

United States Senate

WASHINGTON, DC 20510

February 14, 2025

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 20548

RE: North Dakota Resource Management Plan Record of Decision: a “rule” subject to review by Congress

Dear Comptroller General Dodaro,

On January 15, 2025, the Bureau of Land Management (BLM) published the approved North Dakota Resource Management Plan (“North Dakota RMP”) for the North Dakota Field Office.¹ This letter requests the Government Accountability Office (GAO) issue a decision, finding the North Dakota RMP is a “rule” for purposes of the Congressional Review Act (CRA) and, as such, is subject to disapproval by Congress.² As written, the North Dakota RMP will deprive the State of \$34 million annually in terms of royalties and tax revenues. This data only accounts for oil and gas leasing alone and does not account for coal production or royalties to private mineral owners intertwined with federal minerals. Moreover, the ND RMP will close 213,100 acres of BLM subsurface to fluid mineral leasing which is 44% of the decision area and 98.6% of the 4,071,600 acres of federal coal in ND closed to coal and potentially critical mineral leasing.³

Finding the North Dakota RMP to be a rule would be consistent with GAO’s precedents concerning Resource Management Plans. For instance, in November 2017, GAO concluded the Eastern Interior Resource Management Plan, issued by BLM on December 30, 2016, and the four underlying resource management plans were rules under the CRA.⁴ GAO has also concluded the resource management plans issued by the U.S. Forest Service are “rules” subject to disapproval by Congress.⁵

¹ <https://www.federalregister.gov/documents/2025/01/15/2025-00840/record-of-decision-and-approved-resource-management-plan-for-the-north-dakota-resource-management>

² 5 U.S.C. § 8.

³ Bureau of Land Management North Dakota Resource Management Plan and Record of [Decision](#) (January 8, 2025).

⁴ U.S. Government Accountability Office. (2017). Eastern Interior Resource Management Plan (Letter number: B-329065).

⁵ U.S. Government Accountability Office. (2017). Tongass National Forest Land and Resource Management Plan Amendment (Letter number: B-238859) & U.S. Government Accountability Office. (1977). Tongass National Forest Land and Resource Management Plan (Letter number: B-275178).

Consistent with GAO’s prior determinations, the North Dakota RMP meets the CRA’s definition of a rule and Congress may review and disapprove it through the process outlined in the CRA.⁶ Section 551 of the Administrative Procedure Act (APA) defines a “rule” as follows:⁷

“rule” means the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency.”

The definition has three components. A rule must (1) be an agency statement; (2) have future effect; and (3) be designed to either implement, interpret or prescribe law or policy or describe the agency’s organization, procedure, or practice requirements.⁸

First, the North Dakota RMP is a statement by BLM, an agency of the United States Department of the Interior, thereby meeting the first requirement. Second, the North Dakota RMP has a future effect. The RMP specifically notes that it will remove significant acres of BLM subsurface minerals from leasing decisions.⁹ Third, the North Dakota RMP must implement, interpret or prescribe law or policy or describe the agency’s organization, procedure or practice requirements. The Record of Decision implements BLM’s policy on the removal of 213,100 acres of BLM fluid minerals and 98.6% of the 4,071,600 acres of coal minerals from leasing within the planning area. The alternative selected in the approved RMP is final and became effective on January 8, 2025. The North Dakota RMP thus meets the third requirement and falls within the definition of the term “rule” in section 551 of APA as it implements policy and provides final authorization.

The North Dakota RMP is not subject to the exemptions from the definition of a rule that the CRA provides. The CRA exempts three key categories of agency action from its definition of a rule.¹⁰ These are: (1) any rule of particular applicability, (2) any rule relating to agency management or personnel, and (3) any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. First, the North Dakota RMP has a broad scope and impacts all persons and entities that rely on and utilize mineral or liquid mineral production in any capacity. Thus, the exemption provided by 5 USCS § 804(3)(A) does not apply. Second, the North Dakota RMP does not relate to “agency management or personnel.” Rather, the North Dakota RMP impacts all communities and infrastructure heavily dependent on mineral and liquid mineral production and will damage all future operations. North Dakota is abundant in oil, gas, and coal mining operations, and the jobs and energy produced in North Dakota support not only our economy through high paying jobs,

⁶ 5 U.S.C. § 802.

⁷ 5 U.S.C. § 551 (4).

⁸ 5 U.S.C. § 551 (4).

⁹ Bureau of Land Management North Dakota Resource Management Plan and Record of [Decision](#) (January 8, 2025).

¹⁰ 5 USCS § 804(3)(A), (B) or (C).

but also our national and energy security. Accordingly, the North Dakota RMP does not qualify for the exemption under 5 USCS § 804(3)(B) or (C). Therefore, the North Dakota RMP does not fall under the enumerated exemptions and must instead be subject to the CRA.

For the foregoing reasons we respectfully request you conclude the CRA applies to the North Dakota RMP, including specifically that GAO determine it is subject to CRA's submission requirements and subject to review by Congress. Your determination to this effect would be entirely consistent with your previous interpretation of the CRA, as seen in previous years. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, reading "John Hoeven". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

John Hoeven
U.S. Senator

A handwritten signature in black ink, reading "Kevin Cramer". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kevin Cramer
U.S. Senator

A handwritten signature in black ink, reading "Julie Fedorchak". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Julie Fedorchak
U.S. Representative