



Forest Service Can't Ban Drilling In Pa. National Forest

By **Dan Packel**

Law360, Philadelphia (September 07, 2012, 4:03 PM ET) -- A Pennsylvania federal judge overturned a ban on mineral and oil drilling in the state's Allegheny National Forest on Thursday, ruling that the U.S. Forest Service lacked the authority to impose a forestwide prohibition on drilling.

U.S. District Judge Sean McLaughlin ruled in favor of the Minard Run Oil Co., the Pennsylvania Oil and Gas Association, the Allegheny Forest Alliance, and Bradford County when he concluded that a settlement agreement between the Forest Service and a set of environmental groups banning drilling was illegal.

Judge McLaughlin's decision to grant summary judgment in favor of the pro-drilling parties follows a Third Circuit ruling that affirmed an earlier preliminary injunction halting the ban.

"I don't think anyone is surprised at the ruling," Matthew Wolford, an attorney for the plaintiffs, told Law360 on Friday. "The oral arguments for the case turned on whether there was any reason to challenge what the Third Circuit had decided, and ultimately the judge decided that there wasn't."

The lawsuit, filed in 2009, centered on a dispute between private owners of mineral and oil rights in the national forest and a set of environmental groups that sought to halt drilling there.

In 2008, the environmental groups — led by the Forest Service Employees for Environmental Ethics — filed suit against the Forest Service, seeking to alter the practice by which mining and drilling activities were approved in the national forest.

For roughly 30 years prior to the groups' action, private owners of mining and drilling rights worked cooperatively with the Forest Service to develop their rights in the forest, according to the memorandum. The rights holders would provide the Forest Service details on their drilling plans, and after a 60-day review process — during which the Forest Service would work with the driller to address any concerns — the Forest Service would grant a "notice to proceed."

The environmental groups' 2008 suit challenged this arrangement, arguing that the process of issuing the notices without the filing of an environmental impact study violated the National Environmental Policy Act.

In a 2009 settlement between the parties, the Forest Service agreed to halt approval of new drilling proposals until it had conducted a "forestwide, site-specific environmental analysis."

The rights holders then sued the Forest Service, along with the environmental groups, contending that a notice to proceed did not trigger the NEPA requirements because the Forest Service lacked regulatory authority over the drilling proposals.

After the Western District of Pennsylvania issued a preliminary injunction halting the ban, the environmental groups appealed to the Third Circuit. The appeals court concluded that the notices were not akin to permits, and as a result, the Forest Service did not hold the authority to require an EIS before their issuance.

The rights holders then sought summary judgment in the matter, while the environmental groups in turn sought summary judgment in their own favor.

The Forest Service itself conceded that the Third Circuit had settled the legal issues surrounding the case, but argued that the appropriate legal remedy was not a permanent injunction — the solution sought by the rights holders — but rather a simple declaratory judgment

In his Thursday ruling, Judge McLaughlin affirmed the Third Circuit’s reasoning in support of the preliminary injunction, and ruled to convert the preliminary injunction into a declaratory judgment, agreeing with the Forest Service’s argument that a permanent injunction was unnecessary.

“Simply put, a permanent injunction against further implementation of the settlement agreement is unnecessary because the drilling ban has already been lifted by virtue of the preliminary injunction entered on Dec. 15, 2009, and any attempt by the Forest Service to reinstate the drilling ban would be precluded by the terms of the declaratory relief awarded herein,” said the judge in the memorandum.

Representatives from the environmental groups and the Forest Service could not be reached for comment Friday.

The pro-drilling groups are represented by Timothy McCrum and Michael Klise of Crowell & Moring LLP, Steven J. Lechner of the Mountain States Legal Foundation, and Matthew Wolford.

The environmental groups are represented by Marianne G. Dugan of Marianne Dugan PC and Timothy M. Bechtold of the Bechtold Law Firm.

The case is Minard Run Oil Co. et al v. U.S. Forest Service et al, case number 1:09-cv-00125 in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Kat Laskowski.

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