc. v. Phila. Fed'n of Teachers, Local 3*, 150 A.3d 528, 533 (Pa. Cmwlth. 2016).

32. Pennsylvania's public natural resources, including surface and groundwater and wild flora, fauna, and fish, are the common property of all the people, including generations yet to come. PA. CONST. art I, Sec. 27; *Marcellus Shale Coal. v. Dep't of Env't Prot.*, 292 A.3d 921, 962 n.50 (Pa. 2023).

33. Persons who use and enjoy these public resources or take advantage of the natural, scenic, historic, and/or esthetic values of the environment have standing to challenge actions that injure these resources or values. *See, e.g., Funk v. Wolf*, 144 A.3d 228, 244 (Pa. Cmwlth. 2016) (citing *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*, 528 U.S. 167, 183 (2000)).

34. “[E]nvironmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and are persons for whom the aesthetic and recreational values of the area will be lessened by the challenged activity.” *Funk*, 144 A.3d at 244; *see also White v. Twp. of Upper St. Clair*, 799 A.2d 188 (Pa. Cmwlth. 2002) (persons who enjoyed the conservation, recreation, and historic uses of a public park had standing to challenge municipal approval of communications tower in park).

35. This includes persons whose ability to fish, hunt, camp, swim, picnic, walk, and/or birdwatch in or near a waterway may be affected by a decline in water quality of that waterway. *See Funk*, 144 A.3d at 244.

36. Persons also have a substantial and direct interest in the outcome of litigation where there is “serious risk of alteration in the physical nature of their respective political subdivisions and the components of their surrounding environment.” *Funk*, 144 A.3d at 246 (quoting *Robinson Twp. v. Commonwealth*, 83 A.3d 901, 922 (2013)).

37. The “fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process.” *Funk*, 144 A.3d at 244; *Robinson Twp.*, 623 Pa. at 598.

38. If one party has standing, the tribunal will not question whether other aligned parties have standing. *See Funk*, 144 A.3d at 248 n.12 (“Because we conclude that Ms. McIntyre has standing, we need not address whether the other Petitioners also have standing to reach the merits of this case.”), *aff’d per curiam without opinion*, 158 A.3d 642 (Pa. 2017). *See also Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 877 A.2d 383, 393 (Pa. 2005).

B. PennFuture’s Standing

1. PennFuture has standing in its own right.

39. PennFuture is a membership organization engaged in seeking to improve water quality within Pennsylvania, in particular the Special Protection streams and wetlands of the Poconos, including Coolbaugh Township.

40. In addition to PennFuture’s legal, regulatory, policy, education, and outreach work aimed at protecting Special Protection Waters in the Poconos, in 2018, PennFuture spearheaded the creation of the Our Pocono Waters campaign, joining together various stakeholders to educate residents, business leaders, and local officials about the importance of protecting EV waters.

41. PennFuture also holds as its mission the protection of the rights guaranteed by Article I, Section 27 of the Pennsylvania Constitution, known as the Environmental Rights Amendment (“ERA”). The ERA provides that “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.

42. PennFuture educates its members on their rights under the ERA, engages with Commonwealth agencies, municipalities, and other ERA trustees on their duties with regard to Pennsylvania’s public natural resources, and works to protect the rights guaranteed by ERA through litigation and policy work.

43. PennFuture has devoted considerable time and resources toward protecting and improving water quality throughout the Poconos, particularly in Coolbaugh Township.

44. Examples of actions undertaken by PennFuture to further its mission of protecting and improving the water quality of streams and wetlands in the Poconos, including in Coolbaugh Township, and to educate the public about these resources include:

- a. Providing written and oral public comment on DEP permit applications that threaten Special Protection streams and wetlands, including Orchard’s “Lot #1” warehouse development. *See* Co. ¶ 11–17;
- b. Providing suggested zoning ordinance language to Coolbaugh Township to enhance protection of Special Protection waters in the Township; and
- c. Participating from September 2022 to the present as a party in local hearings and subsequent land use appeal to this Court and the Commonwealth Court in

a matter related to a warehouse development threatening Tobyhanna Creek, *Evergreen Farms at Coolbaugh Township c/o Lehigh Valley Underground v. Zoning Hearing Board of Coolbaugh Township*, Monroe County Court of Common Pleas Docket No. 007623-cv-2022.

