

A battle over drilling access to gas and oil continues in the industry's birthplace.

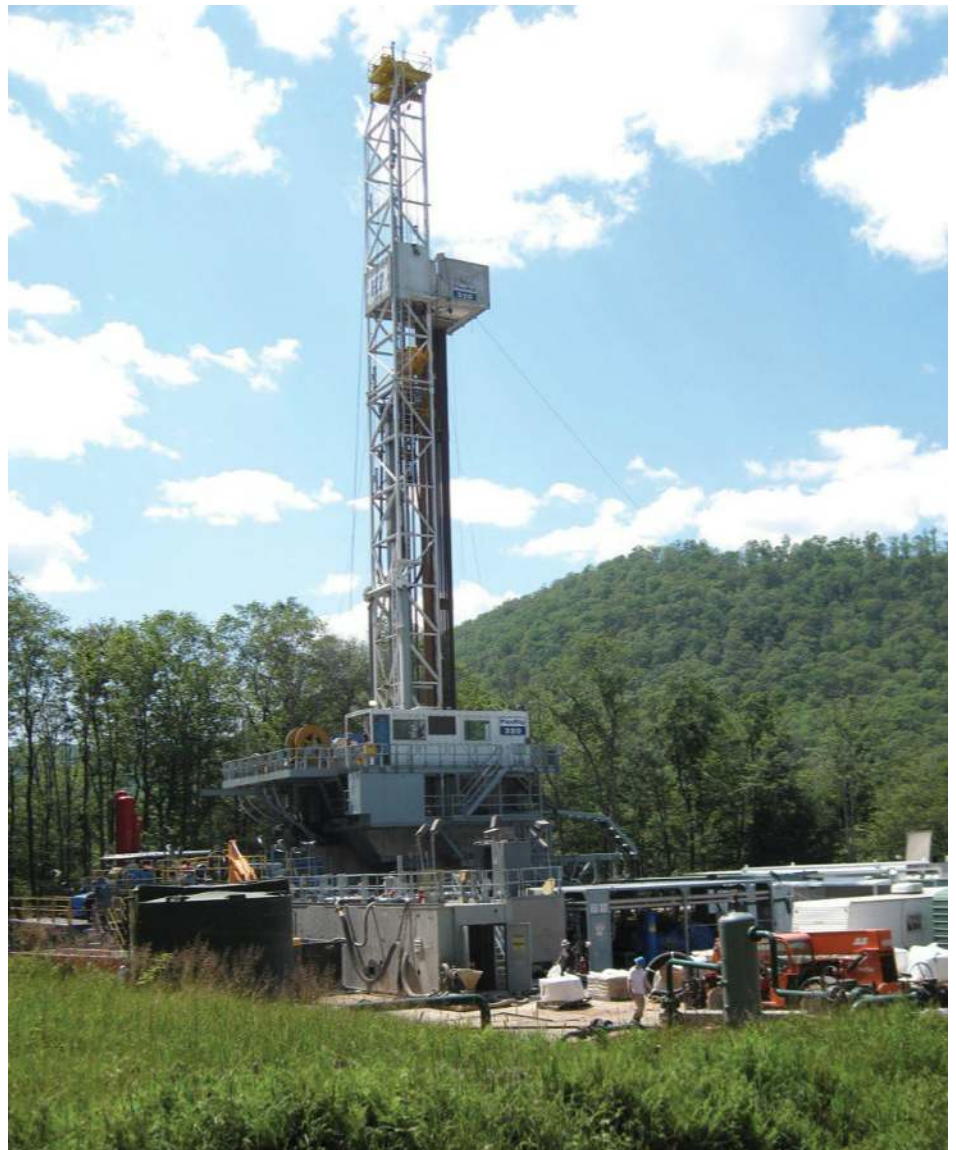
BY R. TIMOTHY MCCRUM

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Most people in the gas and oil industries are aware that the first oil well in the world was drilled in 1859 by Col. Edwin Drake, in western Pennsylvania, and that much of the earliest natural gas production also occurred in the 1800s in that region. Now that Pennsylvania has again become a leading producer of natural gas, with enormous new reserves in the Marcellus and Utica Shales, and through the development of horizontal drilling and hydraulic fracturing, western Pennsylvania is again the center of drilling excitement.

