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VIA FEDERAL EXPRESS

Tom Darrington, Field Manager
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Malta Field Office
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VIA FEDERAL EXPRESS

Office of the Solicitor
Billings Field Office, Rocky Mountain Region
Department of the Interior
2021 4th Avenue North, Suite 112
Billings, MT 59101

Re: Notice of Appeal, Statement of Reasons in Support of Appeal, and Petition
for Stay of the Bureau of Land Management's July 28, 2022 Final Decision
for the APR Grazing Proposal; DOI-BLM-MT-Lo10-2018-0007-EA

Dear Mr. Darrington,

On behalf of the South and North Phillips County Cooperative State Grazing
Districts (the "Grazing Districts") and the Montana Stockgrowers Association (the
"MSGA"), and pursuant to 43 C.F.R. Subtitle A, Part 4, Subpart E (Grazing Procedures)
and 43 C.F.R §§ 4160.1-4160.4, the purpose of this letter is to appeal the Bureau of Land
Management's July 28, 2022 Final Decision for the American Prairie Reserve (APR)
Grazing Proposal, DOI-BLM-MT-Lo10-2018-0007-EA, which authorizes grazing by
non-production livestock, the elimination, reconstruction and construction of fences,
and modification of the season of use for multiple allotments. The Grazing Districts and

MSGA are requesting a stay of this decision in accordance with 43 C.F.R. §§ 4.471, 4160.3, and 4160.4.

I. Introduction.

The Final Decision affects seven Bureau of Land Management (BLM) grazing allotments in Phillips County, Montana: Telegraph Creek (allotment #05654), Box Elder (allotment #15634), Flat Creek (allotment #15439), Whiterock Coulee (allotment #15417), East Dry Fork (allotment #05617), French Coulee (allotment #05616), and Garey Coulee (allotment #05447). These allotments are located within and administered by the Malta Field Office. The allotments covered by the Final Decision currently include 7,969 permitted AUMs and, according to the Final Decision, contain approximately 63,065 acres of BLM-administered lands¹.

For the Telegraph Creek (05654) and Box Elder (15634) allotments, the Final Decision authorizes the issuance of a 10-year grazing permit for non-production indigenous livestock (bison). For the Flat Creek (15439) and Whiterock Coulee (15417) allotments, the Final Decision authorizes the issuance of a 10-year grazing permit for cattle and non-production indigenous livestock (bison), which is a change in the type of livestock currently authorized on the Flat Creek and Whiterock Coulee allotments. For these four allotments, the Final Decision also modifies the existing seasons of use,

¹ The BLM's documents related to this Final Decision are unclear as to the total BLM acres impacted. The Draft EA states that total land included in the APR proposal is 107,850 acres with 69,310 acres being BLM managed, Draft Environmental Assessment at p. 1-1, while the Final EA states only 63,065 acres of the total 107,850 acres are BLM managed, Environmental Assessment at p. 1-1. Both of those calculations of BLM managed lands contradict Table 1 of the Final EA which accounts for only 62,077 acres. Environmental Assessment at p. 2-2.

changes fences from traditional livestock wire fences to electrical fences², and includes the construction and reconstruction of fencing to combine allotments with “other allotments, state leases, and/or deeded lands.”

For the French Coulee (05616) and Garey Coulee (05447) allotments, the Final Decision authorizes the issuance of a 10-year grazing permit for cattle and non-production indigenous livestock (bison), which is a change in the type of livestock currently authorized and changing fences to electric fencing³. For the East Dry Fork (05617) allotment there is no change in the type of livestock and cattle grazing would continue. For all three of these allotments, the season of use, stocking rate, and AUMs would not change from the current conditions.

II. Description of Appellants.

a. North and South Phillips County Cooperative State Grazing Districts (Grazing Districts).

The Montana Law Title 76-16-102 allows for the formation of the North and South Phillips County Cooperative State Grazing Districts (Grazing Districts) which were formed as the result of the 1934 Taylor Grazing Act. Before this act was passed, land that was valued for grazing purposes was unappropriated and unreserved from the public domain. The North District was formed September 20, 1935, and the South

² Although the change to electric fences is discussed, there is no discussion regarding how these fences will be electrified, the power source for the electricity and the environmental impacts of installing electricity to the fences. For example, if the fences are to be solar powered, there will be environmental impacts from installing solar power on the landscape.

³ Although the change to electric fences is discussed, there is no discussion regarding how these fences will be electrified, the power source for the electricity and the environmental impacts of installing electricity to the fences. For example, if the fences are to be solar powered, there will be environmental impacts from installing solar power on the landscape.

District was formed September 10, 1930. The purpose of 76-16-102 is to “provide for the conservation, protection, restoration, and proper utilization of grass, forage, and range resources of the state of Montana, to provide for the incorporation of cooperative nonprofit state districts, to provide a means of cooperation with the secretary of the interior as provided in the federal act known as the Taylor Grazing Act and any other governmental agency or department having jurisdiction over lands belonging to the United States or other state or federal agency as well as agencies having jurisdiction over federal lands, to permit the setting up of a form of grazing administration which will aid in the unification or control of all grazing lands within the state where the ownership is diverse and the lands intermingled, and to provide for the stabilization of the livestock industry and the protection of dependent commensurate properties.”

The Grazing Districts have twelve directors who serve as officers and who are elected by over 200 permittees engaged in livestock production in Phillips County. The North and South Cooperative State Grazing Districts have cooperative agreements with the Malta Field Office of the Bureau of Land Management, under a Memorandum of Understanding, and provide oversight of sale of permits and changes of preference, including the ones at issue in this case.

b. The Montana Stockgrowers Association.

The Montana Stockgrowers Association (MSGA) is a grass roots non-profit membership organization with over 135-years of history of advocating on behalf of Montana cattle ranchers to ensure cattle ranching remains relevant, safe, and a sustainable way of life for generations to come. Membership in MSGA consists of cattle ranchers of all ages, ranching operations large and small, feedlot operators, affiliate

businesses, private property owners, and supporters and friends of Montana ranchers whose livelihood and identity are tied to the Montana cattle industry. MSGA is the trusted voice of cattle ranchers, and advocate of cattle ranching for state and federal legislators and a true partner in efforts to preserve and advance Montana's cattle industry. MSGA's board of directors is elected by the membership at the organization's annual meeting.

III. Statement of Reasons in Support of Appeal.

The Final Decision which authorizes APR to graze non-production indigenous livestock (bison) on six allotments, including four new allotments, changes the season of use on four allotments, authorizes the elimination, construction and reconstruction of fences on four allotments, and authorizes alterations to electric fencing on six allotments is arbitrary, capricious, not supported by any rational basis, and is not in accordance with the law, including, but not limited to, the Taylor Grazing Act, 43 U.S.C. §§ 315-315r, the Administrative Procedures Act ("APA"), 5 U.S.C. §§ 551-706, the Federal Land Policy and Management Act of 1976 ("FLPMA"), 43 U.S.C. §§ 1701-1785, and the Public Rangelands Improvement Act ("PRIA"), 43 U.S.C. §§ 1901-1908, and any applicable regulations or policies of the Department of the Interior. Appellants reserve the right to add additional parties, additional reasons in support of this appeal, and to supplement the reasons for appeal stated herein if required by state law or based on discovery in this matter.

a. Standard of Review.

Review of this appeal is governed by Section 9 of the Taylor Grazing Act (TGA), 43 U.S.C. § 315h. *See Eason v. Bureau of Land Management*, 127 IBLA 259, 260

(1993). In *Bureau of Land Management v. Ericsson*, 98 IBLA 258, 263 (1987), the IBLA concluded that a TGA Section 9 hearing was an adjudication under 5 U.S.C. § 554(a), or an adjudication “required by statute to be determined on the record after opportunity for an agency hearing.” See *Bureau of Land Management v. Ericsson*, 98 IBLA 258, 263 (1987). Accordingly, any such hearing is a formal adjudication under the Administrative Procedures Act (APA) and is subject to the terms of that Act. See *Eason v. Bureau of Land Management*, 127 IBLA at 262.

