



— State of —  
**North Dakota**  
*Office of the Governor*

**Doug Burgum**  
*Governor*

February 13, 2017

The Honorable John Barrasso  
307 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable John Hoeven  
338 Russell Senate Office Building  
Washington, DC 20510

Re: Senate Joint Resolution 11 disapproving the flaring and venting rule, 81 Fed. Reg. 83,008 (November 18, 2016) under the Congressional Review Act (CRA).

Dear Senators;

On behalf of the State of North Dakota, the second largest oil producer in the United States, I write to express my strong support for the use of the Congressional Review Act (CRA) to repeal the Bureau of Land Management's (BLM) *Waste Production, Production Subject to Royalties, and Resource Conservation rule* (commonly referred to as the "Venting and Flaring Rule"), published in the Federal Register on November 18, 2016.

Immediately upon publication of the Venting and Flaring Rule, the States of North Dakota, Wyoming and Montana challenged the legal sufficiency of the rule in *State of Wyoming, et al. v. United States Department of the Interior, et al.*, Case No. 2:16-CV-0285, Federal District Court for the District of Wyoming. A request by the states for a preliminary injunction was denied by the Court, which leaves the states and operators of oil and gas wells subject to sorting out confusing jurisdictional boundaries between State and Federal regulatory requirements.

The Venting and Flaring rule, as written, impermissibly intrudes upon the sovereign authority of the State to define and control oil and gas waste on State and fee lands, and it unnecessarily creates jurisdictional confusion over the specific regulatory standards that operators of wells must meet. The North Dakota Industrial Commission requires gas capture plans to reduce natural gas flaring and the North Dakota Department of Health oversees air emissions enforcement on oil and gas sites. The Venting and Flaring Rule is duplicative of North Dakota rules and interferes with our regulatory jurisdiction by imposing federal regulations on private and state owned minerals that are pooled with federal minerals.

Unlike many western states that contain large blocks of unified federal surface and mineral ownership, a large number of small federally-owned mineral estate tracts are scattered throughout North Dakota. The Venting and Flaring Rule expands the federal jurisdiction to state and privately owned lands where the federal government owns only a small amount of minerals, and in many cases, no surface rights. Those

federal mineral estates impact more than 30% of the oil and gas spacing units in North Dakota. Virtually all federal lands in North Dakota consist of some form of split estate.

The extension of the Venting and Flaring Rule to non-federal lands represents an unjustified and legally questionable expansion of federal regulation that would have a significant impact to oil and gas operations in North Dakota. It has been estimated that this change would expand federal regulation to over 1.2 million acres of state and privately owned land in the Williston Basin of North Dakota and Montana. BLM does not have the legal authority to expand its jurisdiction to state and privately owned lands.

Thank you for your consideration. On behalf of the State of North Dakota, I again urge you to repeal this unnecessary and economically harmful rule by supporting Senate Joint Resolution 11 to disapprove the Rule under the Congressional Review Act.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Burgum", with a long horizontal flourish extending to the right.

Doug Burgum, Governor

Cc: Senator John Hoeven  
Senator Heidi Heitkamp  
Congressman Kevin Cramer