

## Director's Cut September 2022 Production

### Oil Production

**August** 33,334,503 barrels = 1,075,307 barrels/day (final)  
*(New Mexico)* 47,590,362 barrels = 1,535,173 barrels/day **(+.8%)**

**September** 33,581,380 barrels = 1,119,379 barrels/day **(+4.1%) (RF + 12%)**  
 1,078,594 barrels/day or 96% from Bakken and Three Forks  
 40,786 barrels/day or 4% from legacy pools

1,519,037 all-time North Dakota high Nov 2019

**Revised Revenue Forecast** = **1,100,000 > 1,000,000 barrels/day**

### Crude Price<sup>1</sup> (\$/barrel)

	North Dakota Light Sweet	WTI	ND Market estimate
<b>August</b>	90.14	91.48	90.34 <b>(RF +81%)</b>
<b>September</b>	81.02	87.27	81.24 <b>(RF +63%)</b>
<b>Today</b>	83.75	85.87	84.81 <b>(Est. RF +70%)</b>
All-time high (6/2008)	\$125.62	\$134.02	\$126.75

**Revised Revenue Forecast** = **\$50.00**

### Gas Production & Capture

**August Production** 95,728,721 MCF = 3,088,023 MCF/day  
 Gas Captured: 94% 89,796,283 MCF = 2,896,654 MCF/day

**September Production** 95,273,362 MCF = 3,175,779 MCF/day **(+2.8%)**  
 Gas Captured: 95% 90,581,506 MCF = 3,019,384 MCF/day  
 3,175,779 MCF/day all-time high production Sep 2022  
 3,019,384 MCF/day all-time high capture Sept 2022

### Fort Berthold Reservation Activity

	Total	Fee Land	Trust Land
Oil Production (barrels/day)	187,153	70,735	116,418
Drilling Rigs	6	3	3
Active Wells	2,629	642	1,987
Waiting on Completion	17		
Approved Drilling Permits	261	49	212
Potential Future Wells	3,923	1,122	2,801

<sup>1</sup> Pricing References: WTI: [EIA](#) and [CME Group](#); ND Light Sweet: [Flint Hills Resources](#)

**Rigs & Wells**

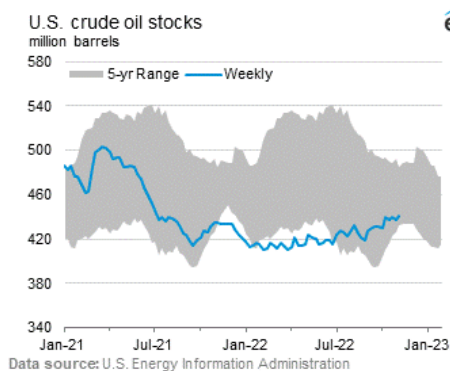
	August	September	October	Today
<b>Rigs</b>	46	45	43	39 New Mexico – 106 Federal Surface 6 All-time high – 218 (5/29/2012)
<b>Permitted</b>	102 drilling 0 seismic	65 drilling 0 seismic	77 drilling 1 seismic All-time high – 370 (10/2012)	-
<b>Completed</b>	66 (Preliminary)	81 (Preliminary)	54 (Preliminary)  Revenue Forecast <b>30→40→50→60</b> <b>(RF+8%)</b>	-
<b>Inactive<sup>2</sup></b>	1,714	1,447	-	-
<b>Waiting on Completion<sup>3</sup></b>	477	474	-	-
<b>Producing</b>	17,632	17,759 (Preliminary) NEW All-time high 17,759 9/22 15,438 (87%) from unconventional Bakken – Three Forks 2,321 (13%) from legacy conventional pools	-	-

**Drilling and Completions Activity & Crude Oil Markets**

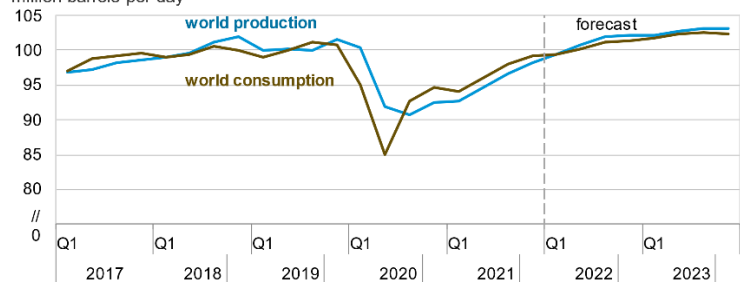
The drilling rig count has stalled in the low to mid-forties with a gradual increase expected over the next 2 years.

The number of active completion crews decreased to 17 this week.

OPEC+ decided to cut production quotas 2 million barrels per day which is approximately 1 million barrels per day less than current production. Russia sanctions have created significant price volatility in an already tight market. Lower transportation fuels and crude oil demand are resulting in a US crude oil stock build.



