

# Director's Cut

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## Oil Production

July 32,491,069 barrels = 1,048,099 barrels/day  
 August 33,625,401 barrels = 1,084,690 barrels/day (preliminary)  
 (all-time high was Dec 2014 at 1,227,483 barrels/day)  
 1,031,638 barrels per day or 95% from Bakken and Three Forks  
 53,052 barrels per day or 5% from legacy conventional pools

## Gas Production

July 58,779,995 MCF = 1,896,129 MCF/day  
 August 60,240,375 MCF = 1,943,238 MCF/day (preliminary) (NEW all-time high)

## Producing Wells

July 13,992  
 August 14,080 (preliminary) (NEW all-time high)  
 12,024 wells or 85% are now unconventional Bakken – Three forks wells  
 2,056 wells or 15% produce from legacy conventional pools

## Permitting

July 146 drilling and 1 seismic  
 August 101 drilling and 2 seismic  
 September 104 drilling and 0 seismic (all time high was 370 in 10/2012)

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

July \$35.83/barrel  
 August \$37.93/barrel  
 September \$39.56/barrel  
 Today \$41.50/barrel (all-time high was \$136.29 7/3/2008)

## Rig Count

July 58  
 August 56  
 September 56  
 Today's rig count is 57 (all-time high was 218 on 5/29/2012)  
 The statewide rig count is down 74% from the high and in the five most active counties  
 rig count is down as follows:

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

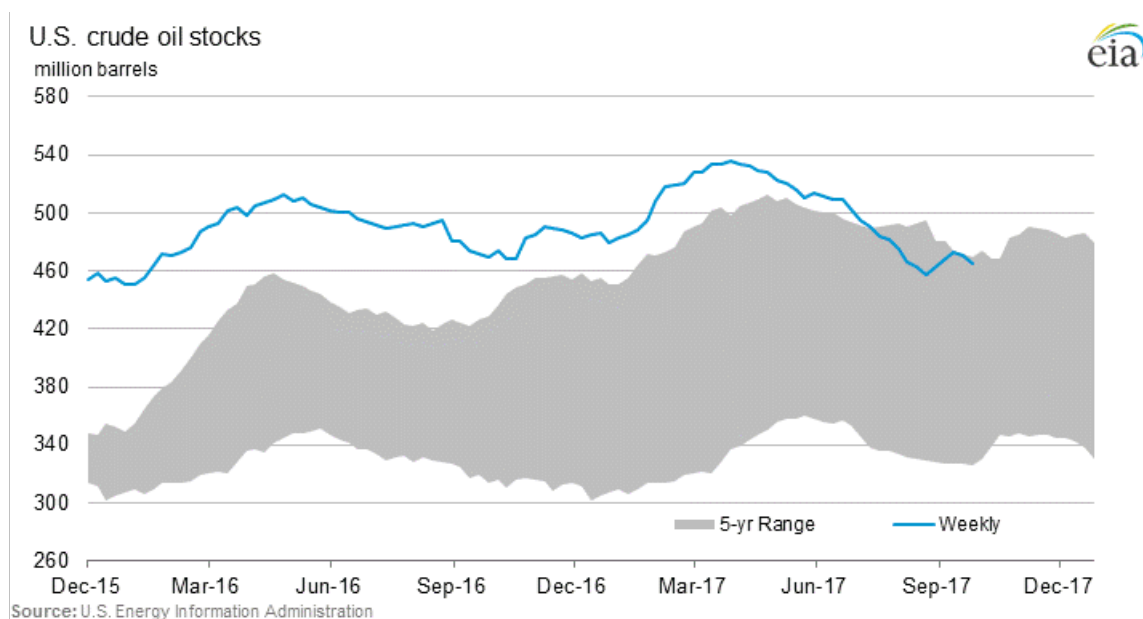
Divide -100% (high was 3/2013)  
 Dunn -74% (high was 6/2012)  
 McKenzie -67% (high was 1/2014)  
 Mountrail -73% (high was 6/2011)  
 Williams -75% (high was 10/2014)

### Comments:

The drilling rig count increased two from July to August, then remained unchanged from August to September, and is currently up one from September to today. Operators have shifted from running the minimum number of rigs to incremental increases and decreases as WTI oil price moves between \$40 and \$50/barrel. If WTI drops below \$45/barrel for more than 30 days rig count is expected to drop. If WTI remains above \$55/barrel for more than 90 days rig count is expected to rise.

