

Slawson Exploration Gets OK To Drill During Tribal Row

By **Christine Powell**

Law360, New York (August 15, 2017, 7:40 PM EDT) -- A federal judge gave Slawson Exploration Co. Inc. the green light Tuesday to continue drilling operations in North Dakota while the Interior Board of Land Appeals hears a challenge by the Mandan, Hidatsa & Arikara Nation.

U.S. District Judge Daniel L. Hovland granted Slawson's motion for a temporary restraining order setting aside an IBLA decision that stayed eight drilling permits the Bureau of Land Management gave to the company for a project that involves drilling multiple horizontal wells from a single well pad to develop oil and gas leases beneath Lake Sakakawea in North Dakota.

The IBLA decided to press pause on the permits last week while it considers the merits of a challenge in which the MHA Nation objects to the location of the well pad, largely on the ground that it conflicts with a tribal resolution imposing a 1,000 foot setback from the lake, according to the ruling.

But Judge Hovland said that Slawson is likely to succeed on its claim that the IBLA's order is flawed because it ignores well-settled principles that tribes cannot regulate federal agencies and have limited civil jurisdiction over non-tribal members on non-tribal land, agreeing with the company that "the MHA Nation does not have civil jurisdiction over either Slawson or the BLM."

Additionally, Judge Hovland said Slawson is likely to succeed on its claim that the IBLA's order is flawed because it is based on a mistaken conclusion that the underlying dispute concerns trust resources for the MHA Nation, agreeing with the company that "the BLM has no obligation to enforce or recognize tribal law when making federal decisions affecting non-Indian land."

Judge Hovland also found that Slawson had adequately demonstrated a threat of irreparable harm if forced to cease drilling operations, saying it had shown that the economic loss it would sustain from doing so is significant.

Not only that, but Judge Hovland said it does not appear that setting aside the IBLA's order would harm the federal government "in any significant way, or even at all."

"The issuance of a temporary restraining order would simply vacate the order dated August 9, 2017; however, normal board procedures would continue to apply," Judge Hovland said. "To the contrary, if the temporary restraining order is not granted, Slawson asserts it will likely move the drilling rig off of the well pad to a different [site], in order to mitigate injury, and still incur substantial costs in doing so."

Judge Hovland said that undoing the IBLA's order comports with the public interest in developing and producing oil and gas.

Representatives for Slawson could not immediately be reached for comment on Tuesday. The federal government does not comment on litigation.

Slawson is represented by Eric R. Olson and Daniel McElroy of Bartlit Beck Herman Palenchar & Scott LLP, Robert Thompson III and Jeffrey Lippa of Greenberg Traurig LLP, and Kathleen C. Schroder and Timothy R. Canon II of Davis Graham & Stubbs LLP.

Counsel information for the federal government was not immediately available.

The case is Slawson Exploration Company Inc. v. U.S. Department of the Interior et al., case number 1:17-cv-00166, in the U.S. District Court for the District of North Dakota, Western Division.

--Editing by Jack Karp.