World liquid fuels production and consumption balance  
million barrels per day



<sup>2</sup> Includes all well types on IA and AB statuses: **IA** = Inactive shut in >3 months and <12 months; **AB** = Abandoned (Shut in >12 months)

<sup>3</sup> The number of wells waiting on completions is an estimate on the part of the director based on idle well count and a typical five-year average. Neither the State of North Dakota, nor any agency officer, or employee of the State of North Dakota warrants the accuracy or reliability of this product and shall not be held responsible for any losses caused by this product. Portions of the information may be incorrect or out of date. Any person or entity that relies on any information obtained from this product does so at his or her own risk.

Crude oil transportation capacity, including rail deliveries to coastal refineries is adequate, but could be disrupted due to:

- US Appeals Court for the ninth circuit upholding of a lower court ruling protecting the Swinomish Indian Tribal Community's right to sue to enforce an agreement that restricts the number of trains that can cross its reservation in northwest Washington state.
- DAPL Civil Action No. 16-1534 continues, but the courts have now ruled that DAPL can continue normal operations until the USACOE EIS is completed.
- Potential railroad worker strike – reported that a tentative deal had been reached.

Drilling activity is expected to slowly increase with operators maintaining a permit inventory of approximately 12 months. A survey of operators by JPT revealed the following:

*“The surge in the cost of services and supplies pushed the average oil price needed to justify drilling a new oil well in the Mid-Continent to \$65/bbl, according to a survey of industry experts by the Federal Reserve Bank of Kansas City released on 8 July.*

*When they were asked what it would take to get them to substantially increase drilling, they put the number at \$98/bbl, which was higher than the closing price for the WTI price in futures trading on 14 July.”*

## Gas Capture

U.S. natural gas storage is 2% below the five-year average. Both US and world crude oil inventories remain below normal. U.S. strategic petroleum reserve is at the lowest level since 1984.

The price of natural gas delivered to Northern Border at Watford City has returned to an elevated level of \$3.56/MCF today for a current oil to gas price ratio of 24 to 1. The state-wide gas flared volume from August to September decreased 35 MCFD to 156,396 MCF per day, the statewide percent flared was unchanged at 4.8% while Bakken gas capture percentage decreased to 94%. The historical high flared percent was 36% in 09/2011.

### Gas capture details are as follows:

Statewide	95%
Statewide Bakken	96%
Non-FBIR Bakken	96%
FBIR Bakken	95%
Trust FBIR Bakken	96%
Fee FBIR	88%
Big Bend	83%
Deep Water Creek Bay	87%
Twin Buttes	52%
Charleston	80%

The Commission established the following gas capture goals:

74%	October 1, 2014 - December 31, 2014
77%	January 1, 2015 - March 31, 2016
80%	April 1, 2016 - October 31, 2016
85%	November 1, 2016 - October 31, 2018
88%	November 1, 2018 - October 31, 2020
91%	November 1, 2020

## Seismic

There are currently 0 active oil and gas seismic surveys.

Active Surveys	Recording	NDIC Reclamation Projects	Remediating	Suspended	Permitted
1	1	0	0	5	0

## **Agency Updates**

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**BLM on 1/20/21 DOI issued order 3395** implementing a 60-day suspension of Federal Register publications; issuing, revising, or amending Resource Management Plans; granting rights of way and easements; approving or amending plans of operation; appointing, hiring or promoting personnel; leasing; and permits to drill. On 1/27/21 President Biden issued an executive order that mandates a “pause” on new oil and gas leasing on federal lands, onshore and offshore, “to the extent consistent with applicable law,” while a comprehensive review of oil and gas permitting, and leasing is conducted by the Interior Department. There is no time limit on the review, which means the president’s moratorium on new leasing is indefinite. The order does not restrict energy activities on lands the government holds in trust for Native American tribes.

### **What is the percentage of federal lands in ND?**

Mineral ownership in ND is 85% private, 9% federal (4% Indian lands and 5% federal public lands), and 6% state. 66% of ND spacing units contain no federal public or Indian minerals, 24% contain federal public minerals, 9% contain Indian minerals, 1% contain both.

### **How many potential wells could be delayed or not drilled by a Biden administration ban on drilling permits and hydraulic fracturing on federal lands?**

A spatial query found 3,443 undrilled wells in spacing units that would penetrate federal minerals, 2,902 undrilled wells in spacing units would penetrate BIA Trust minerals (700 tribal minerals and 2,202 allotted minerals), and the total number of wells potentially impacted is 6,345. The minimum number of future Bakken wells is 24,000 so the 3,443 wells on federal public lands = 14%, and the 2,902 wells on trust lands = 12%.

### **What is the potential federal royalty loss from a Biden administration ban on drilling permits and hydraulic fracturing on federal lands?**

A recent study from University of Wyoming estimated the ND loss as follows: 2021-2025 \$76 million, 2026-2030 \$113 million, 2031-2035 \$160 million, and 2036-2040 \$221 million for a total of \$570 million over 15 years. Please note that 50% of the royalties on federal public lands go to the state and 50% of the state share goes to the county where the oil was produced.

On 7/7/21 North Dakota sued the Department of Interior (DOI), Secretary of Interior Debra Haaland, Bureau of Land Management (BLM), Director of the BLM Nada Culver, and Director of the Montana-Dakotas BLM John Mehlhoff in US District Court for the District of North Dakota. The lawsuit requested the court:

Compel the Federal Defendants to hold quarterly lease sales. Oral arguments are scheduled for 1/12/22 in Bismarck.

