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First name: Lynn

Last name: Helm

Organization: Department of Resources

Title: Director

Comments: Dear Mr. O'Donnell:

Thank you for the opportunity to provide comments on the DEIS for Oil and Gas Leasing on the Dakota Prairie Grasslands.

The State of North Dakota is ranked 2nd in the United States in the production of oil and gas. North Dakota produces approximately 450 million barrels of oil per year and 850 billion cubic feet of natural gas per year. There is the potential for significant adverse impacts on state revenues through prescriptive lease stipulations.

Preliminary estimates indicate the DEIS for Oil and Gas Leasing could impact as much as 2% of North Dakota's oil and gas productive area.

The policy of the state of North Dakota is declared in North Dakota Century Code 38-08-01 as follows: It is hereby declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas in the state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such a manner that a greater ultimate recovery of oil and gas be had and that the correlative rights of all owners be fully protected; and to encourage and to authorize cycling, recycling, pressure maintenance, and secondary recovery operations in order that the greatest possible economic recovery of oil and gas be obtained within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources.

The NDIC provides the following comments and concerns:

1. Of primary concern are tracts with surface rights and/or mineral rights owned by the state of North Dakota or by private parties that will be completely surrounded by lands managed by DPGL as No Surface Occupancy (NSO). The NSO designation potentially prevents access to the state and private lands for oil and gas development denying them the economic recovery of oil and gas and enjoyment of the greatest possible good from these vital natural resources.

The NDIC strongly recommends that all newly proposed NSO in Alternative 3 of the DEIS include robust waivers, exemptions, and modifications as follow to allow upgrading of existing primary roads, secondary roads, or trails on DPGL managed surface to allow access to state and private lands for oil and gas development:

#### Waivers

Upon request of the lessee, the authorized officer shall evaluate whether access to state and private lands for oil and gas development can be provided by upgrading of existing primary roads, secondary roads, or trails on DPGL managed surface. If the evaluation determines that access to state and private lands for oil and gas development can be provided by upgrading of existing primary roads, secondary roads, or trails on DPGL managed surface, the authorized officer shall grant a waiver to this stipulation.

#### Exceptions

The authorizing officer may grant an exception to this stipulation if the operator submits a plan that adequately mitigates impacts of the proposed action.

## Modifications

Upon request of the lessee the authorized officer shall evaluate whether access to state and private lands for oil and gas development can be provided by upgrading of existing primary roads, secondary roads, or trails on DPGL lands. If the evaluation determines that access to state and private lands for oil and gas development can be provided by upgrading of existing primary roads, secondary roads, or trails on DPGL lands the authorized officer shall modify the boundaries of the stipulated NSO area to allow access to state and private lands for oil and gas development.

1. A second concern is the large blocks of new NSO in Alternative 3 of the DEIS that could potential place mineral resources out of reach of current drilling technology. Thank you for providing the special analysis that allowed identification of the 21 sections of land that would require a minimum two mile horizontal lateral or directional well for mineral development.

While current drilling technology is capable of reaching minerals two or more miles from the surface location, this is not the case for many formations located at depths of less than 10,000 feet, and the economics of several North Dakota oil and gas plays will not support the cost of this technology. The NDIC strongly recommends that new NSO designation be removed from small areas of proposed new NSO. This would provide corridors for access to sections of land requiring more than 1 mile of directional drilling for access from non-NSO surface. Alternatively, the NDIC recommends waivers, exemptions, and modifications as follow that would provide for leasing with surface occupancy if the inability to develop oil and gas resources due to technology or economic limitations is properly documented:

## Waivers

Upon request of the lessee, the authorized officer shall evaluate whether technology at the time of leasing is not capable of accessing otherwise economic oil and gas resources located at depths of less than 10,000 feet. If the evaluation determines that technology at the time of leasing is not capable of accessing otherwise economic oil and gas resources located at depths of less than 10,000 feet, the authorized officer shall grant a waiver to this stipulation.

## Exceptions

The authorizing officer may grant an exception to this stipulation if the operator submits a plan that adequately mitigates impacts of the proposed action.

## Modifications

Upon request of the lessee, the authorized officer shall evaluate whether technology at the time of leasing is not capable of accessing otherwise economic oil and gas resources located at depths of less than 10,000 feet. If the evaluation determines that technology at the time of leasing is not capable of accessing otherwise economic oil and gas resources located at depths of less than 10,000 feet, the authorized officer shall modify the boundaries of the stipulated NSO area to provide access to otherwise economic oil and gas resources located at depths of less than 10,000 feet.

1. Another significant concern is the implementation of a revised stipulation prohibiting surface use (including fracking) from occurring during the May 1 - December 1 timeframe for any recreation sites with a development scale of 3 through 5. This stipulation would limit surface use activities (such as fracking) that may impact air quality to distances greater than 0.25 mile from those developed recreation sites considered likely to have concentrated public use, in order to limit public exposure to unhealthy air pollution. The 0.25-mile distance is

considered to be relevant to the range of modeled distances recommended to determine a potential fence line to be used during fracking operations (Anderson and Dzomba 2014). The Anderson and Dzomba study assumed 100% diesel engine use to provide the most conservative estimates. The NDIC recommends waivers, exemptions, and modifications as follow that would allow drilling or hydraulic fracturing operations utilizing natural gas fueled equipment to be utilized year round:

#### Waivers

If the operator submits a plan to utilize natural gas fueled drilling and hydraulic fracturing equipment, the authorized officer may grant a waiver to this stipulation.

#### Exceptions

The authorizing officer may grant an exception to this stipulation if the operator submits a plan that adequately mitigates impacts of the proposed action.

#### Modifications

If the operator submits a plan to utilize natural gas fueled drilling and hydraulic fracturing equipment, the authorized officer shall modify the boundaries of the stipulated area to permit surface use activities such as drilling and hydraulic fracturing.

1. The final concern of the NDIC is the impact of the partial federal government shutdown on filing, evaluating, and granting extensions to comments. The NDIC must be given the opportunity to file amended and supplemental comments if the deadline for filing comments is extended.

Thank you for your consideration of our comments.