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WESTERN ENERGY ALLIANCE

September 6, 2024

Sonya Germann
Montana-Dakotas State Director
Bureau of Land Management
Attention: North Dakota RMP/EIS
99 23rd Avenue West, Suite A
Dickinson, ND 58601

RE: Objections to the U.S. Bureau of Land Management's Resource Management Plan for North Dakota.

Submitted electronically at:
https://eplanning.blm.gov/eplanning-ui/project/1505069/595/8020579/comment

The North Dakota Petroleum Council (NDPC) and Western Energy Alliance (collectively the Associations) submits this letter as a formal protest against the Proposed Resource Management Plan (RMP) for North Dakota under Alternative D, as detailed in the Final Environmental Impact Statement (FEIS).

The NDPC represents over 550 member companies that are integral to the oil and gas industry in North Dakota, South Dakota, and the Rocky Mountain Region. Our members are involved in all facets of the industry, including exploration, production, transportation, refining, and related services.

Working with a vibrant membership base for over 50 years, Western Energy Alliance stands as a credible leader, advocate, and champion of independent oil and natural gas companies in the West. Our expert staff, active committees, and committed board members form a collaborative and welcoming community of professionals dedicated to abundant, affordable energy and a high quality of life for all. Most independent producers are small businesses, with an average of fourteen employees.

The Associations have a direct and substantial interest in the outcome of this RMP, as the proposed plan will significantly impact the ability of our members to operate effectively within the region. The restrictions proposed under Alternative D are particularly concerning, as they would impose severe limitations on oil and gas development, contrary to the intent of the Mineral Leasing Act. These restrictions would not only hinder resource development but also pose a serious threat to the economic vitality of North Dakota, the broader Great Plains region, and the national energy landscape.

The Associations acknowledge the BLM's efforts in attempting to strike a balance between conservation priorities and the development of energy resources through the proposed RMP under Alternative D. We recognize that Alternative D offers more flexibility compared to Alternative B, which was the preferred alternative in the Draft EIS. This shift demonstrates the BLM's willingness to consider the importance of resource development in North Dakota. However, despite these efforts, Alternative D still misses the mark. It imposes excessive restrictions that do not adequately support or allow for responsible energy development.

In our previous comments submitted on May 22, 2023, during the Draft RMP process, the Associations outlined several key concerns that we believe have not been fully addressed in the final proposal. This letter outlines our objections to Alternative D, detailing how the proposed plan's provisions would adversely affect the oil and gas industry, conflict with federal law, and undermine the economic and energy security of the region.

Protester's Information

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Interest: The proposed RMP directly impacts the Associations and their members, as it restricts access to federal lands essential for oil and gas development. These restrictions will result in reduced production, increased costs, and diminished economic returns for their members, thereby adversely affecting the regional and national economy. Additionally, the proposed plan's provisions may set precedents that could negatively influence future land management decisions across the United States.

Summary of Objections

This protest letter addresses several key objections to the Proposed RMP under Alternative D, including:

1. **Restrictions on Oil and Gas Development**: The proposed plan imposes unnecessary and excessive restrictions on oil and gas leasing and development, which are inconsistent with the Mineral Leasing Act and detrimental to the economic interests of North Dakota.

2. **Visual Resource Management (VRM) Classifications**: The stringent VRM classifications proposed under Alternative D are overly restrictive and fail to consider the minimal visual impact of modern drilling techniques.

3. **NSO, CSU, and TL Stipulations**: The stipulations related to No Surface Occupancy (NSO), Controlled Surface Use (CSU), and Timing Limitations (TL) are overly burdensome and increase operational costs, reducing the viability of oil and gas projects.

4. **Right-of-Way (ROW) Restrictions**: The proposed ROW restrictions under Alternative D create significant barriers to the development of essential infrastructure necessary for resource extraction and transportation.

5. **Coal Leasing Restrictions**: The limitations on coal leasing under Alternative D threaten energy reliability and conflict with federal policies aimed at ensuring a stable energy supply.

The following sections elaborate on each of these objections in detail, providing specific references to the Proposed RMP and FEIS, as well as supporting evidence from previous submissions made during the planning process.

Objection to Restrictions on Oil and Gas Development

The Proposed RMP under Alternative D imposes severe restrictions on oil and gas development, particularly through the closure of low-potential areas and state-designated drinking water source protection areas to future leasing. The closure of these areas limits the potential for future production and exploration, restricting access to resources that could become economically viable with advances in technology.

