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May 22, 2023

Mr. Loren Wickstrom
North Dakota Field Manager
North Dakota Field Office
Bureau of Land Management
Attention: North Dakota RMP/EIS
99 23rd Avenue West, Suite A
Dickinson, ND 58601

Comments submitted online at <https://eplanning.blm.gov/eplanning-ui/project/1505069/570>

Re: Comments on the Bureau of Land Management North Dakota Field Office Draft Resource Management Plan and Environmental Impact Statement, NEPA Number DOI-BLM-MT-C030-2020-0085-RMP-EIS

Dear Mr. Wickstrom:

The North Dakota Petroleum Council (NDPC) and Western Energy Alliance (WEA) (collectively the Associations) appreciate the opportunity to submit comments as the Bureau of Land Management (BLM) North Dakota Field Office considers the Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) providing a framework for the future management strategy that best meets the needs of the resources and values in the planning area of North Dakota.

Established in 1952, the NDPC is a trade association that represents more than 600 companies involved in all aspects of the oil and gas industry, including oil and gas production, refining, pipelines, transportation, mineral leasing, consulting, legal work, and oil field service activities in North Dakota, South Dakota, and the Rocky Mountain Region; to promote opportunities for open discussion, lawful interchange of information, and education concerning the petroleum industry; to monitor and influence legislative and regulatory activities on the state and national level; and to accumulate and disseminate information concerning the petroleum industry to foster the best interests of the public and industry.

The WEA represents 200 member companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas in the West. The WEA represents independent oil and gas producers, the majority of which are small businesses with an average of fourteen employees.

Importantly, North Dakota is ranked third in the nation in the production of oil, and the Associations' members produce 98 percent of the oil in North Dakota. North Dakota produced approximately 2.97 billion cubic feet of natural gas per day and 394 million barrels of oil in 2022. As an industry, we are proud of our environmental record and take very seriously our responsibility to be good stewards of the lands on which we operate. Our members have a vested interest in the BLM North Dakota Field Office's management direction of the RMP/EIS to guide future land management in North Dakota, both day-to-day and long-term, and efforts to further regulate the industry.

In the RMP/EIS Abstract, the BLM states:

*"The need for the North Dakota RMP is to address changes in resource conditions, shifting demands for resource uses, new technologies, new program and resource guidance and policies, and new scientific information since the development of the 1988 RMP. The purpose of this RMP is to develop management direction to guide future land management in the decision area. These decisions establish goals and objectives for day-to-day and long-term resource management. To achieve these goals and objectives, the RMP identifies uses (allocations) that are allowed, restricted, or prohibited. BLM has identified four specific purposes that describe BLM's distinctive role in the North Dakota landscape: **providing opportunities for mineral and energy development on BLM-administered lands, managing for the conservation and recovery of threatened, endangered, and special status species, providing for recreation opportunities, and managing for multiple other social and scientific values.**"*

The Associations believe the identified uses of BLM-administered surface lands should adhere to the parameters put in place by Congress, upholding the opportunities for mineral and energy development. The loss of production through restricted and prohibited uses not only impacts the energy security of the nation, but the economic security of thousands of North Dakotans.

The Associations Comments Approach

Even with the extended comment period, which we appreciated, our comments are not all-encompassing due to the extensive content in the RMP/EIS, and the absence of comment is not meant as agreement or support for any of the alternatives and proposed management decisions. Rather, we have highlighted topics and concerns, and illustrated efforts, solutions, and technologies already being implemented to assist BLM in producing a Proposed RMP/Final EIS management strategy flexible enough to adapt and grow as the practices and technologies continue to improve and sustainable enough to persevere the political and regulatory uncertainties and changes.

The "Dear Reader Letter" in the RMP/EIS, Volume 1, expresses BLM's desire to receive ". . . constructive feedback regarding the adequacy of the alternatives considered, the analysis of its respective management decisions, and any new information that would help us produce the Proposed RMP/Final EIS . . . (which is the next phase of the planning process)." More importantly, BLM has stated "in developing the Proposed RMP/Final EIS, the decision-maker may select management decisions from each of the alternatives analyzed in the Draft RMP/EIS to create a

management strategy that best meets the needs of the resources and values in this area, under the BLM’s multiple use and sustained yield mandate.”

Simply put, the BLM North Dakota Field Office and industry have worked together successfully under the current RMP developed in 1988 and through the Bakken boom years, providing opportunities for mineral and energy development while best meeting the needs of resources and values in the area. Industry has implemented efforts, solutions, and technologies for reducing surface disturbance, reclamation, and reducing emissions, as exemplary examples, without an updated RMP, that was slated for update starting in 2007. Due to BLM’s shift in workload priorities, the 2007 effort was postponed, and during the 16-year period since then, industry has continued to adapt and grow as the practices and technologies continue to improve and the regulatory landscape has escalated with compliance requirements, especially for air quality compliance. We are taking care of business in a responsible way, a sustainable way for energy development, security, and independence.

Throughout our comments, we have reiterated portions of the comments previously provided by NDPC jointly with the WEA and Domestic Energy Producers Alliance (DEPA) (comments dated August 28, 2020), and in addition, we are offering new comments, perspectives, and information on selected management decisions from each of the alternatives that could potentially impact our industry in North Dakota. Our general comment section highlights key topics including Statutory and Regulatory Framework – New Policy Issued in 2021, Valid Existing Lease Rights, Fee/Fee/Fed and Split-Estate Lands, Land Tenure Adjustments, Fluid Leasable Minerals, Areas of Critical Concern (ACEC), Air Quality and Climate, Waste Management (Minimization) Plan, Social and Economic Conditions (Disadvantaged Communities and Small Businesses Impacts), Soil Resources, Water Resources, Wildlife Protections, Visual Resources, Lands with Wilderness Characteristics, Treaty and Tribal Interests and Cultural Resources, and Public Health and Safety.

For our specific comments section, we are using Table 2.2: Land Use Plan Decisions by Alternative from Volume 1 of the RMP/EIS to organize comments and the specific lines of the table will be referenced to support ease of incorporating comments and ease of comment review by the BLM. Again, our comments are not all-encompassing due to the extensive content in the RMP/EIS, and the absence of comment is not meant as agreement or support for any of the alternatives and proposed management decisions.

General Comments

Statutory and Regulatory Framework – New Policy Issued in 2021

The Associations have serious concerns with the timing of this proposed RMP/EIS, issued during ongoing BLM regulatory actions, such as the proposed Waste Prevention Rule and now the proposed Conservation and Landscape Health Rule, and these rule impacts on the proposed RMP management decisions and resulting management strategies, with no further opportunity to comment on the impacts of these changing RMP management directions.

