



June 1, 2018

Bureau of Land Management
501 South 2nd St. East
Malta, MT 59538

RE: American Prairie Reserve (APR) Proposal to Modify BLM Grazing Allotments

To Whom It May Concern:

On behalf of the Montana Association of State Grazing Districts (MASGD), Montana Public Lands Council (MPLC) and the Montana Stockgrowers Association (MSGA), I am providing comments in regards to the APR's proposal to modify eighteen BLM grazing allotments, including changing the class of livestock from cattle to bison; allowing for season-long grazing and removing interior fences. Our organizations have consistently provided comments regarding similar, but smaller scale APR proposals and our concern over the impacts to the rangeland health, riparian areas and economic impacts to the livestock industry.

No Legal Basis Qualifying APR To Carry Grazing Permits

The BLM must analyze if APR has legal basis qualifying them to carry grazing permits within the Taylor Grazing Act and subsequent federal statutes, which authorizes and administers grazing on federal lands. Pursuant to federal regulations, "livestock and "kind of livestock" are defined as "species of domestic livestock, clearly defined as cattle, sheep, horses, burros and goats." This is referenced in the 43C.F.R. 41000.0-5. Bison do not clearly fit into this definition and also call into question previous decisions to from the BLM to allow two prior decisions that allowed the class of livestock to be changed on other grazing allotments.

The mission of the American Prairie Reserve is to "create and manage a prairie-based wildlife reserve that, when combined with public lands already devoted to wildlife, will protect a unique natural habitat, provide lasting economic benefits and improve public access to and enjoyment of the prairie landscape." With the inclusion of the APR's mission statement as an organization devoted to wildlife, BLM needs to fully analyze if the approval of these permit modification requests meet the requirements under the federal statutes that authorize and administer the grazing program.

According to the Taylor Grazing Act's (TGA) legislative history, "the whole purpose of the TGA was to conserve the public range in aid of the livestock industry."¹ Secretary Ickes said, "We wanted to protect the range in the interest of the stock industry."² This was reiterated by the Tenth Circuit when it came to a similar conclusion in *Chournos v. United States*, stating, "The purpose of the Taylor Grazing Act is to stabilize the livestock industry and to permit the use of the public range according to the needs and the qualifications of the livestock operators with base holdings."³ The Federal Lands Policy and Management Act (FLPMA) in 1976, and the Public Rangelands Improvement Act (PRIA) in 1978, also confirm that grazing permits are intended for grazing purposes only. Both those statutes define "grazing permit and lease" as "any document authorizing use of public lands ... for the purpose of grazing domestic livestock." BLM needs to more fully evaluate, if this decision meets the above mentioned federal statutes and include the documentation by which it is based.

Analyze Taylor Grazing Act Stipulations for Grazing Districts

Within the Taylor Grazing Act of 1934, stipulations existed for the establishment of grazing districts. At the same time the state of Montana was addressing the issue through the State Legislature, which passed the enabling legislation for the creation of a Montana Grass Commission in 1935, and then passed the Montana Grass Conservation Act of 1939, which allowed for the creation of State Cooperative Grazing Districts. Montana is in a very unique position as it is the only western state that has provided for formal recognition of federal grazing districts in state law. The Taylor Grazing Act states grazing districts can regulate their occupancy and use, to preserve the land and its resources from destruction or unnecessary injury. BLM must analyze if this proposal infringes on the rights of grazing districts and is in compliance with the Act. Our research shows the grazing districts should have a much more active role in those proposed allotments within those grazing district boundaries.

Failure to Meet BLM's Policy and Program Documents

Current BLM policy and program documents state that proper management and administration of livestock grazing is essential to protect the health of the public lands and provide stability to the western livestock industry. In addition, it is also stated that grazing must be properly managed and provide economic and social benefits to those western communities. This type of analysis will be extensive to determine a full accounting to the impacts to the local communities and social and economic impacts to those areas. An environmental assessment (EA) will not provide

1 H.R. Rep. NO. 73-309, at 2 (1934).

2 See To Provide for the Orderly Use, Improvement, and Dev. of the Pub. Range, Hearings on H.R. 2835 and H.R. 6462 before the House Comm. on the Pub. Lands, 73d Cong., 1st & 2d Sess. 133 (1933 & 1934).

3 *Chournos v. United States*, 193 F.2d 321 (10th Cir. 1951).

the necessary level of analysis required. Agriculture is consistently the number one industry in Montana and continues to outpace all other industry sectors. In our state, agriculture accounted for \$4.3 billion dollar impact in 2016. With this level of importance and potential impacts, once again, and EA is simply inadequate and Environmental Impact Statement must be conducted.

