



# INDUSTRIAL COMMISSION OF NORTH DAKOTA

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February 9, 2016

Public Comments Processing  
Attn: FWS-HQ-NWRS-2012-0086  
Division of Policy, Performance, and Management Programs  
U.S. Fish and Wildlife Service, MS: BPHC  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

The North Dakota Industrial Commission (NDIC) appreciates this opportunity to comment on the DEPARTMENT OF THE INTERIOR Fish and Wildlife Service 50 CFR Parts 28 and 29; [Docket No. FWS-HQ-NWRS-2012--0086; FXRS12610900000-156-FF09R24000] RIN 1018-AX36; Management of Non-Federal Oil and Gas Rights; Proposed rule.

The State of North Dakota is ranked 2nd in the United States among all states in the production of oil and gas. North Dakota produces approximately 400 million barrels of oil per year and 465 billion cubic feet of natural gas per year.

The NDIC, Department of Mineral Resources, Oil and Gas Division is responsible for administering North Dakota's comprehensive oil and gas regulations found at North Dakota Administrative Code (NDAC) Chapter 43-02-03. These regulations include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; and all other operations for the production of oil or gas.

The proposed rule could have significant impacts on North Dakota's ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

North Dakota has a unique history of land ownership that has resulted in a significant portion of the state consisting of split estate lands that could be adversely affected by the proposed rule. Unlike many western states that contain large blocks of unified federal surface and federal mineral ownership, the surface and mineral estates in North Dakota were at one time more than 97% private and state owned as a result of the railroad and homestead acts of the late 1800s. However, during the depression and drought years of the 1930s, numerous small tracts in North Dakota went through foreclosure. The federal government through the Federal Land Bank

and the Bankhead Jones Act foreclosed on many farms taking ownership of both the mineral and surface estates. Many of the surface estates were later sold to private parties, but some or all of the mineral estates were retained by the federal government. This resulted in a very large number of small federally-owned mineral estate tracts scattered throughout western North Dakota. Those federal mineral estates impact more than 30% of the oil and gas spacing units that are typically recognized as a communitized area (CA) by the BLM. In North Dakota, there are a few large blocks of federal mineral ownership or trust responsibility where the federal government also manages the surface estate through the U.S. Forest Service or Bureau of Indian Affairs. These are on the Dakota Prairie Grasslands in southern McKenzie and northern Billings County as well as on the Fort Berthold Indian Reservation. See map, Exhibit 1. However, even within those areas federal mineral ownership is interspersed with a “checkerboard” of private and state mineral or surface ownership. Therefore, virtually all federal management of North Dakota’s oil and gas producing region consists of some form of split estate.

In addition the attached map indicates that much of the oil and gas producing areas of North Dakota lies under or near a United States Fish and Wildlife Service (USFWS) refuge, waterfowl production area or conservation easement.

Given North Dakota’s unique land ownership situation, the proposed rule could have far-reaching adverse impacts on North Dakota’s ability to administer its oil and gas regulatory program. The State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The impacts of the proposed rule on North Dakota’s ability to administer its oil and gas regulatory program are explained below:

**Alternative C:** This alternative states that operating standards and the permitting process under Alternative C would be the same as Alternative B, except the Service would actively regulate downhole operations, such as well cementing, well casing, and well integrity testing, as a matter of course. The Service’s goals in regulating downhole aspects of oil and gas well drilling, production, and plugging are to 1) prevent escape of fluids to the surface, and 2) isolate and protect usable quality water zones throughout the life cycle of the well. The Service found that these regulatory goals can adequately be met by current state regulatory programs, and that Service regulation would slightly reduce already very low risks to usable quality water zones. Refuge resources and uses, other than usable quality water zones, would only be impacted by accidents associated with well control, and as discussed above, these events are extremely rare. For these other resources and uses, the Service does not expect any reduction of impacts or risks of impacts to refuge resources and uses related to our regulation of downhole operations. The Service finds that State requirements for well control and the expectation that companies will act in their own best interest provide adequate protections.