The Associations respectfully requests BLM initiate a supplemental public scoping process, at a minimum, and request BLM reissue the RMP/EIS for another extended comment period, 90 days, to provide the opportunity for more extensive review of policy change impacts on

management decisions, especially regarding timing limitations, No Surface Occupancy (NSO) stipulations, and controlled surface use (CSU) restrictions and in light of recent BLM regulatory actions further impacting management decisions.

As this proposed RMP/EIS is moved forward the Associations respectfully urge BLM to consider the unique characteristics of different types of energy development and not lump all energy resources into the same category.

The Associations believe it is important to reiterate the text of the *Statutory and Regulatory Framework* comments provided to BLM on August 28, 2020. The policies in place at the time of our 2020 comments on the BLM RMP/EIS public scoping process were aligned with the White House administration policies and BLM policy implementation based on promoting energy independence and economic growth and guidance to federal agencies to avoid taking actions that will unnecessarily burden domestic energy production. The policies put in place after the BLM RMP/EIS scoping process was completed (during the development of the RMP/EIS and prior to the issuance of the RMP/EIS for public review and comment on January 20, 2023) now emphasize tackling the “climate crisis” and bolstering resilience to the impacts of climate change.

A new Executive Order, E.O. 13990, issued on January 20, 2021, called for federal agencies to review existing regulations and policies issued between January 20, 2017, and January 20, 2021, for consistency with the climate crisis policy and promptly take steps to rescind any rules or regulations implemented under E.O. 13807 Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects. E.O. 13807 was revoked on January 20, 2021, with the issuance of E.O. 13990. Also, consistent with E.O. 13990, the Council on Environmental Quality (CEQ) rescinded its 2020 NEPA amendments and issued a final rule National Environmental Policy Act Implementing Regulations Revisions on April 20, 2022. This 2022 amendment restored provisions of NEPA that were in effect for decades before being modified in 2020. In 2020, the Associations and other stakeholders commented on a BLM scoping process not wholly reflective of the 2023 RMP/EIS proposed draft.

The Associations’ August 28, 2020 comments are reiterated herein for reference and emphasis.

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.” 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.”

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

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 provides 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.

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."

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

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”. 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

The Associations' August 28, 2020 comments are reiterated herein for reference and emphasis.

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”. Thus, according to federal statute, BLM cannot terminate, modify, or alter any valid or existing property rights through a land use plan update process.

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. 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.

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,” subject to the requirement that any modification must be reasonable, and only after site-specific NEPA analysis would support such a modification.

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. Thus, an RMP update prepared pursuant to FLPMA, after lease execution, is likewise subject to existing rights.

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.

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. 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.

Fee-Fee-Fed and Split Estate Lands

The Associations respectfully request BLM add an outline or summary to the RMP to specify which parts of the RMP would apply to Fee-Fee-Fed, split estate/Fee-Fee-Fed, and BLM surface/Fed-Fed-Fed.

The Associations respectfully request BLM specifically clarify the statement in Volume 3, Appendix K regarding BLM’s authority to take reasonable measures to avoid or minimize adverse environmental impacts resulting from authorized mineral lease activity.

“In summary, while the BLM does not have the legal authority in split estate situations to regulate how a surface owner manages his or her property, the agency does have the statutory authority to take reasonable measures to avoid or minimize adverse environmental impacts that may result from federally authorized mineral lease activity.”

This statement creates regulatory uncertainty as it is unclear if this “authority” statement applies to Fee-Fee-Fed as well as split estate/Fee-Fee-Fed.

As you are aware, in North Dakota, much of the federal mineral ownership was acquired through mortgage foreclosures in the 1930s, with the government later selling the surface and reserving all or a portion of the minerals. These small, checkerboard, federally owned tracts are unique to North Dakota whereas, in other states and basins, federal mineral ownership is more typically large public domain tracts. While most of the mineral ownership in the Bakken is privately held, a minority of federal ownership of minerals is present in approximately one-third of all spacing units. Sixty-six percent of North Dakota spacing units contain no federal public or Indian minerals, 24% contain federal public minerals, 9% contain Indian minerals, and 1% contain both.

The Associations are reiterating and further commenting on these known federal mineral ownership facts since the RMP/EIS text (as discussed above) regarding statutory authority is creating regulatory uncertainty about BLM’s “authority”. The regulatory uncertainty is further elevated by BLM’s proposed land tenure actions (discussed more specifically below). Also, BLM’s proposed Waste Prevention Rule, as drafted, appears to assert primary jurisdiction over hundreds of thousands of acres of private land currently under the jurisdiction of the North Dakota

Industrial Commission (NDIC). The Associations are concerned about the apparent alignment of these BLM actions to assert jurisdiction over lands outside their statutory and legal authority. BLM appears to be using the “climate crisis” as the basis to assert jurisdiction and regulate matters, such as air quality, that are outside its authority. 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 Clean Air Act (CAA).

For resource management plan conformance under FLPMA, RMPs allocate public lands (including minerals) for particular uses and establish the conditions under which those uses may occur. RMPs do not govern the use of non-Federal lands. Management actions in an RMP meant for the protection of Federal surface resources should not be applied to a Fee/Fee/Fed APD unless, and only to the extent that, activities authorized under the APD will impact Federal lands.

Land Tenure Adjustments

The Associations respectfully requests the BLM be more transparent about their existing and specific plans regarding land tenure adjustments for existing and proposed oil and gas development and leased/leasing areas.

“Land tenure adjustments. Landownership or jurisdictional changes. To improve the manageability of the BLM-administered lands and their usefulness to the public, the BLM has numerous authorities for repositioning lands into a more consolidated pattern, disposing of lands, and entering into cooperative management agreements. The BLM completes these land pattern improvements primarily through the use of land exchanges but also through land sales, jurisdictional transfers to other agencies, and the use of cooperative management agreements and leases.”

The Associations have serious concerns with the timing of this proposed RMP/EIS, issued during ongoing BLM regulatory actions, such as the proposed Waste Prevention Rule and now the proposed Conservation and Landscape Health Rule, and these rule impacts on the proposed RMP management decisions and resulting management strategies, with no further opportunity to comment on the impacts of these changing RMP management directions.

The small, checkerboard, federally owned tracts are unique to North Dakota. As such, the Associations are highly concerned about BLM’s plans regarding land tenure adjustments and the impact on blocked and or loss of production, especially on private (fee-fee-fed and split estate/fee-fee-fed lands) and state lands, through land tenure adjustments to restrict and prohibit uses and access.