Prohibit the Federal Defendants from cancelling quarterly lease sales.

Enjoin the Secretary implementing a moratorium on federal lease sales.

Declare that Federal Defendants are in violation of MLA, FLPMA, NEPA, and APA.

Grant other relief sought and as the court deems proper to remedy the violations.

There are 811 tracts nominated for pending lease sales in ND:

- 569 are pending NEPA or surface manager concurrence

- 242 are fully evaluated with Record of Decision by US Forest Service and Corp of Engineers, and waiting for scheduled auction – value to ND 1,037 wells and \$4.9 billion (GPT, OET, NDTL royalties, federal royalties, sales tax and income tax)

On 01/14/2022 Judge Traynor denied North Dakota’s motion without prejudice. In the Order on Mandamus, the Court noted that “a fully developed factual record is necessary to resolve the instant dispute.” The Court also held that because Federal Defendants had given the Court “assurances at the hearing the process to start Federal oil and gas leasing sales in North Dakota was imminent” mandamus relief was “unnecessary.” However, the Court noted that “if the Defendants do not hold to their word and cancel any planned future sale, North Dakota may bring this action for review of the specifically cancelled sales once this Court has the benefit of a complete record.” Federal Defendants have cancelled the Q1 2022 lease sale, but have now published a potential Q2 sales listing with a protest period ending 5/18/22. The matters at issue in Louisiana v. Biden et al. continue to be litigated. For these reasons, North Dakota filed a motion with the Court to enter a Scheduling Order setting the following schedule for resolving North Dakota’s case:

1. Federal Defendants will prepare an administrative record for lodging and certification to this Court by no later than March 25, 2022.
2. North Dakota will file any motion to complete the administrative record within fourteen days from when the administrative record is lodged.
3. The dispositive briefing schedule will then proceed as follows:
  - a. North Dakota will file its opening brief within four weeks of when the administrative record is complete.
  - b. The Federal Defendants and Intervenors will simultaneously file their responsive briefs within four weeks of North Dakota's opening brief.
  - c. North Dakota will file its reply brief within two weeks from the Federal Defendants' and Intervenors' responses.

The BLM and North Dakota filed documents to complete the administrative record on April 8, 2022. DOI administrative record is incomplete therefore, NDIC motion to complete was filed 5/9/22 and follow up reply on 5/27/22.

On 6/28/22 DAKOTA RESOURCE COUNCIL, CENTER FOR BIOLOGICAL DIVERSITY, CITIZENS FOR A HEALTHY COMMUNITY, LIVING RIVERS & COLORADO RIVERKEEPER, MONTANA ENVIRONMENTAL INFORMATION CENTER, RIO GRANDE RIVERKEEPER, SIERRA CLUB, WATERKEEPER ALLIANCE, WESTERN WATERSHEDS PROJECT, and WILDEARTH GUARDIANS sued DOI to challenge leasing decisions on 173 parcels including those in North Dakota. On 8/09/2022 the U.S. District Court in DC granted North Dakota's Motion to Intervene in the NGO's challenge to the legality of BLM's quarterly lease sales in Dakota Resource Council et al. v. U.S. Department of the Interior et al., 1:22-cv-01853-CRC.

On 9/6/22 the BLM and a group of NGOs filed a proposed settlement in the District Court of Montana in which BLM agrees to not issue drilling permits on 2019 and 2020 federal leases in North Dakota, Montana and South Dakota pending the completion of revised NEPA analyses that must take into account factors such as the social cost of carbon. This illustrates the revival of the "sue and settle" litigation strategy whereby the Biden Administration settles litigation brought by NGOs in a manner that furthers the Biden Administration's policy goals. The case was filed on 1/12/2021 by the same group of NGOs involved in North Dakota's leasing cases. The proposed settlement would cover 5 lease sales that authorized the sale of 113 leases encompassing 58,617 acres in North Dakota, Montana, and South Dakota. 55 North Dakota Parcels, 9,564.347 Federal Acres in North Dakota, leases Expire in 2029 and 2030 so if permitting is delayed 7-8 years 130 wells will not be drilled, 58,329,000 barrels of oil will not be produced, GrossProductionTax + OilExtractionTax + SalesTax + PersonalIncomeTax + FedRoyaltyShare + NDTLRoyalties @ \$50/barrel = \$8,006,217 per month = \$960,746,074 in ten years.

