

# Director's Cut

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## Oil Production

July	39,347,975 barrels = 1,269,290 barrels/day (Final)
August	40,036,384 barrels = 1,291,496 barrels/day ( <b>NEW All-time high</b> ) 1,237,298 barrels per day or 96% from Bakken and Three Forks 54,191 barrels per day or 4% from legacy conventional pools

## Gas Production

July	74,206,466 MCF = 2,393,757 MCF/day
August	75,570,551 MCF = 2,437,760 MCF/day ( <b>NEW All-time high</b> )

## Producing Wells

July	14,980
August	15,103 (Preliminary) ( <b>NEW All-time high</b> )

## Permitting

July	163 drilling and 0 seismic
August	152 drilling and 0 seismic
September	113 drilling and 0 seismic (All-time high was 370 in 10/2012)

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

July	\$63.13/barrel
August	\$57.80/barrel
September	\$59.05/barrel
Today	\$58.75/barrel (All-time high was \$136.29 7/3/2008)

## Rig Count

July	66
August	61
September	65
Today	67 (All-time high was 218 on 5/29/2012)

The statewide rig count is down 69% from the high and in the five most active counties rig count is down as follows:

Divide	-92% (High was 3/2013)
Dunn	-74% (High was 6/2012)
McKenzie	-65% (High was 1/2014)

<sup>1</sup> Pricing Source: Flint Hills Resources

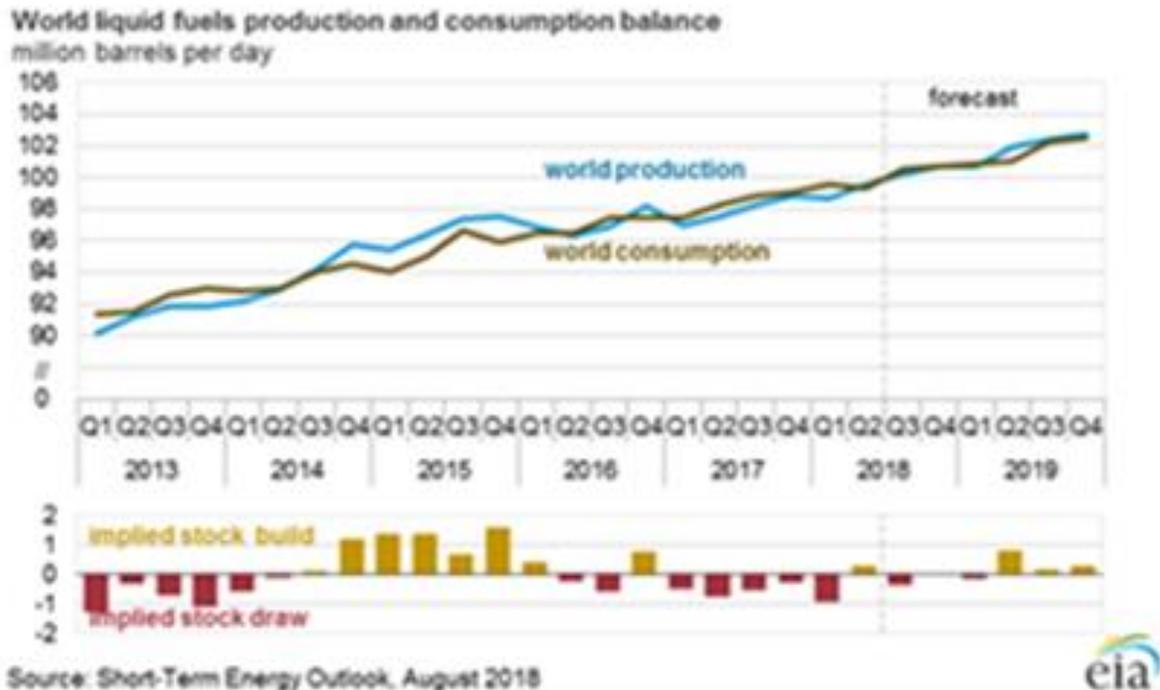
Mountrail -78% (High was 6/2011)  
 Williams -60% (High was 10/2014)