Furthering the Associations’ concerns is the timing the newly proposed “*Conservation and Landscape Health Rule*” prior to finalizing this RMP/EIS (and finalizing the proposed Waste Prevention rule). This proposed rule’s priorities to “. . . clarify that conservation is a “use” within FLPMA’s multiple-use framework, and revise existing regulations to better meet FLPMA’s requirement that the BLM prioritize designating and protecting Areas of Critical Environmental Concern (ACECs)” appears to “provide an overarching framework for multiple BLM programs”, such as land tenure adjustments, to minimize surface use for oil and gas developments in the name of conservation and disregard the social and economic benefits to all North Dakotans.

Since BLM has stated the “RMP makes decisions about what is open and closed to new federal oil and gas leasing”, the concern with the potential for BLM to deny a submitted drilling permit and allow a non-governmental organization (NGO) to come in with a conservation project that makes land contiguous (as an illustrative example) is real.

Fluid Leasable Minerals

The Associations respectfully request the BLM North Dakota Field Office does not apply any new management directions to oil and gas industry, especially for fee-fee-fed and split estate/fee-fee-fed surface lands, with potential to impact future production opportunities, impact energy prices and energy security, and disadvantaged communities and small businesses for the sake of a political agenda and distortion of science regarding climate “crisis” and greenhouse gas emissions.

As this proposed RMP/EIS is moved forward in the process the Associations respectfully urge BLM to consider the unique characteristics of different types of energy development and not lump all energy resources into the same category.

Our industry has continued to implement technological advancements in oil extraction to benefit the environment by reducing surface area impacts. One of said advancements is the development of horizontal drilling. This process 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. Advancements in technology with horizontal drilling permit up to 28 wells on a single well pad, producers recover more oil using fewer wells and less than 0.5 percent of the surface area in North Dakota. Thanks to multi-well pad development, the average impact per well ranges from 1.0–1.25 acres rather than 5 acres.

As a result of this single, significant advancement, operations have limited impact on BLM-administered surface lands (less than 72 acres estimated over the next 20 years) in North Dakota, since 99% of the oil and gas wells (fee/fee/federal and split-estate oil and gas wells) are on private surface.

We are and have been meeting the goals of avoiding unnecessary impacts on other resources and land use and maintaining the integrity of federal oil and gas reserves to facilitate efficient and reasonable development.

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 gas,” 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%. Also, North Dakota is a unique and challenging environment for right-of-way acquisition. Furthermore, pipeline companies operating in North Dakota face significant federal permitting challenges (including the potential need for approvals from multiple

agencies such as 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.

In March 2014, 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. **The February 2023 report from North Dakota's Department of Mineral Resources shows 95% gas capture.**

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 NDIC gas capture rules.

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. Consolidated infrastructure minimizes impacts on soil erosion, weeds, visual resources, air quality, and other impacts, and allows for oil and gas operations to be compatible with the other multiple uses of BLM-administered surface lands. The benefits and possibilities due to technological advancements in the industry are beneficial for all stakeholders.

Areas of Critical Environmental Concern (ACEC)

The Associations have serious concerns regarding the timing of this proposed RMP/EIS, issued prior to the newly proposed "Conservation and Landscape Health Rule" and proposed rule's priority for designating and protecting ACECs, outside of the RMP scoping process and proposal, and eliminating the opportunity for further comment on designating ACECs and impacts to the RMP management directions and strategies.

The Associations respectfully oppose the designation of ACECs in North Dakota.

If the BLM proceeds with designating ACECs in North Dakota, the Associations respectfully opposes any ACEC designation that is not narrowly tailored in scope and limited in its impact beyond the boundaries of the area.

The newly proposed "Conservation and Landscape Health Rule" summary reads:

"The BLM proposes new regulations that, pursuant to the Federal Land Policy and Management Act of 1976, as amended, and other relevant authorities, would advance the BLM's mission to manage the public lands for multiple use and sustained yield by prioritizing the health and resilience of ecosystems across those lands. To ensure that health and resilience, the proposed rule provides that the BLM will protect intact landscapes, restore degraded habitat, and make wise management decisions based on

science and data. To support these activities, the proposed rule would apply land health standards to all BLM-managed public lands and uses, clarify that conservation is a “use” within FLPMA's multiple-use framework, and revise existing regulations to better meet FLPMA's requirement that the BLM prioritize designating and protecting Areas of Critical Environmental Concern (ACECs). The proposed rule would provide an overarching framework for multiple BLM programs to promote ecosystem resilience on public lands.”

Before this RMP/EIS, there were no ACECs designated in the planning area. The Associations believe the designation of ACECs in North Dakota is not necessary and we oppose any designations. The BLM North Dakota Field Office and industry have worked together successfully under the current RMP developed in 1988 and through the Bakken boom years, providing opportunities for mineral and energy development while best meeting the needs of resources and values in the area. Industry has implemented efforts, solutions, and technologies for reducing surface disturbance, reclamation, and reducing emissions, as exemplary examples, without an updated RMP. The industry has continued to adapt and grow as the practices and technologies continue to improve and the regulatory landscape has escalated with compliance requirements. The industry is and has been meeting the goals of avoiding unnecessary impacts on other resources and land use and maintaining the integrity of federal oil and gas reserves to facilitate efficient and reasonable development. We are taking care of business in a responsible way, a sustainable way for energy development, security, and independence.

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.

Air Quality and Climate

As this proposed RMP/EIS is moved forward in the process the Associations respectfully urge BLM to consider the unique characteristics of different types of energy development and not lump all energy resources into the same category.

The Associations believe BLM lacks jurisdiction to regulate air quality, which is subject to NDDEQ jurisdiction. BLM should defer to the North Dakota Department of Environmental Quality (NDDEQ) (and EPA when applicable) and eliminate all redundant, costly, and/or conflicting air quality control provisions from the RMP. As such, the Associations believe the RMP air quality management directions are burdensome and duplicative, disregard the efforts of operators to maximize gas capture and minimize emissions, and based on a fundamentally flawed social cost of carbon greenhouse gas (GHG) cost-benefit analysis.

The Associations 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 third 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.

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 CAA and Ambient Air Quality Standards (AAQS). Under the CAA, each state has the primary responsibility for assuring air quality within the state.