BLM has posted for comment NEPA Number: DOI-BLM-HQ-3100-2023-0001-EA, Project Name: Supplemental Environmental Assessment Analysis for Greenhouse Gas Emissions Related to Oil and Gas Leasing in Seven States from February 2015 to December 2020, Project Type: Environmental Assessment, Project Status: In Progress - Public Review and Comment Period, Lead Office: HQ-310. Bureau of Land Management has released an updated environmental assessment for public comment. The additional review analyzes greenhouse gas emissions that may result from reasonably foreseeable development of 3,600 oil and gas leases that were sold in 74 lease sales between February 2015 and December 2020 that were the subject of litigation. The leases span approximately 3,433,615 acres in Colorado, Montana, New Mexico, Utah, Wyoming, North Dakota, and South Dakota. The environmental analysis looks at the development activity that would result in greenhouse gas emissions due to well development and production operations, as well as the end-use of the petroleum products produced from oil and gas leases. The supplemental analysis is in response to numerous court rulings and settlements. It incorporates new information and ensures consistency with recent court decisions, Executive and Secretarial Orders, and Department of the Interior policy. This analysis of greenhouse gas emissions supplements the greenhouse gas analysis provided in the previous National Environmental Policy Act (NEPA) documents supporting the 74 lease sales. The previous environmental assessments or determinations of NEPA adequacy, decision records, and findings of no significant impacts for the 74 lease sales are listed on BLM's State Oil and Gas Lease Sale website, which contains detailed information for the lease sales in each field office. Decisions related to the affected lease sales will be made separately and will include additional analysis of impacts to other resources, as appropriate. The public comment period will run for 45 days through December 27, 2022. To view the supplemental environmental assessment and to comment, please visit <https://eplanning.blm.gov/eplanning-ui/project/2022218/510>.

**BLM published a new final rule 43 CFR Parts 3100, 3160 and 3170 to update and replace its regulations on venting and flaring of natural gas** effective 1/17/16. The final rule can be viewed online at <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/operations-and-production/methane-and-waste-prevention-rule>. North Dakota, Wyoming, Montana, Western Energy Alliance, and IPAA filed for a preliminary injunction to prevent the rule going into effect until the case is settled. A hearing in Casper, Wyoming was held 1/6/17. On 1/16/17 the court denied all of the petitioners' motions for preliminary injunctions. **On 2/3/17 the US House of Representatives voted 221-191 to approve a Congressional Review Act resolution against the rule.** On 3/28/17 President Trump issued an executive order which in part directs "The Secretary of the Interior shall review the following final rules, and any rules and guidance issued pursuant to them, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules". This rule is included in the list as item (iv). North Dakota plans to continue active participation in the litigation of this rule until the BLM takes final action eliminating the rule. **On 5/10/17 the Senate voted 51 to 49 against the CRA, allowing the rule to remain in effect.** On 6/27/17 U.S. D. Ct. Judge Skavdahl granted BLM's motion to extend the merits briefing schedule by 90 days, based on BLM's APA 705 stay and BLM's representations regarding its plans to reconsider the VF Rule. Opening briefs were filed 7/3/17. On 7/5/17 California and New Mexico sued BLM in the U.S. District Court for the Northern District of California, seeking a declaratory judgement that BLM's APA 705 stay was illegal and vacating the stay. The relief they request would vacate the stay of the January 2018 compliance et al deadlines, bringing them all back into force. BLM officials encouraged North Dakota to intervene. On 7/12/17 a group of NGOs including the Fort Berthold Protectors of Water and Earth Rights filed a separate suit against the BLM in federal court in the U.S. District Court for the Northern District of California, seeking a declaratory judgement that BLM's APA 705 stay was illegal and vacating the stay. California and New Mexico, along with various environmental groups, have challenged BLM's stay in the Northern District of California, and filed a motion for summary judgment on 7/26/17. On 8/24/17 North Dakota filed a response supporting BLM's motion, a motion to intervene, and a motion to change venue to Wyoming in an attempt to prevent all of the litigation regarding the timing of the Flaring Rule, including the future rulemakings further extending compliance deadlines that BLM has stated that it intends to publish, could end up in front of the magistrate judge in the Northern District of California instead of Judge Skavdahl in Wyoming. On 10/04/17 the federal magistrate judge in the Northern District of California granted the summary judgement motion by California, New Mexico, and several NGOs throwing out BLM's administrative and temporary postponement of several of the future rules compliance dates/obligations. On 10/05/17 the BLM issued a Federal Register Notice for a proposed rule that if finalized will delay certain requirements of the BLM Rule until 1/17/2019. North Dakota submitted comments to (1) support BLM's decision to delay certain compliance requirements and (2) continue to make the record that BLM exceeded its authority to promulgate the rule in the first place with particular emphasis on the specific/unique North Dakota considerations at issue. NDIC comments are available at <http://www.nd.gov/ndic/ic-press/dmr-blm-comments17-11.pdf>. BLM, the states of CA & NM, and the NGOs supporting the current final rule were granted an extension to file response briefs to December 11<sup>th</sup> in the WY court. On 11/29/17 North Dakota filed a response to industry petitioner's motion for a preliminary injunction supporting a preliminary or permanent injunction. On 12/4/17 USDOJ petitioned the 9<sup>th</sup> US Judicial Circuit Court in San Francisco to review and overturn the Northern District of California court's November decision ordering the US Bureau of Land Management to make oil and gas producers comply with the methane emissions requirements while the rules are being reviewed. On 12/7/17 BLM published a rule in the Federal Register delaying the methane regulation until January 2019, saying the previous rule is overly burdensome to industry. Officials said the delay will allow the federal Bureau of Land Management time to review the earlier rule while avoiding tens of millions of dollars in compliance costs to industry that may turn out to be unnecessary. On 12/19/17 BLM was sued by California, New Mexico, and a large group of NGOs in the Northern District of California federal court over the 12/7/17 rule extending certain compliance dates in BLM's 2016 Rule. The complaint requests that BLM's extension rule be set aside and the provisions it relates to reinstated. On 12/26/17 BLM filed a motion seeking to stay the litigation in the U.S. District Court case in WY and to vacate the 1/5/2018 briefing deadline, a motion in which the industry trade associations and Montana and Wyoming joined. North Dakota and Texas filed a short response on 12/27/17 asking the Court to deny the motion or allow until 1/12/18 to fully respond to BLM's holiday week motion. On 12/29/17 the Wyoming district court granted BLM's motion to stay the 2016 Rule challenge litigation. On 2/22/18 BLM published a new rule proposal to revise the 2016 final Waste Prevention Rule (also known as the venting and flaring rule). The proposed rule would eliminate duplicative regulatory requirements and re-establish long-standing requirements that the 2016 final rule sought to replace. The Federal Register notice specifically requested comment on ways that the BLM can reduce the waste of gas by incentivizing the capture, reinjection, or beneficial use of the gas. NDIC comments can be viewed at <http://www.nd.gov/ndic/ic-press/blm%20comments%20180417.pdf>. On 2/22/18 Judge Orrick in the Northern District of California entered a preliminary injunction against the BLM's "Suspension Rule" which "suspended for one year certain compliance deadlines in BLM's Venting and Flaring Rule. Judge Orrick also denied North Dakota's motion to transfer the