The number of well completions has become highly variable from 95(final) in July to 63 (preliminary) in August.

Oil price weakness is now anticipated to last through calendar year 2017. OPEC met the last week of August and decided to extend production cuts for nine months, but compliance has been less than 100%. OPEC meets again in November and members are currently discussing support for extending cuts to mid-2018. The markets are watching to see if US shale production offsets OPEC cuts. US crude oil inventories rose due to hurricanes, but have fallen the last two weeks. IEA and EIA have raised estimates for 2017 and 2018 demand.



## World liquid fuels production and consumption balance



Source: Short-Term Energy Outlook, September 2017

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

Over 99% of drilling now targets the Bakken and Three Forks formations.

Estimated wells waiting on completion<sup>2</sup> is 863, down 26 from the end of July to the end of August.

Estimated inactive well count<sup>3</sup> is 1,498, up 20 from the end of July to the end of August.

Crude oil take away capacity including rail deliveries to coastal refineries is more than adequate.

Low oil price associated with crude oil inventories that remain near the five-year average high continues to limit drilling rig count. Utilization rate for rigs capable of 20,000+ feet is 35-40% and for shallow well rigs (7,000 feet or less) 25-30%.

<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)

Drilling permit activity decreased 31% from July to August then increased 3% from August to September. Operators continue to maintain a permit inventory that will accommodate increased drilling price points within the next 12 months.

Rigs actively drilling on federal surface in the Dakota Prairie Grasslands increased one to two.

Activity on the Fort Berthold Reservation is as follows:

13 drilling rigs (3 on fee lands and 10 on trust lands)  
 229,639 barrels of oil per day (149,459 from trust lands & 80,180 from fee lands)  
 1,723 active wells (1,202 on trust lands & 521 on fee lands)  
 85 wells waiting on completion  
 431 approved drilling permits (342 on trust lands & 89 on fee lands)

Seismic activity is slowing. There are 3 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 0.2% below the five-year average indicating potential for positive 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 the well was plugged on 7/28/17.

The price of natural gas delivered to Northern Border at Watford City is up \$0.06 at \$2.50/MCF. This results in a current oil to gas price ratio of 17 to 1. The percentage of gas flared increased to 14%. The Tioga gas plant input was up 6% to 89% of capacity. The expansion of gas gathering from south of Lake Sakakawea is starting up and the crude oil and natural gas liquids transfer lines have been approved pending geotechnical work this summer. The August Bakken capture percentage was 87% with the daily volume of gas flared from July to August up 40 MMCFD. The historical high flared percent was 36% in 09/2011.

Gas capture statistics are as follows:

Statewide	86%
Statewide Bakken	87%
Non-FBIR Bakken	89%
FBIR Bakken	77%
Trust FBIR Bakken	73%
Fee FBIR	90%

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

**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. Secretary Zinke has expressed interest in revising right of way rules to simplify and speed up the process.

**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. 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 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 January 17, 2019. Comments must be submitted no later than 11/04/17. North Dakota is considering 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. BLM, the states of CA & NM, and the NGOs supporting the current final rule have response briefs due on November 6<sup>th</sup> in the WY court. North Dakota's reply brief is then due November 22<sup>nd</sup>. This is an expedited briefing schedule set by Judge Skavdahl along with his earlier acknowledgment for deciding the merits of this case before the major compliance requirements of the current final rule take effect in January of 2018.

