

# Director's Cut

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## Oil Production

February 28,958,939 barrels = 1,034,248 barrels/day  
March 31,794,769 barrels = 1,025,638 barrels/day (preliminary)  
(all-time high was Dec 2014 at 1,227,483 barrels/day)  
972,706 barrels per day or 95% from Bakken and Three Forks  
52,933 barrels per day or 5% from legacy conventional pools

## Gas Production

February 47,717,348 MCF = 1,704,191 MCF/day  
March 53,590,398 MCF = 1,728,723 MCF/day (preliminary)  
(all-time high was Nov 2016 at 1,759,524 MCF/day)

## Producing Wells

February 13,518  
March 13,632 (preliminary) (NEW all-time high)  
11,671 wells or 86% are now unconventional Bakken – Three forks wells  
1,961 wells or 14% produce from legacy conventional pools

## Permitting

February 45 drilling and 1 seismic  
March 93 drilling and 1 seismic  
April 58 drilling and 1 seismic (all time high was 370 in 10/2012)

## ND Sweet Crude Price<sup>1</sup>

February \$42.74/barrel  
March \$38.13/barrel  
April \$39.86/barrel  
Today \$38.50/barrel (all-time high was \$136.29 7/3/2008)

## Rig Count

February 39  
March 46  
April 50  
Today's rig count is 51 (all-time high was 218 on 5/29/2012)

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<sup>1</sup> Pricing Source: [Flint Hills Resources](#)

The statewide rig count is down 77% from the high and in the five most active counties rig count is down as follows:

Divide -100% (high was 3/2013)  
 Dunn -71% (high was 6/2012)  
 McKenzie -68% (high was 1/2014)  
 Mountrail -88% (high was 6/2011)  
 Williams -81% (high was 10/2014)

### **Comments:**

The drilling rig count increased seven from February to March, then increased four from March to April, and is currently up one from April to today. Operators have shifted from running the minimum number of rigs to incremental increases and decreases throughout 2017, as WTI oil price moves above and below \$50/barrel. If WTI drops below \$45/barrel for more than 30 days rig count is expected to drop.

The number of well completions decreased slightly from 61(final) in February to 59 (preliminary) in March.

Oil price weakness is anticipated to last through the second quarter of 2017. OPEC meets the last week of May to decide whether to extend production cuts.

There was one significant precipitation event, six days with wind speeds in excess of 35 mph (too high for completion work), and no days with temperatures below -10F.

More than 98% of drilling now targets the Bakken and Three Forks formations.

Estimated wells waiting on completion<sup>2</sup> is 689, down 110 from the end of February to the end of March.

Estimated inactive well count<sup>3</sup> is 1,299, down 312 from the end of February to the end of March.

Crude oil take away capacity remains dependent on rail deliveries to coastal refineries to remain adequate.

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<sup>2</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.

<sup>3</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)

Low oil price associated with lifting of sanctions on Iran, a weak world economy, and capital movement to the Permian basin continued to limit drilling rig count. Utilization rate for rigs capable of 20,000+ feet is 25-30% and for shallow well rigs (7,000 feet or less) 15-20%.

Drilling permit activity rose sharply from February to March then decreased again in April. Operators are maintaining a permit inventory that will accommodate a return to the drilling price point within the next 12 months.

Rigs actively drilling on federal surface in the Dakota Prairie Grasslands remains at 0.

Activity on the Fort Berthold Reservation is as follows:

12 drilling rigs (2 on fee lands and 10 on trust lands)

196,651 barrels of oil per day (120,415 from trust lands & 76,237 from fee lands)

1,627 active wells (1,125 on trust lands & 502 on fee lands)

100 wells waiting on completion

519 approved drilling permits (328 on trust lands & 191 on fee lands)

1,613 potential future wells (1,143 on trust lands & 470 on fee lands)

Seismic activity is down slightly. There are 4 surveys active, 0 recording, 0 NDIC reclamation projects, 0 remediating, 1 suspended, and 1 permitted.

North Dakota leasing activity is limited to renewals and top leases in the Bakken - Three Forks area.

US natural gas storage is now 13.6% above the five-year average indicating little price improvement in the future. North Dakota shallow gas exploration could be economic at future gas prices, but is not at the current price. The operator of the exploration well (file 27235) in Emmons County has cancelled all other permits in the area and is in the process of transferring the well to a working interest owner who plans a production test. The well appears to contain 2 pay sections totaling about 80 feet thick with very good gas shows.