NDDEQ has primary jurisdiction over air quality regulation programs in North Dakota, including on BLM-administered surface lands. BLM is not legally authorized to regulate air quality standards and it is the responsibility of the NDDEQ to issue air quality 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 and emission inventories to determine potential air resource impacts from BLM-authorized activities. The Associations encourage BLM to utilize state and industry data when developing any type of model to ensure the modeling is accurate and completed with the highest level of expertise.

Burdensome and Duplicative Requirements

BLM's proposed air quality management directions for the oil and gas industry, already operating under and complying with multiple established state and federal permitting and regulatory programs focused on gas capture and controlling emissions, including the requirements of EPA's New Source Performance Standards (NSPS) regulations, seem to disregard the efforts of operators to maximize gas capture and minimize emissions, including equipment leaks. In disregarding these on-going and successful efforts, including voluntary efforts that go beyond the current requirements, BLM is creating management directions and practices to address emission reductions already being realized, and applying additional burdensome and duplicative requirements to achieve no additional reduction of emissions, and a probable net increase.

Industry is Already Reducing Flaring and Emissions

In North Dakota, produced natural gas is associated or dissolved in the crude oil and cannot be produced independently from each other. The State of North Dakota already has regulations in place that:

- (1) Require a minimum of 91% of the associated gas be captured (not flared). Operators are required to report their gas capture data monthly and many companies have their own goals that exceed 91%. This data is available to the public. The latest report from North Dakota's Department of Mineral Resources shows 95% gas capture in February 2023.
- (2) Prohibit the venting of natural gas unless it is flared or otherwise controlled as approved by the NDDEQ Division of Air Quality.

- (3) Require the control of vapors from storage tanks with the implementation of a control device prior to first production and a control device equipped and operated with an automatic igniter or a continuous burning pilot.

Fundamentally Flawed Social Cost of Carbon (GHG) Analysis

The oil and gas industry is an integral part of the U.S. economy. In 2020, oil and natural gas accounted for 69% of the energy consumption in the U.S. (Source: U.S. EIA). Affordable energy prices generally benefit all sectors of the American public, and cost-effective regulation of the energy industry can benefit human health and the environment.

From 2008 to 2022, the economic benefit from the oil and gas industry in North Dakota was approximately \$25 billion in extraction and production taxes alone. In a 2021 economic impact study, almost 50,000 jobs are supported by industry with a payroll totaling \$4.5 billion. North Dakota has two major economic generators: agriculture and energy. The state has more than 17,563 producing wells and anticipates the development of tens of thousands of additional wells in the decades to come.

When it comes to climate change, the United States has reduced greenhouse gas emissions more than any other industrialized country. The increased production of natural gas has helped decrease emissions in the United States. BLM references EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019 for estimates with regard to pneumatic device and equipment leaks. This inventory has been updated to include 2020 data, and for petroleum and natural gas systems, the 2020 inventory shows a 15% decrease in methane from 1990 to 2020. This decrease in methane emissions is due to the many advancements in the oil and gas industry (e.g., equipment, drilling, completions, production, technologies for sampling and analysis, and for controlling emissions). The Associations believe the industry has demonstrated its ability to manage fossil fuels and fossil fuel-powered technologies to neutralize its own climate impacts (climate mastery), as we have discussed above with our efforts to capture gas and minimize emissions.

However, 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. The Associations have significant concerns with the EPA's changing basis for determining the impact from GHG emissions for any proposed plan and rulemaking actions, in that EPA is not comparing domestic benefits with domestic costs for significant energy actions such as RMP/EIS development. An illustrative example of our concern is provided directly below.

The WEA submitted comments on "*Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates Under Executive Order 13990*" (submitted June 21, 2021, via Regulations.gov) in which they reiterated the purpose of the CAA with regard to determining the impact from proposed rulemaking actions.

‘A focus on domestic impacts only also aligns well with the principles laid out in the Clean Air Act. In section 101(b)(1) of the Clean Air Act, for example, Congress wrote that the purpose of the Act is to “protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and productive capacity of its population.” This language has led to interpretation used by multiple agencies that the Clean Air Act is limited to covering impacts and benefits of regulation domestically.’

EPA’s cost-benefit analysis, the full cost of GHG emissions, takes global damages into account for domestic matters. The global Social Cost of Carbon is \$51 per ton and the U.S. Social Cost of Carbon is \$7 per ton, a significant cost of carbon difference creating an unbalanced regulatory cost-benefit analysis, a fundamentally flawed GHG emission calculation basis. This flawed calculation basis leads to overstated domestic GHG emissions, more GHG emissions than would result in the absence of regulation, and EPA making regulatory decisions to restrict domestic activity based on a global calculation basis. The outcome is no beneficial reduction of GHG emissions and a probable net increase of GHG emissions due to more equipment installed and energy expended, creating more GHG emissions than GHG emissions eliminated.

Thus, the Associations have concerns with BLM’s use of this fundamentally flawed analysis for the RMP/EIS management decisions and directions.

The Air Quality Technical Support Document – BLM North Dakota RMP/EIS states, *“Since climate change is a global problem, the analysis area for greenhouse gases cannot be restricted to one region. For the purposes of the RMP/EIS, the greenhouse gas/climate change analysis area is focused on North Dakota and the United States but worldwide data are also used in the greenhouse gas analysis described in Section 6 of this document.”*

The Associations separately provided comments to BLM on January 30, 2023 regarding the proposed rule on Waste Prevention Production Subject to Royalties, and Resource Conservation. In our comments we provided a discussion on our concerns with the fundamentally flawed social cost of carbon (GHG) cost-benefit analysis. We are reiterating NDPC’s comments herein for reference and emphasis as the proposed RMP/EIS is a significant energy action and we believe all BLM actions are now based on a fundamentally flawed analysis considering global damages for domestic matters.

NDPC does not believe the BLM’s Regulatory Impact Analysis (RIA) appropriately justifies the economic burden of the Proposed Rule on domestic oil and gas producers. The NDPC asks that the BLM focus on the parts of this proposal that will have the most cost-effective impact on reducing waste going forward and reconsider some of the unnecessarily burdensome requirements, including but not limited to, regulating sources, including insignificant sources of

lost gas under the regulatory authority of EPA, administrative recordkeeping, and reporting requirements that do not directly or significantly impact waste reductions.

