September 2, 2025

The Hon. John Thune
Majority Leader
U.S. Senate
Washington, DC 20515

The Hon. Mike Johnson
Speaker
U.S. House of Representatives
Washington, DC 20515

The Hon. Charles Schumer
Democratic Leader
U.S. Senate
Washington, DC 20515

The Hon. Hakeem Jeffries
Democratic Leader
U.S. House of Representatives
Washington, DC 20515

Dear Leader Thune, Leader Schumer, Speaker Johnson, Leader Jeffries, and Members of Congress:

As professors and practitioners in the fields of administrative, environmental, and natural resource law, we write to express our grave concerns regarding recently introduced resolutions to disapprove three Bureau of Land Management (BLM) resource management plans (RMPs) under the Congressional Review Act (CRA).[1]

In July 2025, Members of Congress introduced joint resolutions to disapprove the Records of Decision (RODs) for the BLM's Central Yukon RMP (H.J.Res. 106, S.J.Res. 63), the North Dakota RMP (H.J.Res. 105, S.J.Res. 62), and the Miles City Resource Management Plan Amendment (RMPA) (H.J.Res. 104, S.J.Res. 61). To date, neither chamber of Congress has voted on the resolutions. **While we take no position on the substantive provisions in the plans at issue, we strongly urge Congress to avoid the harmful precedent and unintended policy consequences of invalidating RMPs or Forest Plans through the CRA.**

Developed under the Federal Land Policy and Management Act (FLPMA), RMPs are foundational documents that provide binding direction to federal agencies and users of

[1] A GAO advisory opinion was read into the Congressional Record on July 28, 2025, regarding the applicability of the CRA to the 2022 National Petroleum Reserve in Alaska Integrated Activity Plan Record of Decision.

federal public land. 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3. Despite their binding effect, to our knowledge, the Department of the Interior has never considered RMPs to be subject to the CRA, nor has the agency submitted land use plans to Congress for review since passage of the CRA in 1996.[2]

While the Government Accountability Office (GAO) has opined that RMPs are rules under the CRA and must be submitted to Congress in order to take effect, Congress has never demanded that land management agencies submit land management plans for congressional review. This longstanding congressional and agency practice resulted in stable expectations that allowed public land dependent economies to grow and thrive.

As explained further below, the view that RMPs are subject to review under the CRA is also contrary to long-standing interpretations on the nature and effect of land use plans. If Congress were to disapprove even one RMP, every other unsubmitted RMP or management plan developed for federal lands and waters could be called into question, to great destabilizing effect. For example, because the BLM must have a valid RMP in place to authorize activities on public lands, including mineral leasing and development, forest management, timber sales, livestock grazing, rights of way for energy generation and transmission, and motorized recreation, congressional action now could call into question any permits, authorizations, contracts, rights of way, or licenses issued pursuant to an unsubmitted plan.[3]

While only three RMPs are presently under consideration, hundreds of federal land management plans nationwide may be implicated. The resulting uncertainty could trigger an endless cycle of litigation, effectively freezing the ability of the BLM and other agencies to manage public lands for years, if not decades to come. Adding to the uncertainty, the CRA's prohibition on an agency issuing a rule in "substantially the same" form as the disapproved rule may prevent an agency from replacing the disapproved plan in the future, contrary to FLPMA's mandate.

We strongly urge you to adhere to long-standing congressional practice by not bringing the resolutions to the House floor for a vote. Instead, Congress should amend the CRA to clarify that RMPs – and other land management plans required by statute – are not subject to CRA review.

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[2] Forest Plans, developed pursuant to the National Forest management Act (NFMA), provide similar binding direction to agency staff and forest users. 16 U.S.C. § 1604(h)(3)(i); 36 C.F.R. § 219.15(b). To our knowledge, the U.S. Forest Service does not consider Forest Plans to be subject to the CRA and also has not submitted their plans to Congress.

[3] A CRA resolution of disapproval for a Forest Plan could similarly call into question the validity of timber sale contracts, ski area leases, utility rights of way, and a host of other authorizations made pursuant to unsubmitted Forest Plans.

Statutory Framework and Policy Concerns

1. **FLPMA Governs BLM's Land Use Planning**

Congress enacted FLPMA in 1976 to serve as the foundational legislative charter for the BLM. FLPMA established a specialized statutory and regulatory framework for the management of public lands. 43 U.S.C. §§ 1701-1787 and 43 C.F.R. Part 1600.

FLPMA's resource management planning procedures are procedurally distinct from federal agency rulemaking under the Administrative Procedure Act (APA). Section 202 of FLPMA directs the BLM (through the Secretary of the Interior) to "develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands" in a manner consistent with multiple use and sustained yield. 43 U.S.C. § 1712. Section 202 includes specific criteria for plan development and revision, public engagement requirements, and mandates to coordinate with other federal agencies, state and local governments, and Tribal Nations, among other requirements. Nowhere in the statute, however, is language requiring the submission of RMPs to Congress, except in one narrow circumstance where a plan eliminates one or more principal uses on tracts of land of 100,000 acres or more for two or more years. *Id*. § 1712(e)(2).

