

The Bradford Era

THE HIGH GRADE OIL METROPOLIS OF THE WORLD

U.S. Forest Service settles lawsuit Wednesday

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Agreeing to ramp up regulation of oil and gas development on the Allegheny National Forest, the U.S. Forest Service settled a lawsuit Wednesday with a coalition of environmental groups who have been pressing the agency for stricter management on the forest.

In the settlement dated Wednesday, the Forest Service decided to deviate from its current management practices by utilizing the National Environmental Policy Act to analyze each proposed oil and gas well in certain areas of the Allegheny. Previously, NEPA has not been required in regards to private mineral rights on the forest, spurring Sierra Club, Allegheny Defense Project and Forest Service Employees for Environmental Ethics to file the suit in November 2008.

(See LAWSUIT, Page 12)

Lawsuit

According to the settlement, any future development proposed in the Rimrock area and Morrison area west to the Rimrock Overlook, any wilderness study area, any National Recreation Area, any inventoried roadless area and the Tionesta Scenic area will be subject to NEPA.

Under NEPA, a federal agency which plans to undertake a project that could possibly disrupt the environment must prepare an environmental analysis and allow the public to comment on the proposed development.

The Forest Service has never required public comment for previous developments by private oil and gas producers.

The Forest Service is currently involved in four other lawsuits from representatives of the oil and gas industry that claim the Forest Service has no legal authority to impose additional restrictions on oil and gas developments.

In the wake of the lawsuits, the Forest Service Eastern Region headquarters has taken over the the process of reviewing proposals and issuing notices to proceed, the document that allows producers to access forest land. Allegheny personnel previously handled the approval responsibility, and since the Milwaukee, Wisc., headquarters took over issuing notices to proceed, not a single one has been returned.

But approval for oil and gas development may not be far off now that a settlement has been reached.

Under the terms of the agreement, approximately 585 oil and gas well proposals the Forest Service has on its desk will be reviewed using the old policy. Any future development will require NEPA analysis.

The issue regarding the Forest Service's authority to regulate oil and gas on the forest stems from the fact that most of the Allegheny is a severed estate, meaning the mineral and surface estates are owned by separate parties. When the federal government purchased the 513,000 acres that is the Allegheny in 1923, it left 93 percent of the mineral rights in the hands of private owners.

According to state and federal law, the mineral estate trumps the surface estate, and surface owners cannot deny mineral right owners access to the property as long as reasonable measures are taken to mitigate surface disruption.

Steve Rhoads, president of the Pennsylvania Oil and Gas Association, said the settlement could be very detrimental to producers, but would not comment further until he had a chance to thoroughly review it.

The environmental groups that filed the suit see the settlement as a clear-cut victory not just because NEPA will be implemented but also because in the agreement the Forest Service acknowledges that it does have legal authority to manage surface disruption.

"The settlement agreement unequivocally states that 'the Forest Service has legal authority to establish reasonable conditions and mitigation measures to protect federal surface resources' from oil and gas drilling, said Ryan Talbott, forest watch coordinator for Allegheny Defense Project. "This important acknowledgment signals a new direction for regulating oil and gas drilling on the Allegheny that will better protect water and air quality, wildlife habitat and recreation opportunities."

In the settlement, the Forest Service also agreed to pay the environmental groups' attorney fees totaling \$19,221.60.

A representative for Rep. Glenn Thompson said the congressman is dismayed at what he sees as a one-sided settlement.

"When the ANF was created some 86 years ago, the federal government made a conscious decision to leave the subsurface mineral rights in the hands of the private sector," said Patrick Creighton, Thompson's communications director. "This settlement not only tramples on these rights, it sets a dangerous precedent for future energy production."

Thompson has met with Forest Service officials and the Secretary of Agriculture regarding the issue, advocating on behalf of mineral right owners.

Thompson got involved in the dispute after the Milwaukee office took over responsibility of issuing notices to proceed, the document that grants producers access to their mineral rights.