Conformance with Land Use Plan

A number of the proposed grazing allotments will be within and managed by the HiLine Resource Management Plan. BLM states the public lands in the project area will be managed according to decision in this plan. BLM must analyze if this proposal meets the Vegetation-Riparian and Wetland requirements. BLM has previously stated that “*Grazing techniques and practices will be implemented to reduce hot season (summer) grazing on riparian and meadow complexes within Greater Sage-Grouse Priority Habitat Management Areas (PHMA).*” Our organizations fail to see how this proposal to allow year-round grazing and removal of interior fencing will conform to the current land use plan.

Relevant Past and Ongoing Actions

In a BLM previous decision regarding the Flat Creek allotment, it is stated the allotment was reassessed in 2014, but that no final report or determination has been completed. It is important for BLM to analyze if this information was ever finalized, because in may be critical to determine how other grazing allotments will be impacted. BLM should review the process by which baseline assessments are made, prior to making decisions that significantly differ from prior allotment management plans. ,

Greater Sage-Grouse Habitat

A number of the proposed allotments are within the Sagebrush Focal Area (SFA) and the Greater Sage Grouse Priority Habitat Management Area (PHMA). While grazing is certainly compatible and beneficial to sage grouse, it is important to implement decisions based on sound management principles. BLM has typically supported, encouraged and in most cases required, grazing systems that allow for control of domestic livestock in a form of rest rotation systems. These time-controlled grazing practices tend toward increased herbaceous cover on rangelands, which is beneficial to wildlife and the resource itself. BLM must analyze the effects of making a significant policy change, that question if grazing systems are even necessary. Our organizations request BLM to clarify if all grazing allotments will now be based solely on stocking rates or if these proposed grazing allotments will be treated differently and utilize different criteria.

BLM also previously stated conversion to year-round grazing by bison throughout the Flat Creek allotment may impact the desired conditions for sage-grouse habitat if the allotment is not adequately monitored and swift actions are not taken to address deficiencies. BLM must

adequately identify how it will meet this requirement, due to much of the infrastructure being removed from the allotments.

How would the proposed action and the alternatives affect Water, Wetlands, and Riparian Resources

It had been stated, “Compared to domestic cattle, bison wander more, will use steeper terrain, select and consume drier, rougher forage, and spend less time in riparian areas and wetlands.” BLM must analyze if research exists that shows without infrastructure in place, these riparian areas will meet the standards. BLM must also show how this proposal will be within conformance with Land Use Plans and grazing techniques that reduce hot season grazing on riparian and meadow complexes within Greater Sage-Grouse PHMAs. BLM must also show how future requests by any grazing permittees will be handled and if conformance standards will still be required.

BLM has also recognized that year-round grazing may lead to increased shoreline and riparian trampling where bison tend to concentrate. The acknowledgement that resource damage may occur due to this type decision, once again deviates from past BLM grazing decisions. Analyzation should occur to determine if this is a new BLM policy shift that will allow grazing permits to be approved, even if riparian standards are not met.

Compliance with Montana Trust Lands

The Department of Natural Resources and Conservation (DNRC) - Land Management Program manages agricultural and grazing resources on state trust land. Their responsibilities include the evaluation and assessment of range and crop land condition, investigations of lease noncompliance and oversight of water developments and improvement projects such as range renovation and resource development. There are approximately 8100 grazing leases on these state trust lands. Many of the proposed allotments include state grazing leases. Because DNRC currently requires grazing lessees to meet specific standards, BLM must analyze how these requirements will be met and what actions will be taken if there are infractions. From our view, there does not seem to be a clear communication between the state and BLM in how this significant proposed change will affect these state grazing leases.

Coordination with Local Governments and Local Ordinances

BLM must provide how it has coordinated with the local county officials impacted by this proposal. Those counties should include at a minimum, Fergus, Petroleum, Phillips and Valley. This coordination should also include their input on this proposal and how it will impact the social and economic values of their constituents. BLM should also include if this proposal conflicts with any local ordinances that have been enacted by local counties.

In conclusion, the livestock organizations would like to thank the BLM for the opportunity to submit these comments on the APR permit modification proposal. Many of the requested changes in this proposal have raised a number of resource concerns that we feel have not been fully vetted and analyzed by your agency. We look forward to continue providing information as the BLM analyses this proposal in more detail.

Sincerely,

A handwritten signature in black ink that reads "Jay Bodner". The signature is written in a cursive style with a long, sweeping underline.

Jay Bodner
Montana Association of State Grazing Districts
Montana Public Lands Council
Montana Stockgrowers Association