NDPC considers this proposed rulemaking a significant energy action, a significant energy action that if promulgated will have adverse effects on energy supply. We have significant concerns with the BLM's Regulatory Impact Analysis (RIA) and the stated cost-benefit outcomes skewing the balance in favor of the proposed action. As it stands, the Proposed Rule's Regulatory Impact Analysis (RIA) has not demonstrated adequate benefits to justify promulgating the rule. The Proposed Rule would impose costs to industry of about \$122 million per year (costs annualized for a 7 percent discount rate). The estimated benefits to industry are significantly less at around \$55 million per year (costs annualized for a 7 percent discount rate) and these benefits to industry are based on the recovery or sale of captured gas from pneumatic controllers, storage tanks, and LDAR. BLM is proposing significant requirements on low emitting sources without considering the secondary emissions that will result from the Proposed Rule's new requirements. We believe the BLM's actions could have a more significant negative global impact than the small sources the BLM is trying to control. For this reason, we believe the BLM must consider any secondary emission impacts in their analysis.

Additionally, as detailed in the RIA, the Proposed Rule states an estimated benefits to society of \$427 million per year from reduced greenhouse gas emissions. EPA's social cost of carbon is based on a fundamentally flawed cost-benefit analysis by comparing global benefits of methane emissions reductions with domestic cost of compliance. The EPA does not have any basis in the Clean Air Act that would allow this comparison. BLM's mission is to focus on domestic matters, domestic oil and gas production, and regulating domestic waste prevention, however, the BLM uses a global social cost of carbon to justify burdensome and duplicative requirements and regulate air quality outside of their regulatory authority.

Waste Management (Minimization) Plan

The Associations respectfully request BLM remove the requirement for a Waste Management (Minimization) Plan.

The Associations believe BLM lacks jurisdiction to regulate air quality, which is subject to NDDEQ jurisdiction. BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

The Associations provided separate comments to BLM on January 30, 2023 regarding the proposed rule on Waste Prevention Production Subject to Royalties, and Resource Conservation and specifically addressed the requirement for a Waste Management Plan. BLM states it has developed "an adaptive management strategy" for managing air resources under this RMP that includes lease stipulations, design features, best management practices (BMPs), and other air resource management actions to minimize or reduce adverse impact on air resources. This adaptive management strategy outlined in the RMP implies flexibility with actions, however,

BLM's Waste Prevention Rule as proposed requires the submittal of a waste management plan as part of an APD package.

The Associations believe this requirement is unrealistic and arbitrary and more importantly is a breach of contract to our midstream agreements. In most cases, operators have no knowledge of current capacity, future expansion plans, or even the wells currently under contract with each midstream company. At best and in lieu of a waste management plan, an APD submittal could include a "certification" from the gas gatherer signifying the connection to the gas gathering line.

The purpose of the waste minimization plan is to create a planning mechanism which requires operators to identify gas take away and beneficial use options prior to applying for an APD. Technical information related to these plans is oftentimes proprietary, confidential, subject to unfair trade practices and antitrust laws and requirements, or not in the possession of the operator (solely in the possession of the midstream company).

Specifically, the following information is considered proprietary and confidential in the oil and gas industry and should not be disclosed broadly through filings subject to FOIA:

- (1) The expected oil and gas production rates and duration from the proposed well; and,
- (2) The expected production decline curve of both oil and gas from the proposed well.

Many confidentiality clauses in midstream agreements prohibit parties from disclosing the existence of their agreement with a particular midstream provider (i.e., disclosing the existence of the agreement). As such, identification of the company subject to a midstream dedication can constitute a breach of the agreement. Additionally, most midstream agreements will not allow oil and gas operators to provide commercial information provided by the midstream operator to third parties who are not subject to and bound by a confidentiality agreement or court order. As such, oil and gas operators will be forced to make decisions to breach agreements when determining whether they can permissibly disclose the midstream company's system information, such as:

- Maximum current daily capacity of the pipeline.
- Current throughput of the pipeline.
- Anticipated daily capacity of the pipeline at the anticipated date of first gas sales from the proposed well.
- Anticipated throughput of the pipeline at the anticipated date of first gas sales from the proposed well.
- Any plans known to the operator for expansion of pipeline capacity for the area that includes the proposed well.

Additionally, the request for identification of pipelines within 20 miles is without basis and is a poor determination of accessibility ignoring topography, current markets, contractual rights, and the complicated ownership of surface rights that occur in North Dakota as is the case with areas of the Mandan, Hidatsa, and Arikara Tribal Nation. The fact that a pipeline may be within 20 miles is not in itself a good determination for approval or denial of an APD.

Social and Economic Conditions (Disadvantaged Communities and Small Businesses Impacts)

The Associations fear that potentially extraneous and overly burdensome new requirements of the proposed RMP would have the reverse impact on economically and socially disadvantaged communities by steering oil and gas investment away from communities in need such as on the Mandan, Hidatsa, and Arikara Reservation.

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.

Many North Dakota lessees are small businesses that run wells with little room for changes that would render their wells uneconomical. Even though these wells are considered small producers, they make up a large portion of the wells in North Dakota and across the nation. The lessees will now be faced with a choice to continue their livelihood at great expense that may never be recovered or abandon those locations. The loss of this production not only impacts the energy security of the nation, but the economic security of thousands of North Dakotans.

These small producers all support other small service businesses that will also be forced into uncertain economic situations. As stated previously, according to a 2021 economic impact study, almost 50,000 jobs in North Dakota are a result of the Oil and Gas Industry with a payroll totaling \$4.5 billion dollars. Operating under the currently regulatory oversights and requirements, families are provided with the opportunity to make a living wage and support themselves and their families. Burdensome and duplicative environmental regulations under the guise of preventing waste are unfounded and will cause more damage than good to the economics of North Dakota, impacting disadvantaged communities and small businesses, and as stated previously, the economic security of thousands of North Dakotans.

Soil Resources

The Associations respectfully requests the BLM seriously consider, and not disregard, the industry's on-going and successful efforts in reducing impacts to soil resources, including voluntary efforts that go beyond the current requirements, as you move forward in selecting management directions address impact reductions already being realized. We urge BLM not to apply blanket exclusions and burdensome and duplicative requirements to restrict development and production.

The Associations respectfully request the BLM defer the interim reclamation planning and implementation to the private and State surface owners for fee-fee-fed and spilt estate/fee-fee-fed developments.

For interim reclamation on well pads after drilling has been completed, the Associations 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. We urge BLM to communicate

extensively with operators before creating additional reclamation requirements that may be unnecessarily burdensome.