case to the District of Wyoming where Judge Skavdahl had stayed the original rule on the grounds that parties were protected by the Suspension Rule. The immediate effect of this decision was to reinstate the BLM Venting and Flaring Rule in full, along with compliance deadlines that became effective 1/17/2018, and remove the protections relied upon by Judge Skavdahl the District of Wyoming case. On 3/7/18 U.S. District Court Judge Skavdahl granted the North Dakota/Texas Motion to lift the stay in the challenge to the BLM's Venting & Flaring Rule. The California Court explicitly adopted North Dakota's central position in intervention - stating that "I express no judgment whatsoever in this opinion on the merits of the [V&F] Rule," showing great deference to Judge Skavdahl and the existing case in his Court and rejecting the California, NM, and NGOs request to uphold the V&F Rule. On 4/4/18 U.S. District Judge Skavdahl issued an order granting Wyoming's request for a partial stay of the Rule under Section 705 of the APA. The Court's limited Stay Order provides immediate relief to industry, but the balance of the Rule, including BLM's unlawful exercise of authority over State and private mineral interests through an over-inclusive application of communitization remains. The Court denied the North Dakota/Texas motion to move forward to complete briefing on the merits, and also denied industry's motion for a preliminary injunction. The Court expressed frustration with "the administrative dysfunction" reflected by this case as it ping-pongs between the District Courts of Wyoming and California and BLM's various attempts to delay, rescind or replace the Rule, concluding that "going forward on the merits at this point remains a waste of judicial resources and disregards prudential ripeness concerns." On 4/5/18 15 NGOs filed a Notice of Appeal with the 10th Circuit. California & New Mexico followed suit on 4/5/18 and have now also filed an appeal with the 10th Circuit. On 9/12/18 North Dakota filed a brief in the 10<sup>th</sup> Circuit Court of Appeals urging the Court, if it chooses to reverse the Wyoming district court's Stay Order, to remand the case back to the Wyoming district court with direction to finish this protracted legal process by promptly proceeding to a ruling on the merits. On 9/18/18 BLM issued their final rule revising the Obama-era Waste Prevention Rule, also referred to as the venting and flaring rule. The new rule will better align venting and flaring regulations with President Trump's priorities on energy development, job creation, and reduced compliance costs. These changes will also allow BLM to recognize existing state regulatory efforts and avoid duplicative requirements. In response to comments and after further consideration, the BLM made the following modifications to the proposed rule in this final rule: (1) Clarification that the 24-hour limit on royalty-free flaring during downhole well maintenance and liquids unloading in § 3179.104 applies "per event"; (2) Addition of a standard for "applicable rules, regulations, or orders" of a State regulatory agency or tribe in § 3179.201(a); and (3) Addition of a provision allowing for tribes to seek BLM approval to have tribal rules apply in place of any or all of the provisions of subpart 3179. The revised rule goes into effect on 11/27/18. On 9/28/18 a coalition of 17 conservation and tribal citizen groups filed a lawsuit challenging the decision to revise the Bureau of Land Management's Waste Prevention Rule, stating that the rule violates a number of existing federal policies. The states of New Mexico and California also filed a lawsuit challenging BLM's action. The BLM and NDIC have reached an impasse on negotiations for an agreement to implement section 3179.201, but continue to communicate regarding possible ways to resolve the disagreement. On 08/15/20 the U.S. District Court for the Northern District of California invalidated the 2018 revisions to the 2016 Waste Prevention Rule. This ruling means that the Waste Prevention Rule goes back in effect in 90 days, and the oil and gas industry will have to comply with the Rule's requirements. U.S. District Judge Yvonne Gonzalez Rogers found that the 2018 rescission violated federal law because it ignored the federal government's statutory duty to prevent waste, instead relying almost entirely on "inadequate or nonexistent state regulations". On 08/25/20 the citizen groups and state respondents filed a supplemental response brief in the US District Court District of Wyoming. On 09/04/20 North Dakota and Texas filed a reply brief of petitioner-intervenors in the US District Court District of Wyoming. On 10/8/20 US District Judge Skavdahl issued an opinion agreeing with North Dakota's split estate argument concluding that BLM's right to regulate "waste" from federal interests does not give it the right to impose federal requirements on communitized State and private interests, that the BLM unlawfully stepped over the line into EPA and state Clean Air Act jurisdiction, and rejecting several elements of BLM's cost-benefit analysis, including that BLM cannot justify the rule based primarily on alleged environmental "co-benefits" and that BLM should not have used the so-called "global cost of carbon" in its calculations. He also wrote with some humor, reflecting on the tortured process of setting policy through litigation "So, three and a half years later, after several turns and loopy-loops, it seems the roller coaster has returned to the station, though the Court doubts any of the parties will be exiting the ride just yet, as it is likely this Court's decision will not end this ride but simply serve as a lift hill transporting it to another level." As expected, on 12/21/20, CA and NM appealed Judge Skavdahl's decision to the US Court of Appeals for the 10<sup>th</sup> Circuit.