The price of natural gas delivered to Northern Border at Watford City is down \$0.09 to \$2.62/MCF. This results in a current oil to gas price ratio of 15 to 1. The percentage of gas flared decreased to 10.5%. The Tioga gas plant operated at 74% of capacity. The expansion of gas gathering from south of Lake Sakakawea is now starting up and the crude oil and natural gas liquids transfer lines have been approved pending geotechnical work this summer. The March Bakken capture percentage was 91% with the daily volume of gas flared from February to March down 4.7 MMCFD. The historical high flared percent was 36% in 09/2011.

Gas capture statistics are as follows:

Statewide 90%

Statewide Bakken 91%

Non-FBIR Bakken 92%

FBIR Bakken 85%  
 Trust FBIR Bakken 85%  
 Fee FBIR 88%

77% January 1, 2015 through March 31, 2016  
 80% April 1, 2016 through October 31, 2016  
 85% November 1, 2016 through October 31, 2018  
 88% November 1, 2018 through October 31, 2020  
 91% beginning November 1, 2020

The North Dakota Legislature passed HB1432 which sets up a council to address Clean Water Act, Safe Drinking Water Act, Clean Air Act, and Endangered Species Act issues: **BIA** has published a new final rule to update the process for obtaining rights of way on Indian land. The rule was published 11/19/15 and became effective 12/21/15. The final rule can be found at <https://www.federalregister.gov/articles/2015/11/19/2015-28548/rights-of-way-on-indian-land>. On 3/11/16, the Western Energy Alliance filed a complaint and motion for a temporary restraining order and/or a preliminary injunction. On 4/19/16, the US District court for the District of North Dakota issued an order denying the motion for a preliminary injunction.

**BLM** has 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. The deadline to submit a briefing proposal on the merits of the case to the Court has been postponed to 4/24/17 at the request of Wyoming. 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. The US District Court in WY granted in part industry trade group petitioners' request to delay merits briefing. The Senate voted 51 to 49 against the CRA allowing the rule to remain in effect. The court has adopted a new briefing schedule. Although the court went with the slightly less expedited briefing schedule proposed by the Department of Justice, Judge Skavdahl went out of his way to state that this "briefing schedule provides the Court with the ability to enter a decision in a timely manner and before the January 2018 compliance deadlines," recognizing ND's stated concern that we receive a decision before the major compliance

deadlines/conflicts with ND. Opening briefs are due July 3, 2017. Response briefs are due August 11, 2017. Reply briefs are due August 25, 2017.

**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 have appealed 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. A three judge panel of the 10th Circuit will hear arguments on Wednesday March 22nd at 2pm. 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 June 5 to respond to BLM’s position. North Dakota continues to disagree with BLM’s assertion that it had statutory authority to promulgate the Rule and plans to continue active participation in the litigation until the BLM takes final action eliminating the rule.

**BLM** has published the North Dakota Greater Sage-Grouse Proposed Resource Management Plan Amendment and Final EIS. NDIC is evaluating whether the state needs to intervene in the lawsuit filed by Western Energy Alliance challenging the final plan. Information on the plan and EIS can be found at the following web addresses: <https://www.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=dispatchToPatternPage&currentPageId=48797>

**EPA** On 8/26/15 a coalition of environmental organizations filed a 60 day legal notice with the U.S. Environmental Protection Agency demanding more regulation of drilling and fracking waste. The groups are the Environmental Integrity Project, Natural

Resources Defense Council, Earthworks, Responsible Drilling Alliance, San Juan Citizens Alliance, West Virginia Surface Owners Rights Organization, and the Center for Health, Environment and Justice. On 5/4/16 the same environmental groups filed suit against the EPA in the federal district court for the District of Columbia. The Plaintiffs Allege that EPA "has failed to meet its nondiscretionary duty" under the federal Resource Conservation and Recovery Act (RCRA ) to review and revise the RCRA Subtitle D solid waste regulations for O&G wastes every three years and that EPA last completed such a review in 1988 and that EPA has failed to review or revise the guidelines for state solid waste plans since 1981.

Plaintiffs want to force EPA to do two things-

1. Issue more stringent regulations for managing and disposing of O&G wastes, including on issues such as open-air pits and impoundments used for storing O&G wastewater, underground injection wells, and the transportation of O&G wastes by truck or pipeline.
2. Make the state solid waste plan guidelines more stringent and comprehensive.

