
Testimony of Lynn D. Helms

Director, North Dakota Industrial Commission Department of Mineral Resources

November 7, 2017

H. R. _____

To distribute revenues from oil and gas leasing on the outer Continental Shelf to certain coastal States, to require sale of approved and scheduled offshore oil and gas leases, to establish offshore wind lease sale requirements, and to empower States to manage the development and production of oil and gas on available Federal land, and for other purposes.

Chairman Gosar, Ranking Member Lowenthal and members of the Subcommittee on energy and Mineral Resources. Thank you for the opportunity to present testimony on behalf of the citizens of the great state of North Dakota. I am here to comment on Title II – Onshore “Opportunities for the Nation and States to Harness Onshore Resources for Energy Act” or the “ONSHORE Act”.

I am employed as the Director of the North Dakota Industrial Commission (“NDIC”) Department of Mineral Resources (“DMR”). I have been employed by the NDIC since July 20, 1998, and I have continuously served as the Director of DMR since July 1, 2005.

The NDIC has continuing jurisdiction and authority over all persons’ public and private property as necessary to control the oil and gas resources of the state. N.D. Cent. Code § 38-08-04. The NDIC regulates all operations for the production of oil or gas. N.D. Cent. Code § 38-08-04(2). The DMR’s Oil and Gas Division has jurisdiction to administer North Dakota’s comprehensive oil and gas regulations, found at North Dakota Administrative Code Chapter 43-02-03. These regulations include regulation of 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, and/or other substances into producing formations; the disposal of saltwater and oil field wastes through the North Dakota Underground Injection Control (“UIC”) Program; and all other operations for the production of oil and gas.

Oil and Gas Production in North Dakota

The State of North Dakota is ranked second in the United States among all states in the production of oil and gas. North Dakota produces approximately 350 million barrels of oil per year and 400 billion cubic feet of natural gas per year.

North Dakota has more than 2,800 oil and gas spacing units that contain federal minerals. Each spacing unit is typically comprised of 1,280 acres. Thirty-two percent of all North Dakota spacing units contain federal minerals and will have at least one well impacted by BLM permitting and sundry notice processing. That represents approximately 18% of statewide production from federal and Indian lands, and 14% of statewide production from State or private land that contains some federal mineral estates with no federal surface estate.

Over the next 20 years, working interest owners of North Dakota oil and gas leases plan to increase the drilling density from one well per spacing unit to as many as 32 wells to recover incremental oil and gas.

North Dakota has a unique history of land ownership that has resulted in a significant portion of North Dakota consisting of split-estate lands that are adversely affected by BLM permitting and sundry notice processes. Unlike many western states that contain large blocks of unified federal surface and mineral interest 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 Bankhead Jones Act—foreclosed on many farms, taking ownership of both the mineral and surface estates. Many of those 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, without corresponding federal surface estates, scattered throughout western North Dakota. There are a few large blocks of federal mineral ownership or trust responsibility where the federal government 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 Country as well as on the Fort Berthold Indian Reservation. However, even within those areas, the State of North Dakota owns all water rights, and 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.

The enormous amount of split-estate lands can be seen on the attached map, *see Page 5*, by comparing federal surface management/ownership (crosshatched areas), to the federal mineral ownership (red areas) within well spacing units (gray areas), to the private- and state-mineral ownership (uncolored areas) in the area around the confluence of the Yellowstone and Missouri Rivers in Williams and McKenzie counties.

Due to North Dakota’s unique history of land ownership discussed above, it is typical for oil and gas spacing units in North Dakota to consist of a combination of federal, state, and private mineral ownership. A diagram of an actual spacing unit with private, state, and federal mineral ownership is attached, *see Page 6*. Even in circumstances where the federal mineral ownership is small relative to other mineral ownership interests within the spacing unit, operators of wells that develop private and state minerals within the communitized spacing unit are subjected to federal permitting, waste minimization plan, gas capture, gas venting, and production restriction rules and requirements. This prevents the NDIC from regulating the orderly development of the spacing unit for prevention of waste and from pooling and protecting the correlative rights of the various owners in the spacing units.