Since the last status update on August 22, 2022, the Bureau of Land Management (BLM) has made significant progress on the proposed Waste Prevention Rule. BLM has revised the proposed rule to address the Inflation Reduction Act and has addressed interagency review comments that followed passage of the Act. BLM and the Department of the Interior continue to move as expeditiously as possible and believe that there is a realistic chance that the proposed rule will be released by the end of October.

**BLM** revised final regulations for hydraulic fracturing on federal and Indian lands were published in the CFR on 3/26/15 and they were scheduled to go into effect 6/24/15. North Dakota, Colorado, Utah, Wyoming, Western Energy Alliance, and IPAA filed for a preliminary injunction to prevent the rules going into effect until the case is settled. Following a lengthy hearing in Casper, Wyoming on 6/23/15, the court issued a stay on the rules. On 9/30/15 the court granted a preliminary injunction, preventing the rules from being enforced until litigation on the rule is final. The 10<sup>th</sup> Circuit Court of Appeals issued an order 3/10/16 denying the industry alternative motion for a stay. On 6/21/16 the court found the rule to be unlawful and ordered it set aside. The plaintiffs filed a motion with the US Court of Appeals for the Tenth Circuit to dismiss the appeal of the preliminary injunction. The Department of Justice on behalf of the BLM and the intervening environmental groups filed an appeal of the decision on the rule and oppose the motion to dismiss the appeal of the preliminary injunction. The North Dakota Response Brief to the US Court of Appeals for the Tenth Circuit was filed 9/15/16. NDIC comments on the rule can be found at <http://www.nd.gov/ndic/ic-press/BLM-comments-120625.pdf>. On 3/28/17 President Trump issued an executive order which in part directs “The Secretary of the Interior shall review the following final rules, and any rules and guidance issued pursuant to them, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules”. This rule is included in the list as item (i). On 5/4/2017 BLM filed a request asking the court to hold the appeal in abeyance as it will “soon” initiate a rulemaking process to revise or rescind the 2015 Rule, that it had the authority to issue the Rule, but conceding that the Rule does not reflect BLM’s current priorities or policies, as reflected in certain recent Presidential Executive Orders. After the BLM submitted its filings the 10th Circuit Court Appeals immediately directed the petitioners (including North Dakota) and the intervenors to file briefs by 6/5/17 to respond to BLM’s position. Two amicus groups that submitted merits briefs (the law school professors and former DOI officials) filed supplemental amicus briefs on the questions posed by the Court following the change of Administrations. The Court’s Supplemental Order authorized the filing of these additional amicus briefs. Both briefs seek to capitalize on the BLM’s continued insistence that it had the authority to issue the Rule (but concede that the 2015 HF Rule does not reflect BLM’s current priorities or policies as reflected in certain recent Presidential Executive Orders). The two amicus groups solicit the Court to rule on the merits of the BLM and NGO appeals and to overturn the District Court decision, actually asking the Court to issue an advisory opinion on the BLM’s authority. In addition to addressing the NGO arguments, North Dakota will respond to these two briefs in the context that all three parties are asking the Court to do what it is prohibited from doing by Article III of the U.S. Constitution. North Dakota filed a response brief 6/20/17 in support of the BLM action to put the rule in abeyance and take final action vacating the rule. Oral arguments before the 10<sup>th</sup> Circuit took place 7/27/17. A recording of the oral arguments is now available on the home page of the court's website <http://www.ca10.uscourts.gov>. NDIC filed comments supporting BLM’s rescission of the rule that can be found at <http://www.nd.gov/ndic/ic-press/dmr-blm-comment17-9.pdf>. On 09/21/17 the 10th Circuit issued a split (2-1) decision to dismiss the appeals as prudentially unripe, vacate the district court’s judgment invalidating the rule, and remand with instructions to dismiss the underlying action without prejudice. Appellees State of North Dakota, State of Colorado, State of Utah, and State of Wyoming’s filed a Petition for Panel Rehearing And/Or Request for En Banc Determination on 11/03/17. On 11/06/17 the court ordered the appellants to file a response to the Petition on or before 11/20/2017. The En Banc rehearing request was denied. The 10<sup>th</sup> circuit court has not yet issued its mandate ending the current round of litigation in the Wyoming District court. The Ute tribe filed a motion on 1/12/18 asking the court to dismiss the appeals as moot based on the publication of the rescission rule and leave the WY court decision to vacate the rule in place. The court ordered the DOJ and BLM to file a response by 1/22/18. On 12/29/17 BLM published a final rule rescinding the 2015 Hydraulic Fracturing rules with 2 exceptions 1) the rule does not restore language requiring pre-approval of non-routine hydraulic fracturing operations and 2) the rule does not rescind changes to 43 CFR 3160 due to other rules published between 3/26/15 and 12/29/17 (electronic filing and venting & flaring rules). On 2/7/18 North Dakota filed a reply in support of its motion to dismiss the original rule appeal as moot pursuant to Federal Rule of Appellate Procedure 27(a)(4), and request that the Court should not issue the mandate, nor vacate the District Court’s judgment based on two new and important developments: (1) on December 29, 2017, the Bureau of Land Management (BLM) promulgated a final rule rescinding the Hydraulic Fracturing Rule (“HF Rule”), and (2) on 1/24/2018, the Citizen Group Intervenors challenged the repeal of the HF Rule (“HF Repeal Rule”) in the U.S. District Court for the Northern District of California.

