



August 28, 2020

Submitted via BLM ePlanning website: <https://eplanning.blm.gov/eplanning-ui/project/1505069/595/8001597/comment>

North Dakota Field Office  
Attention: North Dakota RMP  
99 23rd Ave. West, Suite A  
Dickinson, ND, 58601

RE: Notice of Intent to Prepare a Resource Management Plan and Associated Environmental Impact Statement for the North Dakota Field Office – public scoping process

Dear Sir/Madam:

The North Dakota Petroleum Council (NDPC), Western Energy Alliance (WEA), and the Domestic Energy Producers Alliance (DEPA) appreciate the opportunity to submit scoping comments on the Bureau of Land Management's (BLM) Resource Management Plan (RMP) and associated Environmental Impact Statement (EIS) for the North Dakota Field Office (NDFO). As BLM undertakes the scoping process for drafting an updated RMP for the NDFO, its planning efforts should consider the significant changes that have taken place in the oil and gas industry since the last RMP was finalized in 1988.

The North Dakota Petroleum Council (NDPC) is a trade association that represents more than 650 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipeline, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in North Dakota and across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

The Domestic Energy Producers Alliance (DEPA) is a nationwide collaboration of 39 coalition associations – from California to West Virginia, Texas to Montana – representing individuals and companies engaged in domestic onshore oil and natural gas exploration and production. DEPA is a non-partisan association seeking common ground, and common sense solutions to the challenges facing American oil and natural gas production.

Our members have a vested interest in decisions made by the BLM for the North Dakota Field Office as they affect valid existing oil and natural gas lease rights and future exploration and development activities. We have reviewed the BLM's "Analysis of the Management Situation" and have drafted the following comments on each of the key findings that could potentially impact our industry in North Dakota.

We agree with the BLM's assessment that an updated RMP needs to plan for the dramatic increase in oil and gas development in western North Dakota as well as address the potential for new mineral development. Since the last RMP, completed in 1988, the technological improvements in hydraulic fracturing and horizontal drilling have allowed the industry to increase oil and gas production with fewer impacts. We want to ensure the BLM's updated RMP accounts for the potential future growth and development and builds in some flexibility so it can adapt and grow as technology continues to improve.

In its Analysis document, BLM also cited the need to adjust for new technologies and trends in mineral development, which we fully support. Specifically, we encourage BLM to seek input and consult research from the Energy and Environmental Research Center (EERC) at the University of North Dakota (UND). EERC is a first-class research center, a leader in the design and implementation of clean and efficient oil and gas exploration, development, and production technologies. In 2019, the North Dakota State Legislature created the State Energy Research Center, which is housed in EERC and focused on conducting exploratory, transformational, and innovative research that advances future energy opportunities within the state.<sup>1</sup> True to its mission, EERC is doing important work in the areas of oil production optimization, CO2 enhanced oil recovery, pipeline research and technology development, and other topics of critical interest for oil and gas development and production. We urge BLM to consult this important research as they move forward in their analysis.

### **Statutory and Regulatory Framework**

When the Federal Land Policy and Management Act (FLPMA) was enacted in 1976, Congress declared that "the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals."<sup>2</sup> It is therefore the "continuing policy of the Federal Government in the national interest to foster and encourage private enterprise in . . . the orderly and economic development of domestic mineral resources."<sup>3</sup>

FLPMA dedicated public lands to multiple use and sustained yield and identified mineral exploration and development as one of the principal uses.<sup>4</sup> Congress also directed the president to encourage federal agencies to "facilitate availability and development of domestic resources to meet critical material needs."<sup>5</sup>

Domestic oil and natural gas resource development is a legitimate use of public lands which can and is being done in an environmentally responsible manner and providing financial benefits to the federal, state and local governments. Throughout the development of this RMP, BLM must follow the requirements of the Energy Policy Conservation Act of 2000 and the Energy Policy Act of 2005 (EPA) to reduce rather than increase impediments to federal oil and gas leasing.

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<sup>1</sup> 2019 N.D. Sess. Laws ch. 139.

<sup>2</sup> 43 U.S.C. §1701(a)(12)

<sup>3</sup> 30 U.S.C. §21a

<sup>4</sup> 43 U.S.C. §1702(c), (l)

<sup>5</sup> 30 U.S.C. § 1602(7)

Through the North Dakota RMP process, BLM must also ensure that its selected alternative is consistent with the Administration's policies and guidance for managing public lands. On March 28, 2017 President Donald Trump issued Executive Order 13783, titled "Promoting Energy Independence and Economic Growth," which provides guidance to federal agencies to avoid taking actions that will unnecessarily burden domestic energy production.