The imposition of BLM's additional regulatory requirements also threatens the extent and amounts of royalties to be paid to mineral owners and the taxes paid to the State of North Dakota. While federal minerals in many states occur in large contiguous blocks of federal minerals, in North Dakota small tracts of federal minerals are interspersed with State- and privately-owned minerals. If permitting is delayed because one or more wells penetrate federal minerals, then development of all wells on the entire multi-well pad will be delayed. North Dakota's federal minerals would therefore not be protected from drainage and correlative rights of North Dakota's mineral owners would not be protected.

Each year, North Dakota collects more than \$90 million in royalties from the production of oil and gas on federal and Indian lands. Based on oil price projections from the Energy Information Administration, over the next 30 years North Dakota anticipates the collection of more than \$6 billion in royalties from federal and Indian lands. The use of the 30-year projection represents the anticipated life of the resource as it is known today.

Based on my understanding of state versus BLM current drilling permit approval times, federal drilling permit requirements result in a delay of more than eight months for every oil and gas well drilled within a spacing unit that contains federal or Indian minerals in North Dakota. This nearly triples the permitting time for these wells. This may be justified where the federal government also owns the surface estate, but for almost 60% of North Dakota wells that penetrate federal minerals the surface location is on private or state lands.

Delays in drilling are estimated to result in more than \$250 million decreased royalties and taxes. Because federal royalty revenue is shared with the counties in North Dakota, any decrease in royalty revenue will adversely affect critical funding sources for public services such as health districts, emergency management, human services, roads, schools, and law enforcement.

Many times oil and gas operators in North Dakota are forced to refocus their planned drilling activities to spacing units that do not contain federal lands rather than confront the BLM permitting delays and uncertainties. There are currently 20 companies with significant oil and gas operations on federal and Indian lands in North Dakota. The shifting of capital investment to State and private lands and delay or loss of full development on federal and Indian lands will result in significant loss of oil and gas resources and associated revenues estimated at more than \$1 billion during the next two to five years.

The displacement of numerous oil and gas operations due to implementation of the Final Rule will also result in the loss of employment. It is estimated that North Dakota will lose more than 1,000 jobs from the relocation of oil and gas operations due to the implementation of the Final Rule. This estimate is based on a study done by the North Dakota Department of Mineral Resources in conjunction with North Dakota State University Department of Agribusiness and Applied Economics, and the Vision West project. This study looked at the average number of jobs per drilling rig and producing well in North Dakota, and from the study one can estimate how many of those jobs are lost as a result of delays and uncertainties in the federal processes.

This legislation will reduce delays in operator's abilities to conduct oil and gas production in North Dakota. In my observation, operators applying for drilling permits generally wait approximately nine months for approval of an application for permit to drill from the BLM. Operators wait less than 20 days for State approval of an application to drill in North Dakota. By imposing additional permitting requirements, BLM duplicates, frustrates, and interferes with North Dakota's regulatory role and authority.

Pages 7 and 8 are a tabular side by side comparison of North Dakota versus federal drilling permit requirements. Federal permit applications require 101 elements 50 of which are for surface management with 37 also required by North Dakota. Of the 51 elements that apply to down hole well bore construction North Dakota requires 47 as part of the state drilling permit and the other four through sundry notices. Delegating the permitting of all down-hole permit elements to states like North Dakota will allow BLM to focus its limited state office resources on efficient and effective management of the federal surface estate.

The other important element of this legislation is the elimination of duplicative sundry notice application and approval to perform work not covered by an approved permit or a change to operations covered under a previously approved permit. I have attached samples of BLM and North Dakota sundry notice forms, *see Pages 9 and 10*. There are 18 application or reporting options on the BLM sundry notice form with 15 also handled by the North Dakota sundry notice process. The other three options are handled in North Dakota with Form 14 or Form 19. As you can see the resources used for application and approval of these sundries are duplicative and that duplication provides no additional resource protection.