North Dakota’s comprehensive oil and gas regulations found at NDAC Chapter 43-02-03 include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; and all other

operations for the production of oil or gas. In addition the Department of Interior's Bureau of Land Management (BLM) has extensive regulations in place to address most or all of the above surface and downhole operations. It is our contention that USFWS regulation as suggested in Alternative C would yield no reduction of impacts or risks to refuge resources and is not authorized by the statutory language in the National Wildlife Refuge system Administration Act and the national Wildlife Refuge System Improvement Act.

**Alternative B - performance bond, or other acceptable method of financial assurance:** North Dakota's comprehensive oil and gas regulations found at NDAC 43-02-03 include regulation of financial assurance and the restoration of drilling and production sites. In addition the BLM has similar regulations in place. It is our contention that the proposed USFWS regulation would yield no reduction of impacts or risks to refuge resources and is not authorized by the statutory language in the National Wildlife Refuge system Administration Act and the national Wildlife Refuge System Improvement Act.

**Alternative B – extension of regulation of oil and gas operations to tracts where the Federal interest is less than fee (e.g., wetland or grassland easements) to the extent necessary to protect Federal interest:** North Dakota's comprehensive oil and gas regulations found at NDAC 43-02-03 include regulation of the drilling, producing, and plugging of wells; the restoration of drilling and production sites; the perforating and chemical treatment of wells, including hydraulic fracturing; the spacing of wells; operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; disposal of saltwater and oil field wastes through the ND UIC Program; and all other operations for the production of oil or gas. In addition the BLM has extensive regulations in place to address most or all of the above operations. It is our contention that the proposed USFWS regulation would yield no reduction of impacts or risks to refuge resources and is not authorized by the statutory language in the National Wildlife Refuge System Administration Act and the national Wildlife Refuge System Improvement Act.

**Alternative B – technologically feasible, least damaging oil and gas development methods:** The proposed rule defines technologically feasible, least damaging methods as those that USFWS determine, on a case-by-case basis, to be most protective of refuge resources and uses while ensuring human health and safety, taking into consideration all relevant factors, including environmental, economic, and technological factors and the requirements of applicable law. North Dakota's comprehensive oil and gas regulations found at NDAC Chapter 43-02-03 include regulation of the construction of drilling and production sites; drilling, producing, and plugging of wells; and the restoration of drilling and production sites to as closely as practicable to original condition. . It is our contention that the proposed USFWS regulation would yield no reduction of impacts or risks to refuge resources and will impair North Dakota's ability to administer its oil and gas regulatory program.

**Federalism:** The proposed rule states that "it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It addresses use of refuge lands, and would impose no requirements on other agencies or governments. A federalism summary impact statement is not required". For the reasons discussed above this conclusion is not correct and the State of North Dakota intends to defend its sovereign jurisdiction over oil and gas regulation in any manner necessary.

The North Dakota Industrial Commission recommends that USFWS withdraw the proposed rule and 1) adhere to the statutory language in the National Wildlife Refuge System Administration Act and the national Wildlife Refuge System Improvement Act, and 2) conduct and properly document in the administrative record the required consultation with state and tribal governments.

Alternatively the NDIC respectfully requests a 60 day extension of the comment period in order to facilitate consultation and the submission of additional comments.