Executive Order 13783 also requires federal agencies to review actions that potentially burden the development or use of domestically produced energy resources, including National Environmental Policy Act (NEPA) implementation. The Executive Order defines "burden" as "to unnecessarily obstruct, delay, curtail, or otherwise impose significant costs on the siting, permitting, production, utilization, transmission, or delivery of energy resources."<sup>6</sup>

In line with Executive Order 13783, Secretary of the Interior Zinke issued Secretarial Order 3349, titled "American Energy Independence," which calls on BLM and the agencies within the Department of the Interior to review existing and draft policies to ensure a proper balance between conservation and job creation. The Department of the Interior (DOI) and BLM have recently taken numerous concrete steps to address NEPA and oil and natural gas leasing via Secretarial Orders (SO) and instructional memoranda (IM), including without limitation the following:

- [SO 3354](#) – Supporting and Improving the Federal Onshore Oil and Gas Leasing Program and Federal Solid Mineral Leasing Program
- [SO 3355](#) – Streamlining National Environmental Policy Act Reviews and Implementation of Executive Order 13807, "Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects"
- [SO 3358](#) – Executive Committee for Expedited Permitting
- [WO PIM 2018-010](#) – NEPA Compliance for Oil and Gas Reinstatement Petitions
- [WO PIM 2018-014](#) – Directional Drilling into Federal Mineral Estate from Well Pads on Non-Federal Locations
- [IM 2018-034](#) – Updating Oil and Gas Leasing Reform – Land Use Planning and Lease Parcel Reviews
- [IB 2018-061](#) – NEPA Efficiencies for Oil and Gas Development
- [Deputy Secretary Memo](#) – Standardized Intra-Department Procedures Replacing Individual Memoranda of Understanding for Bureaus Working as Cooperating Agencies
- [Deputy Secretary Memo](#) – Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments

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<sup>6</sup> Exec. Order No. 13783, 82 Fed. Reg. 16093 (Mar. 31, 2017).

Furthermore, BLM's Manual on Land Use Planning specifically states that "[w]hen applying leasing restrictions, the least restrictive constraint to meet the resource protection objective should be used."<sup>7</sup> We urge BLM to observe this statutory mandate and regulatory guidance as it considers any stipulations for oil and natural gas leases, especially with regard to timing limitations, No Surface Occupancy (NSO) stipulations, and controlled surface use (CSU) restrictions. An NSO is the most restrictive stipulation; it should be used only sparingly.

The final RMP should accurately reflect these policies. As BLM moves forward in updating the North Dakota RMP, it must ensure that the final RMP is consistent with Executive Order 13783, Secretarial Order 3349, and any further guidance provided by the Administration. BLM should not unnecessarily burden energy development through the RMP.

### **Valid Existing Lease Rights**

It is well settled under law that any RMP update process must respect valid existing lease rights. This fundamental principle is found within the applicable statutes, regulations, and BLM policy guidance. Pursuant to FLPMA, all BLM actions, including authorization of RMPs, are "subject to valid existing rights."<sup>8</sup> Thus, according to federal statute, the BLM cannot terminate, modify, or alter any valid or existing property rights through a land use plan update process.<sup>9</sup>

For example, once BLM has issued a federal oil and gas lease that does not contain a CSU or NSO stipulation, BLM cannot thereafter completely deny development on the leasehold due to an updated RMP.<sup>10</sup> As explained by the Interior Board of Land Appeals (IBLA), only Congress has the right to completely prohibit development once a federal lease has been issued.<sup>11</sup>

Under 43 C.F.R. § 3101.1-2, when a lease contains a stipulation regarding a particular wildlife or environmental resource, after site-specific NEPA analysis, BLM may be permitted to "make modifications to the siting and timing of surface-disturbing activities,"<sup>12</sup> subject to the requirement that any modification must be reasonable, and only after site-specific NEPA analysis would support such a modification.<sup>13</sup>

When FLPMA was enacted, Congress made it clear that nothing within the statute, or in the land use plans developed under FLPMA, was intended to terminate, modify, or alter any valid or existing property rights.<sup>14</sup> Thus, an RMP update prepared pursuant to FLPMA, after lease execution, is likewise subject to existing rights.<sup>15</sup>

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<sup>7</sup> BLM Handbook H-1601-1, App. C. II. H. at 24.

<sup>8</sup> 43 U.S.C. § 1701 note (h); *see also* 43 C.F.R. § 1610.5-3(b) (BLM is required to recognize valid existing lease rights).

<sup>9</sup> *Id.*

<sup>10</sup> *See, e.g., National Wildlife Federation, et al.*, 150 IBLA 385, 403 (1999).

