



September 28, 2021

Tom Darrington
Bureau of Land Management
Malta Field Office
501 South 2nd St. East
Malta, MT 59538

**RE: Comments regarding American Prairie Reserve Bison Change of Use DOI-
BLM-L010-2018-0007-EA**

Dear Mr. Darrington:

On behalf of the Montana Stockgrowers Association (MSGA) and the National Cattlemen's Beef Association (NCBA) and the Public Lands Council (PLC), we appreciate the opportunity to submit these comments concerning the American Prairie Reserve (APR) application for Bison change of Use DOI-BLM-L010-2018-0007-EA.

From the local, state and national level, our grassroot organizations are directed and made up of ranchers representing the West's livestock producers. Our livestock organizations' missions are to maintain a stable business environment for ranchers that utilize public lands, including strongly advocating for the water, grazing and other private property rights on public lands so that western ranching families may continue their traditions of production and stewardship.

Our organizations initially have concerns over the Environment Assessment (EA) and how the document is drafted. Historically, BLM has been consistent in past EA documents in selecting a preferred alternative, but in this EA draft document, a preferred alternative does not exist. The BLM should select a preferred alternative and state how the alternative would fulfill its statutory mission and responsibilities, giving consideration to economic, environmental, technical and other factors.

Consultation and Coordination

Our organizations also raise the concern regarding the preparation of the EA document. The BLM has, in this case, allowed a third-party provider, as a client of the APR, to write the entire EA document. While it is stated that it was under review of BLM staff, the optics of having a third-party conduct an EA that favors the client's position, seems questionable at best.

Additionally, in 2003, the BLM and the Montana Grass Conservation Commission signed an MOU with the purpose of creating an atmosphere of cooperation and mutual trust between the two entities. The working agreement was founded on these principles that would allow the BLM, MGCC and state grazing districts to achieve the objective spelled out in the Federal Land Policy and Management Act, Public Rangelands Improvement Act, the Taylor Grazing Act, and the Montana Grass Conservation Act. This MOU outlines the responsibilities of each entity as well as management considerations. Specifically, the MOU states the BLM and the grazing district should determine time, intensity and duration of grazing of intermingled lands through consultation, cooperation and coordination. This has not occurred and grazing districts were not consulted throughout the process. Prior to any decision, the BLM needs to fulfill the requirements in this MOU.

Environmental Assessment vs. Environmental Impact Statement

As the largest organizations representing individuals who graze on public lands, our members are very familiar with the permit processes and what processes should be followed. We feel this draft EA is not adequate. Additional vetting and analysis should be done by the BLM. The APR is very outward facing with their mission to create an American Serengeti. This can be easily found in marketing material as well as past interviews. This American Serengeti is not achievable with just these seven allotments. It requires a greater plan and footprint. Because this mission is public and accessible, we feel this should play a role in the analysis and decision. We believe this request should trigger an Environmental Impact Statement (EIS).

Furthermore, while participating in the virtual listening session hosted by the BLM in July, multiple comments included stories of visitors from across the country traveling to view the bison. However, recreational use and the impacts of increased visitor use on the allotments has not been addressed in the EA. The draft EA does not include any impacts related to recreation and commercial use on the allotments. Without these analyses included in the EA, how can there be a Finding of No Significant Impact (FONSI)? Not all uses and impacts have been accounted for in the EA and should be analyzed.

No Legal Basis Qualifying APR To Carry Grazing Permits

The BLM has not shown or adequately analyzed the legal basis to qualify APR 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 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 failed to fully analyze if the approval of these permit modification

requests meets 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 fails to fully evaluate, if this decision meets the above-mentioned federal statutes and includes the documentation by which it is based.

In section 1.6.6, the BLM states, "*The proposal to graze domestic indigenous animals is consistent with the authorities of the TGA.*" Once again, the BLM has failed to prove or show the specific language in the TGA that authorizes this action.

Change the class of livestock from cattle to bison

It is important to clarify the APR bison are not indigenous, but domestic livestock, based on Montana Code Annotated 81-1-101: (4) "*Domestic bison*" means a bison owned by a person." This clarification is also supported by the fact that APR pays the MT Department of Livestock per capita fees on the bison they own. While this application appears to be a simple request for a change of livestock, BLM's decision to convert grazing leases from cattle to bison represents a significant management change. We also believe the decision to convert cattle grazing leases to bison requires consideration of many other factors that go beyond the conversion of grazing from one livestock category to another. Given the APR's plan for bison restoration, our organizations request BLM consider a comprehensive review of bison management, before allowing additional change requests to occur.