Section 7(c) of the APA provides that “the proponent of a rule or order has the burden of proof.” See 5 U.S.C. § 556(d). The United States Supreme Court held that section 7(c) of the APA requires the proponent of the rule or order to meet its burden by a preponderance of the evidence. See *Steadman v. Securities & Exchange Commission*, 450 U.S. 91, 102 (1981); see also 5 U.S.C. § 556(d) (a rule or order may not be imposed except on consideration of the whole record and supported by and in accordance with the reliable, probative, and substantial evidence). Thus, for grazing adjudications which fall under Section 9 of the Taylor Grazing Act, the Bureau is the “proponent of the rule or order” and must prove its decision by a preponderance of the evidence. See *John L. Falen*, 143 IBLA 1, 4 (1998); and *David and Bonnie Ericsson*, 88 IBLA 248, 255 (1998).

The BLM is the proponent of its Final Decision which authorizes APR to stock non-production indigenous livestock (bison) on six allotments, changes the season of use on four allotments, authorizes the elimination, construction and reconstruction of fences on four allotments, and authorizes changes to electric fencing on six allotments. Accordingly, the BLM has the burden to prove by a preponderance of the evidence that its decisions were justified.

In addition, the APA prohibits agency actions, findings, and conclusions found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” See 5 U.S.C. § 706(2)(A); *see also Friends of the Bow v. Thompson*, 124 F.3d 1210, 1215 (10th Cir. 1997). Even though the standard of review under section 706 of the APA is a narrow one, in determining whether an agency acted in an arbitrary and capricious manner, a trier of fact must ensure that the agency's decision was based on a consideration of the relevant factors and examine whether there has been a clear error of judgment. *See Friends of the Bow v. Thompson*, 124 F.3d at 1215, *citing Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971).

“Generally, an agency decision will be considered arbitrary and capricious if the agency had relied on factors which Congress had not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.”

Friends of the Bow v. Thompson, 124 F.3d at 1215, *citing Motor Vehicles Mfrs. Association v. State Farm Mutual Auto Insurance Co.*, 463 U.S. 29, 43 (1983).

Furthermore, a decision concerning grazing permits may be arbitrary, capricious, or inequitable where it is not supported by any rational basis. *See Filippini Ranching Co. v. Bureau of Land Management*, 149 Interior Decision 54, 78 (1999); *Riddle Ranches, Inc. v. Bureau of Land Management*, 138 IBLA 82, 84 (1997); *Kelly v. Bureau of Land Management*, 131 IBLA 146, 151 (1994); and *Yardley v. Bureau of Land Management*, 123 IBLA 80, 90 (1992). A decision may be regarded as arbitrary and capricious if it is not supportable on any rational basis or if it does not substantially comply with the grazing regulations. *See Riddle Ranches, Inc. v. Bureau of Land*

Management, 138 IBLA at 97; *Joe Saval Co. v. Bureau of Land Management*, 119 IBLA 202, 208 (1991); *Fasselin v. Bureau of Land Management*, 102 IBLA 9, 14 (1988); and *Webster v. Bureau of Land Management*, 97 IBLA 1, 3-4 (1987).

In the present case, the BLM's decision which authorizes APR to stock non-production indigenous livestock (bison) on six allotments, changes the season of use on four allotments, authorizes the elimination, construction and reconstruction of fences on four allotments, and authorizes changes to electric fencing on six allotments is not in accordance with the law, is without merit, and is not supported by any rational basis.

b. The Taylor Grazing Act Prohibits the Grazing of Non-Production Animals on BLM Allotments.

Although the BLM's July 28, 2022, Final Decision makes the blanket determination that bison are livestock that can graze on the allotments at issue, neither the Taylor Grazing Act, the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) nor the Final Decision support or justify this determination. First, the TGA limits the issuance of grazing permits to those engaged in the "livestock production" business in order to stabilize the livestock industry. The APR's use of these grazing allotments does not meet this qualification.

Second, while the Final Decision's Appendix A Substantive Concerns and Responses cites to *Hampton Sheep Co. v. Bureau of Land Management*, Docket No. 1-74-1 (Appeal from District Manager's Decision dated March 27, 1974, Worland District) (September 26, 1975), that decision does not support the BLM's blanket assertion that bison are livestock. Rather, that case stated that the Office of Hearings and Appeals found that bison could be livestock for the purpose of the grazing under the TGA if, based on the surrounding facts and circumstances, the bison are being "treated in

substantial respect as livestock and have characteristics in common with livestock.” *See Hampton Sheep* attached as Exhibit 1 at p. 13 (emphasis added). *See also, Norman and Norman v. Bureau of Land Management*, CO-01-99-02 at p. 6 (Nov. 15, 2000) (stating that “bison or other animals, which would ordinarily be categorized as wildlife, may be considered “livestock” for purposes of issuing grazing permits under the TGA when they are treated in substantial respects as livestock and have characteristics in common with livestock.”).

None of the requirements in *Hampton Sheep* or *Norman and Norman* are present in this case. In fact, the BLM’s own analysis in the Environmental Assessment (EA) describes APR’s bison as “non-production” livestock. *See Environmental Assessment* at pp. 3-39, 3-44 and Appendix D (stating that APR is engaging in “non-production oriented, wildlife management focused grazing on APR lands.”). Additionally, APR’s own material, including deposition testimony, makes it clear that the proposed permittee, APR, treats its bison as wildlife. Given these facts, APR does not qualify to hold the grazing permits at issue in this case.

i. Taylor Grazing Act Was Enacted, in Part, to Provide Grazing Permits to Stabilize the Livestock Industry.

Although a substantial number of comments on the Draft EA argue that bison are wildlife rather than livestock, the case law cited by the BLM to reject these comments supports a much more factual and nuanced argument that is being ignored by the BLM in this case. As the cases of *Hampton Sheep* and *Norman and Norman* point out, the issue is not about the legal definition of bison or any other animal, but whether the facts in each case support whether the animals are treated as “production animals” or “non-production animals.” The TGA was enacted June 28, 1934 “[t]o stop injury to the public

grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, to stabilize the livestock industry dependent upon the public range, and for other purposes.” Taylor Grazing Act, ch. 865, pmbl, 48 Stat. 1269 (1936) (emphasis added). The TGA was “intended to address...the need to stabilize the livestock industry by preserving ranchers’ access to the federal lands in a manner that would guard the land against destruction.” *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1290 (10th Cir. 1999).

The Secretary of the Interior was authorized by the TGA “to establish grazing districts or additions thereto and/or to modify the boundaries thereof, of vacant, unappropriated, and unreserved lands...which in his opinion are chiefly valuable for grazing and raising forage crops.” 43 U.S.C. § 315. The BLM regulations define a grazing district as, “the specific area within which the public lands are administered under section 3 of the Act.” 43 C.F.R. § 4100.0-5.⁴ These are essentially the lands in which the TGA applies, and grazing permits may be issued. To have been placed in these districts, lands must have been deemed to have their highest purpose as grazing. The TGA also authorized the Secretary of the Interior to issue permits “to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range.” 43 U.S.C. § 315(b). Permittees must pay annual fees for use of the range and preference is given to “those within or near a district who are landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights.” *Id.* The Secretary has the power to downsize, or even temporarily suspend, permits if necessary

⁴ Section three was codified as § 315(b) Grazing permits; fees; vested water rights; permits not to create right in land.

to protect range lands, but nothing in the TGA enables the BLM to issue a permit for any purpose besides grazing of livestock. *See Public Lands Council v. Babbitt*, 167 F.3d at 1290.

ii. Federal Land Policy and Management Act/Public Rangelands Improvement Act.