<sup>11</sup> *Western Colorado Congress*, 130 IBLA 244, 248 (1994).

<sup>12</sup> *Wyoming Outdoor*, 284 F. Supp. 2d at 92.

<sup>13</sup> *Yates Petrol. Co.*, 176 IBLA 144, 155 (2008).

<sup>14</sup> *See* 43 U.S.C. § 1701.

<sup>15</sup> *See Colorado Environmental Coal, et al.*, 165 IBLA 221, 228 (2005).

Similarly, federal courts have interpreted the phrase “valid existing rights” to mean that federal agencies cannot impose stipulations or conditions of approval (COA) that make development on existing leases either uneconomic or unprofitable.<sup>16</sup>

Therefore, through the North Dakota RMP process, BLM cannot revise or restrict valid existing lease rights through imposition of COAs for drilling permits or through imposition of lease stipulation provisions from adjacent leases.<sup>17</sup> BLM must make clear in the RMP that timing limitations, CSU and NSO stipulations, and any other management prescriptions across the planning area are not applied retroactively to existing leases.

## **Air Quality and Climate**

Regarding Air Quality, we believe it is important to emphasize that, even with the remarkable growth of the Bakken play, North Dakota’s air quality remains high. North Dakota is the second highest oil producing state in the country and we have excellent air quality. As BLM stated in their Analysis document, there are no air quality nonattainment areas in North Dakota.

BLM has no authority to regulate air quality unless those regulations can be “independently justified as waste prevention measures” under the Mineral Leasing Act. It is important to keep BLM’s role regarding air quality within proper context. BLM must analyze and disclose impacts to air and other resources in NEPA documents but is not the regulating agency to ensure that oil and gas operations comply with the Clean Air Act (CAA). Under the CAA, each state has the primary responsibility for assuring air quality within the state.<sup>18</sup>

The North Dakota Department of Environmental Quality (DEQ) has primary jurisdiction over air quality regulation on BLM lands. BLM is not legally authorized to regulate air quality standards and it is the responsibility of the State of North Dakota to issue air permits for oil and gas operations and to ensure that operators comply with those permits and the CAA. BLM’s authority to develop land use plans and otherwise manage federal land under FLPMA does not usurp the air quality authority granted to the states under the CAA.

BLM has identified a potential management opportunity to perform regional modeling to determine potential air resource impacts from BLM-authorized activities. We encourage BLM to utilize state and industry impacts when developing any type of model to ensure any modeling is accurate and completed with the highest level of expertise.

When it comes to climate change, the United States has reduced greenhouse gas emissions more than any other industrialized country. There is also uncertainty and unsettled law as it pertains to the regulation of greenhouse gases and the interpretation of how certain activities impact climate change. We ask that BLM be consistent in their planning regarding climate change and regulation of greenhouse gases. We also ask that the cumulative impacts of oil and gas development be fully considered. The increased production of natural gas has helped decrease emissions in the United States. As this RMP scoping document is developed we urge BLM to consider the unique characteristics of different types of energy development and not lump all energy resources into the same category.

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<sup>16</sup> See *Utah v. Andrus*, 486 F. Supp. 995, 1011 (D. Utah 1979); see also *Conner v. Burford*, 84 F.2d 1441, 1449-50 (9th Cir. 1988).

<sup>17</sup> *Colorado Environmental Coalition*, 165 IBLA at 228.

<sup>18</sup> 42 U.S.C. § 7407

## **Soil Resources**

We agree with BLM's assessment that soil resources in North Dakota are good and our industry is proud to help preserve this high-quality soil. Oil and gas operators have made great strides in reducing surface area impacts, especially since the last RMP was completed in 1988. One of the most important advancements has been the development of horizontal drilling (also called directional drilling). This procedure allows multiple wells to be drilled on a single well pad. In the past, vertical drilling was predominant, with only one well per well pad placed as often as every 40 acres, impacting up to ten or twelve percent of production zone surface area.

With advancements in technology, horizontal drilling allows for up to 28 wells on a single well pad, producers recover more oil using fewer wells, and less than one half percent of production zone surface area in North Dakota is disturbed. Thanks to multi-well pad development, the average impact per well is 1.0–1.25 acres rather than five acres. Based on 2019 and early 2020 well drilling models, the expected five-year impact will be on the order of 310–390 acres rather than 1,550 acres.

Multi-well pad development provides a myriad of benefits such as development of on-lease and off-lease minerals, connecting "stranded" oil and gas wells that are not connected to gas gathering, and connection to existing gathering systems for oil, gas, and produced water. This also contributes to the BLM's multiple-use and sustained yield mission, allowing for more surface activities while still supporting responsible energy development.