The document filed in the suit can be found at <http://environmentalintegrity.org/wp-content/uploads/2016-05-04-RCRA-OG-Wastes-Deadline-Suit-Complaint-FILED.pdf>

On 6/30/16 North Dakota filed motions to intervene in order to prevent a sue and settle situation that would adversely impact state regulatory jurisdiction and to dismiss the case. Motions to Intervene were also filed by the Texas Railroad Commission, American Petroleum Institute, Independent Petroleum Association of America, and the association of Texas oil and gas producer/royalty owners (TIPRO). The plaintiffs and EPA each filed motions to oppose the motions to intervene. North Dakota filed a reply in support of its motion on 9/23/16. Late Friday afternoon 11/18/16 the U.S. District Court in Washington DC denied North Dakota and the two industry association's Motions to Intervene. The Court accepted the NGOs' statements in their briefs that all they asked for in their Complaint was a deadline for EPA to conduct a rulemaking, and concluded that none of the intervenors had demonstrated a sufficient "injury" to support standing in that context. On 12/23/16, EPA and the NGOs submitted a proposed consent decree to the Court that would settle the RCRA Subtitle D litigation. Unlike under the Clean Air Act, there is no statutory RCRA requirement that the proposed decree be published in the Federal Register or put out for public comment. NDIC has significant concerns about the proposed decree and submitted a letter to the court expressing those concerns. Since the court denied ND's motion to intervene, ND is not a party. The consent decree was approved Dec. 28 by U.S. District Judge John D. Bates. The EPA has agreed to review the regulations and by March 2019 either propose new rules or determine that new rules aren't necessary. This is an attempt by EPA and the NGOs to impose court-ordered obligations that would be difficult for the new administration to evade and looks like an attempt to ram through a sue and settle deal before the new administration takes office. On 1/13/17 North Dakota filed an appeal of the decision(s), consent decree, and federal reimbursement of plaintiffs legal costs. As part of the appeal process, on 03/24/17 North Dakota filed a statement of issues and the other administrative filings: (1) Whether the District Court erred in denying North Dakota's motion to intervene in order to represent its sovereign interests in a case in which the Plaintiffs-Appellees seek to compel the U.S. Environmental Protection Agency ("U.S. EPA") to review and revise solid waste management regulations under Subtitle D of the Resource Conservation and Recovery

Act. (2) Whether the District Court erred in concluding that North Dakota did not have Article III standing in this case. (3) Whether the District Court erred in concluding that North Dakota should be held to a different, and more stringent, standard for Article III standing than the Plaintiffs-Appellees. (4) Whether the District Court erred in entering a Consent Decree that violates Subtitle D of RCRA because it omits statutory non-discretionary duties with which U.S. EPA must comply, and would impose new non-discretionary duties on U.S. EPA that are not contained in the statute.

**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 can be found 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 (June 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.

**EPA** published an advanced notice of proposed rule-making to seek comments on the information that should be reported or disclosed for hydraulic fracturing chemical substances and mixtures and the mechanism for obtaining this information. The proposed rule-making is in response to a petition from Earthjustice and 114 other groups who are opposed to the use of the GWPC-IOGCC FracFocus website process of chemical disclosure and any type of trade secret protection for hydraulic fracturing fluid mixtures. These groups are requesting EPA regulation of chemical disclosure under the federal

Toxic Substances Control Act. Thanks to all who provided comments in support of a “states first” policy. NDIC comments can be viewed at <http://www.nd.gov/ndic/ic-press/DMR-frac714.pdf>

**EPA** Administrator, Gina McCarthy, and the Assistant Secretary of the Army (Civil Works), Jo Ellen Darcy, signed the “Waters of the United States” final rule on 05/27/2015. The final rule was published in the Federal Register 7/29/15 and became effective in 37 states on 8/28/15. North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, New Mexico, Nevada, South Dakota, and Wyoming filed a lawsuit in U.S. District Court, claiming the final rule would harm states as regulators of the waters and lands. On 8/27/15 Federal District Judge Erickson granted a preliminary injunction preventing enforcement of the rule in the 13 states. The North Dakota case will now be subject to appeal, but no schedule has been set at this time. NDIC comments can be viewed at <http://www.nd.gov/ndic/ic-press/WOTUS-comments.pdf>

Texas, Mississippi and Louisiana filed a joint complaint in the U.S. District Court for the Southern District of Texas, charging that the rule is unconstitutional. Ohio and Michigan filed a complaint in the U.S. District Court for the Southern District of Ohio, alleging that the expansion of jurisdiction includes dry land. Georgia and eight other states (Alabama, Florida, Kansas, Kentucky, South Carolina, Utah, West Virginia and Wisconsin) filed suit in the U.S. District Court for the Southern District of Georgia, asking the court to vacate the rule and block its enforcement by injunction. On 10/9/15 the United States Court Of Appeals for the Sixth Circuit granted a nationwide stay of the WOTUS rule pending jurisdiction determinations. On 2/28/17 President Trump signed an executive order directing the EPA to take action, paving the way for the elimination of the rule. North Dakota plans to continue active participation in the litigation of this rule until the EPA takes final action eliminating the rule.