Fencing

It appears in communication between the APR and Malta BLM office that the BLM border fence has been modified by the APR. This should have required either a Cooperative Agreement or a Permit (both issued by the BLM) and an EA would have had to be conducted. We have no documentation that either an Agreement or Permit was issued by BLM and no EA was conducted before the fences were modified.

^[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).

This is the case with most of the fencing and cattle guards discussed under item B in the EA. It raises great concern that the current EA notes the modification as they have not been done, yet these modifications have already occurred. This request to remove significant interior fencing has raised considerable concerns for our organizations. A range management principle in general is that by increasing fencing (cross fences) a livestock producer can increase carrying capacity because of additional control over the livestock's movements. With the removal of interior fences, the reverse should be true by decreasing management options and reducing carrying capacity because the animals will concentrate in their desired areas.

A prime example of this type of management action was taken by Mr. Ted Turner on the Flying D Ranch in Gallatin County. In his book (*Last Stand, 2013*), Turner sought to "re-wild" the land and help the bison by tearing down all the fences on the ranch's 170 square miles. Then, a few years later, Turner realized the grazing management strategy wasn't working as planned. The ranch replaced some of those same fences to better manage bison grazing. We would expect a similar situation to exist with this change request.

Our groups also question the need for removal of these interior fences when APR reports on their website the success of wildlife friendly fences already in existence. They state, "*Using remote camera traps to take photographs and record 30-second videos, WWF biologists monitored wildlife passage under or over bison fencing on American Prairie Reserve to ensure that the fences do not inhibit the movements of other animals.*"

With past histories of resource concerns occurring that were seeking to conduct similar conservation actions, we request BLM deny this provision.

Year-Round Grazing

BLM allows for very limited permits where year-round grazing is allowed. This application questions whether this is a special exception due to the animals being bison. With the possibility of reduced interior fences and year-round grazing, it will be difficult for BLM to address range conditions that are not meeting standards and take corrective actions.

An additional concern is the impact this request may have on sage grouse and the efforts by numerous groups to have the species listed under the Endangered Species Act by the U.S. Fish and Wildlife Service. While grazing is certainly compatible and beneficial to sage grouse, it is important to implement it 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.

Economic and Socioeconomic Analysis

The economic and socioeconomic impact study included in the EA is inadequate and does not reflect the impacts of this proposed decision. As stated on page 3-38, "For the purposes of this analysis, information used in modelling socioeconomic impacts was obtained from bison enterprise budgets (Foulke et al. 2001) (see Appendix D, Economic Modelling Technical

Approach),” this document is specific to a production/commercial type bison operation and does not reflect the current business model for the APR. As stated in the report, “The budget assumes an established bison herd where most replacements are ranch raised. A linear livestock flow chart was created in a spreadsheet to determine production numbers. The spreadsheet represents three years’ worth of bison production (three years represents the time it takes for a bison heifer to produce a calf), starting with 100 head of bred bison cows. Weaning rate is set at 85 percent and death loss at 2 percent. The portion of the chart that represents year two of the cycle includes the purchase of two yearling bulls and three yearling heifers, which were purchased to enhance genetic diversity. Herd size is maintained by selling 75 percent of the open cows (both classes) in the fall.” This small sampling of the document clearly shows that APR does not engage in these types of production methods and is therefore inadequate for the economic/socioeconomic analysis. It is clear a more thorough analysis must be conducted before a significant impact can be determined.

References

Throughout the EA, there are numerous references to the following study, “Kohl, M., P. Krausman, K. Kunkel, and D. Williams. 2013. *Bison Versus Cattle: Are They Ecologically Synonymous? Journal of Rangeland Ecology Management Vol 66. Pp. 721–731. November.*” The EA references numerous times about the differences between bison and cattle at water resources. We think it is important to point out that this study is contrary to the significant literature that exists as stated in the document, “*We are the first to observe selection of water resources by bison across location and spatial scale, a finding contrary to other work throughout the literature (van Vuren 1979; Phillips 2000; Babin 2009; Allred et al. 2011).*” We believe the EA relies too heavily on this one study. One simply has to drive through the Lamar Valley in Yellowstone National Park (YNP), to also call the results of this study into question. Bison inhabit this area year-round as even stated by YNP on their website. It is also very visible to see the significant grazing pressure in this riparian area. Based on these issues, BLM should do additional analysis on impacts to riparian area impacts from this decision.

In conclusion, the livestock organizations would like to thank the BLM for the opportunity to submit these comments. Many of the requested changes in Alternative B have raised a number of resource concerns that we feel have not been fully vetted and analyzed by your agency.

Sincerely,



Montana Stockgrowers Association
National Cattlemen’s Beef Association
Public Lands Council