Regarding interim reclamation, when in a split estate development scenario, the BLM should defer the interim reclamation planning and implementation to the private and State surface owners. Oil and gas operators enter into Surface Use Agreements and Easement Agreements with these surface owners that have specifications for available development acreage, reclamation, and the timing to complete those actions. The required site preparation, seed mix, and application are dictated by these surface owners, and often differ from BLM COAs.

Regarding interim reclamation on well pads after drilling has been completed, we urge BLM to work closely with operators to more fully understand what is feasible, necessary and consistent with safe operation of oil and gas production sites. Interim reclamation does not make sense on an active well pad because after drilling is completed production equipment is installed on well pads. We urge BLM to communicate extensively with operators before creating additional reclamation requirements that may be unnecessarily burdensome.

Requiring berms around well pads as a mitigation measure can be problematic, especially in North Dakota. During the drilling process, all fluids are completely contained. Operators that have installed berms have had difficulty with pooling water and areas of concentrated water becoming frozen during the cold winter months creating a potential safety hazard. Berms are not a reasonable measure and create difficulty for both operations and safety at the well sites.

## **Water Resources**

North Dakota has an abundant supply of water as well as excellent water quality. Water supply has never been an issue in North Dakota, even at the height of Bakken oil production where the industry

arguably saw its highest demand for water. Oil and gas operators also comply with all water quality regulations.

During this scoping process, it is important to keep BLM's role regarding water quality within proper context. BLM must analyze and disclose impacts to water and other resources in NEPA documents but is not the regulating agency responsible for ensuring that oil and gas operations comply with the Clean Water Act (CWA). The North Dakota Department of Environmental Quality (DEQ) has primary water quality jurisdiction on BLM lands. BLM is not legally authorized to regulate water quality standards and it is the responsibility of the State of North Dakota to issue necessary permits for oil and gas operations and to ensure that operators comply with those permits and the CWA. We do not believe it is appropriate for this RMP to impose water quality standards or alter their management decisions to try to manage for water supply.

Further, BLM's authority to develop land use plans and otherwise manage federal land under FLPMA does not usurp the water quality authority granted to the states under the CWA.

### **Wildlife Protections**

BLM must ensure that any conservation measures for wildlife management are consistent with BLM's authority under FLPMA, the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA). BLM cannot manage non-listed, state- or BLM-designated special status species with the same protections afforded ESA-listed species. Further, with respect to managing special status species habitat, BLM must ensure that its proposed conservation measures are within its authority.

Regarding habitat protection, BLM cannot manage all occupied, suitable, and unoccupied habitat for the benefit of a species, especially those species not listed as "threatened" or "endangered" under the ESA. Additionally, the ESA allows federal actions to have some impact to listed species or their critical habitat as long as the impact does not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.<sup>19</sup>

Any proposed stipulations protecting special status plant species habitat must recognize valid existing lease rights, and thereby afford enough flexibility through exception, waiver, and modification criteria to allow for activities needed for exploration and development of those valid lease rights. If the stipulations are too inflexible or regimented with respect to operational and technical issues, BLM will not be able to address such issues appropriately on a project basis. Further, BLM cannot apply such restrictions to existing oil and natural gas leases that do not contain lease stipulations to protect these BLM "sensitive species."

While it may be appropriate for the BLM to impose prospective conservation measures for the conservation of special status species, including listed and non-listed species, these conservation measures must allow for site-specific flexibility. Additionally, in the case of non-listed species, BLM cannot entirely prohibit development within species habitat, nor can it impose broad, unjustified buffers around habitat.

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<sup>19</sup> See, e.g., *Conservation Cong. v. U.S. Forest Serv.*, 720 F.3d 1048, 1057 (9th Cir. 2013) ("Even completely destroying 22 acres of critical habitat does not necessarily appreciably diminish the value of the larger critical habitat area."); *Wild Fish Conservancy v. Salazar*, 628 F.3d 513, 523 (9th Cir. 2010) (observing that an action can impact the survival or recovery of listed species without jeopardizing the species' continued existence).

Furthermore, BLM must ensure the RMP complies with recent guidance from DOI and the U.S. Fish and Wildlife Service (FWS) regarding migratory birds. Opinion M-37050 determined that the MBTA does not provide criminal liability for incidental take of migratory birds or nests, and FWS issued additional guidance on June 14, 2018 clarifying that the MBTA does not prohibit the destruction of inactive nests and even provides guidance on the destruction or relocation of active nests.