The other oil and gas producing states with significant federal mineral estates have permit and sundry notice processes that are very similar to those in North Dakota. In addition, all of those states are members of the Interstate Oil and Gas Compact Commission and utilized the State Oil and Gas Regulatory Exchange process for peer review of their regulations to achieve continuous regulatory improvement.

Sincerely,



Lynn D. Helms, North Dakota Industrial Commission, Department of Mineral Resources

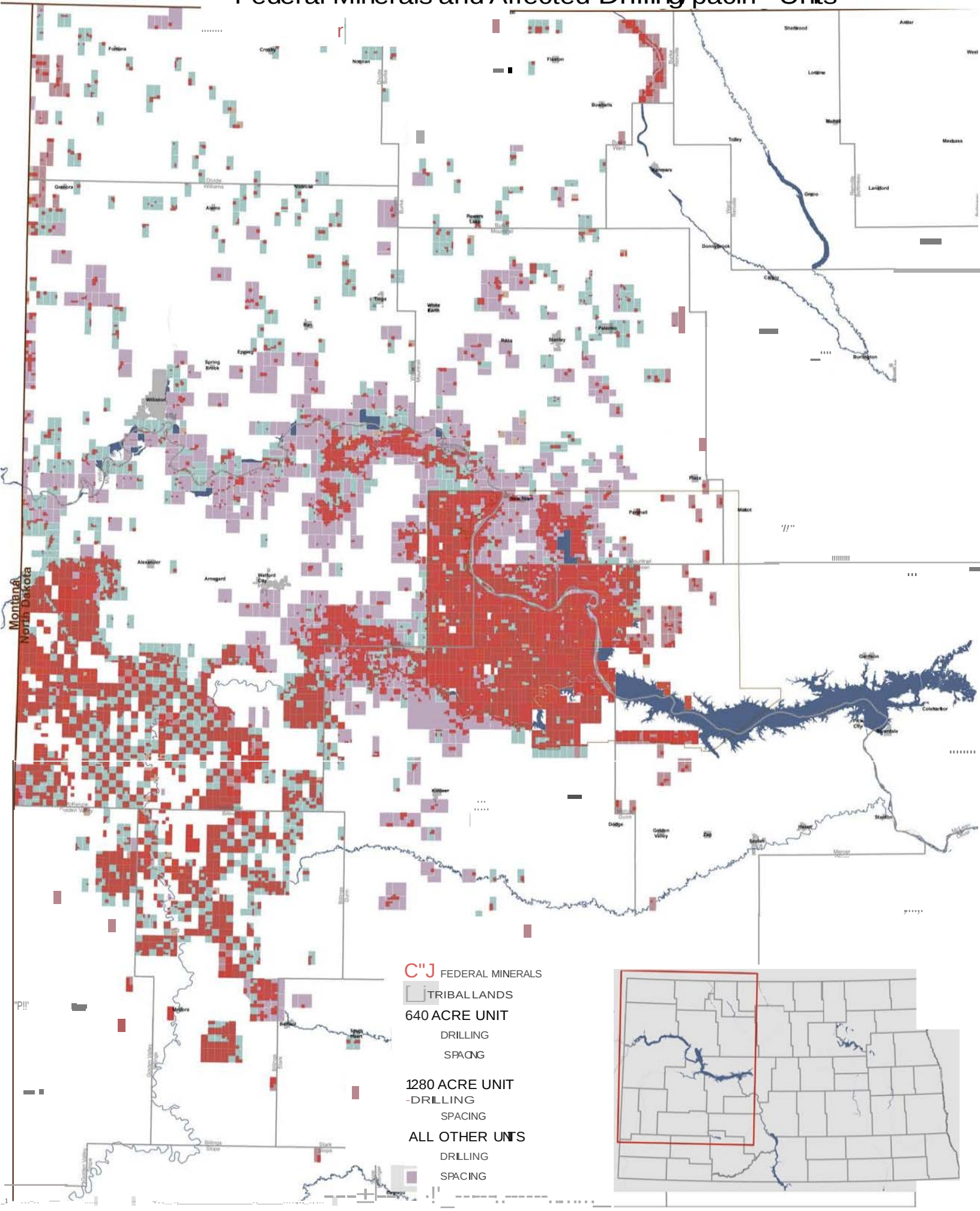
On behalf of the North Dakota Industrial Commission