45. Through the Our Pocono Waters campaign, PennFuture has:
- a. Gathered over 3,000 signatures on the “Keep Our Streams Exceptional” petition that was submitted to 25 state legislators in seven counties in and around the Poconos;
 - b. Released television and social media ads asking people to “Pledge to Defend Our Pocono Waters,” reaching over 1.7 million people;
 - c. Released a report entitled “Economic Effects of Special Protection Stream Designations in the Pocono Mountains Region” which identified \$3 billion in local economic benefits from Special Protection Waters;
 - d. Launched an interactive map of Special Protection Waters in the Poconos; and
 - e. Completed a survey of over 500 people in several northeastern counties, including Monroe County, in which 97% of respondents agreed that it is important to protect and maintain EV streams from added development.

46. PennFuture has also attended and participated in public meetings regarding proposed development affecting Special Protection Waters in Coolbaugh Township, including development proposed by Plaintiffs. For example:

- a. On March 1, 2023, PennFuture submitted written comments to Coolbaugh Township expressing concerns about the impact of Orchard’s “Lot #1” development on Duckpuddle Run, an HQ stream, and adjacent EV wetlands.

- b. PennFuture attorney Abigail Jones attended meetings of the Coolbaugh Township Board of Supervisors on March 21, 2023 and April 18, 2023, and offered comment regarding concerns about the “Lot #1” development on these same water resources. *See* Co. ¶ 15, Exhibit D.
- c. On April 24, 2023, PennFuture attorneys attended the Pennsylvania Department of Environmental Protection’s public hearing regarding the “Lot #1” development and offered oral and written comment expressing PennFuture’s concern about the development’s impact on Coolbaugh Township’s water resources.
- d. On August 2, 2023, PennFuture staff members attended the Coolbaugh Township Board of Supervisors’ meeting and offered public comment in support of the Amendment. *See* Co. ¶ 31.

47. PennFuture’s activities, on its own and through the Our Pocono Waters campaign, demonstrate a commitment to the improvement, preservation, and restoration of Coolbaugh Township’s Special Protection streams and wetlands, represent a substantial financial investment in that activity, and provide a sufficient basis for PennFuture’s standing to intervene in this matter in its own right.

2. *PennFuture has standing as representative of its members.*

48. PennFuture has members who live and reside in Coolbaugh Township and who fish in and enjoy the recreational uses of the Township’s surface waters.

49. The water quality of Coolbaugh Township’s streams and wetlands directly affects the health, recreational, and aesthetic interests, and the constitutionally protected environmental rights of PennFuture members, who live near, fish, and/or hike along these waters.

50. Because stream and wetland buffers protect the water quality of Coolbaugh Township's water resources, these interests of PennFuture members would be impacted by a decision affecting the buffers provided by the Amendment.

51. For these reasons, PennFuture has standing as a representative of its members to intervene in this litigation.

C. TCTCWA's Standing

1. TCTCWA has standing in its own right.

52. TCTCWA exists to promote and preserve the water quality and the environment of the Tobyhanna Creek and Tunkhannock Creek watersheds and surrounding areas of special concern, to improve the water quality of the associated creeks and tributaries and promote the natural bounties thereof, to provide educational materials on the benefits of and methods to achieve protection and preservation of the natural integrity of the watershed, to educate the general public and interested parties in the value of stress controls and land activities, to promote and coordinate the conservation of natural resources of the watershed, and to protect and preserve terrestrial and aquatic life in the watershed.

53. Due to the significant portion of the Tobyhanna Creek/Tunkhannock Creek watershed located in Coolbaugh Township and the development pressure affecting those streams, *see* ¶¶ 9–21, *supra*) Coolbaugh Township and its land use decisions are very important to the long-term health of the entire Tobyhanna Creek/Tunkhannock Creek Watershed.

54. Since 1990, TCTCWA has devoted considerable time and resources toward protecting and improving water quality in the Tobyhanna Creek Watershed.