The 213,100 acres proposed to be closed to fluid mineral leasing comprise 44% of the available acres across North Dakota. Furthermore, 53% of the remaining acres would be subject to further stipulations such as NSO, CSU, and TL provisions. This leaves only 3% of the BLM-administered mineral acres available for lease under standard terms and conditions. These restrictions are inconsistent with the Mineral Leasing Act and could significantly negatively impact North Dakota's economic vitality and the broader energy security of the United States.

The Mineral Leasing Act (MLA) was enacted to promote the orderly development of mineral resources on public lands, ensuring that these resources contribute to the nation's energy supply and economic stability. The proposed closures under Alternative D contradict the MLA's intent by unnecessarily restricting access to lands with potential for oil and gas development.

The 213,100 acres targeted for closure, while deemed to have "low potential" by the BLM, may still hold significant untapped resources. Advances in extraction technology, particularly in hydraulic fracturing and horizontal drilling, have demonstrated that previously overlooked areas can become economically viable. By preemptively closing these areas, the BLM could be stifling future development opportunities and failing to consider the potential long-term value of these resources.

North Dakota's economy is heavily reliant on the oil and gas industry, which directly contributes to job creation, tax revenue, and the overall economic health of the state. The proposed closures under Alternative D would lead to reduced exploration and production activities, resulting in significant economic losses not only for industry but also for the communities that depend on it. A reduction in oil and gas production will lead to lower state and local revenues, which fund critical public services such as education, infrastructure, and healthcare. The broader economic impact would include job losses in both the oil and gas sector and the many ancillary industries that support it, from construction and manufacturing to retail and hospitality.

The United States has made significant strides toward energy independence in recent years, with North Dakota playing a crucial role in this achievement through its substantial oil production from the Bakken formation. The restrictions under Alternative D would undermine these efforts by potentially reducing the nation's domestic production capacity, making the U.S. more reliant on foreign energy sources.

The proposed RMP could also threaten the stability of the national energy supply by limiting the development of oil and gas resources in North Dakota. The energy sector requires a predictable and supportive regulatory environment to invest in the infrastructure needed to maintain and expand production. The uncertainty and constraints introduced by Alternative D could deter investment, leading to long-term reductions in domestic energy production.

The BLM's justification for these closures appears to be based on outdated assessments of resource potential and environmental impact. Modern oil and gas extraction techniques have significantly reduced the environmental footprint of development activities. Technologies such as pad drilling, which allows multiple wells to be drilled from a single location, minimize surface disturbance and reduce the overall impact on surrounding ecosystems. Additionally, the development of these areas would already be managed with stringent environmental safeguards to ensure that water resources and other critical habitats are protected.

Rather than a blanket closure to any leasing and development, the BLM has imposed lease stipulations to protect other resource values. As detailed below, the Associations find these stipulations excessive but also wish to remind the BLM that the requirements of the Energy Policy Act of 2005, as well as the Energy Policy Conservation Act Amendments of 2000, require federal land management agencies to <u>use the least restrictive means necessary to protect other resource values</u>.

Blanket closure to a principal use of public lands is not the least restrictive means. Moreover, blanket closure is inconsistent with the BLM's own Land Use Planning Handbook. The Land Use Planning Handbook provides that areas should only be closed to leasing when "other land or resource values cannot be adequately protected with *even the most restrictive lease stipulations*." BLM Handbook H-1601, App. C at 24. The BLM should consider a more nuanced approach that allows for responsible development while addressing environmental concerns through targeted mitigation measures that are consistent with its own stated policies.

The Associations strongly urge the BLM to reconsider these closures and adopt a more balanced approach for responsible development that prioritizes the accessibility of these critical resources. Failure to do so may have far-reaching negative consequences for the state's economy, the national energy supply, and the many communities that depend on the oil and gas industry for their livelihoods.

Objection to Visual Resource Management (VRM) Classifications

The Proposed RMP under Alternative D applies Visual Resource Management (VRM) classifications that impose significant restrictions on surface disturbances essential for oil and gas infrastructure development. These classifications are based on outdated perceptions of visual impact and fail to account for technological advancements that have significantly reduced the footprint of oil and gas operations. The restrictive nature of these VRM classifications is unwarranted and could lead to adverse economic impacts, including delays, increased costs, and potentially halted projects.