Doug Burgum, Chairman
Governor

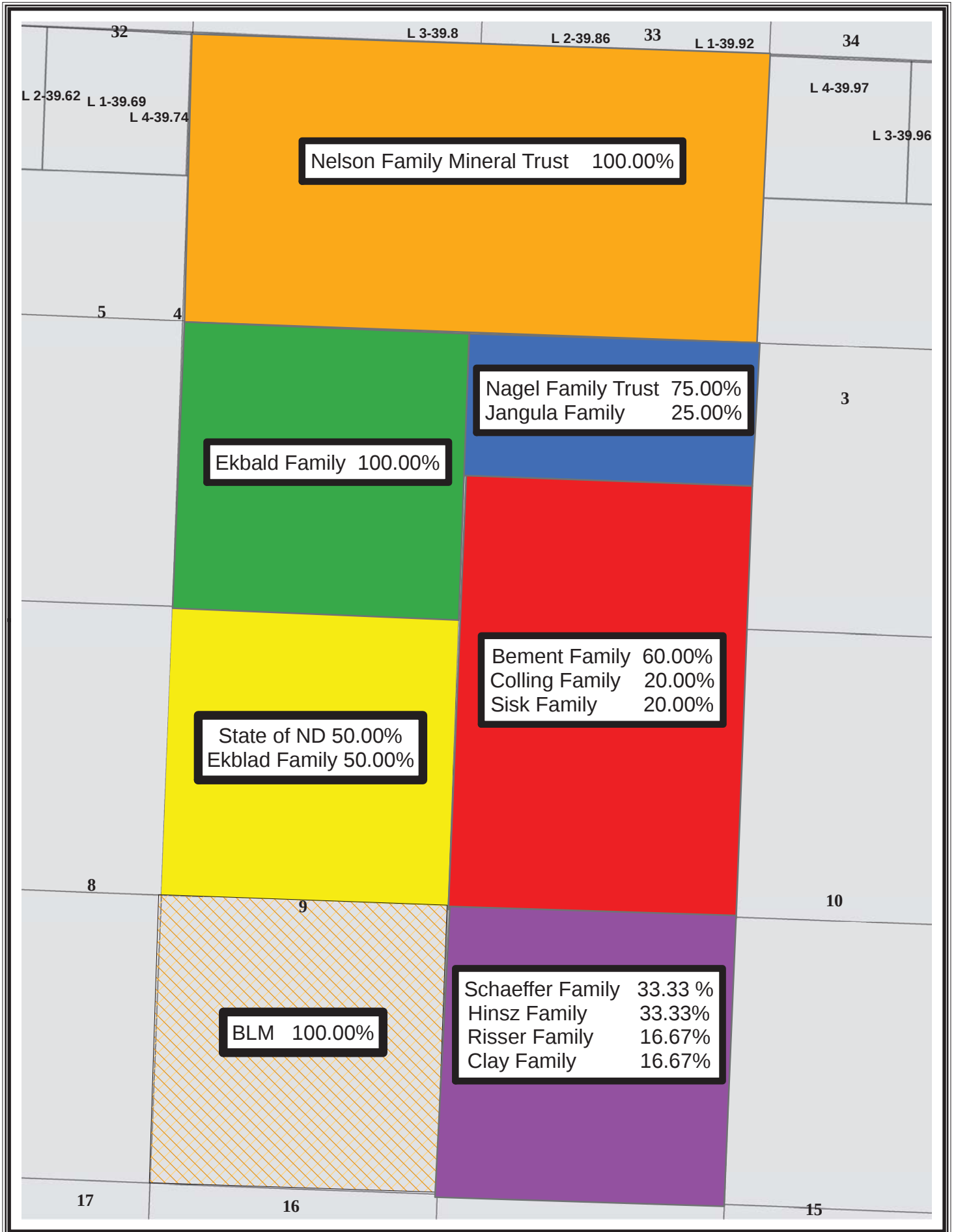
Wayne Stenehjem
Attorney General

Doug Goehring
Agriculture Commissioner

Northwest North Dakota Federal Minerals and Affected Drilling/pacing Units



T155N, R100W Sections 4 and 9



Official APD Form	State	Federal	Comment	Hyperlink (if available)
APD Fee	X	X	State=\$100. Federal=\$9,790	
APD valid	1 year	2 years		
Notice of Staking	LO	X		
Electronic submission	X	X	Federal=A.F.M.S.S. II; effective 2017= 6-8hrs to file form.	
Operator Information	X	X		
Confidential request	X	X		
Lease number	N/R	X		
Type of Well (OG, SWD, etc.)	X	X		
Type of Work (New location, re-entry, etc.)	X	X		
Well Name and Number	X	X		
Well Surface Location (footages, lat/long, and legal description)	X	X		
Site Elevation	X	X		
Total Depth	X	X		
Spacing Unit Description	X	N/R		
Spacing Unit Acreage	X	X		
Operator Agent Signature	X	X		
Date Operator Agent Signed	X	X		
Contact Info of Operator Agent	X	X		
Approval Signature (with title)	X	X		
Approval Date	X	X		
API Number	X	X		
NDIC File Number	X	N/R		
Proposed setbacks (distances to nearest lease line in ft.)	X	X		
Target Pool	X	X		
If Indian, Allottee or Tribe Name	N/R	X		
Approximate Work Start Date	X	X		
Required APD Documents	State	Federal	Comment	
Official APD Form	X	X		
Certified Well Location Plat	X	X		
Certified Horizontal Section Plat	X	X		
Geologic Tops	X	X		
Casing Program	X	X		
Cementing Program	X	X		
Mud Program	X	X		
Wellbore Schematic (Bakken)	X	X		
Completion Info	X	X	Federal=Onshore order #1 outlines requirements	
Fracking Job Details	N/R	S	Federal=will require some documentation on fluid.	
Fracking with Diesel Fuels Statement	X	X	Federal=components of frac fluid	