In 1976, Congress passed additional legislation, the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. §§ 1701–1787), to further protect public lands. *See Public Lands Council v. Babbitt* at 1291. FLPMA “did not repeal or modify the grazing provisions of the TGA.” U.S. Dep’t of the Interior, Memorandum: Clarification of Solicitor Opinion M-37008 (May 13, 2003). Instead, the TGA acts as the base and FLPMA serves as an additional framework on top of this base. FLPMA requires the BLM to create land use plans and manage grazing districts “on the basis of multiple use and sustained yield.” 43 U.S.C. § 1701(a). This means that when issuing permits the BLM must comply with these additional requirements, but it still has to follow the original rules outlined in the TGA. Permits are still to be issued for the grazing of production livestock to stabilize the livestock industry, not for wildlife or some other purpose.

The Public Rangelands Improvement Act (PRIA) was added to the web of laws governing federal lands in 1978. 43 U.S.C. §§ 1901–1908. PRIA, like FLPMA, sought to further improve the management of federal lands, but was to “be construed as supplemental to and not in derogation of the purposes for which public rangelands are administered under other provisions of law.” 43 U.S.C. § 1901. This again means that although there are additional laws to be considered, the base rules of the TGA are not to be ignored or overridden.

The fact that that TGA permits are to be issued to those in production agriculture is further supported by the 10th Circuit opinion *Public Lands Council v. Babbitt*. In that case, the court said, “[b]oth [FLPMA and PRIA] define ‘grazing permit and lease’ as ‘any document authorizing use of public lands ...*for the purpose of grazing domestic livestock.*’” *Public Lands Council v. Babbitt* at 1308.⁵ The court further concluded that, “the TGA, FLPMA, and PRIA each unambiguously reflect Congress’s intent that the Secretary’s authority to issue ‘grazing permits’ be limited to permits issued “for the purpose of grazing domestic livestock.” This case was determining whether a grazing permit could be utilized for conservation purposes where the holder of the permit would not graze the land at all. However, the court’s analysis is still applicable when considering whether such a permit could be issued for the use of a species that is not “domestic livestock.” The court explained how FLPMA did not replace the TGA, but instead resulted in the Secretary of the Interior issuing new regulations that influenced the *process* through which grazing permitting was to occur, not the function of the permits themselves. The Court also said the primary effect of PRIA “was to implement a new grazing fee formula for domestic livestock grazing on public rangelands.” *Id.* at 1291. These statutes do not grant any power to issue grazing permits for anything other than domestic livestock.

iii. APR’s Bison Are Not Domestic Livestock.

As stated above, *Hampton Sheep* does not stand for the proposition that all bison can graze upon a BLM allotment, rather only those bison that are treated by their owners in substantial respects as domestic livestock are eligible to graze on the TGA

⁵ See also 43 U.S.C. § 1702; 43 U.S.C. § 1902.

land under section 3 of the Act. In this case however, there is NO indication that APR intends to treat their bison as production livestock and even the BLM admits to as much.

First, the BLM's EA describes the APR's bison as "non-production" livestock. *See* Environmental Assessment at pp. 3-39, 3-44 and Appendix D (stating that APR is engaging in "non-production oriented, wildlife management focused grazing on APR lands."). "Livestock production" means the business of acquiring, raising, and processing livestock, including real and personal property necessary for all activities related to such production. *See Law Insider*, [livestock production Definition | Law Insider](#) (last visited Aug. 18, 2022). In the *Hampton Sheep* case, the Administrative Law Judge considered whether the permittee was going to utilize his bison for the production of meat similar to a cattle or sheep operation, whether the allotment fences were sturdy enough to keep the bison in the appropriate location⁶, whether the bison were appropriately branded, and that those bison were artificially inseminated⁷. These characteristics – human handling for branding or breeding, meat production, and others – provide the factual evidence used to determine whether bison are being grazed as production animals.

In addition, the APR's own documents show no evidence that these bison are considered by APR as production livestock. For example, "Bison Restoration" is listed on APR's webpage under "Wildlife Restoration," (*see* <https://www.americanprairie.org/wildlife-restoration>) which makes it apparent that the

⁶ In that case, the exterior allotment fences were 32-inch-high woven wire fences with two galvanized strands on top. *Hampton Sheep* at 3 – 4.

⁷ Animals that are artificially inseminated are placed in livestock working facilities, which means they are used to being handled by humans.

organization is intending to propagate bison as wild animals and not domestic livestock. Rather, the APR is focusing on bison as an “iconic symbol” and seeks to “restore bison to their original habitat.” See <https://www.americanprairie.org/project/bison-restoration>. The APR has even stated, “We want to set the gold standard for bison *conservation* in North America. The management of our bison herd should be exemplary for how to restore and conserve the genetic, ecological and behavioral features of *wild bison*.” See <https://www.americanprairie.org/bison-faqs> (emphasis added). An animal cannot be both wild and domestic.

APR has also emphasized that it wants the bison on its land to “display natural behavior,” essentially returning the animals and the range back to what it was before it was settled by humans. *Id.* Encouraging bison to “graze the prairie according to their natural instincts” is contrary to the practices of raising domestic livestock who are periodically moved around on the range by their owners and influenced by the human placement of water and nutrient sources. *Id.* Merriam-Webster Dictionary defines a domestic animal as “any of various animals (such as the horse or sheep) domesticated so as to live and breed in a tame condition.” See <https://www.merriam-webster.com/dictionary/domestic%20animal>. There is nothing tame about the setting on the APR and the intent of the organization to reintroduce wild animals creates an important distinction between its bison and anything considered domestic livestock.

In sum, there is nothing in the BLM’s Final Decision or in the APR literature that indicates that these bison are production livestock. The APR’s own website describes itself as having the goal of establishing “the largest wildlife reserve in the continental United States.” Exhibit 2, *The American Prairie Reserve, Montana*, DISCOVERING MONTANA, Aug. 10, 2022; see also Exhibit 3, APR Letter to Governor Bullock (stating

that “the mission of American Prairie Reserve is to create the largest nature reserve in the continental United States” with the goal of a minimum of 10,000 bison.) Neither the cases cited by the BLM, nor the Taylor Grazing Act, support the notion that grazing allotments can be used to create a “nature reserve.”

c. The BLM Failed to Engage in Adequate Consultation with the State Grazing Districts and Failed to Follow the Existing MOU and Cooperative Agreements.

The Department of the Interior, Departmental Manual 516 DM 11 directs BLM personnel to determine early in the process the appropriate type and level of consultation and coordination required with state, local, and tribal government. 516 DM 11.4(c). The EA acknowledges that “the BLM has memorandums of understanding with Cooperative State Grazing Districts regarding cooperation, coordination, and consultation on the administration of public land allotments.” Environmental Assessment at p. 3-39. More specifically, the BLM has a Memorandum of Understanding with the Montana Grass Conservation Commission (MOU), *see* Exhibit 5, Affidavit of Greg Oxarart, at GO-1; Exhibit 6, Affidavit of Dean Kienenberger, at DK-1, and Cooperating Agreements with the North and South Phillips Cooperative State Grazing Districts (Cooperating Agreements) pursuant to the MOU. *See* Exhibit 5, Affidavit of Greg Oxarart, at GO-2; Exhibit 6, Affidavit of Dean Kienenberger, at DK-2. Neither of these parties were part of the consultation and coordination process for the preparation of the EA. *See* Environmental Assessment at p. 4-1. The MOU and Cooperating Agreements provide guidance for specific types of consultation and coordination between the BLM and the Montana Grass Conservation Commission and the North and South Phillips Cooperative State Grazing Districts that simply did not occur during the BLM’s review of APR’s application.