The Associations 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. The industry is and has been meeting the goals of avoiding unnecessary impacts on other resources and land use and maintaining the integrity of federal oil and gas reserves to facilitate efficient and reasonable development. As discussed above and as an exemplary example, one of the most important advancements, horizontal drilling, allows multiple wells to be drilled on a single well pad, and as a result of this single, significant advancement, operations have limited impact on BLM-administered surface lands (less than 72 acres estimated over the next 20 years) in North Dakota, since 99% of the oil and gas wells (fee/fee/federal and split-estate oil and gas wells) are on private service.

Regarding interim reclamation, for fee-fee-fed and split estate/fee-fee-fed development scenarios, the BLM should defer the interim reclamation planning and implementation to the private and State surface owners, the stewards of these lands. 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 Condition of Approvals (COAs).

For interim reclamation on well pads after drilling has been completed, we urge BLM to work closely with operators to understand more fully what is feasible, necessary and consistent with safe operation of oil and gas production sites. We urge BLM to communicate extensively with operators before creating additional reclamation requirements that may be unnecessarily burdensome.

Water Resources

The Associations believe BLM lacks jurisdiction to regulate water quality, which is subject to NDDEQ jurisdiction. BLM should defer to the North Dakota Department of Environmental Quality (NDDEQ) (and EPA when applicable) and eliminate all redundant, costly, and/or conflicting water quality control provisions from the RMP.

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.

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 (NDDEQ) 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 the 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.¹⁹

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.

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

The Associations respectfully reaffirms BLM no longer has authority to designate additional wilderness.

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.”

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.

Treaty and Tribal Interests and Cultural Resources

The Associations respectfully requests the BLM provide clarity regarding Section 106 consultations on federal lands and 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.

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

The Associations believe it is not 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.

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.

SPECIFIC COMMENTS

Reiterating the organization of the specific comments. For the Associations specific comments, we are using *Table 2.2: Land Use Plan Decisions by Alternative* from Volume 1 of the RMP/EIS to organize comments. The specific lines of Table 2.2, along with the RMP/EIS Volume 1 page numbers, will be referenced to support ease of incorporating comments and ease of comment review by the BLM. Again, our comments are not all-encompassing due to the extensive content in the RMP/EIS, and the absence of comment is not meant as agreement or support for any of the alternatives and proposed management decisions.

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Air Quality

Line 2

As this proposed RMP/EIS is moved forward in the process the Associations respectfully urges BLM to consider the unique characteristics of different types of energy development and not lump all energy resources into the same category, including the fee-fee-fed and split estate/fee-fee-fed wells due to the small, checkerboard, federally owned tracts unique to North Dakota. Also, the Associations believes BLM lacks jurisdiction to regulate air quality, which is subject to NDDEQ jurisdiction. BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 3

The Associations believes BLM lacks jurisdiction to regulate air quality, which is subject to NDDEQ jurisdiction. BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 4

The Associations believes BLM lacks jurisdiction to regulate air quality, which is subject to NDDEQ jurisdiction. BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP. As such, the Associations believe the RMP air quality management directions are burdensome and duplicative, disregard the efforts of operators to maximize gas capture and minimize emissions, and based on a fundamentally flawed social cost of carbon (GHG) cost-benefit analysis. 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 CAA and Ambient Air Quality Standards (AAQS). Under the CAA, each state has the primary responsibility for assuring air quality within the state.

Line 5

NDDEQ has jurisdiction over air quality permitting and demonstrations of compliance for oil and gas production operations and is responsible for permitting actions near sensitive areas to include modeling necessary to demonstrate compliance with the AAQS.

Line 6

The Associations encourages BLM to utilize state and industry data for air quality monitoring and when developing any type of model to ensure any modeling is accurate and completed with the highest level of expertise.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 7

The Associations commend BLM for prioritizing ROW actions for gas-gathering pipelines.

As far as other management actions to reduce gas venting and flaring, the NDDEQ already has regulations in place to: Require a minimum of 91% of the associated gas be captured (not flared). Operators are required to report their gas capture data monthly and many companies have their own goals that exceed 91%. This data is available to the public. Also, NDDEQ prohibits the venting of natural gas unless it is flared or otherwise controlled as approved by the NDDEQ, and requires the control of vapors from storage tanks with the implementation of a control device prior to first production and a control device equipped and operated with an automatic igniter or a continuous burning pilot.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 8

The NDDEQ already has regulations in place to: Require a minimum of 91% of the associated gas be captured (not flared). Operators are required to report their gas capture data monthly and many companies have their own goals that exceed 91%. This data is available to the public. Also, NDDEQ prohibits the venting of natural gas unless it is flared or otherwise controlled as approved by the NDDEQ, and requires the control of vapors from storage tanks with the implementation of a control device prior to first production and a control device equipped and operated with an automatic igniter or a continuous burning pilot.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 10

The NDDEQ already has regulations in place to: Require a minimum of 91% of the associated gas be captured (not flared). Operators are required to report their gas capture data monthly and many companies have their own goals that exceed 91%. This data is available to the public. Also, NDDEQ prohibits the venting of natural gas unless it is flared or otherwise controlled as approved by the NDDEQ, and requires the control of vapors from storage tanks with the implementation of a control device prior to first production and a control device equipped and operated with an automatic igniter or a continuous burning pilot.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 11

NDDEQ has jurisdiction over air quality permitting and demonstrations of compliance for oil and gas production operations and is responsible for permitting actions near sensitive areas to include modeling necessary to demonstrate compliance with the AAQS.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 12

NDDEQ has jurisdiction over air quality permitting and demonstrations of compliance for oil and gas production operations and is responsible for permitting actions near sensitive areas to include modeling necessary to demonstrate compliance with the AAQS. These allocations are not conducive to orderly development and will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 13

NDDEQ has jurisdiction over air quality permitting and demonstrations of compliance for oil and gas production operations and is responsible for permitting actions near sensitive areas to include modeling necessary to demonstrate compliance with the AAQS. These allocations are not conducive to orderly development and will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 14

The Associations respectfully requests BLM remove the requirement for a Waste Management (Minimization) Plan. NDPC believes BLM lacks jurisdiction to regulate air quality, which is subject to NDDEQ jurisdiction. BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP. NDPC believes this requirement is unrealistic and arbitrary and more importantly a breach of contract of our midstream agreements. In most cases, operators have no knowledge of current capacity, future expansion plans, or even current wells currently under contract with that midstream company. At the best and in lieu of this Plan, the APD submittal could include a “certification” from the gas gatherer signifying the connection to the gas gathering line.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

***Table 2.2, Page 44 of 424
Air Quality***

Line 16

NDDEQ has jurisdiction over air quality permitting and demonstrations of compliance for oil and gas production operations and is responsible for permitting actions near sensitive areas to include modeling necessary to demonstrate compliance with the AAQS. These allocations are not conducive to orderly development and will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 17

NDDEQ has jurisdiction over air quality permitting and demonstrations of compliance for oil and gas production operations and is responsible for permitting actions near sensitive areas to include modeling necessary to demonstrate compliance with the AAQS. These allocations are not conducive to orderly development and will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 18

When it comes to climate change, the United States has reduced greenhouse gas emissions more than any other industrialized country. The increased production of natural gas has helped decrease emissions in the United States. BLM references EPA’s Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019 for estimates regarding pneumatic device and equipment leaks.