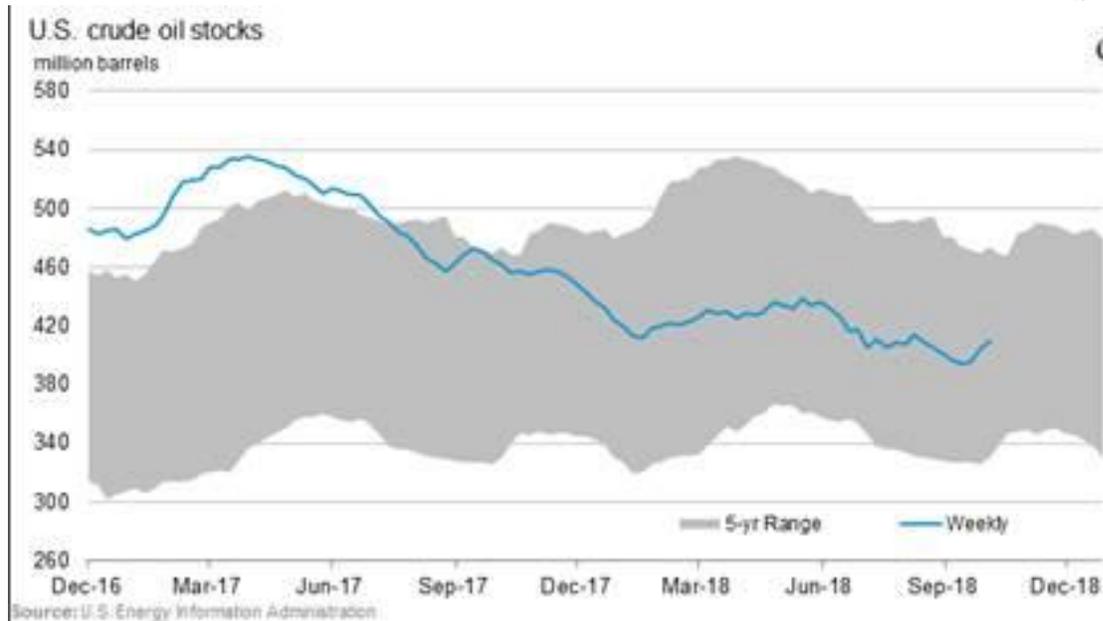
**Comments:**

The drilling rig count was down five from July to August, increased four from August to September, and is currently up two from September to today. Operators have shifted from running the minimum number of rigs to incremental increases and decreases based on gas capture, completion crew availability, and oil price. Current operator plans are to add 1-5 more rigs in 2019 depending on workforce and infrastructure constraints.

The number of well completions has become variable again due to gas capture, workforce, and weather at 85 (final) in June, 125 (final) in July, and 114 (preliminary) in August.

OPEC approved a plan to increase production through the second half of 2018 to offset Venezuela’s export collapse and US sanctions on Iran. Crude oil futures markets appear to anticipate supply and demand remaining in balance. US crude oil inventories are below the long term average.





In August there was one significant precipitation event, zero 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 925, down 18 from the end of July to the end of August.

Estimated inactive well count<sup>3</sup> is 1,427, down 59 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.

Gas capture, workforce, and competition with the Permian and Anadarko shale oil plays for capital continue to limit drilling rig count. Utilization rate for rigs capable of 20,000+ feet is 60-70% and for shallow well rigs (7,000 feet or less) 40-50%.

Drilling permit activity decreased slightly from July to August then decreased significantly from August to September, signaling the end of the summer surge. Operators continue to maintain a permit inventory that will accommodate varying oil prices for the next 12 months.