The MOU, dated December 10, 2003, authorizes cooperative agreements between the Commission and BLM with the consent of Cooperative State Grazing Districts, MOU at VI(A)(1); requires consultation, cooperation, and coordination between the BLM, State District, and permittee, to determine the time, intensity, and duration of grazing of BLM lands intermingled with State District lands, MOU at VI(B)(2); allows cooperative development of allotment management plans, MOU at VI(C)(1); and also requires the BLM to consult with the Commission and Grazing Districts during each stage of the EIS process⁸, MOU at VI(D). This consultation did not occur. *See* Exhibit 5, Affidavit of Greg Oxarart; Exhibit 6, Affidavit of Dean Kienenberger.

The Cooperative Agreements, each dated February 12, 2014, require the BLM to notify the Commission and Grazing Districts for recommendations when “Grazing or other Environmental Impact Statements” involve lands within a State Grazing District, Cooperative Agreement at V(1); requires the BLM to request for District approval of allotment management plans, Cooperative Agreement at V(2); and requires the BLM to request District approval for allotment assessments to meet Standards for Rangeland Health and Guidelines for Livestock Grazing, Cooperative Agreement at V(3). These requirements were not met. *See* Exhibit 5, Affidavit of Greg Oxarart; Exhibit 6, Affidavit of Dean Kienenberger.

The Cooperative Agreements, further provide that grazing permits “will authorize grazing use and will specify the grazing capacity available and the kind and class and numbers of domestic livestock use, the period of time which the lands may be used by

⁸ The BLM’s EA determined a FONSI is appropriate, however, the NEPA process to prepare an EA and EIS are intertwined until enough information is gathered to determine if there will be significant environmental impacts and thus consultation under the MOU should have occurred.

allotment, and may contain other specific terms and conditions.” Exhibit 5, Affidavit of Greg Oxarart at OG-2 at V(4)(a); Exhibit 5, Affidavit of Dean Kienenberger at OG-2 at V(4)(a) (emphasis added). Additionally, they state, “a term permit that is in question will be discussed with the District before action is taken.” *Id.* The EA defines the bison proposed to be permitted to graze as “indigenous livestock” which are “animals that are indigenous (native) to an area but are managed as livestock within grazing allotments.” *See* Environmental Assessment at pp. iv, 1-2. Although the Cooperating Agreements do not contemplate “indigenous livestock” grazing, if indigenous species are to be permitted to graze BLM lands they should be managed as domestic livestock and consequently the BLM should have consulted the Districts, but it failed to do so. *See* Exhibit 5, Affidavit of Greg Oxarart; Exhibit 6, Affidavit of Dean Kienenberger. In addition to the lack of consultation as required by the Cooperating Agreements, as argued in more detail above, the EA contradicts this definition of “indigenous livestock” by acknowledging that rather than managing the bison as livestock, APR is engaging in “non-production oriented, wildlife management focused grazing on APR lands.” Environmental Assessment at pp. 3-39, 3-44 and Appendix D. Thus, the grazing permits authorized in the Final Decision do not comply with “domestic livestock use.”

d. The Final Decision’s Economic Analysis Violates the Provisions of the National Environmental Policy Act and the Conclusion That There are Limited Economic Changes is Arbitrary and Capricious.

The Final Decision determined that changing the use from cattle to non-production indigenous livestock (bison) grazing on four allotments (Flat Creek, Whiterock Coulee, French Coulee, and Garey Coulee) and continuing non-production indigenous livestock (bison) grazing on two allotments (Telegraph Creek and Box Elder)

would result in relatively limited economic changes from the current economic conditions. However, the EA relies on Economic Modelling based on a 20-year-old paper that sought to determine a budget for a bison livestock operation focused on production. Reliance on such a study is not reasonable and the conclusion reached based upon it is erroneous and without any valid support. The Final Decision’s conclusion that there would be no significant economic impacts is based on the assumption that a non-production bison operation will produce the same economic effects as a production-based cattle (or bison) operation. This assumption, and the conclusion reliant upon it, is arbitrary and capricious and is inadequately supported by the EA.

The purpose of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4370, is to provide agencies and the public with the full range of accurate data and expert analysis available with respect to potential impacts, to facilitate informed decision-making by both the agency and the public. *See* 40 C.F.R. § 1500.1⁹; *see also Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978). The required NEPA documentation, either an environmental assessment (“EA”) or an environmental impact statement (“EIS”), must provide a “full and fair discussion” of significant potential environmental impacts of a proposed action. *See Catron County Board of Commissioners, New Mexico v. United States Fish and Wildlife Service*, 75 F.3d 1429, 1434 (10th Cir.1996); *see also* 40 C.F.R. § 1502.1.

⁹ The Final Environmental Assessment was completed pursuant to the CEQ regulations in effect prior to September 14, 2020. *See* Environmental Assessment at p. 1-4, n.2. Accordingly, all references to CEQ regulations in this Appeal are also to the regulations in effect prior to September 14, 2020.

An EA or EIS is designed to aid an agency in its decision-making process, advise the public of the environmental consequences of proposed actions, and assure that the agency has an opportunity to make the best and most informed decision. *See Natural Resources Defense Council, Inc. v. Morton*, 388 F. Supp. 829, 838 (D.C. Cir. 1974); *see also George Washington Home Owners Association v. Widnall*, 863 F. Supp. 1423, 1426 (D. Colo. 1994). While a NEPA document does not need to be based on the best available scientific methodology, it must be determined that it was the result of a reasoned analysis. *See Friends of Endangered Species, Inc. v. Jantzen*, 760 F.2d 986 (9th Cir.1985). The EA must include all information which is relevant and essential to a reasoned choice among alternatives. *See* 40 C.F.R. § 1502.22; *see also Robertson v. Methow Valley Citizens Council*, 490 U.S. 332 (1989). Applicable regulations require economic effects to be considered where an environmental effect is disclosed. *See* 40 C.F.R. § 1508.14 (stating that when an EA is “prepared and economic or social and natural or physical environmental effects are interrelated, then the [EA] will discuss all of these effects on the human environment.”).

An EA, and possibly a more detailed EIS, must be prepared for every major federal action significantly affecting the quality of the human environment, to be in compliance with NEPA. *See Natural Resources Defense Council, Inc. v. Morton*, 388 F. Supp. 829, 832 (D.C. Cir.1974); *see also* 42 U.S.C. § 4332(2)(c). A decision by the BLM to renew or issue a livestock grazing permit is a major federal action significantly affecting the quality of the human environment, and therefore, requires the preparation of an EA or an EIS. *See* Department of the Interior, Instruction Memorandum No. 99-039, at 2 (stating that “State Directors and Field Managers are required to . . . ensure that there is adequate NEPA documentation and compliance with applicable laws and

regulations before renewing permits.”); *see also Central South Dakota Cooperative Grazing Dist. v. Sec. of the United States Department of Agriculture*, 266 F.3d 889, 892 (8th Cir. 2001). Furthermore, NEPA is applicable even if the Federal government believes there will be an environmental *benefit*. *See Catron County Board of Commissioners, New Mexico v. United States Fish and Wildlife Service*, 75 F.3d at 1437.

Livestock grazing is a historical use throughout Montana and the use of BLM grazing allotments accounts for approximately 12% of the state’s grazing lands. Environmental Assessment at p. 3-39. More importantly, per the EA, the total pastureland acres in Phillips County is 1,401,113 acres, Environmental Assessment at p. 3-38, and 1,054,464 of those acres, 75%, are BLM administered. Environmental Assessment at p. 3-40. Thus, with this Final Decision alone, authorizing grazing for non-production livestock for a total of 96,344 acres in Phillips County including 57,804 acres of BLM-administered lands¹⁰, results in a change of use for 6.9% of the county’s total pastoral land and 5.5% of the BLM managed land in the county. In light of APR’s stated objective to assemble 3.5 million acres for bison habitat, *see Exhibit 7, APR’s Bison Report 2016-2017*, the change from cattle ranching to a non-production bison reserve could have rippling effects on local economies. However, the EA fails to adequately address the economics of the proposed APR operations and consider its impact on the community because it analyzes APR’s bison herd as being a production livestock operation, which it clearly is not.