Based on this guidance, any imposition of blanket stipulations to protect migratory birds, nests, and trees from incidental take is superfluous and unjustifiable. Since the MBTA does not prohibit incidental take, BLM should not impose onerous restrictions on oil and gas lessees to prevent incidental take, and the final RMP should reflect this conclusion.

To comply with FLPMA, NEPA, the ESA, and the MBTA, and to provide for informed decision-making, BLM needs to appropriately analyze the impacts of management prescriptions, stipulations, and access restrictions upon minerals management and development, including both the economic and environmental impacts from these narrow operational windows. BLM must ensure that the conservation measures for special status species and migratory birds considered in the final RMP are not overly burdensome and within its authority under the appropriate laws.

Finally, we note that any protections contemplated in the RMP for the Dakota Skipper should recognize the strong population levels for the species in 2020 and the possibility that it could potentially be delisted as a Threatened species under the ESA in the near future. BLM should contemplate the need for flexible management provisions that can be quickly adapted should the population levels continue to increase and regulatory protections for the species shift over time.

### **Visual Resources**

Any surface use restrictions contemplated in the RMP process to protect visual resources should be reasonably tailored and site-specific, and they should recognize the relatively short-term surface disturbance resulting from oil and natural gas operations. A blanket application of broad surface use stipulations is inconsistent with NEPA's requirement to apply the least restrictive prescriptions necessary to protect a resource and should not be included in the RMP.

Impacts to visual resources can be successfully mitigated by incorporating best management practices, including design, location, and camouflaging when appropriate. As BLM is aware, many of the more noticeable aspects of oil and natural gas development are temporary in nature, with a large proportion of equipment and infrastructure removed and surface disturbances reclaimed after initial development.

Flexible, discretionary management for visual resource impacts based on the unique circumstances presented at each locale is necessary. We recommend that BLM adopt stipulations for visual resource management that fully recognize the transient nature of many of the impacts. Visual impact mitigation requirements for relatively temporary impacts would incur unnecessary additional costs to development which could arbitrarily render a project economically infeasible.

### **Lands with Wilderness Characteristics**

In the scoping notice, BLM writes that the agency “will not designate additional Wilderness Study Areas (WSAs) during this planning process, nor will it conduct studies or make recommendations related to



wilderness suitability. The BLM will, however, consider new information on resource values and uses, including lands with wilderness characteristics.” Designation of so-called “lands with wilderness characteristics” (LWC) is not just a procedural action by the BLM – such designations result in burdensome restrictions on development in the planning area, including NSO, CSU, and TL stipulations, and is a violation of congressional intent.

Under Section 102 of FLPMA, Congress directed BLM to manage lands on a multiple-use basis to “... best meet the present and future needs of the American people” in a “combination of balanced and diverse resource uses,” including minerals development. Importantly, in Section 103(c) of FLPMA, Congress listed resources that BLM should take into account in allocating management, and “wilderness characteristics” is not included as such a resource. Section 603 of FLPMA provided a time -limited process for BLM to inventory and designate wilderness on BLM lands. That time has now passed, and those recommendations have been made to congress. As a result, BLM no longer has authority to designate wilderness. On the other hand, mineral development is a “principal or major use” of public lands under FLPMA. Congress further emphasized the importance of minerals development by, as noted above, declaring that public lands be managed “in a manner which recognizes the Nation’s need for domestic sources of minerals.”<sup>20</sup>

In addition, designation of LWCs and WSAs conflicts with a Congressional prohibition. Through the appropriations process, Congress has repeatedly denied funding for the implementation of Secretarial Order 3310 concerning the designation of “Wild Lands” since its release in 2010. LWCs and WSAs are “Wild Lands” in all but name. It is therefore a violation of both existing law and the multiple-use mandate for BLM to designate LWCs and WSAs in any planning document, and they should not be included in this RMP update.

### **Fluid Leasable Minerals**

Regarding management opportunities to reduce loss of gas from productive use and reduce impacts to other resources due to flaring, producers have always desired marketing opportunities for the associated gas produced during oil development. However, as Bakken gas was found to be particularly laden with natural gas liquids, or “wet,” quick market takeaway was not possible without associated gas processing and major investment. The lack of infrastructure for gas takeaway led to increased flaring of gas within North Dakota in 2010-2013. Flaring of natural gas peaked in the Bakken in 2013 at 36%.

In March 2014, the North Dakota Industrial Commission (NDIC) approved a policy by the state’s Department of Mineral Resources to regulate the amount of gas flared. The first target required oil companies to have a gas capture plan and capture 78% of the total natural gas production for beneficial use by April 2016. The goals were then increased to 85% capture by November 2016, 88% in November 2018, and 91% in November 2020. Currently, ND oil producers are meeting the gas capture targets. Infrastructure has been able to keep pace with increased production. Meeting these targets has required significant investment in gas gathering and gas processing infrastructure. It has been reported that more than \$18 billion has been invested in North Dakota for these purposes to date, with billions still planned to match future development and allow the industry to remain in compliance with the ND gas capture rules.