One recent controversy illustrates the importance of the gas and oil industries actively advocating for their interests against groups or policies limiting access to supplies. Western Pennsylvania is the site of the Allegheny National Forest, which covers major portions of four counties (Warren, McKean, Forest, and Elk), comprising over 500,000 acres and underlying gas and oil rights. Notably, when the federal government acquired private lands for the National Forest in the 1930s, the gas and oil mineral rights were severed from the land surface. Today, more than 93 percent of the National Forest is underlain by private gas and oil rights, and the current National Forest border is about 15 miles from Drake's first oil well. The Allegheny National Forest has also been part of the



A modern oil well along the Marcellus Shale. As in days of yore, western Pennsylvania remains critical to the gas and oil industries.

historic natural gas producing region, supplying natural gas for many decades to AGA's member company, National Fuel Gas Company, through its subsidiary Seneca Resources Corporation.

In April 2009, at the height of the recession, the U.S. Forest Service agreed to impose a "drilling ban" through a settlement agreement to resolve a law suit filed by the Sierra Club and the Allegheny Defense Project. The drilling ban created by the settlement agreement barred all new proposed gas and oil drilling projects on National Forest lands until a forest-wide Environmental Impact Statement was prepared. That process would have taken many years, and there was significant risk that continuing appeals and challenges to

any such EIS would have shut down drilling in the region for the indefinite future.

Fortunately, the Pennsylvania Independent Gas and Oil Association, along with Warren County, immediately filed a complaint in Federal District Court in western Pennsylvania, seeking a preliminary injunction against the Forest Service-Sierra Club settlement agreement and the associated drilling ban. After a three-day evidentiary hearing with more than a dozen witnesses testifying, on Dec. 15, 2009, Federal District Judge Sean McLaughlin granted a preliminary injunction against the Sierra Club, the Forest Service, and the U.S. attorney general, finding that the settlement agreement would unlawfully cause irreparable harm to the gas and oil-

producing interests, and that the injunction would be in the public interest. This preliminary injunction allowed drilling to proceed while the litigation was pending.

The federal government and the environmental parties appealed that ruling to the U.S. Court of Appeals for the Third Circuit, but on Sept. 20, 2011, a unanimous three-judge panel of the federal court of appeals affirmed Judge McLaughlin's preliminary injunction order in all respects. The case was then sent back to the district court in 2012 for final disposition on the merits, and at this stage, the federal government has conceded the merits of the case and supported vacating the settlement agreement. Judge McLaughlin entered final judgment on the merits in favor of the gas and oil producers on Sept. 6, 2012. However, the Sierra Club has again appealed to the Third Circuit appellate court; argument has now been set for Sept. 12.

The controversy over drilling access in the Allegheny National Forest demonstrates that persistence and engagement by the gas and oil industries are critical to maintain the recent and increasing production successes in the United States. We live in a litigious society—and a society that is quite polarized on issues involving natural resource production and use.

For example, a statement by the Sierra Club's president, Robin Mann, on the association's website in 2013, states in part: "Fossil fuels have no part in America's energy future—coal, oil, and natural gas are literally poisoning us." Mann added that "if drillers can't extract natural gas without destroying landscapes and endangering the health of families, then we should not drill for natural gas." With well-funded opponents of natural gas like these active in the courts, before the U.S. Congress, and in the media, successes in these battles ahead will not occur through complacency. As J. Paul Getty said, "The meek shall inherit the earth, but not its mineral rights." ♦

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In the Beginning: America's first oil well was drilled in 1859 by Edwin L. Drake in Titusville, Pa.