The VRM classifications under Alternative D do not adequately reflect the industry's ability to minimize its visual impact. Historically, oil and gas operations were associated with significant surface disturbances, but advances in technology, such as horizontal drilling and the use of multi-well pads, have dramatically reduced the surface footprint of these operations. Multi-well pads allow for the extraction of resources from multiple wells using a single pad, significantly reducing the need for additional infrastructure such as roads and pipelines. Longer laterals—sometimes extending up to three miles—further minimize the environmental and visual impact by reducing the number of surface locations required for drilling.

The introduction of new VRM areas under Alternative D could impose severe limitations on the development of necessary infrastructure for energy projects. High VRM classifications typically restrict surface disturbances, which are essential for the construction of drilling pads, roads, pipelines, and other infrastructure. These restrictions not only impact the timeline for bringing new resources to market but also increase the cost of project development. In some cases, the limitations imposed by VRM classifications could make certain projects economically unfeasible, leading to delayed or canceled developments and potentially resulting in litigation over the restrictions.

The economic impact of these VRM classifications cannot be overstated. The restrictions associated with higher VRM classifications could slow down or even halt new project developments, leading to increased costs and delays. This would have a direct negative effect on local communities, as the economic benefits of these projects—including job creation, public revenues, and investment in local infrastructure—would be diminished or lost entirely.

Given the industry's ability to operate with such a minimal footprint, the Associations advocate for more flexible VRM classifications that take into account these technological advancements. Flexibility in VRM classifications would allow the industry to continue contributing to the state's economy while ensuring that visual impacts are minimized. This balanced approach would support both economic growth and conservation goals, providing a win-win scenario for all stakeholders involved.

The Associations strongly urge the BLM to reconsider the proposed VRM classifications and adopt a more flexible approach that reflects the modern realities of oil and gas development. By doing so, the BLM can support responsible resource development while minimizing visual impacts and preserving the natural beauty of North Dakota's landscapes.

Objection to No Surface Occupancy (NSO), Controlled Surface Use (CSU), and Timing Limitation (TL) Stipulations

The Proposed RMP under Alternative D imposes stringent No Surface Occupancy (NSO), Controlled Surface Use (CSU), and Timing Limitation (TL) stipulations that significantly constrain oil and gas operations. While these stipulations are intended to protect environmental resources, their blanket application across large areas creates excessive operational constraints, increases costs, and reduces the viability of projects. The Associations contend that these restrictions are overly broad and fail to recognize the effectiveness of modern avoidance and mitigation measures employed by the oil and gas industry.

NSO stipulations, in particular, are the most restrictive, prohibiting any surface-disturbing activities within designated areas. These stipulations are often applied without sufficient justification or consideration of alternative mitigation strategies. The oil and gas industry has demonstrated its ability to avoid and mitigate impacts on wildlife and habitat through diligent environmental surveys, the use of multi-well pads, horizontal drilling, adjusting the timing of development activities, and implementing habitat conservation plans. These practices have repeatedly shown that oil and gas activities do not inherently threaten landscape conservation and health.

Although the Proposed RMP reduces NSO and TL stipulations by nearly half between Alternatives A and D, it significantly increases the number of CSU restrictions. This shift indicates that CSU stipulations have risen at the expense of reducing NSO and TL areas. However, the BLM has not provided clear, detailed mapping of the areas where CSU restrictions apply or the specific stipulations governing them. The Associations strongly protest the lack of transparency regarding the location and extent of CSU areas and request that the BLM provide this information before finalizing the RMP.

CSU and TL stipulations, while less restrictive than NSO, still impose significant operational challenges. CSU stipulations require additional mitigation measures that can increase project costs and delay timelines. TL stipulations restrict activities during specific periods, often leading to fragmented operations where drilling, construction, and other activities must be spread out over multiple years to comply with seasonal restrictions. This can make projects economically unfeasible, especially in areas where the geology is complex or the resources are deeper and more difficult to extract.

Furthermore, the BLM appears to have applied NSO and CSU stipulations on private surface lands, a point of significant concern for the Associations. According to the data mapped from the BLM's RMP, several areas under NSO and CSU stipulations overlap with private surface lands, including parcels #004, #005, #006, #009, #014, and #015, among others. The BLM's surface management authority is limited to federal lands, and the inclusion of private surface areas under these stipulations is beyond its jurisdiction. The Associations protest this overreach and request clarification from the BLM on why these private lands are subject to federal surface use restrictions.

In addition, the BLM's species management requirements should be consistent with the guidelines established by the U.S. Fish and Wildlife Service (USFWS). Imposing more conservative measures than those required by USFWS places unnecessary burdens on operators without clear justification. The Assocations request that BLM align its wildlife stipulations with USFWS standards to ensure regulatory consistency and avoid unnecessary operational constraints.