RMPs are the primary vehicles for carrying out FLPMA's statutory mandates. They are programmatic planning documents that set forth land use allocations and management direction to guide project level decisionmaking over long time horizons for a particular geographic area. All future agency actions, including site-specific projects and issuance of permits and other authorizations, must conform to the BLM's approved plan. 43 U.S.C. § 1732(a); 43 C.F.R. § 1610.5-3(a).

2. **FLPMA Regulations Prescribe Their Own Specific Procedures**

The BLM's planning regulations at 43 C.F.R. Part 1600 prescribe a comprehensive, multi-step process for RMP development, including:

- Scoping
- Public involvement and comment
- Coordination with other federal agencies, state and local governments and federally recognized Indian tribes
- Inventory of resources and analysis of issues
- Development of alternatives
- Preparation of a draft RMP and Environmental Impact Statement
- Consistency review by state governors
- Protest Procedures for the agency's decisions on plans

This process reflects congressional direction that land use planning follow a specialized, participatory model distinct from and more robust than ordinary APA rulemaking. FLPMA's

regulatory requirements are in addition to other procedural obligations prescribed by law, including but not limited to Tribal consultation and compliance with the Endangered Species Act and the National Environmental Policy Act.

The BLM's current planning regulations have been revised several times since passage of the CRA in 1996, but no requirement has been added for the BLM to submit approved RMPs to Congress or the Comptroller General for review. Congress has never, to date, disapproved of an RMP under the CRA. Nor did Congress act to clarify any intent that RMPs fall under the purview of the CRA when it amended FLPMA's planning provision (43 U.S.C. § 1712) in 2014, 18 years after the passage of the CRA.

Longstanding agency and congressional practice suggest neither the agency nor Congress considered RMPs to be subject to CRA review, and Congress has not acted to amend FLPMA to clarify its intent to the contrary.

3. Planning Authority is Distinguishable from Rulemaking Authority

Section 310 of FLPMA, in contrast to Section 202, grants the Secretary separate authority to "promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands…." 43 U.S.C. § 1740. This provision applies to legislative rulemaking, not the development of RMPs. Reviewing RMPs under section 310 would collapse the distinction between the two statutory processes and undermine the structure Congress designed in FLPMA. Reading sections 202 and 310 together makes clear that Congress distinguished RMP decisionmaking procedures in section 202 from APA rulemaking under section 310.

4. Courts Recognize the Distinction Between RMPs and Rules

Courts also recognize a distinction between RMPs and rules, for certain limited purposes, while acknowledging the legal enforceability of RMP requirements.

Under the Administrative Procedure Act (APA) "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…." 5 U.S.C. § 551(4). The CRA adopts the APA's definition of the term "rule." 5 U.S.C. § 804(3).

In assessing whether the BLM could be compelled to act to effectuate requirements contained in a land use plan under APA section 706, Justice Scalia recognized the unique nature of such plans, writing that:

> Quite unlike a specific statutory command requiring an agency to promulgate regulations by a certain date, a land use plan is generally a statement of priorities; it guides and constrains actions, but does not (at

> least in the usual case) prescribe them. It would be unreasonable to think that either Congress or the agency intended otherwise, since land use plans nationwide would commit the agency to actions far in the future, for which funds have not yet been appropriated.

Norton v. SUWA, 542 U.S. 55, 71 (2004). In that sense, the Court chose not to treat RMPs as rules under APA section 706 when doing so would confound efforts to effectuate statutory objectives. Congress should also recognize the unique nature of RMPs and continue to refrain from applying the CRA to land use planning because of the unintended consequences that would follow, as described below.

This approach does not, however, diminish RMP requirement enforceability. Applying *Norton v. SUWA*, the 9th Circuit Court of Appeals explained earlier this year that:

> FLPMA requires the government to "manage the public lands … in accordance with the land use plans … when they are available." 43 U.S.C. § 1732(a). Once a plan is adopted, "[a]ll future resource management authorizations and actions … and subsequent more detailed or specific planning, [must] conform to the approved plan." 43 C.F.R. § 1610.5-3(a). "The statutory directive that BLM manage 'in accordance with' land use plans, and the regulatory requirement that authorizations and actions 'conform to' those plans, prevent BLM from taking actions inconsistent with the provisions of a land use plan." *Norton v. [SUWA]*, 542 U.S. 55, 69 (2004). Any BLM land use decision contrary to the plan "can be set aside as contrary to law pursuant to 5 U.S.C. § 706(2)."

Mont. Wildlife Fed'n v. Haaland, 127 F.4th 1, 42 (9th Cir. 2025).

The distinction here is important. RMPs created under section 202 of FLPMA, while imposing legally enforceable requirements on agency staff and public land users, can and should continue to be treated as distinct from rules promulgated pursuant to section 553 of the APA.

5. Permits Issued under Any Unsubmitted Plan Could be Subject to Challenge

Disapproving RMPs under the CRA could lead to widespread, unintended consequences beyond the specific RMPs disapproved. Any unsubmitted RMP, as well as plans approved by other federal land management agencies such as the United States Forest Service, could be exposed to claims that they are not legally operable if they have not been submitted to Congress and the Comptroller.