In response to concerns about the destabilization of the of the livestock industry, in its Public Comment Report, the BLM compounds its assumption that the non-

¹⁰ All acres impacted in Phillips County by Final Decision less the 11,506 acres within the East Dry Fork Allotment.

production wildlife management focused use of the allotments proposed by APR has the same economic impacts as a livestock production operation with further assumptions and incomplete information on the impacts to AUMs available for production livestock grazing. *See* American Prairie Reserve Bison Change of Use Environmental Assessment Public Comment Report at p. A-2. The BLM's Report states "it is reasonable to conclude there is no destabilization of the livestock industry" because only 1.25% of the forage in Phillips County would be converted from cattle to bison. *Id.* However, per the Public Comment Report, this conclusion only compares the 7,697 AUMs to be changed from cattle to cattle or bison, and a calculation of the "requirement...[of] 618,024 AUMs of forage or equivalent" to support the 51,502 beef cattle reported in Phillips County by the 2017 National Agricultural Statistical Service Census of Agriculture. *See id.* (emphasis added). Neither the Public Comment Report nor the EA provides any calculation of the actual AUMs available in Phillips County as forage or how much is provided through an "equivalent," so there is no basis for the conclusion that only 1.25% of forage would be impacted.

Furthermore, according to APR's New Grazing Proposal dated September 24, 2019, if this Final Decision stands, in addition to the 6,385 BLM AUMs¹¹, it is the intention of APR to use 553 AUMs on State Lands and 5,083 AUMs on deeded private lands for non-production livestock grazing as well. *See* APR New Grazing Proposal at pp. 3-4. Thus, a total of 12,021 AUMs in Phillips County will be taken out of grazing for production livestock under this Final Decision which is only a fraction of the 55,568

¹¹ 7,973 AUMs less the 1,584 AUMs in East Dry Fork Allotment 05617 which will remain cattle only.

AUMs APR plans to convert to non-production indigenous livestock (bison) grazing by 2030 according to the APR Revised Proposed Action (November 20, 2017).

The EA claims to acknowledge that APR is not proposing operations based on production, yet then inexplicitly bases its entire economic analysis purporting to compare cattle and bison farm budgets. Environmental Assessment at p. 3-39. APR first introduced bison to the Montana prairie on October 20, 2005, *see* Exhibit 24, <https://www.americanprairie.org/project/bison-restoration-timeline>, and by the end of 2017 it had approximately 860 animals on the reserve. Exhibit 7, APR's Bison Report 2016-2017. Thus, by the time this EA was prepared, APR had been operating its bison reserve for more than fifteen years. Despite more than a decade of operations that could have been reviewed and evaluated to determine the true economic impacts of APR's proposal, there was no attempt to actually quantify the economics of APR's operations.

Due to the EA's failure to assess APR's actual operations, the conclusion that approval of Alternative B would increase jobs and that there would be no impact on traditional ranching and existing livelihoods because only limited economic changes would occur, Environmental Assessment at pp. 3-43-45, is erroneous and without any valid support. The Economic Modelling presented in Appendix D is based on a 20-year-old paper to determine a budget based on operations where "bison meat is marketed as an 'upscale' product, commanding premium prices. Bison breeding stock are also commanding premium prices," Exhibit 8, Thomas Foulke, et al., *Enterprise Budget: Bison Cow-Calf*, COOPERATIVE EXTENSION SERVICE, UNIVERSITY OF WYOMING, at 1 (2001). Further, the budget presented is an estimate for the "costs and returns for a bison cow-calf enterprise," and also notes that the budget assumes that herd size is maintained by

selling 75% of the “open cows” each fall. *Id.* None of the purposes or assumptions of the Foulke 2001 paper are applicable to APR’s operations.

The Economic Modelling again gives lip service to the fact that APR is not operating a production-oriented enterprise and states that use of the Foulke budget “is likely to overestimate the potential effects from non-production-oriented, wildlife management focus bison grazing on APRs.” Environmental Assessment, D-1. However, it then contradicts this assessment and claims that use of the Foulke budget “represents an appropriate and conservative measure of estimated contributions and can be used in lieu of more detailed APR-specific operational budgets to estimate modelled inputs for the current analysis.” Environmental Assessment, D-1. The model simply cannot overestimate the potential effects of APR’s operations and also be a conservative measure of estimated contributions of those operations. The Economic Modelling is not an accurate representation of the APR operations and therefore the socioeconomic analysis is fatally flawed.

Finally, the Economic Modelling appears to be flawed on its face. The direct value per AUM was calculated based on the component parts presented in Table D-2. *See* Environmental Assessment Appendix D. This table lists the items included in a theoretical budget and determines the “price/cost per head, as a percent of gross value” for each category. However, the table purports to account for costs that are equal to 116.3% of the price/cost per head. As these categories are supposed to be represented as a percent of the gross value, they should only total 100%.

The Socioeconomic Analysis and Economic Modelling used by the BLM to conclude that changing the use of the BLM allotments from production cattle grazing to non-production livestock grazing is based on flawed assumptions, failed to investigate

relevant and available financial information from APR, and ignored the cumulative effects of APR's stated mission to assemble 3.5 million acres for bison habitat. Accordingly, the decision reached by the BLM is arbitrary and capricious and unsupported by the record.

e. The Final Decision Violates Applicable Regulations Because a Conclusion that APR is in Substantial Compliance with Rules and Regulations and Existing Permits is Arbitrary, Capricious, and Unsupported by Any Rational Basis.

APR's request is characterized by the EA as a proposal to modify the terms and conditions of their grazing permits. Environmental Assessment at p. 1-1. Accordingly, before renewing any lease, it is mandatory that the BLM determine whether an applicant for a permit has a "satisfactory record of performance." *See* 43 C.F.R. § 4110.1(b) (1995). This requires the BLM to consider whether the application is in substantial compliance with the terms and conditions of the existing permit as well as all applicable rules and regulations. *See id.* The Final Decision concludes that APR is in substantial compliance with the rules and regulations and the terms of and conditions in the existing permits. However, the Grazing Districts and the MSGA raised significant concerns over instances of APR's complete disregard for the applicable requirements¹² which were not properly addressed in the Final EA or Final Decision indicating that the BLM has not evaluated whether APR has been in substantial compliance. Without a full review of its records which document APR's performance, any conclusion by the BLM

¹² Concerns of APR's noncompliance were based upon various BLM documents obtained by the Grazing Districts over the years. A full evaluation of APR's compliance or non-compliance with applicable requirements has not been possible to date despite the efforts of the Grazing District to obtain such records via a FOIA request. *See* Exhibits 4 and 11. At the time of the filing of this Appeal and Request for Stay, it has been over 1 year since the FOIA requests for this information were submitted to the BLM—yet the BLM has still not produced the requested documents.

that APR is in substantial compliance with the rules, regulations, terms, and conditions is arbitrary, capricious, and unsupported by any rational basis.

i. Relocation of Fences Without Authorization.

First, substantial changes and modifications were made to miles of fences by APR without BLM authorization or environmental review. In a June 20, 2018, letter, the BLM Field Manager indicated that “due to the nature of the current fence modification,” APR was directed to stop. Exhibit 9, Letter from BLM to Roy Taylor. A map prepared by APR in or around September of 2018 noted 81.1 miles of fencing boarding the BLM allotments had already been modified. Exhibit 10, APR Map of Modified Fences. There is no evidence in the record to show that this modification was authorized by the BLM or that any documentation pursuant to NEPA, the Archaeological Resources Protections Act or the Endangered Species Act was completed.

