

September 28, 2021

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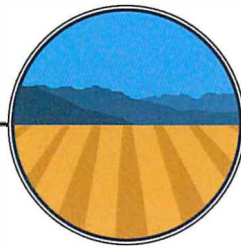
Tom Darrington
Malta Field Office
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Re: The United States Bureau of Land Management's draft environmental assessment (EA) for the American Prairie Reserve Bison Change of Use (DOI-BLM-L010-2018-0007-EA) and Finding of No Significant Impact (FONSI)

Mr. Mehlhoff and Mr. Darrington:

The Montana Department of Agriculture (AGR) has reviewed the United States Bureau of Land Management's (BLM) draft EA and FONSI for the American Prairie Reserve (APR) Bison Change of Use (DOI-BLM-L010-2018-0007-EA), and thanks BLM for the opportunity to submit comment.

The AGR is statutorily charged to encourage and promote the interests of agriculture and other allied industries and collect and publish statistical information related to agricultural production in the State of Montana. In reviewing the EA, proposed alternative, and FONSI, the AGR has identified several areas of significant concern which it submits to BLM. Specifically, the AGR asserts that BLM lacks the legal authority to issue the permit APR seeks. Even if BLM had the authority, AGR is particularly concerned with the EA's failure to analyze economic harm that could occur in the affected communities in association with the preferred alternative.



1. The proposed alternative is in violation of legal authorities governing grazing permits.

Under federal statutes and rules governing grazing permits, bison do not constitute “livestock” for which grazing permits can be given. While the EA references “bison” and “indigenous animals” interchangeably, neither are defined as “livestock” under 43 CFR § 4100.0-5. One of the purposes of the grazing regulations is to “provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.” 43 CFR § 4100.0-2. The grazing regulations do not contemplate a “non-production-oriented, wildlife management focused” bison herd. EA at 3-42.

The Taylor Grazing Act (TGA) was clear in its mandate that grazing districts be permitted for **livestock** grazing. One of the primary purposes of TGA was to stabilize the livestock industry dependent upon the public range. As such, the Secretary of the Department of the Interior was directed to establish grazing districts from public domain determined to be “chiefly valuable for grazing” and raising forage crops. Taylor Grazing Act of 1934, 43 U.S.C. § 315. The Secretary was similarly imbued with the power to issue permits to graze **livestock** on those grazing districts. *Id.* at § 315(b). The Federal Land Policy and Management Act (FLPMA) renewed this targeted intent, as it defines grazing permits as authorizations for using public lands in the eleven contiguous western States for the purpose of “**grazing domestic livestock.**” Federal Land Policy and Management Act of 1976, 43 USC § 1702(p) (emphasis added).

The EA characterizes APR’s bison herd as a “non-production-oriented, wildlife management focused” herd. EA at 3-42. Awarding a permit to APR, which allows them to graze bison on lands originally withdrawn under the TGA, runs contrary to stated laws and regulations and afoul of the spirit of the TGA, which was to stabilize the production livestock industry.

The only point at which the grazing rules reference “indigenous animals” is at 43 CFR § 4130.6-4, which addresses **special** grazing permits. That rule states that “special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.” However, APR has not requested, and the EA does not analyze, a **special** grazing permit. Special grazing permits, as opposed to regular permits, have no renewal priority, and cannot be assigned or transferred. 43 CFR § 4130.6.

In short, BLM lacks the authority to select the preferred alternative set forth in the EA. Such a permit runs contrary to federal statutes and rules governing these public grazing lands.



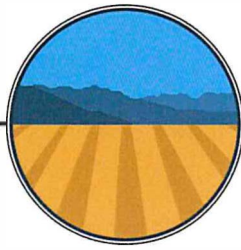
2. Assuming, for the sake of argument, that BLM has the authority to grant the requested permits, the EA’s economic analysis is insufficient.

The EA’s analysis focuses on the inputs associated with a production bison herd. That is not an accurate analysis of the impacts associated with the actual proposal at issue. By incorporating such assumptions into its analysis, and finding “no impact,” the EA ignores what could potentially be very significant, and maybe even devastating, impacts on a local level.

The communities affected by the proposed alternative are ag-centric. The infrastructure and social constructs of the region, from feed stores to county fairs, are based on the day-to-day realities of the production livestock industry. The proposed alternative removes large chunks of land from production agriculture. Doing so will certainly decrease agricultural production revenue, but may also impact support industries, such as feed suppliers, ranch laborers, machinery sales and repair businesses, livestock veterinarians, etc. Depending on the severity of these impacts, the State could also witness a decrease in the affected population base and a shift away from present socio-cultural characteristics.

Similarly, it would be important for the EA to explore the temporal characteristics of any economic impacts, specifically addressing the possibility that once done, any potential damage could be irrevocable. Phillips County is an extraordinarily rural area of Montana. Many of the ranches in the Phillips County community are generational, with direct ancestral connection to original homesteaders. Should these ranchers leave, or community members close their businesses, it could be very difficult to restore those rural communities to their former economic, or socio-cultural, status. Unsubstantiated conclusory statements of “no impact” or future benefit do not constitute a sufficient or realistic review in accordance with the National Environmental Policy Act. The insufficiency is especially apparent when viewed through the lens of the communities most likely to be affected, given the potential change to their livelihoods and the potential long-term economic harms that could result.

The need for an economic analysis is particularly appropriate given that these lands are subject to the TGA, the purpose of which was to stabilize livestock industry and the communities supported by it. Any decision reached by BLM needs to be in full compliance with its statutory mandate and not in derogation to it.



AGR would strongly encourage BLM to re-evaluate the proposed alternative and FONSI. After reviewing the relevant authorities, allowing APR's bison on the subject lands is an impermissible contortion of federal law, rule, and intent. Even if BLM had the authority to grant the requested permit, the analysis conducted in the EA is insufficient as it does not properly review the potential economic impacts.

Sincerely,

Christy Clark

A handwritten signature in black ink that reads "Christy Clark". The signature is written in a cursive style with a large, looping initial "C".

Acting Director, Montana Department of Agriculture (AGR)