This inventory has been updated to include 2020 data, and for petroleum and natural gas systems, the 2020 inventory shows a 15% decrease in methane from 1990 to 2020. This decrease in methane emissions is due to the many advancements in the oil and gas industry (e.g., equipment, drilling, completions, production, technologies for sampling and analysis, and for controlling emissions). The Associations believe the industry has demonstrated its ability to manage fossil fuels and fossil fuel-powered technologies to neutralize its own climate impacts (climate mastery), as we have discussed above with our efforts to capture gas and minimize emissions.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

Line 19

The Associations commend BLM for prioritizing ROW actions for gas-gathering pipelines.

Line 20

When it comes to climate change, the United States has reduced greenhouse gas emissions more than any other industrialized country. The increased production of natural gas has helped decrease emissions in the United States. BLM references EPA's Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2019 for estimates with regard to pneumatic device and equipment leaks. This inventory has been updated to include 2020 data, and for petroleum and natural gas systems, the 2020 inventory shows a 15% decrease in methane from 1990 to 2020. This decrease in methane emissions is due to the many advancements in the oil and gas industry (e.g., equipment, drilling, completions, production, technologies for sampling and analysis, and for controlling emissions). The Associations believe the industry has demonstrated its ability to manage fossil fuels and fossil fuel-powered technologies to neutralize its own climate impacts (climate mastery), as we have discussed above with our efforts to capture gas and minimize emissions.

BLM should defer to NDDEQ (and EPA when applicable) and eliminate all redundant, costly, and or conflicting air quality control provisions from the RMP.

***Table 2.2, Page 45 of 424
Soil Resources***

Line 30

BADLANDS, ROCK OUTCROP

Allocation: NSO 11-69 Badlands, Rock Outcrops. Surface occupancy and use is prohibited on badlands and rock outcrops.

Development on badlands has been accomplished successfully and should not be prevented or prohibited from continuing.

Line 31

Allocations for Alternative B calls for ROWs exclusion areas for all types of ROWs for sensitive soils, slopes greater than 30 percent and rock outcrops. Blanket exclusion areas will prevent the orderly and timely hook up of well sites. The BLM needs to have the ability to grant ROWs in these areas when there is not an alternative. Surface disturbance on some of these areas could be avoided with boring of the utilities.

Line 32

Allocations for Alternative B calls for ROWs exclusion areas for all types of ROWs for sensitive soils, slopes greater than 30 percent and rock outcrops. Blanket exclusion areas will prevent the orderly and timely hook up of well sites. The BLM needs to have the ability to grant ROWs in these areas when there is not an alternative. Surface disturbance on some of these areas could be avoided with boring of the utilities.

***Table 2.2, Page 46 of 424
Water Quality***

Line 66

Alternative C is preferred. Groundwater should be available to all user needs. Freshwater can be needed in the daily maintenance of oil and gas wells and should be available for industrial uses.

***Table 2.2, Page 47 of 424
Water Quality***

Line 72

MISSOURI RIVER

Allocation: NSO-New: No surface-disturbing activities within 0.50 miles of the ordinary high-water mark for the Missouri River, Lake Sakakawea, and Lake Oahe.

The topography around the Missouri River and Lake Sakakawea can be rough and difficult to find a wellsite location. This allocation could lead to the inability to find a location to develop a spacing unit. This allocation should not be included.

***Table 2.2, Page 48 of 424
Riparian Areas and Wetlands***

Line 86

Allocation for Alternative B calls for riparian areas and wetlands as ROW exclusion areas. BLM need the ability to grant a ROW with the appropriate stipulations to reduce impacts if an alternative route is not available.

*Table 2.2, Page 49 of 424
Rangeland*

Line 109

TALLGRASS PRAIRIE

Allocation: NSO–New: Surface occupancy and use is prohibited in identified tallgrass prairie.

A NSO for tallgrass prairie could lead to a spacing unit with no feasible location for a well pad. This will not protect correlative rights and lead to waste. If there is not an alternative location for a wellsite the BLM needs the ability to allow a surface location with design features to minimize impacts.

Line 112

Allocation for Alternative B calls for tallgrass prairie as ROW exclusion. BLM needs the ability to grant a ROW if an alternative is not available.

*Table 2.2, Page 49 of 424
Forested/Woodland*

Line 120

Allocation for Alternative B calls for NSO and use is prohibited within identified woody draws. BLM needs the ability to grant surface occupancy if there is not an alternative.

Line 121

Comment: Woody draws should not be an ROW exclusion area for underground pipelines. Woody draws can be bored with minimal to no disturbance.

*Table 2.2, Page 51 of 424
Terrestrial and Aquatic Wildlife Resources*

Line 154

These allocations for Alternative B call for either NSO or ROW exclusion area. BLM needs the ability to grant surface occupancy or ROWs if there is not an alternative.

Line 156

These allocations for Alternative B call for either NSO or ROW exclusion area. BLM needs the ability to grant surface occupancy or ROWs if there is not an alternative.

Line 165

These allocations for Alternative B call for either NSO or ROW exclusion area. BLM needs the ability to grant surface occupancy or ROWs if there is not an alternative.

Concern with the potential surface occupancy prairie dog habitat could encompass. Propose limitation to size.

***Table 2.2, Page 52 of 424
Terrestrial and Aquatic Wildlife Resources***

Line 170

This allocation could be achieved by a timing restriction instead of an NSO.

Line 172

This allocation could be achieved by a timing restriction instead of an NSO.

Line 176

A NSO with 2 miles is excessive. This objective can be handled with special stipulation/design features not NSO.

***Table 2.2, Page 53 of 424
Special Status Vegetation***

Line 191

The Management Direction in Alternative A is the sensible alternative. It calls for the protection from adverse impacts without mandating an arbitrary distance from the known special plant species.

***Table 2.2, Page 54 of 424
Special Species Vegetation***

Special Status Vegetation

Lines 193

Allocations for Alternative B and C call for a NSO within an arbitrary distance from the known special plant species. This allocation is not needed as it is covered Alternative A under line 191.