Furthermore, it is believed that the fence changes already conducted by APR have included a change in the location of fences which has resulted in changes to the AUMs tied to BLM’s grazing “preferences.” A “[g]razing preference or preference means a superior or priority position against others for the purpose of receiving a grazing permit or lease. This priority is attached to base property owned or controlled by the permittee or lessee.” 43 C.F.R. § 4100.0-5 (1995). Changing the location of fences would necessarily impact the AUMs enclosed by those fences. The BLM needs to re-inventory all allotments where APR has altered fences before issuing any further permits to APR.

The full extent of these changes and modifications are unknown by the Grazing Districts and MSGA at this time. A Freedom of Information Act (FOIA) request was submitted on August 9, 2021, requesting additional information regarding the modifications to fences completed by APR prior to the completion of the EA. Despite

submitting the request over a year ago, no response to that FOIA has been received to date and we reserve the right to supplement this Appeal and the Record with documentation from the BLM records once a response to that FOIA request has been received.

ii. Allowing Bison to Graze on Allotments Where Not Authorized.

In 2016, APR was found to be trespassing because they were grazing bison without authorization on the Flat Creek Allotment. At the time of the trespass, the allotment was subject to an exchange of use agreement. Under an exchange of use agreement, Form 4130-4, the BLM is responsible for collectively managing BLM and private lands as one unit, restricting the number of AUMs, type of livestock, and period(s) of use for the area as a whole. In 2016, the Flat Creek Allotment was only approved for use by cattle, not bison. Accordingly, whether the bison were on APR's private lands or the BLM lands, the grazing was unauthorized and constituted trespass because bison were not an approved type of livestock permitted in the Flat Creek Allotment.

iii. Failing to Properly File Required Paperwork.

APR has shown a pattern of failing to file the required paperwork. First, the EA states that it is considering a proposal submitted on September 24, 2019, by APR to the BLM to modify certain terms and conditions of BLM-administered grazing permits held by the APR. Environmental Assessment at p. 1-1. This proposal was submitted as a narrative document and not on a designated BLM form, such as Form 4130-1b. It is believed that no appropriate grazing application has been submitted by the APR. A FOIA request was submitted on August 5, 2021, requesting all grazing applications that are being reviewed as part of the EA. Exhibit 11, FOIA Request Aug. 5, 2021. No

response to that FOIA has been received to date and we reserve the right to supplement this Appeal and the Record with documentation from the BLM records once a response to that FOIA has been received. We also note that if grazing applications have been submitted, they were not provided to the Grazing District Secretary in further violation of the Cooperative Agreement, V(4)(b), which requires the BLM to forward Grazing Applications to the Grazing District Secretary for each federal land operator in the State District.

Second, in accordance with the terms and conditions of the permits for the Box Elder Allotment and the Telegraph Creek Allotment, Environmental Assessment at p. 2-5, and pursuant to 43 C.F.R. § 4130.3-2(d), permit holders are required to submit annual actual use reports within 15 days of the end of the annual grazing use. However, the BLM has overlooked the APR's failure to submit such paperwork for years. In a May 2016 email, the BLM Rangeland Management Specialist requested the APR complete actual use forms for "the past several years," and that these were needed "asap for a FOIA request." Exhibit 12, E-mail to APR from BLM. APR then submitted a single Actual Grazing Use Report for both the Box Elder and Telegraph Creek allotments for 2005-2015¹³. Exhibit 13, Actual Grazing Use Report 2005-2015.

iv. Overgrazing Allotments.

APR appears to have disregarded the AUMs currently authorized on the Box Elder and Telegraph Creek Allotments. Year-long continuous bison grazing on these

¹³ The failure to enforce the 15-day time limit is further evidence of disregard for the Cooperative Agreement, V(4)(d), which states "grazing will be authorized in conformance with the plan which will include the operators providing an accurate actual use report to the Bureau within 15 days of leaving the federal land allotment."

allotments has already been authorized.¹⁴ Environmental Assessment at p. 2-9. The Box Elder Allotment has 1,158 AUMs and the Telegraph Creek Allotment has 1,361 AUMs for a total of 2,519 AUMs. Since 2005, APR has been reporting AUM usage on the Box Elder and Telegraph Creek Allotments on a single Actual Grazing Use Report. Exhibit 13, Actual Grazing Use Report 2005-2015. Actual Grazing Use Reports for the years 2016-17, 2017-18, and 2019-20 purport to report AUMs for both of these allotments and private land. Exhibit 14, Grazing Use Reports 2016-2021.

In addition to the general problem of making it impossible for the BLM, the Appellants, or the public to determine in which pastures – or even which allotment – the AUMs were utilized, it also prevents the BLM from ensuring that APR is not overgrazing the allotments. These reports appear to show that APR has reported AUM uses that greatly exceed what is allotted. Evidence of overgrazing has also been observed on the Box Elder Allotment. *See* Exhibit 15, Affidavit of Mark Manoukian, ¶ 10. The AUM allowances for APR for the Telegraph and Box Elder Allotments and associated State Leases and private deeded lands are as follows:

Telegraph: 1361 AUMs
Box Elder: 1158 AUMs
State: 179 AUMs¹⁵
Private: 638 AUMs¹⁶
Total: 3,336 AUMs

¹⁴ The EA states that State lease #4873 is fenced out and not being currently grazed. *See* Environmental Assessment at p. 2-9. Accordingly, the 75 AUMs associated with that lease may not have been available for all or part of the time period discussed, but these calculations include those AUMs as available for grazing.

¹⁵ The EA identifies State Lease #4873, *see* Exhibit 26, which is associated with the Telegraph Allotment and contains 75 AUMs. The EA does not identify State Lease #8124, *see* E which is associated with the Box Elder Allotment and contains 104 AUMs.

¹⁶ *See* Exhibit 25, Box Elder Tab Sheet.

However, the below tables illustrate the actual uses that have been occurring on the Telegraph and Box Elder Allotments and how the actual use exceeds the permitted use:

Actual Use 2016-17: 2,125 AUMs over permitted numbers

Date	Turned In	Taken Out	Days	AUMs
3/1/2016	620		9	183
3/9/2016		210		
2/28/2017	451		356	5278
			Total	5461

Actual Use 2017-18: 2,022 AUMs over permitted numbers

Date	Turned In	Taken Out	Days	AUMs
3/1/2017	451		358	5308
2/22/2018		195		
2/28/2018	256		6	50
			Total	5358

Actual Use 2020-21: 943 AUMs over permitted numbers

Date	Turned In	Taken Out	Days	AUMs
3/1/2020	366			
3/7/2020	364	2	6	72
7/17/2020	363	1	132	1579
8/11/2020	362	1	25	298
11/1/2020	353	9	82	976
12/1/2020	346	7	30	348
1/1/2021	342	4	31	353
2/1/2021	335	7	31	349
2/5/2021	344	1	4	44
2/28/2021	334		23	260
			Total	4279

See Exhibit 14, Actual Grazing Use Reports 2016-2021.¹⁷ As made apparent by the tables, APR has repeatedly overstocked the allotments by over 1,000 AUMs. APR's continual overgrazing with apparently no repercussions from the BLM raises significant concerns with how APR will be a steward of the public land.

v. The BLM's Substantial Compliance Conclusion is Invalid.

In light of the above, the BLM's conclusion that APR is in substantial compliance with all rules and regulations and terms and conditions of its existing permits is arbitrary, capricious, and unsupported by any rational basis. There is documentary proof of APR repeatedly and continually failing to meet these regulatory requirements. It is believed that fences were relocated and have remained in their relocated positions; there is a history of grazing bison on unpermitted lands; there is a consistent pattern of not filing the proper paperwork; and there is documented overgrazing over a number of years. All of the violations have implications on the environmental impact of APR's activities as they raise the concerns of overgrazing and mismanagement which are not being regulated.

f. The Final Decision Authorizing Bison Grazing and Electrical Fencing Violates the Multiple Use Mandate.