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<sup>20</sup> 43 U.S.C. § 1701(a)(12)

North Dakota is a unique and challenging environment for right-of-way acquisition. In addition, pipeline companies operating in North Dakota face significant federal permitting challenges (including the potential need for multiple agency approvals from some or all of BLM, U.S. Forest Service, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, local Tribal Nation authorities, individual allottees, and BIA) when attempting to construct a gas gathering pipeline. BIA right-of-way issues have had significant negative impact on North Dakota's efforts to reduce flaring and have led to lower gas capture rates for wells on lands subject to BIA jurisdiction.<sup>21</sup>

Even for wells already connected to a gas gathering system, the revenue generated by captured gas is in many cases too small to justify the significant infrastructure investments needed to address flaring caused by existing capacity issues. Consequently, BLM must consider equipment and infrastructure costs when evaluating the economics of gas capture. This becomes especially apparent when the economics of remote capture technology are examined. As the Interior Board of Land Appeals has noted, "[t]he fact that locating a compressor at every surface pad would be uneconomical and would not make sense is undoubtedly broadly true in almost any situation involving production from multiple wells and surface pads in a particular area (and for those reasons, no lessee is likely to do so)."<sup>22</sup> Requiring lessees to make uneconomic investments to capture and market gas is irrational, wasteful, and arbitrary and capricious.

The BLM Management Analysis includes many passages on flaring as wasting resources. The following questions need to be considered when discussing gas resources and whether they are being wasted:

- How much would a redundant system cost to capture all flared gas?
- Is it possible to capture all flared gas? What percentage of flaring is required due to preventive maintenance of pipelines?
- Would the leasing of large blocks of parcels allow for the orderly development of oil and gas reserves by providing more financial certainty for the cost of infrastructure? Leasing small groups of parcels might not provide the economic basis for that large investment.

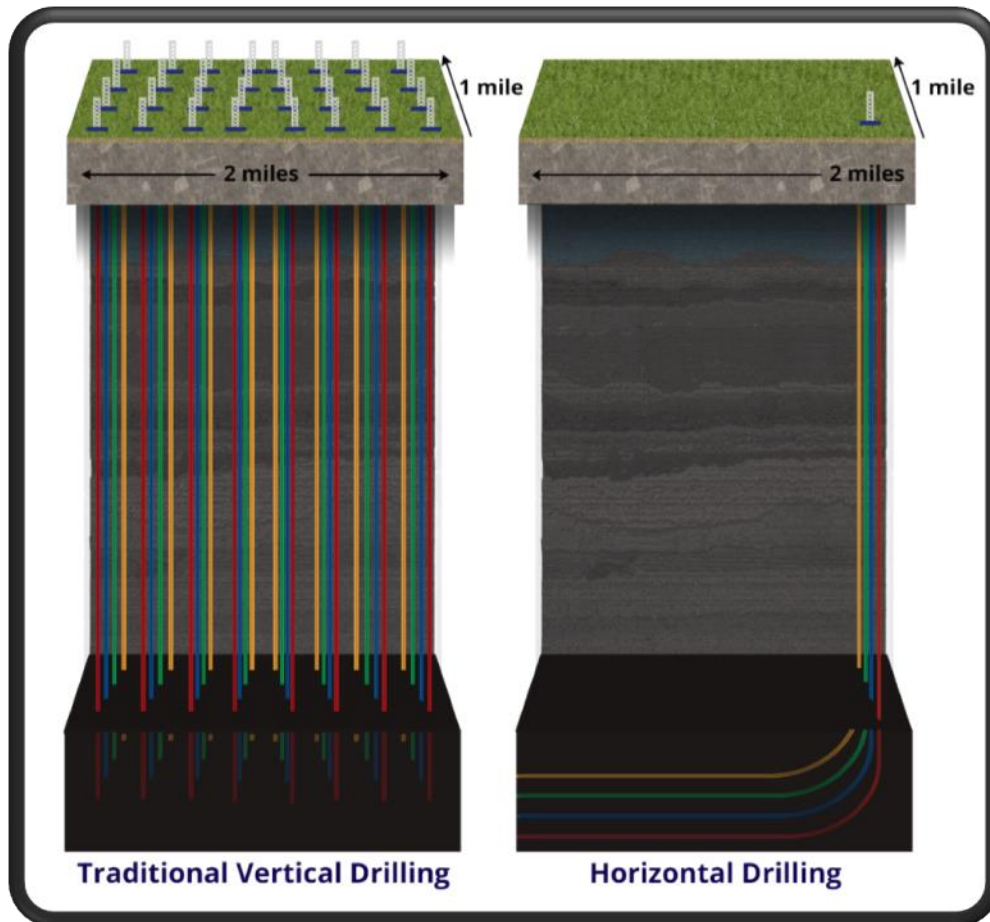
Our industry has made continued technological advancements in oil extraction that benefit the environment by reducing surface area impacts. One of said advancements is the development of horizontal drilling (also called directional drilling). This procedure allows multiple wells to be drilled on a single well pad. In the past, vertical drilling was predominant, only one well per well pad placed as often as every 40 acres, impacting up to 10 or 12 percent of the surface area. The advancements in technology in horizontal drilling permits up to 28 wells on a single well pad, producers recover more oil using fewer wells and less than .5 percent of the surface area in North Dakota<sup>23</sup>. Thanks to multi-well pad development, the average impact per well is 1.0–1.25 acres rather than 5 acres. The 5-year impact will be on the order of 310–390 acres rather than 1,550 acres.

