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SOUTH DAKOTA OIL AND GAS UPDATE



By: Max Main

I. PUMP JACKS REQUIRED TO BE ORIENTED PARALLEL TO THE LINE OF SIGHT AT A NATIONAL HISTORIC LANDMARK AS A CONDITION TO ESTABLISHING AN OIL AND GAS FIELD

In November 2010, the South Dakota Department of Environment and Natural Resources (“SD DENR”) Board of Minerals and Environment (“Board”) issued a field order establishing the Gullickson Field.¹ Sometime thereafter, the SD DENR became aware that part of the Gullickson Field is within the boundary of the Bear Butte National Historic Landmark and that the South Dakota Office of History considered the Gullickson Field “within the environs” of Bear Butte, a historic place listed on the National and State Historic Registers.²

Bear Butte was placed on the Federal National Register of Historic Places in 1973,³ and it has been established as a national historic landmark by the Secretary of the United States Department of Interior since 1981.⁴ Bear Butte has cultural and historical significance to the Sioux tribes and Northern Cheyenne tribe as well as other Native American tribes.⁵

SD DENR filed a petition for rehearing with the Board, requesting a rehearing for the purpose of taking public input concerning protec-

1. *In re* The Application of Nakota Energy, LLC, O&G Case No. 17-2010 (Dep’t Env’t & Natural Res. July 25, 2011), <http://denr.sd.gov/des/og/documents/Nakota17-2010order.pdf>.

2. *Id.* at 12.

3. *Comprehensive Conservation Plan: Bear Butte National Wildlife Refuge*, U.S. FISH & WILDLIFE SERV., 23 (Sept. 2007), http://www.fws.gov/mountain-prairie/planning/ccp/sd/beb/documents/beb_2007_ccpfinal_all.pdf.

4. *National Historic Landmarks Survey*, NAT’L PARK SERV., <http://www.nps.gov/history/nhl/designations/Lists/SD01.pdf> (last visited Oct. 23, 2012).

5. *Comprehensive Conservation Plan: Bear Butte National Wildlife Refuge*, *supra* note 3, at 23.

tion of cultural resources related to the Bear Butte National Historic Landmark to re-authorize or revoke the previous field order, to impose conditions to mitigate potential impacts to cultural resources related to operation of the Gullickson Field, or both.⁶

Upon rehearing, the Board determined that issuance of an oil and gas field order in an area that encroaches upon an historic property on the national or state registers of historic properties requires a review from the South Dakota Office of History to determine if the project will encroach upon, damage, or destroy any historic property on the national or state registers of historic properties.⁷

The Board approved the field order with limitations and conditions.⁸ The Board's order prohibited wells from being drilled in areas that lie within the boundaries of Bear Butte National Historic Landmark.⁹ The order also allowed only five wells to be drilled.¹⁰ All wells within the Gullickson Field must be drilled, completed, and produced in compliance with the following conditions:

- a. Only smaller pump jacks (8 ft. tall) and storage tanks (15 ft. wide and 12 ft. high) may be used;
- b. Neutral color equipment must be used;
- c. Whenever possible, shared or centralized tank systems must be used;
- d. An archeologist, accompanied with a tribal monitor, must conduct a survey and provide a written report to the State Archeologist and the State Historic Preservation Office prior to any ground disturbing activity;
- e. Any identified archeology sites must be avoided with a 10 ft. buffer;
- f. Existing farm access trails must be utilized to avoid the need to construct new access roads;
- g. If new access roads must be constructed, only local gravel from a commercial gravel source may be used, so as to avoid accidental disturbance of unidentified archeology sites;
- h. Dust control measures must be utilized;
- i. Wells must be aligned and equipment shall be located in a manner that minimizes visibility from Bear Butte; and
- j. All disturbed areas must be reclaimed and re-vegetated following abandonment of the field.¹¹

In addition to the foregoing conditions, to minimize the visibility of wells drilled within the field, the Board required that all wells be ori-

6. *In re The Application of Nakota Energy, LLC*, O&G Case No. 17-2010, at 12.

7. *Id.* at 14.

8. *Id.* at 20.

9. *Id.* at 21.

10. *Id.*

11. *Id.* at 21-22.

ented so that the long dimension of the pump jack is parallel to the line of sight from Bear Butte.¹²

II. OIL AND GAS STUDIES

Feeling the pressure of the Bakken oil activity in North Dakota, both the South Dakota Legislature and the Governor's Office have formed oil and gas study committees.¹³

The Governor's Oil and Gas Development Work Group is tasked with providing information and recommendations regarding the potential scope of oil and gas development in South Dakota with respect to geographic area and time; current and potential incentives for development, including tax structure; and the effect of development on the environment, including impacts to surface owners.¹⁴

The Oil and Gas Study Interim Committee authorized by the Legislative Research Council Executive Board has four focus areas: mineral ownership configurations; South Dakota's abandoned severed mineral interest law; taxation; and application of the tax deed procedure to severed mineral interests.¹⁵

Both study groups have met last summer and again this past fall. Each group may propose legislation for consideration by the 2013 Session of the Legislature.

12. *Id.*

13. *South Dakota Oil & Gas Development/Preparedness Executive Branch Work Groups: Summary of Findings*, OFFICE OF S.D. GOVERNOR DENNIS DAUGAARD, 4 (Sept. 2012), <http://denr.sd.gov/documents/oilgasworkgroupsummary2012.pdf>.

14. *Id.* at 7.

15. *Minutes: Oil and Gas Study Interim Committee*, S.D. LEGISLATIVE RESEARCH COUNCIL, 1 (June 12, 2012), <http://legis.state.sd.us/interim/2012/minutes/MOGS06122012.pdf>.