Sincerely,

*Lynn D. Helms*

Director

North Dakota Industrial Commission, Department of Mineral Resources

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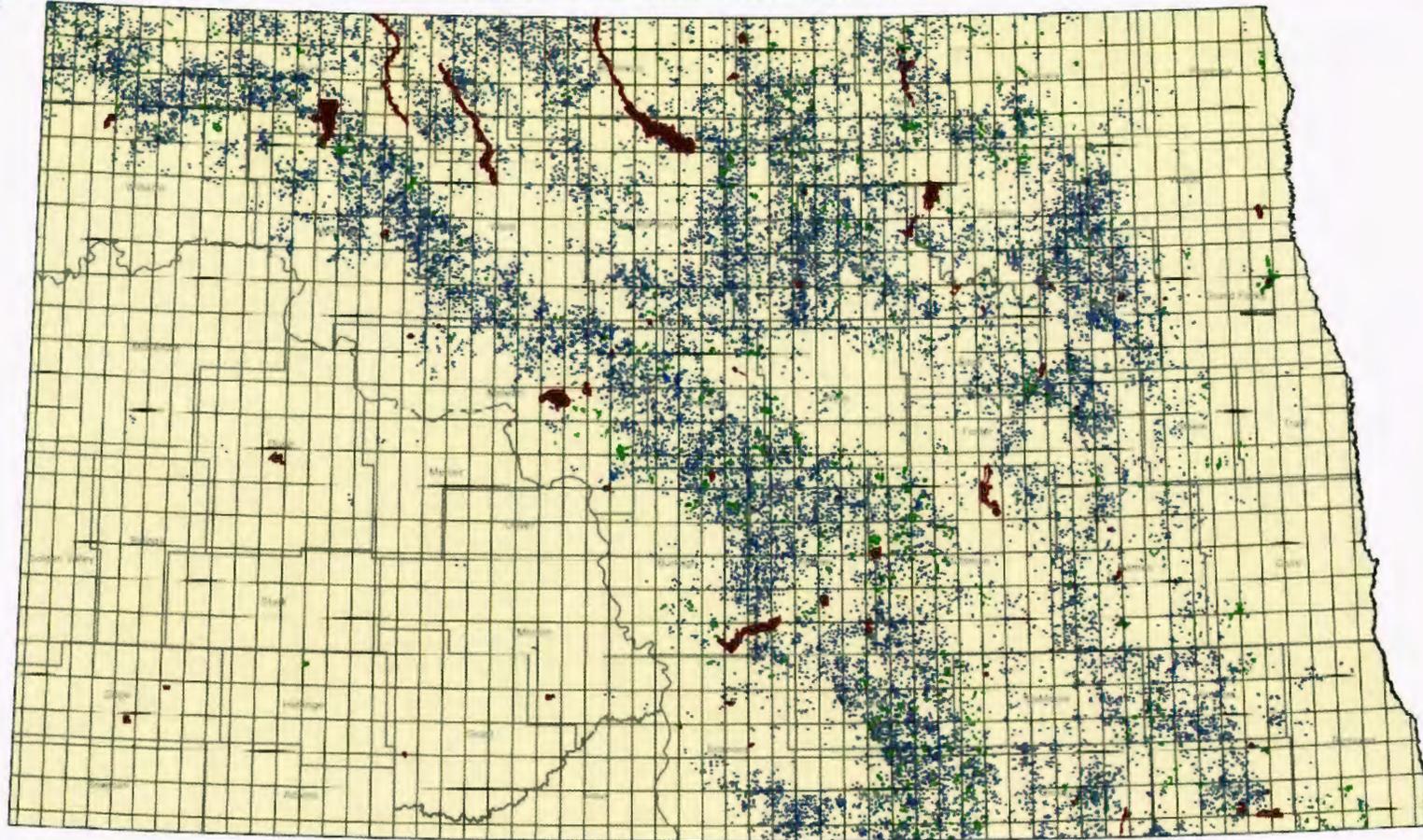
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U.S. Fish & Wildlife Service

## U.S. Fish & Wildlife Service Land Interests for the State of North Dakota



**DISCLAIMER**

The USFWS makes no claim as to the accuracy or completeness of the displayed information. Shaded areas depicting the location of USFWS WPA land interest easements are for illustrative purposes only and approximate the location of parcels identified in the easement contract. The quality of the data used to develop spatial locations is variable and the digital representation of these locations is subject to change as higher quality data becomes available. For more detailed information, please contact one of the USFWS Realty Offices located in Bismarck and Minot, North Dakota, Sand Lake and Huron, South Dakota, or Great Falls, Montana.

The USFWS easement layer is current through October 2012. Please contact the appropriate Wetland Management District for any newly acquired easements.

Map was produced by the MAPET Office, Bismarck, ND - September 2013  
Map location: \\Projects\ND\ONI & Gas Division\ND\_StateMap\_22x34.mxd

- USFWS Conservation Easement
- Waterfowl Production Area
- National Wildlife Refuge