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<sup>21</sup> See Director's Cut, North Dakota Industrial Commission Oil and Gas Division (August 14, 2020), <https://www.dmr.nd.gov/oilgas/directorscut/directorscut-2020-08-14.pdf> (showing an 85% capture rate for gas from Bakken wells on the Fort Berthold Indian Reservation, compared to a 90% capture rate for gas from off-reservation wells).

<sup>22</sup> *Rife Oil Properties, Inc.*, 131 IBLA at 374 n.12.

<sup>23</sup> See website for more details: <https://energyofnorthdakota.com/home-menu/how-oil-is-produced/horizontal-drilling/>



Multi-well pad development provides a myriad of benefits such as development of on-lease and off-lease minerals, connecting “stranded” oil and gas wells that are not connected to gas gathering, and connection to existing gathering systems for oil, gas, and produced water. In permitting development projects, drilling units commonly encompass multiple lease tracts that would be unfairly affected by the NSO and timing restrictions. These options are severely hindered by inflexible lease stipulations and administrative policies that seek to push development off existing well pads and onto adjacent landowners.

We urge BLM to take new technologies into account as well as new practices of consolidated infrastructure. Consolidated infrastructure improves impacts on soil erosion, weeds, visual resources, air and other impacts and allows for oil and gas to be compatible with the other multiple uses of BLM managed lands. The benefits and possibilities due to technological advancements, as seen above, in the industry are a good thing for all parties involved.

#### **Areas of Critical Environmental Concern**

BLM notes that no areas of critical environmental concern (ACEC) are currently designated in the planning area, but new designations will be considered during the RMP process. We oppose any ACEC designation that is not narrowly tailored in scope and limited in its impact beyond the boundaries of the area. Any surface use restrictions that arise from a new ACEC should be carefully examined and justified

in the RMP and balanced with BLM's multiple use mandate for managing public lands. Any ACEC must also respect all valid existing rights, as outlined in more detail previously in these comments.

### **Social and Economic Conditions**

Oil and gas development is vital to North Dakota's economy, providing substantial revenues to the state and local governments that support roads, schools, public safety and other critical services. The oil and natural gas industry also provides billions of dollars in annual economic impact and supports thousands of jobs.

Under FLPMA, BLM is required to integrate social science and economic information in the preparation of land use planning decisions. BLM's Land Use Planning Handbook incorporates this requirement by directing BLM to analyze demographic, economic, social, and fiscal conditions, as well as the impacts to conditions and trends associated with the alternatives to be addressed.

The RMP must include an accurate and timely socio-economic analysis that considers the economic benefits of oil and natural gas development. This analysis should include the potential value of oil and natural gas sales, royalty revenues, production and sales tax revenues and wages generated by the increase or decrease in production that results from each alternative.

The North Dakota Petroleum Council commissions a study by North Dakota State University every other year to measure the economic impact of the industry in the state. The latest data, from 2017, found that the gross business volume for the entire industry, including infrastructure spending, in North Dakota was estimated at \$32.6 billion. The industry supported 51,400 jobs with a total payroll of \$3.8 billion. Additionally, the industry was estimated to make direct contributions to local and state government tax revenues of \$2.7 billion. Secondary business activity generated an additional \$188 million in government revenues in 2017, with over \$82 million of the total representing sales tax collections.<sup>24</sup> We encourage the BLM to utilize this study as part of its analysis.