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

<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)

Activity on the Fort Berthold Reservation is as follows:

- 14 drilling rigs (3 on fee lands and 11 on trust lands)
- 280,934 barrels of oil per day (177,648 from trust lands & 103,287 from fee lands)
- 1,936 active wells (1,392 on trust lands & 544 on fee lands)
- 136 wells waiting on completion
- 425 approved drilling permits (346 on trust lands & 79 on fee lands)
- 3,644 potential future wells (3,054 on trust lands & 590 on fee lands)

Seismic activity is very slow. There are 3 surveys active, 0 recording, 2 NDIC reclamation projects, 0 remediating, 1 suspended, and 2 permitted.

US natural gas storage remained 18% below the five-year average indicating potential for 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 price of natural gas delivered to Northern Border at Watford City is up \$0.50 at \$2.96/MCF. This results in current oil to gas price ratio of 20 to 1. The state wide percentage of gas flared decreased to 17.7% with the daily volume of gas flared from July to August down 4.3 to 431 million cubic feet per day. The Tioga gas plant input was at 99% of capacity. The August Bakken capture percentage was 83%. The historical high flared percent was 36% in 09/2011.

Gas capture statistics are as follows:

Statewide.....	82%
Statewide Bakken.....	83%
Non-FBIR Bakken.....	85%
FBIR Bakken.....	73%
Trust FBIR Bakken...	72%
Fee FBIR.....	79%

The Commission has established the following gas capture goals:

74%	October 1, 2014 through December 31, 2014
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** on 6/6/18 BLM published Information Bulletin No. 2018-061 to remind BLM offices of the existing procedures for streamlining NEPA review under applicable statutes, regulations, and guidance and to encourage BLM offices to use these tools consistently and effectively. These tools include: (1) Determinations of NEPA Adequacy (DNAs), (2) statutory and administrative CXs, and (3) oil and gas field-wide programmatic NEPA analyses based on reasonable foreseeable development scenarios that can be used to expedite compliance with NEPA at the APD stage. This IB is a significant step in the right direction for North Dakota oil and gas operators. North Dakota continues to support current legislation in congress and BLM rule making that will further streamline NEPA review and permitting. The IB can be viewed at <https://www.blm.gov/policy/ib-2018-061>.

**BLM** on 6/12/18 BLM published Permanent Instruction Memorandum No. 2018-014 to establish policies and procedures for processing Federal Applications for Permit to Drill (APD) proposing to drill into and produce leased Federal minerals from well pads on entirely non-Federal locations. This IM is a significant step in the right direction for North Dakota property owners, but falls short of the recognition that production of federal minerals from a horizontal well located on state or private surface should not be treated as a major federal action. The IM can be viewed at <https://www.blm.gov/policy/pim-2018-014>.

**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 January 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. Oral arguments are scheduled on December 18<sup>th</sup>. Judge Skavdahl has indicated he wishes to decide the merits of this case before the major compliance requirements of the current final rule take effect in January of 2018. 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. Briefs in favor of the industry preliminary injunction motion are due on 12/18/17 and briefs responding to BLM's motion to stay the litigation are due on 1/5/18. 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 January 5 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. While the proposed rule is open for public comment generally, the Federal Register notice specifically requests comment on ways that the BLM can reduce the waste of gas by incentivizing the capture, reinjection, or beneficial use of the gas. Public comments on this proposed rule were due to the BLM on or before 4/23/18. 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 Fairing 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 Fairing Rule in full, along with compliance deadlines that became effective January 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. Judge Skavdahl's Lift Stay Order gives BLM until March 14 to file its response to North Dakota/Texas, as well as to the motions filed by Wyoming/Montana and Industry, with reply briefs due March 21. Wyoming/Montana are seeking a partial stay of the VF Rule under Section 705, and Industry is seeking a partial Preliminary Injunction of the 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 the N.D. of CA 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.