55. Examples of projects and programs created and implemented by TCTCWA that aim to protect and improve the water quality of streams and wetlands in the Tobyhanna Creek Watershed and to educate the public about these resources include:

- a. Managing a Stream Watch Program, which enlists volunteers and members who monitor and act as stewards of streams within the watershed by collecting water quality data, which is entered by TCTCWA members into a database to provide a graphic depiction of the long-term health of the streams. The Stream Watch Program monitors the water quality of twenty-one creeks, including seven in Coolbaugh Township: Polly's Run, Clear Run, Frame Cabin Run, Hawkey Run, Kistler Run, Pocono Summit Creek, and Tobyhanna Creek;
- b. Providing guidance to support cost-effective macroinvertebrate sampling and analysis of sites through Monroe County's Annual Water Quality Study, including sampling and analysis of Tobyhanna Creek within Coolbaugh Township;
- c. Presenting educational programs for adults and children on various topics, including watersheds, wetlands, stormwater management, and the importance of forested riparian buffers;
- d. Constructing and maintaining a wetlands boardwalk and consulting on an accompanying Wetlands Curriculum for Pocono Mountain School District;
- e. Leading public wetland tours; and
- f. Participation in PennDOT's Adopt-a-Highway program, picking up trash annually on approximately four miles of roadway in the vicinity of Tobyhanna

Creek and its tributaries in Coolbaugh Township to reduce conveyance of trash via stormwater into surface waters.

56. On June 2, 2022, TCTCWA submitted a letter to Coolbaugh Township expressing concerns about a proposed industrial development's impact on the Tobyhanna Creek Watershed.

57. TCTCWA's decades of work demonstrate a commitment to the improvement, preservation, and restoration of Tobyhanna Creek and its headwaters, including wetlands; represent a substantial financial investment in that activity; and provide a sufficient basis for TCTCWA's standing to intervene in this matter in its own right.

2. *TCTCWA has standing as representative of its members.*

58. TCTCWA has members who live and reside in Coolbaugh Township and who fish in and enjoy the recreational uses of Tobyhanna Creek, its tributaries, and associated wetlands within the Township.

59. The water quality of Coolbaugh Township's streams and wetlands directly affects the health, recreational, and aesthetic interests, and the constitutionally protected environmental rights of TCTCWA members, who live near, fish, and/or hike along these waters.

60. Because stream and wetland buffers protect the water quality of those resources, these interests of TCTCWA members would be impacted by a decision affecting the buffers provided by the Amendment.

61. For these reasons, TCTCWA has standing as a representative of its members to intervene in this litigation.

D. TCA's Standing

1. TCA has standing in its own right.

62. TCA exists to conserve a state of harmony between humans and the land, and the proper harvesting of fish and game so as to retain nature's delicate balance in the Tobyhanna Creek Watershed.

63. Since 1966, TCA has devoted considerable time and resources toward protecting and improving water quality in the Tobyhanna Creek Watershed.

64. Examples of projects and programs created and implemented by TCA that aim to protect and improve the water quality of streams and wetlands in Coolbaugh Township and to educate the public about these resources include:

- a. Managing Kephart Nature Preserve, a 4-acre preserve located in Coolbaugh Township which provides fishing and birdwatching opportunities for children and persons with disabilities;
- b. Assisting the Pennsylvania Fish & Boat Commission with stocking trout in public streams and maintaining a section of the Tobyhanna Creek as a "delayed harvest fishing area" in cooperation with the Commission;
- c. Sponsorship of and participation in Monroe County Conservation Camp, an annual weeklong camp for high school students designed to instill in participants a positive conservation ethic and increased awareness of the environment through lectures and hands-on instruction in areas such as wetlands, soil and water conservation, fisheries and wildlife management, land use planning, and land development project design;

- d. Establishing a scholarship fund for Pocono Mountain School District graduates pursuing a college degree in conservation or environmental majors;
- e. Participation in PennDOT's Adopt-a-Highway program, picking up trash on more than seven miles of roadway several times a year in Coolbaugh Township;
- f. Periodic testing of streams in Coolbaugh Township to assure water quality is not impacted by development; and
- g. Attendance at meetings of the Coolbaugh Township Board of Supervisors to discuss issues relative to environmental protection of the Township.

65. In June 2022, TCA submitted a letter to Coolbaugh Township expressing concerns about a proposed industrial development's impact on the Tobyhanna Creek Watershed.

66. TCA's work demonstrates a commitment to the improvement, preservation, and restoration of Tobyhanna Creek and its headwaters, including wetlands; represents a substantial financial investment in that activity; and provides a sufficient basis for TCA's standing to intervene in this matter in its own right.

2. TCA has standing as representative of its members.

67. TCA has members who live and reside in and around Coolbaugh Township and who fish and hunt in and enjoy the recreational uses of Tobyhanna Creek, its tributaries, and associated wetlands within the Township.

68. The water quality of Coolbaugh Township's streams and wetlands directly affects the health, recreational, and aesthetic interests, and the constitutionally protected environmental rights of TCA members, who live near, fish, and/or hunt along these waters.