Finally, the BLM must clarify how nearly 500,000 acres can be subject to NSO, CSU, or TL stipulations, especially given the overlap in surface areas and the total land area managed by the BLM. The combined surface stipulation areas far exceed the BLM's surface decision area, and the

Associations challenge the scope of these restrictions. The Associations request that the BLM provide a full explanation and justification of this acreage before the RMP is finalized.

The cumulative effect of these stipulations could render some operations nonviable, particularly for smaller operators who rely on access to federal lands for exploration and production. For example, the requirement to separate pad construction, drilling, and fracking over multiple years due to TL stipulations increases the overall cost of the project and extends the timeline for resource extraction. This not only reduces efficiency but also makes North Dakota a less attractive place for investment in oil and gas development.

The Associations believe that the RMP should prioritize avenues for oil and gas activities to avoid and mitigate wildlife and habitat impacts over overly broad applications of NSO, CSU, and TL stipulations. The Associations again remind the BLM that the requirements of the Energy Policy Act of 2005 and the Energy Policy Conservation Act Amendments of 2000 require federal land management agencies to use the least restrictive means necessary to protect other resource values. The current approach in Alternative D exceeds the scope necessary to limit environmental impacts, which are already addressed through permitting processes and industry best practices.

The Associations strongly urge the BLM to reconsider the scale of the proposed NSO, CSU, and TL stipulations in Alternative D. A more balanced approach that recognizes the effectiveness of modern mitigation measures and the operational realities of oil and gas development would allow for responsible resource extraction while protecting environmental values. This approach would support the continued viability of oil and gas projects in North Dakota, ensuring that the state remains competitive in the national energy market.

Objection to Right-of-Way (ROW) Exclusion and Avoidance Areas

The Proposed Resource Management Plan (RMP) under Alternative D introduces modifications to Right-of-Way (ROW) exclusion and avoidance areas that continue to impose significant barriers to the construction of essential infrastructure for the oil and gas industry. While some ROW exclusion areas have been adjusted to avoidance areas, these changes remain insufficient and fail to adequately address the industry's needs for transportation and infrastructure development. The Associations contend that these restrictions are detrimental to the timely and efficient transport of resources, pose challenges to the exercise of valid existing lease rights, and conflict with state and regional development goals.

ROWs are critical for the construction of pipelines, roads, and other infrastructure necessary for the transportation of oil, gas, and related resources. The ability to secure ROWs in a timely and predictable manner is essential for the development and operation of energy projects. The modifications in Alternative D, although slightly more flexible than previous alternatives, still impose significant barriers by designating large areas as avoidance zones. In these areas, obtaining ROWs is subject to stringent review processes, additional mitigation requirements, and potential delays that can jeopardize project timelines and increase costs.

These ROW restrictions could have a particularly severe impact on the energy supply chain. For example, the BLM's Waste Prevention Rule requires certification that a valid gas sales contract is in place, yet the inability to secure ROWs could preclude operators from establishing the necessary infrastructure to deliver gas to market. This situation creates a double jeopardy within BLM regulations, where leaseholders may be unable to exercise their valid existing lease rights due to the inability to obtain ROWs for essential infrastructure. This regulatory inconsistency not only undermines the economic viability of energy projects but also threatens to strand valuable resources that could otherwise contribute to the nation's energy supply.

The economic implications of these ROW restrictions are significant. Delays in securing ROWs can lead to higher project costs, making some developments economically unfeasible. This, in turn, could reduce investment in North Dakota's energy sector, slowing down development and potentially leading to job losses and reduced public revenues. Furthermore, the inability to construct necessary infrastructure could lead to higher energy costs for consumers, as supply chain inefficiencies are passed down through increased prices for goods and services.

In addition to economic impacts, these ROW restrictions are incompatible with state and regional development goals. North Dakota has prioritized the expansion and improvement of infrastructure to support economic growth and ensure the efficient transportation of resources. The restrictions under Alternative D could conflict with these goals by limiting the ability to build pipelines, roads, and other critical infrastructure. This not only hinders the state's ability to fully develop its energy resources but also impacts broader economic objectives, such as regional connectivity and trade.

The Associations strongly urges the BLM to reconsider the ROW exclusion and avoidance designations in Alternative D. A more flexible approach that allows for the timely and efficient construction of infrastructure would better align with the needs of the oil and gas industry, support the exercise of valid lease rights, and contribute to the state's economic development goals. By revising these restrictions, the BLM can facilitate the responsible development of North Dakota's energy resources while ensuring that the necessary infrastructure is in place to support a stable and reliable energy supply.