**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 January 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.

**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 November 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 published a notice that initiates the public scoping process for RMP amendment(s) with associated NEPA document(s). The notice can be found at <https://www.federalregister.gov/documents/2017/10/11/2017-21958/notice-of-intent-to-amend-land-use-plans-regarding-greater-sage-grouse-conservation-and-prepare>. Comment period closed on December 27, 2017. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: <http://bit.ly/GRSGplanning>. In order to be included in the analysis, all comments must be received prior to the close of the 45-day scoping period or 15 days after the last public meeting, whichever is later. BLM will provide additional opportunities for public participation as appropriate. The NDIC comments, submitted on 12/1/17, can be found at <http://www.nd.gov/ndic/ic-press/dmr-comment-Sage.pdf>.

**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 to continue until another hearing on the matter is held. On 6/21/18 the Mandan, Hidatsa and Arikara Nation sued the U.S. Department of the Interior challenging a decision from the agency's Office of Hearing and Appeals that the tribe said approved bids to drill near a lake within the boundaries of the nation's Fort Berthold Indian Reservation. Among other things, the nation asked for "an order setting aside and vacating the director's decision and holding that the eight [applications for permit to drill] must be denied because they are within 1,000 feet of Lake Sakakawea, the source of the MHA Nation's drinking water; or in the alternative reinstating the board's stay order and remanding the case back to the Department of the Interior for reconsideration."

**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 will take comment on the proposal for 60 days (until 10/30/18) and will hold a public hearing. More information is available at <https://www.epa.gov/stationary-sources-air-pollution/proposal-affordable-clean-energy-ace-rule>.

**EPA** On 08/24/18 Trump administration officials at EPA announced they are phasing out the agency's enforcement focus on animal waste pollution and the oil and gas industry. Enforcement chief Susan Bodine said she wants to shift the focus away from oil and gas as a sector deserving of extra scrutiny and toward prioritizing broad environmental problems, such as air pollution.

**EPA** On 6/26/18 EPA Administrator Pruitt direct the Office of Water to prepare a proposal for submission to the Office of Management and Budget and seek public comment within six months that proposes to consider, at a minimum, changes to EPA regulations that would govern the future use of EPA section 404(c) authority: 1) Eliminating the authority to initiate the section 404(c) process before a section 404 permit application has been filed with the Corps or a state, otherwise known as the "preemptive veto", 2) Eliminating the authority to initiate the section 404(c) process after a permit has been issued by the Corps or a state, otherwise known as the "retroactive veto", 3) Requiring a regional administrator to obtain approval from EPA Headquarters before initiating the section 404(c) process, 4) Requiring a regional administrator to review and consider the findings of a final Environmental Assessment or Environmental Impact Statement prepared by the Corps or a state before preparing and publishing notice of a proposed determination, and 5) Requiring the agency to publish and seek public comment on a final determination before such a determination takes effect.

**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 November 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. Oral arguments on the denial of North Dakota's motion to intervene were conducted on 11/07/17. On 11/28/17 the D.C. Circuit denied North Dakota's appeal in the RCRA Subtitle D case. The Court did not engage the state's arguments and decided the case based on precedent from previous industry cases in which they denied intervention in "sue and settle" cases.

**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 (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. More detailed information including how to comment can be found at [https://www.epa.gov/sites/production/files/2018-09/documents/oil\\_and\\_gas\\_technical\\_proposal\\_fact\\_sheet.9.11.18\\_0.pdf](https://www.epa.gov/sites/production/files/2018-09/documents/oil_and_gas_technical_proposal_fact_sheet.9.11.18_0.pdf).

**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. On 6/6/2018 Senator Schumer wrote urging DOE and PHMSA to propose and quickly finalize a rule establishing federal volatility standards for the shipment of crude oil by rail in the United States. The NDIC submitted letter on 6/28/18 to proactively correct several conclusions and statements in Senator Schumer's letter about NDIC oil conditioning regulations and provide the background

and a better understanding of the state's oil conditioning standards for Bakken, Three Forks, and/or Sanish crude oil prior to market transport.

**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 monitoring potential participation in litigation of this rule until the USFWS takes final action eliminating the rule.