Notably, both FLPMA and the National Forest Management Act (NFMA) require that all agency actions (e.g., issuance of permits, authorizations, contracts, and other

instruments) must be in conformance with a valid, approved plan.[4] Permits and approvals for oil and gas development, transmission lines, mining plan approvals, livestock grazing, rights of way (for pipelines, power lines, roads, and other infrastructure projects), timber harvest, and other commercial uses could all be subject to challenge if the underlying RMP has not been submitted to Congress. So too could efforts to protect public lands from catastrophic wildfires.

Even if the agency were to take the highly unusual step of submitting every current RMP to Congress, that may not cure permits and authorizations issued between approval of that plan and submittal to Congress. A chaotic situation would follow, as all existing permits and authorizations could come under legal scrutiny in protracted litigation. And reviewing submitted plans would pose an unnecessary and unreasonable burden on Congress: the BLM has finalized 123 land use plans since enactment of the CRA. To the best of our knowledge, none of which were submitted to Congress.[5] The U.S. Forest Service has 176 active land use plans,[6] the majority of which were presumably finalized after enactment of the CRA and that would also require review. Plans prepared by the National Park Service, U.S. Fish and Wildlife Service, and other Federal agencies would also require review and add to this burden.

6. Disapproving an RMP Creates Uncertainty about Future Management of the Planning Area

If Congress enacts a joint resolution of disapproval, a rule is invalidated as though it had never taken effect, and the agency is barred from reissuing a future rule in "substantially the same" form as the disapproved rule without express statutory authorization. 5 U.S.C. § 801(b)(2). It is unclear how this prohibition would be applied in the context of RMPs where land management plans are specifically required by law.[7]

BLM Resource Management Plans are complex planning documents that set goals and objectives for land management planning units, which often span millions of acres of federal public land. RMPs also identify and apply specific designations to areas of land within those larger planning units and set allocations that describe whether specific uses

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[4] 43 U.S.C. § 1732(a); 16 U.S.C. § 1604(i). *Also see Montana Wildlife Fed'n v. Haaland*, 127 F.4th 1, 42 (9th Cir. 2025), *citing* 43 C.F.R. § 1610.5-3(a) ("[a]ll future resource management authorizations and actions … and subsequent more detailed or specific planning, [must] conform to the approved plan.")

[5] *See* U.S. Dept. of the Interior, Bureau of Land Management, Land Use Plans, https://www.blm.gov/programs/planning-and-nepa/plans-in-development (last visited Aug. 29, 2025) (information obtained from downloadable spreadsheet of approved plans).

[6] *See* U.S.D.A., Forest Service, Land Management Plans, https://www.fs.usda.gov/managing-land/planning/land-management-plans#:~:text=Just%20as%20a%20county's%20comprehensive,20%20grasslands%2C%20and%201%20prairie (last visited Aug. 29, 2025). A list of Forest Plans by date of approval was not available, preventing a precise assessment of the number of plans potentially subject to CRA review.

[7] *See* Congressional Research Service, The Congressional Review Act (CRA): Frequently Asked Questions (Nov. 12, 2021), https://www.congress.gov/crs-product/R43992.

are allowed, restricted, or prohibited within certain areas of land.[8] Moreover, those management plans are living documents, which are often amended and updated to address changing conditions or emerging management issues.

The prohibition against issuing a substantially similar plan could force dramatic changes to established plans, even if those changes are not consistent with the best available science or supported by local constituents, in order to demonstrate a clear difference between plans. Changes that are more drastic than necessary would likely, at a minimum, upset settled business expectations. At their maximum, such changes could result in protracted litigation and make infrastructure development more difficult.

Other questions abound: if Congress disapproves a plan, will an older plan for the area (if one exists) spring back to life? How will the agency address the situation where a court has previously found the older plan deficient in some way and the agency has been ordered to revise it? If Congress rolls back an amendment to an RMP, will the underlying unamended plan become legally operable if it was not submitted for congressional review? These and other questions underscore the ambiguity and uncertainty that will result from congressional disapproval of RMPs and the potential for future litigation, and why we urge Congress to not apply the CRA to land management plans.

Conclusion

The CRA should not serve as a vehicle for overturning land use plans developed under agencies' organic statutes. Using the CRA in this manner undermines FLPMA's planning mandate, runs contrary to longstanding agency practice and interpretation, and threatens to paralyze public land management nationwide.

As Congress returns to session in September, we urge members to continue the established practice of not using resolutions of disapproval to repeal RMPs. We urge Congress to reject the pending resolutions in order to preserve the integrity of the FLPMA planning process and avoid setting a precedent that could have far-reaching unintended consequences for all activities on public lands. Congress should instead amend the CRA to clarify that it does not apply to agency land use plans.

Sincerely,
(Institutional affiliations are offered for identification purposes only)

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[8] Bureau of Land Management, Resource Planning Handbook H-1601-1 (January, 2025), https://www.blm.gov/sites/default/files/docs/2025-01/H-1601-1_Rel_1-1836.pdf.

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