**Congress** On 08/07/2022 the US Senate and on 08/12/2022 the US House passed HR 5376 which is expected to be signed into law by the president and contains numerous provisions that will negatively impact oil and gas producers and transporters. NDIC is in the process of analyzing the potential impact of Section 10101. CORPORATE ALTERNATIVE MINIMUM TAX, Section 10201 EXCISE TAX ON REPURCHASE OF CORPORATE STOCK, Section 13104 CREDIT FOR CARBON OXIVDE SEQUESTRATION, Section 13502 ADVANCED MANUFACTURING PRODUCTION CREDIT critical minerals, Section 60113 METHANE EMISSIONS REDUCTION PROGRAM, Section 50262 MINERAL LEASING



ACT MODERNIZATION, on North Dakota's mineral industries.

**EPA** On 08/21/2018 the U.S. Environmental Protection Agency (EPA) proposed a new rule to reduce greenhouse gas (GHG) emissions from existing coal-fired electric utility generating units and power plants across the country. This proposal, entitled the Affordable Clean Energy (ACE) Rule, establishes emission guidelines for states to use when developing plans to limit GHGs at their power plants. The ACE Rule replaced the prior administration's Clean Power Plan (CPP) and instead empowers states, promotes energy independence, and facilitates economic growth and job creation. Pursuant to President Trump's Executive Order 13873, which directed Federal agencies to review burdensome regulations, the EPA undertook a review of the CPP. Many believed the CPP exceeded EPA's authority under the Clean Air Act, which is why 27 states, 24 trade associations, 37 rural electric co-ops, and three labor unions challenged the rule. The Supreme Court issued an unprecedented stay of the rule. The proposal was published in the Federal Register on 8/31/18 and EPA took comment on the proposal for 60 days and held a public hearing. More information is available at <https://www.epa.gov/stationary-sources-air-pollution/proposal-affordable-clean-energy-ace-rule>. On July 8, 2019, EPA issued the final Affordable Clean Energy rule (ACE) and repealed the Clean Power Plan. On the same day the American Lung Association and the American Public Health Association filed a challenge to the rules in the U.S. Court of Appeals for the District of Columbia. Since then, 22 states, the District of Columbia and six municipalities led by the state of New York lodged a challenge to the rules in the D.C. Circuit, followed closely by a third challenge brought by environmental groups. Numerous industry groups and power providers are seeking to intervene in the litigation in support of the ACE rule. The EPA has asked the court to expedite review of the challenges in the hope of achieving a resolution in the D.C. Circuit by summer of 2020.

**EPA** On 6/3/16 the final rule proposing a suite of changes to Clean Air Act permitting requirements for new and modified emissions sources in the oil and natural gas industry was published in the Federal Register. On 6/29/16 the NDIC decided to file a Petition for Review with the US Appeals Court for the District of Columbia to defend the state's sovereign jurisdiction over oil and gas regulation. Thirteen other states have joined this effort. North Dakota declined the standard offer to explore settlement through the court's mediation program. The proposed actions and NDIC comments are as follows:

- o Proposed New Source Performance Standards – Docket ID number EPA-HQ-OAR-2010-0505. NDIC comments can be found at <http://www.nd.gov/ndic/ic-press/EPA-HQ-OAR-2010-0505.pdf>
- o Draft Control Techniques Guidelines – Docket ID number: EPA-HQ-OAR-2015-0216. NDIC comments can be found at <http://www.nd.gov/ndic/ic-press/EPA-HQ-OAR-2015-0216.pdf>
- o Proposed Source Determination Rule – Docket ID number: EPA-HQ-OAR-2013-0685. NDIC comments can be found at <http://www.nd.gov/ndic/ic-press/EPA-HQ-OAR-2013-0685.pdf>
- o Proposed Federal Implementation Plan for Implementing Minor New Source Review Permitting in Indian Country – Docket ID number: EPA-HQ-OAR-2014-0606. NDIC comments are at <http://www.nd.gov/ndic/ic-press/EPA-HQ-OAR-2014-0606.pdf>.

