

Chapter 7

A Study in the Abuse of Power: The United States Forest Service’s Illegal Efforts to Seize Control of Private Mineral Estates Underlying Pennsylvania’s Allegheny National Forest

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§ 7.01. Introduction.

In a decision published on December 15, 2009, after extensive briefing and a three-day evidentiary hearing in the case of *Minard Run Oil Co. and Pennsylvania Oil and Gas Association v. U.S. Forest Service (Minard Run II)*,² federal district court Judge Sean McLaughlin stopped the U.S Forest

² See *Minard Run Oil Co. v. U.S. Forest Service*, No. 09-125, 2009 WL 4937785 (W.D. Pa. Dec. 15, 2009) (*Minard Run II*). In April 2010 the Pennsylvania Oil and Gas Association (POGAM) merged with the Independent Oil and Gas Association of Pennsylvania to form the Pennsylvania Independent Oil and Gas Association (PIOGA). Hereafter, for accuracy, the industry plaintiff trade association will be referred to as PIOGA for events occurring after April 2010 and POGAM for events occurring before that date. Warren County, Pennsylvania

Service (Forest Service) and the U. S. Department of Justice (DOJ) from further implementation of an illegal settlement agreement with the Sierra Club and two other anti-development activist organizations. The settlement was designed to effectively seize and wrest control of 483,000 acres of privately owned mineral estates from their rightful owners. The agreement's immediate purposes were to obstruct and prevent oil and gas drilling on the Allegheny National Forest (ANF) and to aid the Forest Service in implementing *de facto* oil and gas drilling bans on private oil and gas estates throughout the National Forest System. On appeal to the United States Third Circuit Court of Appeals the district court decision was upheld on September 26, 2011 (*Minard Run III*).³

The *Minard Run II* and *III* decisions represented an “unqualified” defeat for the Forest Service⁴ in a war that was initiated by it on the ANF beginning in 2006. While a truce of sorts is now in place on the ANF it is by no means a settled peace. Regrettably, the war, which has been waged for eight years, continues. Its intensity has changed and Forest Service objectives may have been reevaluated but, notwithstanding its judicial defeats, the Forest Service's overt and covert efforts to impose federal control and *de facto* drilling bans over reserved and outstanding private mineral estates on the ANF and across the National Forest system persist.

and the Allegheny Forest Alliance (AFA), a regional economic development organization comprised of 7 school districts, 33 municipalities and numerous businesses, participated as co-plaintiffs in *Minard Run II* until dismissed for lack of standing.

³ See *Minard Run Oil Co. v. U.S. Forest Service*, 670 F.3d 236 (3rd Cir. 2011) (*Minard Run III*).

⁴ See Thorpe, *Minard Run Oil Co. v. United States Forest Service*, 36 *Harv. Envt. L. Rev.* 567, 579 (2012). The Law Review article author characterized the defeat as unqualified. Additionally and notably, in April 2014 the Department of Justice awarded PIOGA \$530,000 in attorney fees and expenses under the Equal Access to Justice Act, 28 U.S.C. § 2412 (d) (1) (A) *et. seq.* (EAJA). The EAJA authorizes recovery of attorney fees by an aggrieved party in the absence of a showing by the government that its position in litigation was substantially justified. Also see Note 110 *infra*.