The EA fails to properly consider whether the proposal from APR would violate the multiple use mandate. Under FLPMA Section 302(a), the BLM must "manage the public lands under principles of multiple use and sustained yield." 43 U.S.C. § 1732(a).

¹⁷ For the tables, the dates, turned in, and taken out values are taken from APR's Actual Use Reports, Exhibit 14, which were used to determine the number of days bison were on the Allotments. The AUMs columns were calculated based on an assumed 1 AUM per bison per month which is 1/30.5 AUM per day multiplied by the number of days multiplied by the number of bison.

This requires the “BLM to informedly and rationally balance competing resource values to ensure that public lands are managed in the manner ‘that will best meet the present and future needs of the American people.’” *Norman and Norman*, Docket No. CO-01-99-02 (quoting *National Wildlife Federation v. Bureau of Land Management*, 140 IBLA 85, 99-101(1997)). The Final Decision’s authorization of non-production indigenous livestock (bison) grazing within electrified fences on six allotments poses safety risks for other uses of the federal lands that were not adequately considered in the BLM’s analysis.

In contradiction to the Final EA’s description of APR’s operations indicating that the gates will not be electrified, Environmental Assessment at p. 2-9, members of the South and North Phillips County State Cooperative Grazing Districts have reported that gates on BLM allotments currently used by APR are electrified. *See* Exhibit 15, Affidavit of Mark Manoukian, ¶¶ 14-17. Electrified gates prevent neighboring preference and permit holders from safely entering the allotment to return a bison or retrieve a cow. Furthermore, it presents a safety risk to other users such as campers, hikers, or hunters from entering an allotment that is required to be managed as multiple use. Photographs A-C of the Manoukian Affidavit, Exhibit 15, show examples of fences and gates already electrified by APR. Photograph A “is at the corner Section 1 of Township 25 North, Range 29 East (a BLM section).” *Id.* at ¶ 15. Photograph B “is of Section 36, Township 26 North, Range 29 East and it has been reported by a neighbor that the entire area, including State and BLM lands, is electrified on all four sides.” *Id.* at ¶ 16. Finally, Photograph C “shows an electrified gate and how it is dangerous for individuals seeking to enter the allotment because it requires the electrical connection to be disconnected and reconnected.” *Id.* at ¶ 17.

In addition to the electrified fences and gates presenting a threat to users other than APR, the removal of internal fencing to combine pastures and the grazing of the allotments with bison also prevents use of those allotments by other users. The EA acknowledges that bison may be dangerous to humans and can charge and gore people if approached too closely, however it dismisses the threat to other users by simply stating that there are lower levels of visitation to the Phillips County BLM lands as opposed to Yellowstone National Park. Environmental Assessment at p. 3-18. This fails to recognize the difference in risk levels between the Yellowstone free roaming herd of approximately 4,900 on 3,472 square miles (~1.4 bison per square mile) (*See* <https://www.nps.gov/yell/learn/management/bison-management.htm> and <https://www.nps.gov/yell/planyourvisit/parkfacts.htm>) and the authorized AUMs on the BLM allotments under consideration which is 6,385 AUMs (up to 532 bison assumed based on 1 AUM per bison per month) on ~90 divided and fenced BLM managed square miles (~5.9 bison per square mile). This is a significant increase in density of bison compared to Yellowstone, which is compounded by the animals being confined to much smaller fenced areas (even with the planned removal of fences, the pastures are still much smaller than Yellowstone).

The Final EA's cursory consideration of recreational uses on the allotments at issue and summary dismissal of any safety concerns was improper. *See* Environmental Assessment at p. 3-18. Just as the economic analysis incorrectly correlated APR's activities with a production-oriented livestock operation, the BLM's analysis of impacts on public health and safety for recreational use of the allotments completely ignores APR's stated goal of creating a reserve for bison. While the BLM's reasoning that bison grazing did not pose a threat to health and safety in *Norman and Norman* was found to

be justified, there are significant differences in what appeared to be a grazing permit for production-oriented bison at issue in that matter and the use proposed by APR at issue here.

First, as APR is introducing bison to these grazing allotments, it is also actively encouraging visitors to visit its properties and view the bison. *See* <https://www.americanprairie.org/visit>. There is no evaluation in the EA of how much recreational use there is on the allotments currently or how that may change as APR grows its bison reserve. This is in contrast to *Norman and Norman* where there was very limited human use during hunting season. *See Norman and Norman* at p. 8. Injury in *Norman and Norman* was also considered to be unlikely because:

the injuries in the parks were human initiated and usually provoked by tourists attempting to get close to bison while viewing them or taking photographs (Ex H, p. 27). The Big Pasture is less likely to experience these human-initiated contacts both because over half of the Big Pasture is privately controlled land with no legal access to the public and because photography and wildlife viewing are not major uses of the Big Pasture (see *id.*).

Id. at p. 9. APR's Bison Report 2016-17 touts that "visitors to the Reserve look forward to seeing bison more than any other species." *See* Exhibit 7, APR Bison Report 2016-2017, at p. 9. Additionally, APR provides maps to the public of activities available on both private and public lands, including the allotments, that specifically advertises where bison can be viewed. *See* Exhibit 16, Map from <https://www.americanprairie.org/maps>. Unlike *Norman and Norman*, there was no evaluation of whether there are periods of the year when the bison may be more aggressive and how that may interact with the volume of use of the allotments for recreational purposes. *See Norman and Norman*, at p. 9. Finally, the *Norman and Norman* decision determined that "the potential for human/bison conflict is less where

bison, such as the Downare's, are raised like domestic livestock as opposed to where bison roam wild, as in the parks." *Id.* As was discussed in more detail above, APR's stated goals have made it clear that it is not raising the bison as "domestic livestock."

The analysis in the EA failed to adequately evaluate whether the introduction of non-production bison grazing and electric fences would impact health and safety and impair other uses of the allotments. The gaps in the analysis of the impacts on recreational use of the allotments due to the presence of bison discussed above demonstrates that the Final Decision was not informed, nor did it rationally balance competing resource values as recreational uses were utterly ignored. Accordingly, the Final Decision is arbitrary, capricious, and without a rational basis because it failed to consider the risk to the public, or the ability for other users to use the allotments, when they would be in close proximity with bison that can run up to 35 miles per hour surrounded by electrified fences.

g. The BLM's Final Decision Did Not Properly Consider Cumulative impacts.

In reaching its Final Decision, the BLM failed to engage in a meaningful analysis of the cumulative impacts related to APR's stated goal of creating a 3.5-million-acre bison reserve. NEPA defines a cumulative impact as:

the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

40 C.F.R. § 1508.7. NEPA requires the BLM to look at connected, cumulative, and similar actions. 40 C.F.R § 1508.25(a). Cumulative actions are those "which when

viewed with other proposed actions have cumulatively significant impacts.” 40 C.F.R. § 1508.25(a)(2).

To properly consider cumulative impacts there must be “some quantified or detailed information; ... [g]eneral statements about ‘possible’ effects and ‘some risk’ do not constitute a ‘hard look’ absent a justification regarding why more definitive information could not be provided.” *Kern v. U.S. Bureau of Land Management*, 284 F.3d 1062, 1075 (9th Cir. 2002) (citation omitted). The analysis of cumulative impacts cannot be perfunctory and must be timely. *Id.* (citations omitted). Deferring the consideration of cumulative impacts is inappropriate when meaningful consideration can be completed now. *Id.* (citations omitted). While agency decisions as to “reasonably foreseeable future actions” that are “fully informed and well-considered” can be deferred to, we “need not forgive a clear error in judgment.” *Id.* (citations omitted).