North Dakota et al. and EPA have filed motions to govern further proceedings and briefing schedules. On 3/28/17 President Trump issued an executive order which in part directs, "The Administrator shall review the final rule entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," 81 Fed. Reg. 35824 (November 3, 2016), and any rules and guidance issued pursuant to it, for consistency with the policy set forth in section 1 of this order and, if appropriate, shall, as soon as practicable, suspend, revise, or rescind the guidance, or publish for notice and comment proposed rules suspending, revising, or rescinding those rules." On 4/7/17 EPA filed a motion to hold the cases in abeyance. On 6/8/17 the NGO environmental groups challenged EPA's November 5th decision to issue a 90 day stay of the Rule's upcoming implementation dates. The NGOs argue that EPA's justifications for its stay (onerous implementation costs and excessive state administrative burdens) of the Rule were already raised and rejected by EPA during EPA's original rulemaking and that the requirements of a "judicial stay" are not met. The NGO's action is a new case, filed in the D.C. Circuit. They have also filed an emergency motion asking the Court to immediately vacate EPA's decision. On November 3 the DC Circuit court issued a 2:1 decision granting the NGO petition and vacating EPA's 90 day stay of the rule. North Dakota filed an amicus brief in support of the EPA stay. On 7/13/17 the same DC Circuit court granted an EPA motion to recall the mandate and granting 14 days for then EPA to seek reconsideration or review by the full court. API and WVA along with other states filed petitions for rehearing en banc, but on 8/10/17 the entire DC Circuit issued an order denying the API and WVA et al States petitions. EPA now proposes a 2-year stay of certain provision in the oil and gas NSPS. North Dakota filed comments on 8/9/17 in support of the proposed 2-year stay. On 11/8/17 EPA published a Federal Register notice request for supplemental comments relating to the current

Administration's efforts to change course on the oil and gas sector methane regulations put in place by the Obama Administration. North Dakota did not submit additional comment to EPA because the North Dakota comments submitted on 8/9/17 correctly advocate that EPA's rationale for the two year stay also justifies outright repeal of the original Rule, so it justifies a two year stay. On 9/11/18 EPA proposed targeted improvements to the 2016 New Source Performance Standards for the oil and gas industry that streamline implementation, reduce duplicative EPA and state requirements, and significantly decrease unnecessary burdens on domestic energy producers. This oil and gas targeted improvements package is expected to save up to approximately \$484 million in regulatory costs from 2019 – 2025 or \$75 million annually. NDIC comments can be found at <http://www.nd.gov/ndic/ic-press/EPA-HQ-OAR-2017-0757.pdf>. On 9/14/20 EPA's final Methane Rule was officially published in the Federal Register, making the rollback effective. On the very same day, a group of states filed a new lawsuit in the D.C. Circuit asking the court to review EPA's new methane regulations. A number of environmental groups followed suit the next day, asking the court to put an emergency halt to the rule. On 9/17/20 the D.C. Circuit issued an administrative stay, which temporarily freezes the EPA's rollback from taking effect while the court considers a long-term suspension of the rule. The court's order states that the administrative stay "should not be construed in any way as a ruling on the merits." On 10/14/20 North Dakota moved to intervene and on 1/22/21 filed a brief in support of the 2020 rule and requesting dismissal of petitioner's claims.

November 11, 2022 -- EPA is proposing to update, strengthen and expand its November 2021 proposal that would secure major climate and health benefits for all Americans by reducing emissions of methane and other harmful air pollution from both new and existing oil and gas operations. The Agency has issued a supplemental proposal that would achieve more comprehensive emissions reductions from oil and natural gas facilities by improving standards in the 2021 proposal and adding proposed requirements for sources not previously covered. How to comment can be found here [EPA's Supplemental Proposal to Reduce Climate- and Health-Harming Pollution from Oil and Natural Gas Operations: How to Comment](#)

**USFS** published for comment on 11/2/18 draft supplemental environmental impact statement for oil and gas leasing on the Dakota Prairie Grasslands. The proposal documents can be found at <https://www.fs.usda.gov/project/?project=40652> and clicking on Analysis. The recommended alternative increases "No surface occupancy" 32,700 acres, decreases "Timing limitations or controlled surface use" 20,100 acres, and decreases "No added stipulations" 12,600 acres. On 2/1/19 the USFS extended the comment period to 2/20/19. The FR NOA for 8-14 is available to preview at: <https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-17812.pdf>. The FSEIS and DROD are located at the end of page 1 into page 2. The Final Record of Decision was signed 12/7/20.