In BLM's Analysis document, it is acknowledged that energy development is a key economic driver for counties within the Bakken region specifically. However, we want to emphasize that the oil and gas industry benefits the entire state and all residents. The Bakken region has seen exceptional growth since hydraulic fracturing and horizontal drilling operations have increased in the last decade. Towns in western North Dakota, where outmigration was previously a major concern, have become high-growth areas in the state. The tax revenues generated by the oil and gas industry nonetheless benefit every part of the state. In fact, from 2014-2018, oil extraction and production tax revenues made up approximately 50% of all taxes collected by the State of North Dakota. These tax dollars are distributed to every county in the state for water, education, transportation, and conservation projects. The positive impacts and economic stimulus the oil and gas industry provide for the state cannot be overstated.

We recommend that BLM include a comprehensive socio-economic impact analysis that analyzes the positive economic benefits of the industry to the State of North Dakota as a whole. Such an analysis is used to assess the social and economic consequences of implementing the various alternatives identified through the planning process. The impact analysis must also include recent and verifiable

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<sup>24</sup> Dean A. Bangsund and Nancy M. Hodor, "Petroleum Industry's Economic Contribution to North Dakota in 2017", (North Dakota State University, 2019), page xi-xii.

income and employment information for various economic sectors, community infrastructure, state and local revenues and expenditures, and land use patterns. Mineral development plays a large role in the local economic growth and opportunity for the State of North Dakota.

The socio-economic analysis within the EIS should also account for the adverse economic impacts from certain restrictions on development and how such restrictions would negatively impact mineral development, as well as the related impacts to jobs and the local economies. These impacts include tax revenues, employment, energy prices and royalty payments. Any decision by BLM in the RMP process that reduces mineral development must fully consider the economic impact of restricting oil and gas development on lands in the Project Area before making any final decisions on an RMP.

### **Treaty and Tribal Interests and Cultural Resources**

The oil and natural gas industry takes seriously its obligations to protect cultural resources and fully engage in the National Historic Preservation Act's (NHPA) Section 106 process for tribal consultation. Oil and natural gas development can and does coexist with adequate protections for cultural resources and tribal interests, and we urge BLM to strike a proper balance between these resources in the RMP. Unfortunately, the Section 106 consultation process creates a great deal of uncertainty for companies operating in areas near historic cultural resources, so we urge BLM to provide clarity in this area.

Specifically, the scoping notice suggests that BLM is concurrently conducting a Class I inventory effort for cultural resources and will develop priorities for site protection, including surface use restrictions, visual buffers and physical barriers. We support appropriate management of BLM lands for these site protections, but request that any surface use restrictions or buffers be carefully considered, limited in scope to the least restrictive measures necessary to protect the sites, and identified early enough in the RMP process that the public is able to comment on any proposed protections.

We also request that BLM provide clear guidance regarding cultural resources located on private lands within the planning area, as privacy and landowner access concerns have arisen in similar situations across the West. In those situations, operators have been required to facilitate tribal consultation for sites located within expansive areas of potential effects (APE), in many cases where the operator has no right to access the private lands. BLM should clarify tribal consultation requirements on private surface in the RMP so that these issues do not occur in the planning area. BLM should also ensure that the RMP properly defines APEs so they are not overly expansive and unduly burdensome.

### **Public Health and Safety**

Regarding public health and safety, we want to reiterate statements already made throughout this comment document. Our industry operators comply with all rules and regulations impacting public health and safety. The North Dakota Industrial Commission and the North Dakota Department of Environmental Quality enforce many laws and regulations to ensure public health and safety is protected throughout the resource development process. We maintain good relationships with these agencies and take our responsibility to remain in compliance very seriously.

We do not believe it is necessary for BLM to promulgate additional rules and regulations in these categories through a new RMP and create duplicative regulations that will add burdensome costs without providing any additional benefit.

## Conclusion

In conclusion, we appreciate the opportunity to submit these comments on the Notice of Intent to Prepare a Resource Management Plan and Associated Environmental Impact Statement for the North Dakota Field Office – public scoping process. We look forward to working with BLM and other interested stakeholders in the development of the RMP/EIS for the North Dakota Field Office.

Please do not hesitate to contact us if you have any questions or would like additional information.

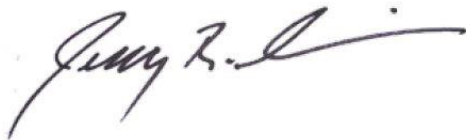
Sincerely,



Kari Cutting, Vice President  
North Dakota Petroleum Council



Tripp Parks  
Vice President of Government Affairs  
Western Energy Alliance



Jerry Simmons, President/CEO  
Domestic Energy Producers Alliance