**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. The District Court's injunction against the rule remains in place until such time as the Court of Appeals issues its mandate to the District Court. The majority decision does not say what the status of the rule is today, but the implication is that the rule is in effect or at least is subject to being enforced.

**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>. On 6/7/17 Secretary Zinke issued Secretarial Order 3353 to establish an internal review team that, among other things, evaluated both federal sage-grouse plans and state plans and programs to ensure they are complementary and explored possible plan modifications with local economic growth and job creation in mind. On 8/10/17 Secretary of the Interior Ryan Zinke received a report from the Department of the Interior Sage-Grouse Review Team (DOI Team) regarding possible plan and policy modifications to complement state efforts to improve Greater Sage-Grouse conservation and economic development on public lands. The report is the final product required by Secretarial Order 3353 "Greater Sage-Grouse Conservation and Cooperation with Western States". The report, the cover letter from the Bureau of Land Management to the Secretary, and the memo from Secretary Zinke to Deputy Secretary David Bernhardt are available at [https://www.doi.gov/sites/doi.gov/files/uploads/so3353\\_memo\\_coverletter\\_report\\_080717.pdf](https://www.doi.gov/sites/doi.gov/files/uploads/so3353_memo_coverletter_report_080717.pdf). NDIC is evaluating whether the state needs to comment or intervene in the lawsuit filed by Western Energy Alliance challenging the final plan. The U.S. District Court for

the District of Nevada ruled in March 2017 that the BLM failed to adequately evaluate the designation of Sagebrush Focal Areas in its 2015 greater sage-grouse plan amendment for Nevada. In order to comply with the court's order and to address issues raised by various interested parties, and to consider recommendations in the August 4, 2017 report prepared by the Department of the Interior's Greater Sage-Grouse Review Team in Response to Secretary's Order 3353 (SO 3353), the BLM intends to consider amending these plans. The BLM will soon publish a Notice of Intent in the Federal Register to announce the beginning of a scoping process to solicit public comments on greater sage-grouse land management issues that could warrant land use plan amendments. The BLM also wants to receive input on whether that planning effort should occur through state-by-state amendment processes, and in particular looks forward to receiving comments from the Governors of each state. The notice has been sent to the Federal Register and is awaiting publication. Publication of the notice initiates a process that could eventually result in some changes, significant changes or no changes at all. The notice can be read on the BLM website: <https://on.doi.gov/2fNuFPt>.

**BLM** On 8/9/17 the DOI Interior board of Land Appeals stayed drilling on the Slawson Torpedo wells. The MHA Nation appealed the BLM decision to grant drilling permits because the well pad is located 600 feet from Lake Sakakawea although a 2012 tribal law requires the wells be 2,640 feet from the lake. The spacing unit for the wells contains private, federal, and state minerals while the surface location is on private land within the boundaries of the Fort Berthold Reservation. On 8/15/17 U.S. District Court Judge Daniel Hovland granted Slawson's request to continue drilling and on 8/29/17 extended the order allowing drilling through at least 10/31/17 when another hearing on the matter is scheduled.

**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 August 2019 either propose new rules or determine that new rules aren't necessary. This is a sue and settle deal. 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. North Dakota filed its opening appeal brief in the UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT on 5/23/17. The EPA and the NGOs filed briefs 6/21/17 and North Dakota filed a reply brief 7/5/17. A date for oral arguments should be set soon.

**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 (August 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 August 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 August 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 proposed 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.

**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. On 6/27/17 The EPA and USACOE filed an official proposal to withdraw the rule and begin a replacement rulemaking process. The proposed rule was published in the Federal Register on 6/27/17. [A group of North Dakota agencies filed comments supporting withdrawal of the rule and beginning the replacement process.](#)

**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 submitted comments on 3/20/17 and the comment period closed on 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 Sicklefin 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.