

A Brief History of the Black Hills Forest Fire Protection District¹

The entire purpose of the Black Hills forest fire protection district is to protect the timber and areas subject to unusual fire danger. See SDCL 34-35-15. It is not unreasonable nor burdensome for any citizen of this State to procure a permit to have an open fire in the Black Hills. For the sake of public interest and safety, the State must protect the Black Hills National Forest lest indiscriminate burning reduce it to total ruin.²

The state of South Dakota has stunning geographical variety. Although flat farmland and pasture consumes much of the state's area, a number of other features stand out. The mighty Missouri river cuts the state almost vertically into eastern and western portions. The otherworldly Badlands are a geographic phenomenon like no other. The majority of the state can find a proverbial polar opposite in the heavily wooded, mountainous Black Hills.

The geographical variety of South Dakota presents a unique challenge for governance. Legislation must consider the unique needs of differing regions without showing unfair favoritism to other areas. Most state lawmakers earn their livelihood on the plains, and feel comfortable with prairie customs and needs. Yet, South Dakotans take pride in the Black Hills and protect and preserve them to the best of our ability.

In chapter 34-35 of the South Dakota Codified Law, sections 15 through 20 lay out some of the most important legislative details about the Black Hills Forest Fire Protection District (District). The District is a region marked out by statute in Section 34-35-15 of the South Dakota Codified Law. U.S. Interstate Highway 90 tops the District on the north. U.S. highway 16B, State Highway 79, and U.S. Highway 18 border it on the east. The Cheyenne River encloses it on the south. Finally, the state of Wyoming borders it on the west. The District surrounds the communities of Spearfish, Deadwood, Lead, Central City, Pluma, Savoy, Cheyenne Crossing, Hanna, Whitewood, Sturgis, Bethlehem, Tifford, Piedmont, Nemo, Deerfield, Rochford, Mystic, Silver City, Hisega, Rapid City, Rockerville, Keystone, Hill City, Custer, Senator, Blue Bell, Pringle, Dewey, Burdock, Argyle, Minnekahta, Hot Springs, and a handful of other small towns. However, the District does not include areas within municipality limits.³

While originally intended only for special fire restrictions, the scope of legislation concerning the District expanded over time to include wildlife protection. The unique

¹ By Benjamin Kleinjan, Legal Intern for the South Dakota Department of Agriculture, 2009.

² *State v. Brave Heart*, 326 N.W.2d 220, 224 (S.D. 1982) (Henderson, J., concurring).

³ [S.D. Codified Laws § 34-35-15 \(supp. 2009\)](#).

character of the territory within the District presents an excellent opportunity for wildlife conservation. For example, the South Dakota Department of Game Fish and Parks refer to the District in beaver trapping regulations.⁴ A 2008 bill failed to remove restrictions on mountain lion hunting outside the District.⁵ While mountain lions are not particularly relevant to forest fires, they are a type of wildlife within the District.

Yet, the primary purpose of the District remains to protect the trees of the Black Hills from devastating fires, and the region's long background of such infernos goes back to before recorded history. As the Black Hills became more populated over time, locals became more concerned about the spread of forest fire.

The early part of the twentieth century saw its largest fires in the 1930s. The hot, dry conditions of that decade produced ideal conditions for fire to explode out of human control. The decade opened with three large fires in 1931, including the Rochford fire, which destroyed over twenty thousand acres. Half a dozen large fires later, the decade closed with the devastating McVey fire north of Hill City.⁶

The McVey fire is considered one of the worst fires in the recorded history of the Black Hills. While officially listed as started by a lightning strike, it may have been started when loggers lost control of their campfires. After starting on July 8, 1939, the McVey fire consumed 12 million board feet of saw timber, 18,000 acres of young trees, 17 cabins, and 100 head of cattle. 1,755 men on 47 miles of fire lines finally got the fire under control by July 12. As a result of the fire, the Black Hills experienced three years of heavy flooding.⁷

The legislature reacted in 1941. On February 10, 1941, Representative Harold H. Doner of district 30 (Custer) introduced House Bill 303, "An Act to Create a Forest Fire Protection District To Regulate the Starting of Open Fires Thereon, and to Provide Penalties for the Violation of This Act."⁸

The law as it passed is strikingly similar to the law today. Section one established the District and set up as its boundaries ranges seven and eight, east of the Black Hills meridian, and south of the township line between townships six and seven, except incorporated towns.

⁴ [Admin. R. S.D. 41:08:01:07 \(2009\).](#)

⁵ [S.D. H. 1171, 83d Sess. \(Jan. 16, 2008\).](#)

⁶ *Black Hills National Forest Large Fire History 1910-2007*, http://wfs.sd.gov/firehist_map2007_visitor.pdf (last accessed Aug. 11, 2009).

