
STATE OF MONTANA

GREG GIANFORTE, GOVERNOR

DEPARTMENT OF LIVESTOCK
PO BOX 202001
HELENA, MONTANA 59620-2001



BOARD OF LIVESTOCK (406) 444-9321
ANIMAL HEALTH & FOOD SAFETY DIVISION (406) 444-2043
BRANDS ENFORCEMENT DIVISION (406) 444-2045
CENTRALIZED SERVICES DIVISION (406) 444-4993
FAX (406) 444-1929

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John Mehlhoff
State Director, Montana/Dakotas
Bureau of Land Management
5001 Southgate Drive
Billings, MT 59101

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

RE: Comments on draft environmental assessment (EA) and Finding of No Significant Impact (FONSI) for the American Prairie Reserve Bison Change of Use (DOI-BLM-L010-2018-0007-EA)

Mr. Mehlhoff and Mr. Darrington:

The Montana Department of Livestock (MDOL) welcomes the opportunity to comment on the draft EA and FONSI pertaining to the American Prairie Reserve's (APR) requested change of use on seven allotments in the Malta Field Office. This request seeks authorization to change the permitted species to include bison and significantly change allotment fencing.

The MDOL is the state agency responsible for regulating the movement and identification of livestock, protection of livestock from disease, containment of livestock, and prevention of livestock theft and fraud. Considering the EA in conjunction with these duties, the MDOL has several concerns with the proposed alternative and the precedent it threatens to set for the administration of public grazing lands in Montana. MDOL's concerns are focused on the legal propriety of issuing the requested permit, the manner in which the proposed alternative affects MDOL's ability to adequately regulate livestock, and the areas of insufficient analysis contained within the EA.

1. Federal grazing statutes and rules do not give BLM the authority to change permits from cattle to bison.

Regardless of whether BLM uses the term "bison," "indigenous animals," or "indigenous livestock," federal land management statutes and regulations do not provide BLM the authority to grant the permit APR seeks. The express language of the Taylor Grazing Act (TGA) permits grazing district use by livestock, the definition of which does not include bison.

One of the stated purposes of permitting livestock use on grazing district land is to prevent overgrazing and soil deterioration, provide for the orderly use, improvement, and development of the land, and to “stabilize the livestock industry.” TGA Pmble, 48 Stat. 1269, ch. 865 (1934). The Federal Land Management and Policy Act (FLPMA) mirrors the TGA in this regard, as it defines a grazing permit to be the documents authorizing use of “public lands or lands in National Forests in the eleven contiguous western States for the purpose of *grazing domestic livestock*.” FLPMA, 43 USC 1702(p) (emphasis added). Unsurprisingly, the rules implementing the TGA and FLPMA reflect these same limitations. 43 CFR § 4100.0-5 specifically defines “livestock or kind of livestock” as a “species of domestic livestock—cattle, sheep, horses, burros, and goats.” *See also*, 43 CFR § 4130.2(a). A non-production herd of bison is not considered “livestock” under applicable federal law and BLM cannot issue the permit APR seeks.

The EA references 43 CFR § 4130.6-4, which addresses *special* grazing permits. However, APR has not requested a *special* grazing permit and the EA’s analysis is not specific to a *special* grazing permit. Such a permit is not only misapplied to the request at issue here, but also seems to run afoul of the TGA and FLPMA.

2. Even if the permit were proper, MDOL is concerned that proposed fencing alterations could be insufficient to contain bison, increasing the burden on MDOL and area livestock producers.

APR seeks authorization to construct, reconstruct, or modify a significant amount of interior and exterior fencing on the allotment to a four-wire fence. The second wire from the top would be high tensile electric wire. The EA cites the Montana Department of Fish, Wildlife, and Parks’ (FWP) wildlife friendly fencing guidance for this design. EA at 2-9 and Appx. B.

The fencing concepts set forth in Appendix B may be acceptable for containing cattle and sheep, while still allowing wildlife to permeate, but these concepts may not be sufficient for bison containment on the allotments. It has been MDOL’s experience when managing wild buffalo or bison in the Greater Yellowstone Area that such a fence would *not* achieve containment.

State law prohibits domestic bison from running at large. Mont. Code Ann. § 81-4-201. It has yet to be seen whether APR’s bison would respect the fence proposed. As APR tries to treat its bison as wildlife, it might be unreasonable to expect said bison to respect a “wildlife friendly” fence.

Given APR’s stated goal of treating these bison as wildlife, it is rash to permit the whole-sale fence modifications as requested. Rather, MDOL would propose a more prudent approach which 1) phases fence modifications in a manner allowing cessation should the fences prove inadequate, and 2) establishes a threshold of escapes which, if reached, would require APR to return fences to their original, pre-permit condition.

3. The proposed alternative complicates MDOL’s ability to fulfill its statutory duties.

MDOL is responsible for regulating the movement, containment, and identification of livestock within the state. These regulations are intended to protect domestic livestock owners from theft, conduct animal disease traces during outbreaks of animal disease, and identify those responsible for domestic livestock running at large. Traditionally, BLM grazing lands in Montana have been used for commercial production herds of domestic cattle and/or sheep. These species and herds generally employ a robust identification system that includes, but is not limited to, livestock brands, vaccination

tags, ranch tags, and tattoos, all of which allow MDOL to easily establish ownership of those livestock when they are transferred or in the event that they escape.