69. Because stream and wetland buffers protect the water quality of those resources, these interests of TCA members would be impacted by a decision affecting the buffers provided by the Amendment.

F. Grounds for refusal of intervention are not present here.

70. A court **may** refuse intervention only if at least one of the three specific circumstances identified in Rule 2329 are present. Pa. R.C.P. 2329.

71. Rule 2329(1) is inapplicable here. Proposed Intervenors' defenses are in subordination to and in recognition of the propriety of the action. *See* Pa. R.C.P. 2328(1).

72. Rule 2329(2) does not provide a reason to deny intervention because Proposed Intervenors' interests are distinct from the Board's and are not adequately represented by the Board or any other party. *See* Pa. R.C.P. 2328(2).

73. Although Proposed Intervenors seek to join in the Board's defense of the Amendment, Proposed Intervenors do so to ensure their own particular interests and the interests of their members.

74. As averred above, Proposed Intervenors have exhibited a long-term commitment to the improvement, preservation, and restoration of water resources within the Tobyhanna Creek Watershed, including those within Coolbaugh Township; have made substantial financial investments in that activity; and have engaged with the Board on issues relating to the matter being litigated.

75. Proposed Intervenors also have members who have health, recreational, and esthetic interests in the water resources of Coolbaugh Township and whose use and enjoyment of those resources will be affected by the extent of the protection offered to those resources.

76. The Board, as a governmental entity, must protect the interests of the Township, which may include goals different from those of Proposed Intervenors and their members. *See Larock v. Sugarloaf Twp. Zoning Hearing Bd.*, 740 A.2d 308, 314 (Pa. Cmwlth. 1999).

77. The Township therefore does not adequately represent Proposed Intervenors' interest in this matter.

78. Moreover, proposed Intervenors represent beneficiaries of the trust guaranteed by the Environmental Rights Amendment of the Pennsylvania Constitution, whereas the Board is a trustee of the public natural resources held in trust. *Pa. Env'tl. Def. Found. v. Commonwealth*, 161 A.3d 911, 931 (Pa. 2017) (explaining that "all agencies and entities of the Commonwealth government, both statewide and local" are trustees); *see* Pa. Const. art. I § 27 ("As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.").

79. As a trustee, the Board has a duty to deal impartially with all beneficiaries of the trust, *see Pa. Env'tl. Def. Found. v. Commonwealth*, 279 A.3d 1194, 1202 (Pa. 2022), and is therefore precluded from representing the interest of one beneficiary over another. Thus, the Board cannot adequately represent the interest of Proposed Intervenors in this matter.

80. Rule 2329(3) does not provide a reason to deny intervention because Proposed Intervenors' Petition for Intervention is timely submitted before the parties have engaged in any discovery and before the Court has issued any orders, and thus intervention will not unduly delay proceedings, nor will it embarrass, or prejudice the trial or the adjudication of the rights of the parties. Pa. R.C.P. 2329(3).

V. CONCLUSION

WHEREFORE, for the reasons set forth above, Proposed Intervenors respectfully request this Court to grant the instant Petition to Intervene and to deem filed their Preliminary Objections to the Complaint, attached hereto as **Exhibit A**.

Respectfully submitted,

PENNFUTURE

Date: June 17, 2024

By: /s/ Brigitte Meyer
Brigitte M. Meyer, Esquire, I.D. # 329088
Abigail M. Jones, Esquire, I.D. # 323921

**IN THE COURT OF COMMON PLEAS
MONROE COUNTY, PENNSYLVANIA**

ORCHARD BJK COMPANY, LLC	:	
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and	:	No. 003018-CV-2024
	:	
POCONO MOUNTAINS INDUSTRIES, INC.	:	CIVIL ACTION
	:	DECLARTORY JUDGMENT
Plaintiffs	:	
	:	
v.	:	
	:	
COOLBAUGH TOWNSHIP BOARD OF SUPERVISORS	:	
	:	

ORDER

AND NOW, this ____ day of _____, 2024, upon consideration of the Petition to Intervene of PennFuture, Tobyhanna Creek/Tunkhannock Creek Watershed Association, and Tobyhanna Conservation Association, and any response thereto, it is hereby ORDERED:

- (1) The Petition to Intervene is GRANTED; and
- (2) Intervenors’ Preliminary Objections to the Complaint, are deemed filed.

SO ORDERED.

, J.