Objection to Coal Leasing Restrictions

The Proposed RMP under Alternative D imposes selective restrictions on coal leasing that threaten the viability of coal-fired power plants in North Dakota. These restrictions not only jeopardize the region's energy reliability and economic stability but also pose a direct threat to the ongoing operations of the oil and gas industry, one of the region's largest electricity consumers. The Associations contend that these restrictions represent federal overreach, infringe upon property rights, and disregard coal's critical role in ensuring a stable and affordable energy supply necessary for oil and gas operations.

Coal-fired power plants in North Dakota provide essential baseload power, supporting the state's energy needs and contributing to the stability of the broader regional power grid. The reliable and affordable electricity generated by these plants is crucial for the oil and gas industry, which relies on a steady power supply to extract, process, and transport resources. The restrictions proposed under

Alternative D, which aim to phase out coal by eliminating 95% of federal coal leases in North Dakota, pose a severe threat to the continued operation of these plants. This threat extends directly to the oil and gas industry, as the loss of coal-fired power plants would destabilize the power grid and lead to increased energy costs, ultimately impacting the viability of ongoing and future operations.

If coal-fired power plants are forced to close, the oil and gas industry may be compelled to rely on alternative power sources, such as portable gas-powered generation units, to maintain operations. This reliance on unnecessary portable generation across an entire field could likely result in a net increase in emissions, as these units are generally less efficient and more polluting than centralized coal-fired power plants. Such an outcome would be counterproductive to the environmental goals the RMP intends to achieve. Rather than reducing the environmental impact, the restrictions on coal leasing could inadvertently lead to higher emissions and greater environmental degradation, undermining the principles of sound environmental management.

The BLM's approach in Alternative D could be seen as an overreach of federal authority, infringing upon the rights of landowners to develop their property as they see fit and threatening the economic stability of the region. By selectively applying Coal Screen 4 to restrict leasing, the BLM is setting a concerning precedent that could destabilize local economies and undermine property rights. This approach fails to recognize that coal remains a vital component of North Dakota's energy mix and that any efforts to phase out coal should be carefully balanced with the need to ensure energy security and support for the industries that depend on it.

The Associations argue that these restrictions are not only economically harmful but also counterproductive from an environmental standpoint. Modern coal plants have significantly reduced their environmental footprint through the implementation of cleaner technologies and more efficient operations. Rather than imposing blanket restrictions on coal leasing, the BLM should consider a more balanced approach that allows for the continued operation of coal plants while supporting the addition of cleaner energy sources, such as natural gas and renewables, over time. This would help maintain the stability of the power grid and ensure that the oil and gas industry continues to have access to the affordable and reliable electricity it needs to operate effectively.

The Associations strongly urge the BLM to reconsider the coal leasing restrictions under Alternative D. These restrictions threaten the stability of North Dakota's energy supply, undermine the operational viability of the oil and gas industry, and could lead to unintended environmental consequences. A more balanced approach that supports both energy security and environmental management is necessary to ensure that North Dakota can continue to meet its energy needs while responsibly managing its natural resources.

Conclusion

In conclusion, the Associations strongly oppose the proposed RMP under Alternative D due to the significant restrictions it places on oil and gas development, the unjustified application of VRM classifications, the overly burdensome NSO, CSU, and TL stipulations, the restrictive ROW exclusion and avoidance areas, and the coal leasing limitations that threaten the stability of the region's energy supply. These restrictions collectively pose a severe threat to the economic vitality of North Dakota, the operational viability of the oil and gas industry, and the broader energy security of the United States.

The oil and gas industry is a cornerstone of North Dakota's economy, providing substantial employment, generating significant tax revenues, and supporting essential public services. The Proposed RMP, as it stands, undermines these contributions by imposing unnecessary and excessive restrictions that will lead to reduced investment, job losses, and diminished public revenues. Additionally, the destabilization of the energy grid through coal leasing restrictions further threatens the ongoing operations of the industry, potentially leading to increased emissions and greater environmental harm—outcomes that are counterproductive to the very goals the RMP seeks to achieve.

The Associations urge the BLM to reconsider the provisions of Alternative D and adopt a more balanced approach that supports responsible resource development, protects environmental values, and ensures the continued economic and energy security of North Dakota and the nation.

Signatures

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