Cuttings Disposal Location or drilling pit location	X	X		
Logging Proposal	X	X		
Directional Plot	X	X		
Directional Plan	X	X		
Gas Capture Plan for Bakken Wells	X	X		
Pad Layout	X	X		
Production Equipment Pad Layout	X	X		
Prevailing wind diagram plat	N/R	X		
Area Maps (lease road location)	X	X		
Blow Out Preventer Information (detailed)	N/R	X		
Water for drilling & completion origins	N/R	X	Federal=Op provides a list of approved disposal & source water sites.	
Produced water deposition	N/R	X	Federal=Op provides a list of approved disposal sites.	
Filter Sock Notice & deposition	X	N/R		
Anti-collision info if existing well adjacent to prop wellbore	X	S	Federal=will ask-but not require to extent of the State.	
Misc. information required	State	Federal	Comment	
Archaeological Study	S	X		
Biological Study	N/R	X		
Geotechnical Report	S	N/R		
"technical" review	X	X		
Tribal consultation	S	S	State=If permit is w/in tribal community section. Fedefederal=BIA notified.	
Wildlife survey	N/R	X		
Endangered Species Review	N/R	X		
Application for Grant of Easement w/ Signatures (BLM Land)	N/R	X		
Spacing Unit development plan	S	N/R		
Master geographic development plan	N/R	X		
Lease stipulations	S	X		
Riparian and wetland	N/R	X		
Transportation, Collection & Distribution Pipelines	N/R	X		
Operator's Best Management Practices	S	X		
Waste management (sewage & garbage)	N/R	X		
Soil Resource Report from NRCS	N/R	X		
H2S Plan	S	X		
Spill prevention plan (document or in place)	X	X		
Flood Contingency plan	S	X		
Affidavit of Executed Surface Use Agreement (ROW granted)	S	X		
Surface Use Plan	N/R	X		
Formal Environmental Assessment	N/R	X		
Reclamation Plan	N/R	X		