⁷ [Edward Raventon, Island in the Plains 130-131 \(2003\).](#)

⁸ S.D. H.J., 27th Sess. 315 (1941).

These boundaries are not commonly recognizable today, and the legislature altered the definition over time to reflect more contemporary landmarks. Section two of the original legislation required permits for open fires between April 1 and November 30 of the year. Section three defined an open fire in the same terms still used in the law today. Those authorized to issue permits were described by section four, and section five denied that the session law absolved any negligence causes of action. Finally, section six promised to punish violators with a misdemeanor punishable by a fine between \$5 and \$100 plus up to 30 days in the county jail.⁹

The bill glided through the legislature to become law in South Dakota. After being referred, it passed through the Committee on State Parks, which was chaired by the same Republican Representative Doner that introduced the bill. On February 21, it passed the house with 73 votes for, zero against, and one absent. The senate added no amendments, and Doner's bill passed on March 3 with 33 votes for, zero against, one absent, and one excused.¹⁰

The law regarding the District remained untouched until 1966. That year the legislature reorganized how some of the laws were arranged.¹¹

The first practical change to the District came nearly forty years after the initial, 1941 legislation. In 1980 the legislature granted the state forester the authority to start fires for forest and range management.¹² Today, fire personnel use prescribed burns to clear growth or for ecology purposes.¹³

A legal challenge to the permit laws in the District resulted in an opinion from the South Dakota Supreme Court in the case of *State v. Brave Heart*. Brave Heart's request for a permit to make an open fire for religious ceremonies was denied because it did not include certain information. The court held that denial of the permit did not infringe on Brave Heart's First Amendment rights. The court explained that Brave Heart did not show that an "open" fire was necessary for the ceremony, nor did he reapply for a permit by including the requested information. The court held that Brave Heart's ceremonies could have been performed without issue if he had complied with the law.¹⁴

⁹ 1941 S.D. Laws ch. 93.

¹⁰ S.D. H.J., 27th Sess. at 315, 345, 566, 621-22, 971; S.D. Sen. J., 27th Sess. 605, 626, 839 (1941).

¹¹ 1966 S.D. Laws ch. 73, § 2.

¹² 1980 S.D. Laws ch. 247, § 3.

¹³ Raventon, *supra* n. 7 at 131.

¹⁴ *State v. Brave Heart*, *supra* n. 2.

Two separate laws in 1986 changed the law in the District. The legislature gave the Secretary of Agriculture authority to promulgate rules pertaining to open fire permits.¹⁵ The legislature also made starting an open fire without a permit a class one misdemeanor punishable by up to one year in prison and a two thousand dollar fine,¹⁶ and made violators liable for all civil damages for injuries caused by the fire.¹⁷

The 1990s ushered in two more changes to the law in the District. A 1992 law changed some of the legal language from “city” or “town” to classes of municipality.¹⁸ A law passed in 1995 further changed the boundaries to more recognizable roads and towns.¹⁹

In 2002, an executive order by Governor William Janklow consolidated the authority of the state forester under the Secretary of Agriculture.²⁰ Before this order, District management fell under the state forester, who reported to the secretary.

Five years of drought and a desire to share expensive and useful resources resulted in 2006 legislation which authorized the governor to enter into an interstate compact on behalf of South Dakota with any other states that agree to the compact.²¹ The resulting Great Plains Interstate Fire Compact includes the states of Colorado, North Dakota, South Dakota, and Wyoming.²²

In 2007 the legislature passed a law that set out the modern boundaries of the District and exempted existing fireworks businesses to a new prohibition on fireworks within the District. This new law provides for better fire prevention by local fire personnel, but also allows some safe firework entertainment.²³

The law pertaining to the District changed several times over the last seven decades, and it served as a regional placeholder for other legislation unrelated to forest fires. Yet, the law is surprisingly similar today, and the goals of the District remain basically the same, as when the legislature officially established it in 1941. The District intends to protect the lumber and life in the Black Hills from devastating forest fires. All the changes to the law since its

¹⁵ 1986 S.D. Laws ch. 326, § 3.

¹⁶ [S.D. Codified Laws § 22-6-2\(2\) \(2006\)](#).

¹⁷ 1986 S.D. Laws ch. 289.

¹⁸ 1992 S.D. Laws ch. 60, § 2.

¹⁹ 1995 S.D. Laws ch. 199.

²⁰ [2002 S.D. Laws ch. 252](#).

²¹ [2006 S.D. Laws ch. 186, § 1](#).

²² Great Plains Interstate Fire Compact, *Home*, <http://www.gpifc.org/> (last accessed Aug. 11, 2009).

²³ [2007 S.D. Laws ch. 198 §§ 1, 2](#).

inception attempt to make the Black Hills region a safer and healthier place for future generations of South Dakotans to enjoy.