Line 194

Under this allocation it would be very difficult to conduct long term project management. Since the plant list would be subject to change overtime, lease stipulations would be subject to change.

Line 195

Allocations for Alternative B and C are not needed as it is covered Alternative A under line 191.

***Table 2.2, Page 54 of 424
Special Status Terrestrial Wildlife***

Line 196

Allocations B and C are very burdensome to impossible in locating well sites and pipelines in certain areas. BLM needs the ability to grant surface locations and ROWs if an alternative is not available.

***Table 2.2, Page 57 of 424
Special Status Aquatic Wildlife***

Lines 245

A NSO with 0.50 miles of the ordinary high-water mark of identified pallid sturgeon habitat is excessive. This objective can be handled with special stipulation/design features not NSO.

***Table 2.2, Page 59 of 424
Cultural Resources***

Line 277

Viewshed protection should be done in accordance with current BLM authorities.

***Table 2.2, Page 60 of 424
Cultural Resources***

Line 281

A 3 mile NSO found in the allocation in Alternative B is not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste.

Table 2.2, Page 61 of 424
Visual Resources

Line 293

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 294

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 295

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 296

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Table 2.2, Page 62 of 424
Visual Resources

Line 297

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 298

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to

waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 299

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 300

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 301

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 302

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 303

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Line 304

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Also, restricted light use could cause safety issues on rig sites.

Line 305

Allocations for Alternative B & C are not conducive to orderly development. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The North Dakota Industrial Commission already has a policy in place to review these areas of interest being NDIC-PP 2.01.

Also, restricted light use could cause safety issues on rig sites.

***Table 2.2, Page 63 of 424
Land Use Authorizations***

Line 314

Allocations for Alternative B & C for Lines 314 & 315 would make it difficult to impossible to achieve the Management Directive in Line 316 of maximizing the recovery and delivery of natural gas from well sites. The BLM needs to have the ability to grant ROWs if there is not an alternative available.

***Table 2.2, Page 63 of 424
Land Use Authorizations***

Line 315

Allocations for Alternative B & C for Lines 314 & 315 would make it difficult to impossible to achieve the Management Directive in Line 316 of maximizing the recovery and delivery of natural gas from well sites. The BLM needs to have the ability to grant ROWs if there is not an alternative available.

Line 316

The Associations commend BLM for prioritizing ROW actions for gas-gathering pipelines.

Allocations for Alternative B & C for Lines 314 & 315 would make it difficult to impossible to achieve the Management Directive in Line 316 of maximizing the recovery and delivery of natural gas from well sites. The BLM needs to have the ability to grant ROWs if there is not an alternative available.

***Table 2.2, Page 67 of 424
Fluid Leasable Minerals***

Line 364

Allocation for Alternative B calls for mineral fluid leasing to be closed to “Low Potential development areas (outside of approximately 5 miles from active oil and gas fields)”. It is not

acceptable to close acreage to mineral leasing. Technology is always advancing and areas that are now low potential development areas could be areas that produce the needed future reserves.

The BLM should not close any acres to fluid mineral leasing.

Line 365

The BLM should only apply oil and gas development design features that correlate with current oil and gas regulations.

***Table 2.2, Page 68 of 424
Fluid Leasable Minerals***

Line 366

Allocations for Alternative B & C call for NSO for numerous reasons. Will ultimately prevent mineral acreage from being developed. This will not protect correlative rights and lead to waste. The BLM needs the ability to grant surface locations if there is not an alternative available.

***Table 2.2, Page 69 of 424
Fluid Leasable Minerals***

Line 367

Allocations for Alternative B & C call for CSU stipulations for numerous reasons. This will lead to unnecessary and burdensome stipulations for locations only because it is within an arbitrary distance from an area of interest.

Line 372

Gas flaring is already regulated through the North Dakota Industrial Commission and mitigation measures are not needed through the BLM.

***Table 2.2, Page 77 of 424
Recreation***

Line 438

Allocations for Alternative B & C call for NSO for fluid minerals for Figure 4 and Lost Bridge. Both areas have terrain that is challenging to find well locations. The BLM needs the ability to grant surface locations if there is not an alternative available. Without this ability acreage will go undeveloped. This will not protect correlative rights and lead to waste.

***Table 2.2, Page 82 of 424
Wild and Scenic Rivers***

Line 509

Specifically for North Dakota, Senate Bill 2097 requires notification of the North Dakota Game and Fish Director, among others, before engaging in meetings with federal agencies to have any water body in the state designated a wild, scenic or recreational river under the Wild and Scenic Rivers Act. This would preclude the BLM from implementing management directions and interim protections for the three suitable wild and scenic river segments, without first initiating specific public comment and involvement of the counties, cities, and tribal entities, among others.

***Table 2.2, Page 82 of 424
National Scenic and Historic Trails***

Lines 517

The Goals, Objective, and Allocations for National Scenic and Historic Trails would only push development along these trails to fee/private acreage and fulfill its objective.

Lines 518

The Goals, Objective, and Allocations for National Scenic and Historic Trails would only push development along these trails to fee/private acreage and fulfill its objective.

Lines 519

The Goals, Objective, and Allocations for National Scenic and Historic Trails would only push development along these trails to fee/private acreage and fulfill its objective.

Lines 520

The Goals, Objective, and Allocations for National Scenic and Historic Trails would only push development along these trails to fee/private acreage and fulfill its objective.

Conclusion

In conclusion, we appreciate the opportunity to submit these comments on the proposed RMP/EIS for the North Dakota Field Office. The Associations highly recommend BLM further engage with stakeholders during the process of incorporating comments and selecting management decisions from each of the alternatives analyzed in the RMP/EIS to create a management strategy that best meets the needs of the resources and values in this area under BLM's multiple use and sustained yield mandate. The Associations look forward to being at the table and working with BLM and other interested stakeholders in the development of the RMP/EIS for the North Dakota Field Office.

We appreciate your serious consideration of our comments on this proposal, and we hope you will move forward in a measured and thoughtful manner.

Sincerely,

A handwritten signature in blue ink that reads "Ron Ness". The signature is stylized, with a large, sweeping initial "R" and a distinct "Ness" at the end.

Ron Ness
President, North Dakota Petroleum Council

A handwritten signature in blue ink that reads "Kathleen Sgamma". The signature is fluid and cursive, with a prominent initial "K" and a long, sweeping tail.

Kathleen Sgamma
President, Western Energy Alliance