Additional APD Requirements	State	Federal	Comment	
Bond	X	X	State=\$100,000 unlimited. Federal=\$100,000 nationwide in or out of FBIR.	
Registration with Secretary of State	X	X	Federal=Corporate documentation w/BIA or State.	
Operator Certification Documentation	X	X		
Notice provided to owner of permanently occupied dwelling	X	GFA		
Well or production facilities not within 500' of occupied dwelling	X	S	Fed=outside FBIR refer to state req. Inside FBIR 1/2 mile approval in 2012.	
If well is 1000' from occupied dwelling prod fac on opp side of	X	N/R		
NSO (setbacks from water ways & endangered species)	N/R	X		
Conditions of Approval (Stipulations) or FONSI	X	X		
Internal Agency Concurrence	S	X		
Comment Period (public or inter-agency)	State	Federal	Comment	
Areas of Interest	X	X	State=NDIC PP 2.01. Federal=AreaOfCriticalEnvConcern	ACEC
Tribal Lands	N/R	X	12-18 months. 30 day environmental doc. 30 day BIA issue ROW. 30 day issuance of ROW.	
Fee Lands	N/R	X	60 days	
Federal Lands	N/R	X	6-12months.	
Permit Policies Considered	State	Federal	Comment	
Shallow Glacial Aquifers	X	N/R	Federal=may not have jurisdiction.	
Nearby Lake - 640 acres or more	X	X		
Wellhead Protection Area	X	X		
Near-surface coal, sand, or gravel deposit	X	X		
Unstable soils or areas with high potential for soil instability	X	X		
Natural Drainage	X	X		
100-year (or less) floodplain	X	X		
Occupied Dwelling	X	X		
Military Facility	X	X		
Plugged and/or abandoned well	X	X	Federal=not to extent of the state.	
Planned bypass route	X	X		
33ft from any non-closed section line	X	N/R		
200ft from centerline of state or federal highway	X	X	Federal=Take height of derrick into account when placing well pad.	
A City's extra-territorial boundary	X	N/R		
county, state or federally designated historic site	X	X		
public recreation area	X	X		
wildlife management area	X	X		
Public use airport	X	N/R		
Private Lands Open to Sportsman (PLOTS)	X	X	State=make op aware. Federal=Landowners consulted for onsite.	
Federal Minerals within the applicable spacing unit	X	X		
Comingling Production	S	X		
Visual considerations	S	X		
Use Restrictions (based on wild life mating seasons)	S	X		
Earthquake considerations	N/R	X		

Key	
Always Applicable	X
Sometimes Applicable	S
Not Required	N/R
Land Owner	LO
Good Faith Attempt	GFA

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FORM APPROVED
OMB No. 1004-0135
Expires: January 31, 2004

SUNDRY NOTICES AND REPORTS ON WELLS

Do not use this form for proposals to drill or to re-enter an abandoned well. Use Form 3160-3 (APD) for such proposals.

SUBMIT IN TRIPLICATE- Other instructions on reverse side.