The leaseholder of the allotments addressed in the proposed alternative own domestic bison as defined by state law (Mont. Code Ann. § 81-1-101), but manage those animals in a “non-production-oriented, wildlife management focused” manner. As such, a number of these animals lack the identification that would typically be associated with domestic livestock on public grazing lands. These animals would be categorized as “estrays” in the event of escape, which MDOL has the authority to gather and dispose of in accordance with Mont. Code Ann. § 81-4-601, *et seq.*

The necessity for identification is only underscored by the fact that tribal bison exist in this region of Montana, and the United States Department of the Interior has historically indicated interest in putting bison on the CMR Wildlife Refuge. An inability to quickly identify ownership of domestic bison, especially in the event that they comingle with other bison, would make it incredibly difficult for the MDOL to serve its mission as required by Montana law.

Both identification and annual actual use reporting requirements would help MDOL identify the proper location of bison in the event of their escape, and MDOL respectfully requests that BLM mandate both tools as conditions on any permit granted, for the foregoing reasons.

4. The proposed alternative threatens to undermine Montana’s livestock industry and economy in ways not examined by the EA.

MDOL strives to foster the livestock industry and its interests. To that end, it is unclear how the proposed alternative would be in the best interest of the industry and the economic viability of the affected rural communities. The proposed alternative would remove commercial production agriculture from the allotments and authorize a non-production use. This has very real economic consequences to the surrounding communities and to the State as a whole, given the potential reduction or complete elimination of agricultural inputs to (*i.e.* feeds, farm equipment, veterinary services, etc.) and economic outputs (*i.e.* feeder cattle, breeding stock, etc.) from, the operation.

BLM’s economic impact analysis in the EA is insufficient. The analysis conducted by BLM is based on a *production* bison operation, which has different inputs and outputs than a *non-production* bison herd. BLM acknowledges as much in the EA.

The model inputs described below are based on a standard bison farm budget. It should be noted that this source is based on a production-oriented enterprise and is likely to overestimate the potential effects from non-production-oriented, wildlife management focused bison grazing on APR lands.

EA at Appx. D.

It is incumbent upon BLM to fully analyze the impacts of the alternatives assessed. The “economic analysis” provided in the EA falls short.

If this proposed change in use sets precedent for future decisions on public lands that allow more non-production or non-commercial activity, the economic impact to the state could be significant and could disproportionately affect rural communities that have a limited tax base to provide services to their

community. A proper analysis would recognize and analyze any cumulative impacts resulting from APR's previous allotment changes, in conjunction with those at issue now.

5. The EA fails to analyze any disease impacts that could be associated with increased commingling between wildlife and a non-production herd of bison.

The EA analyzes possible disease transmission in a very limited manner. On page 3-11, the EA discusses the transfer of brucellosis and bovine tuberculosis from domestic livestock to wildlife, and on page 3-14, the EA lists a number of diseases that could infect bison and which are transmissible to other livestock. The EA also mentions that APR has committed to conducting limited disease testing for the next 10 years. *Id.* at 3-15.

The EA does not address the non-production, conservation nature of the APR herd or how that important factor may play into any disease prevalence or exchange between bison, livestock, and wildlife. For example, because APR strives to treat its herd like wildlife, it does not implement a comprehensive vaccination plan as many traditional production livestock operations do. Similarly, APR does not cull or sell animals in the same manner production operations do, leading to older herd individuals that have potential to contract and harbor disease for a longer period of time. The EA should assess whether these differences, in conjunction with increased wildlife interaction via new wildlife-friendly fencing, create an elevated risk of disease to either APR's bison, neighboring livestock, or area wildlife.

6. The EA does not sufficiently describe or analyze a change in use from "cattle" to "cattle and/or bison."

The EA characterizes the change sought by APR as being from cattle to "cattle and/or bison." It is unclear what this means. Will APR be running bison and cattle concurrently? Will bison and cattle be fenced separately or grazed in common? Several of the assumptions upon which the proposed alternative is based seem specific to bison. For example, the EA draws distinctions between how bison and cattle graze and utilize riparian areas. If the permit contemplates grazing bison and cattle together, however, does removal of interior fencing still protect riparian areas? The EA needs to specifically identify what precise action is contemplated and analyze accordingly.

7. The EA fails to analyze the removal of terms and conditions on existing permits.

The EA identifies several terms and conditions which currently apply to the present permit. *Id.* at 2-2, 2-3. However, a number of those terms (1-10) which address permit cancellation, control over livestock, stocking accountability, and identification, are not identified on the permit described in the proposed alternative. BLM should address why these terms and conditions will no longer apply and analyze the potential impacts of removing those items from APR's permit.

In reviewing the federal statutes and rules that govern grazing permits, it does not appear that BLM has the authority to grant the permit presently sought by APR. In the event that BLM is found to have such authority, the MDOL respectfully requests that BLM address the aforementioned insufficiencies in the EA analysis and implement appropriate permit conditions so that MDOL can continue to do its part to enforce state law and foster a robust livestock industry and rural economy.

Sincerely,



Mike Honeycutt

Executive Officer, Montana Department of Livestock