

Slawson Wins Another OK To Drill Pending ND Tribal Appeal

By **Christopher Crosby**

Law360, New York (November 28, 2017, 4:51 PM EST) -- A North Dakota federal judge on Monday again allowed Slawson Exploration Co. Inc. to continue oil and gas drilling in the state despite an administrative challenge by the Mandan, Hidatsa & Arikara Nation, finding the company had a strong chance of reversing the Interior Board of Land Appeals' decision to temporarily halt its operations pending the tribe's appeal.

U.S. District Judge Daniel L. Hovland granted Slawson's motion for a preliminary injunction, putting the brakes on 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 beneath Lake Sakakawea in North Dakota.

Judge Hovland's rationale mirrored his decision to grant the company a temporary restraining order from the stay in August, finding that the IBLA's decision to halt drilling as it considers the tribe's challenge came too late and ignored well-established U.S. Supreme Court precedent.

At the company's request, Judge Hovland turned his attention to the high court's decision in *Montana v. United States*, which allows tribes to regulate nonmembers in the event their actions endangered tribal lands. Although the MHA Nation objected that the location of the well pad conflicted with a tribal resolution imposing a 1,000-foot setback from the lake, the judge said that the horizontal drilling penetrated private, state and federal mineral rights, and the tribe failed to show how the activity would negatively impact it.

"Slawson argues that neither the MHA Nation's petition for stay nor the IBLA cited evidence of any such 'catastrophic consequence,'" Judge Hovland wrote. "Therefore, Slawson argues the MHA Nation does not have civil jurisdiction over Slawson or the BLM with regard to non-tribal land. The court agrees."

After Slawson sued the U.S. Department of the Interior over the IBLA's decision, the tribe intervened in September, later arguing that the company appealed too early because the administrative process was still pending and there was no final agency action which to appeal. As such, the tribe argued that the court did not have jurisdiction to impose a restraining order.

But on Monday, Judge Hovland said that the IBLA's order ignored well-settled principles that tribes cannot regulate federal agencies and have limited civil jurisdiction over nontribal members on nontribal land. He also noted that the BLM was under no obligation to enforce tribal law when making federal

decisions affecting non-Indian lands since the drilling would not penetrate tribal mineral rights.

Without the injunction, the company would lose the value of its oil and gas leases on the property and would incur considerable expenses having to move its equipment to a new site, he said. In contrast, the judge found that the tribe was unable to point to any specific harm the project would have, and noted that the BLM found that the wells would have no significant environmental impact.

“The development and production of oil and gas is in the public interest,” Judge Hovland wrote. “Granting a preliminary injunction order comports with this public interest and both Slawson and the federal defendants recognized this.”

Monday’s 22-page order also rejects bids by the Department of the Interior and the the MHA Nation to have the case thrown out.

Counsel for the parties did not immediately return requests for comment Tuesday.

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.

The MHA Nation is represented by Timothy Q. Purdon, Katherine S. Barrett Wiik and Luke Hasskamp of Robins Kaplan LLP and John Fredericks III and Rollie Wilson of Fredericks Peebles & Morgan LLP.

The case is Slawson Exploration Co. 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.

--Additional reporting by Christine Powell and Michael Phillis. Editing by Bruce Goldman.