1. Type of Well
Oil Well ☐ ☐ Gas Well ☐ ☐ Other

2. Name of Operator

3a. Address

3b. Phone No. (include area code)

4. Location of Well (Footage, Sec., T., R., M., or Survey Description)

5. Lease Serial No.

6. If Indian, Allottee or Tribe Name

7. If Unit or CA/Agreement, Name and/or No.

8. Well Name and No.

9. API Well No.

10. Field and Pool, or Exploratory Area

11. County or Parish, State

12. CHECK APPROPRIATE BOX(ES) TO INDICATE NATURE OF NOTICE, REPORT, OR OTHER DATA

TYPE OF SUBMISSION	TYPE OF ACTION			
Notice of Intent	Acidize	Deepen	Production (Start/Resume)	Water Shut-Off
	Alter Casing	Fracture Treat	Reclamation	Well Integrity
Subsequent Report	Casing Repair	New Construction	Recomplete	Other _____
	Change Plans	Plug and Abandon	Temporarily Abandon	_____
Final Abandonment Notice	Convert to Injection	Plug Back	Water Disposal	_____

13. Describe Proposed or Completed Operation (clearly state all pertinent details, including estimated starting date of any proposed work and approximate duration thereof. If the proposal is to deepen directionally or recomplete horizontally, give subsurface locations and measured and true vertical depths of all pertinent markers and zones. Attach the Bond under which the work will be performed or provide the Bond No. on file with BLM/BIA. Required subsequent reports shall be filed within 30 days following completion of the involved operations. If the operation results in a multiple completion or recompletion in a new interval, a Form 3160-4 shall be filed once testing has been completed. Final Abandonment Notices shall be filed only after all requirements, including reclamation, have been completed, and the operator has determined that the site is ready for final inspection.)

14. I hereby certify that the foregoing is true and correct
Name (Printed/Typed)

Title

Signature

Date

THIS SPACE FOR FEDERAL OR STATE OFFICE USE

Approved by _____

Title

Date

Conditions of approval, if any, are attached. Approval of this notice does not warrant or certify that the applicant holds legal or equitable title to those rights in the subject lease which would entitle the applicant to conduct operations thereon.

Office

Title 18 U.S.C. Section 1001 and Title 43 U.S.C. Section 1212, make it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious or fraudulent statements or representations as to any matter within its jurisdiction.

(Instructions on page 2)



SUNDRY NOTICES AND REPORTS ON WELLS - FORM 4

INDUSTRIAL COMMISSION OF NORTH DAKOTA
OIL AND GAS DIVISION
600 EAST BOULEVARD DEPT 405
BISMARCK, ND 58505-0840
SFN 5749 (09-2006)

Well File No.

PLEASE READ INSTRUCTIONS BEFORE FILLING OUT FORM.
PLEASE SUBMIT THE ORIGINAL AND ONE COPY.

Reset

View

Print

☐ Notice of Intent

Approximate Start Date

☐ Report of Work Done

Date Work Completed

☐ Notice of Intent to Begin a Workover Project that may Qualify
for a Tax Exemption Pursuant to NDCC Section 57-51.1-03.

Approximate Start Date

☐ Drilling Prognosis

☐ Redrilling or Repair

☐ Casing or Liner

☐ Plug Well

☐ Supplemental History

☐ Temporarily Abandon

☐ Other

☐ Spill Report

☐ Shooting

☐ Acidizing

☐ Fracture Treatment

☐ Change Production Method

☐ Reclamation

Well Name and Number

Footages

F

L

F

L

Qtr-Qtr

Section

Township

N

Range

W

Field

Pool

County

24-HOUR PRODUCTION RATE

Before		After	
Oil	Bbls	Oil	Bbls
Water	Bbls	Water	Bbls
Gas	MCF	Gas	MCF

Name of Contractor(s)

Address

City

State

Zip Code

DETAILS OF WORK

Company	Telephone Number
Address	
City	State Zip Code
Signature	Printed Name
Title	Date
Email Address	

FOR STATE USE ONLY

☐ Received	☐ Approved
Date	
By	
Title	