**PHMSA** Advance notice of proposed rulemaking (ANPRM) was announced 1/10/17. **SUMMARY:** PHMSA is considering revising the Hazardous Materials Regulations (HMR) to establish vapor pressure limits for unrefined petroleum-based products and potentially all Class 3 flammable liquid hazardous materials that would apply during the transportation of the products or materials by any mode. PHMSA is currently assessing the merits of a petition for rulemaking submitted by the Attorney General of the State of New York regarding vapor pressure standards for the transportation of crude oil. The petition requests that PHMSA implement a Reid Vapor Pressure (RVP) limit less than 9.0 pounds per square inch (psi) for crude oil transported by rail. This rule making could substantially interfere with NDIC oil conditioning regulations. You can read about the NDIC regulations at [https://www.dmr.nd.gov/oilgas/2014Permitting\(2\).asp](https://www.dmr.nd.gov/oilgas/2014Permitting(2).asp). NDIC will be preparing comments. You may submit comments identified by the docket number PHMSA-2016-0077 (HM-251D) and the relevant petition number by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov> Follow the instructions for submitting comments.
- Fax: 1-202-493-2251.

- Mail: Docket Management System; US Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Hand Delivery: To the Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.  
NDIC submitted comments on 3/20/17, however the deadline for comments was extended 60 days to 5/19/17.

**USFWS** has made a decision to list the Dakota Skipper and Powershiek Skipperling to receive protection under the Endangered Species Act. Additional potential listing of concern are the Rufa Red Knot, Sprague’s Pipit, Greater Sage Grouse, Monarch Butterfly, Sturgeon Chub, and Sicklefing Chub.

**USFWS** has published a new final rule to revise Management of Non-Federal Oil and Gas Rights. Key components of the proposed rule include: A permitting process for new operations; A permitting process for well plugging and reclamation for all operations; Information requirements for particular types of operations; Operating standards so that both the Service and the operator can readily identify what standards apply to particular operations; Fees for new access beyond that held as part of the operator's oil and gas right; Financial assurance (bonding); Penalty provisions; Clarification that the process for authorizing access to non-Federal oil and gas properties in Alaska will continue to be controlled by 43 CFR part 36, which implements provisions of the Alaska National Interest Lands Conservation Act; and Codification of some existing agency policies and practices. The proposed rule can be viewed online at <http://www.fws.gov/policy/library/2015/2015-30977.html> comments on the proposed rule were due 4/9/2016. NDIC comments can be found at <http://www.nd.gov/ndic/ic-press/DMR-FWS-0086.pdf> On 6/28/16 USFWS published the handbook for implementing the rule. On 7/11/16 Congressman Cramer successfully included a prohibition on funding for the US Fish and Wildlife Service Management of Non-Federal Oil and Gas rule in the House Interior and Environment Appropriations bill which has a number of other provisions prohibiting this Administration from infringing on State's rights. The NDIC is evaluating the impacts of rule and handbook to determine if legal action is appropriate. 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 (iii). North Dakota plans to continue monitor potential participation in litigation of this rule until the USFWS takes final action eliminating the rule.

	1Q 2017					
Current	Breakeven			Wells		
\$49	WTI \$/BO	Rigs	Dec-16	NC	P90	P50
Billings	\$47*	0	610	5	1,900	2,500
Bottineau-Renville	+\$100*	0	1,025	1	3,000	4,000
Bowman-Slope	+\$100*	0	539	0	900	1,200
Burke	+\$100*	1	627	1	1,300	3,000
Divide	+\$100*	0	828	19	3,000	5,000
Dunn	\$23	11	2,030	144	4,800	9,000
Golden Valley	\$49	0	105	1	250	300
McKenzie	\$21	24	4,260	269	7,100	15,000
McLean	\$17	0	64	1	800	1,200
Mountrail	\$25	5	2,754	98	4,800	9,000
Stark	\$29*	1	323	11	2,900	3,500
Williams	\$28	9	2,480	139	5,500	10,000
Statewide	\$24	51	15,639	689	36,250	63,700
* Information from previous quarter, too little data to calculate new value						