Although the specific proposal before the BLM from APR has been a moving target since at least 2017, there is no ambiguity or uncertainty that APR desires to create a large bison reserve and will continue to pursue this goal in the near future. The BLM has claimed that although it is assumed that APR would continue to convert federal and non-federal ranch lands to bison grazing, “these actions are not part of the current proposed action submitted to the BLM. No detailed requests or proposals have been submitted to BLM that would allow for further analysis of direct and indirect effects.” Protest Responses at p. 2. This statement is directly refuted by the documentary record. First, APR submitted a 66-page Revised Proposed Action dated November 20, 2017, that identified a total of 20 allotments, 29,309 acres of State of Montana DNRC land and 86,426 acres of APR deed land. *See Environmental Assessment* at p. 3-3; APR

Revised Proposed Action (November 20, 2017) at p. 1. Second, as cited to throughout this Appeal and Request for Stay, there is a plethora of publicly available documentation from APR regarding APRs goals and ongoing efforts to achieve those goals.

At the time of the completion of the Environmental Assessment, the BLM had the November 20, 2017, APR Revised Proposed Action which detailed the timeline for the introduction of the non-production livestock beginning in 2019 and projected out to 2030. *See* APR Revised Proposed Action (November 20, 2017) at pp. 4-9. It also provided maps detailing the plan for the removal and relocation of the fences for the included allotments. *See* APR Revised Proposed Action (November 20, 2017) at p. 10-22. The November 2017 proposal was submitted “based upon advice by the BLM to help ensure a thorough cumulative effects analysis” and was only withdrawn due to public concerns. *See* APR New Grazing Proposal dated September 24, 2019 at p. 1.

The Environmental Assessment identifies the changes to the 20 allotments from the November 2017 proposal as a reasonably foreseeable future action, *see* Environmental Assessment at p. 3-2, but does not analyze any of the quantifiable or detailed information of the changes included in the November 2017 proposal. By assuming that the cumulative impacts of additional rangeland conversion to non-production livestock grazing would merely be the same impacts from the current proposal, the BLM improperly deferred evaluating reasonably foreseeable impacts now by stating that future grazing requests would be evaluated individually. *See* Final Decision at p. 8. The deficiencies in the Environmental Assessment regarding overgrazing and rangeland health, human health and safety, and socioeconomic impacts are exasperated when the full cumulative impacts are considered.

The Final Decision determined that “areas being grazed by bison will experience improvements to vegetative communities including variation in vegetative communities, diversified vegetation and an increase in native plant species.” Final Decision at p. 7. The EA assumes that the cumulative impacts of additional transition to non-production livestock grazing would incrementally add to the beneficial cumulative effects on vegetation. *See* Environmental Assessment at p. 3 - 50. While the EA relies on literature to reach this conclusion, as argued above for the Box Elder and Telegraph Creek Allotments where non-production livestock (bison) are already grazing there is evidence of over grazing. Significantly, the EA relies on the evaluations of the Box Elder and Telegraph Creek Allotments as part of the 2016 Land Health Assessment Report, *see* Environmental Assessment at pp. 3-24 – 3-25, while the overgrazing is identified in 2016 – 2021. As overgrazing is already a rangeland health concern on allotments with non-production livestock (bison) grazing, it should not have simply been assumed that the cumulative impacts would be improvements in vegetation.

Similarly, the EA’s flawed conclusion of no great risk to human health and safety by the introduction of non-production livestock (bison) grazing, *see* Environmental Assessment at p. 3-18, should not have been assumed to be the same for the cumulative impacts of APR’s future plans, *see* Environmental Assessment at p. 3-21. It was error for the BLM to ignore the details available as to how many bison would be introduced under the November 2017 proposal and evaluate the environment where those non-production bison would be introduced and whether multiple use and sustained yields can be maintained on those allotments given their other uses. This complete lack of actual evaluation of reasonably foreseeable future uses is also seen in the socioeconomic evaluation.

It was argued above that the socioeconomic evaluation included in the EA was fatally flawed. The EA's conclusion that there "are no past, present, or reasonably foreseeable future plans and/or actions in the cumulative impact analysis area that, when combined with the above-described effects of a change in use from cattle to [non-production] livestock, would result in adverse cumulative impacts on socioeconomics," *see* Environmental Assessment at p. 3-45, was not based on a hard look at the reasonably foreseeable future plans of APR. In the November 2017 APR proposal, a total of eleven allotments in Phillips County were identified as where non-production livestock (bison) would be introduced by the year 2030. *See* Environmental Assessment at p. 3-3; *see also* APR Revised Proposed Action (November 20, 2017). The EA did not consider any potential economic impacts from the conversion of additional allotments in Phillips County to non-production bison grazing. Furthermore, while the November 2017 APR proposal identified nine allotments in four additional counties where APR's stated plans are to convert the use from cattle to non-production bison grazing, *see id.*, there is no evaluation of the economic impacts of changing the use of those additional allotments. Accordingly, the EA does not provide any quantified or detailed information that supports its conclusion of no cumulative socioeconomic impacts.

IV. Petition for Stay of Decision Pending Appeal.

The Grazing Districts and the MSGA also hereby petition for a stay of the Bureau's FONSI and Final Decision permitting a change of use from commercial livestock to non-production livestock (APR's bison), changes of seasons of use as well as the addition and elimination of fences on allotments administered by the Malta Field Office in Phillips County, Montana. Applicable regulations provide four elements upon which a stay may be granted: (1) relative harm to the parties if the stay is granted;

(2) likelihood of the appellants' success on the merits; (3) likelihood of immediate and irreparable harm if the stay is not granted; and (4) whether the stay is in the public interest. *See* 43 C.F.R. § 4.471(c). In this case, the Appellants can meet each of the four elements; thus, a stay is in order.

a. Effect of Stay.

To determine the effect of a stay in this case, the grazing regulations, 43 C.F.R. § 4160.4, provide the following:

(b) When OHA stays all or a portion of a BLM grazing decision that affects a grazing permit or lease, BLM will authorize grazing use as follows:

(1) When OHA stays implementation of all or part of a grazing decision that cancels or suspends a permit or lease, changes any term or condition of a permit or lease during its current term, or renews a permit or lease, BLM will continue to authorize grazing under the permit or lease, or the relevant term or condition thereof, that was in effect immediately before the decision was issued, subject to any relevant provisions of the stay order. This continued authorization will expire upon the resolution of the administrative appeal. Such continued authorization is not subject to protest or appeal.

43 C.F.R. §§ 4160.4 (b)(1). Thus, if a stay were granted, APR would continue to be permitted to graze cattle on the allotments. The permits would continue to allow the same number of cows, utilize the same AUM's, and the existing fences would be maintained without modifications.

b. Relative Harm to the Parties.

The granting of a stay would relieve the significant harm that will be suffered by the Appellants and would protect the allotments from unnecessary harm. Thus, a stay is appropriate.

i. Harm to Appellants.

Infectious diseases are a major concern to livestock producers everywhere, and the Appellants' members are no exception. These ranchers work hard to mitigate risks to their herds by implementing best management practices such as “multiple vaccine protocols, regular deworming and external parasite control, testing of diseases and appropriate culling.” Exhibit 17, Affidavit of Dr. McKenna Levesque, at ¶ 6; Exhibit 18, Affidavit of Dr. Rick Levesque, at ¶ 6. However, these management practices are much less effective if neighboring herds are not implementing similar protocols. *See* Exhibit 17, Affidavit of Dr. McKenna Levesque; Exhibit 18, Affidavit of Dr. Rick Levesque. The non-production bison roaming on APR lands are not vaccinated, which creates a significant risk for nearby cattle herds, including those belonging to the Appellant members. *See* Exhibit 17, Affidavit of Dr. McKenna Levesque, at ¶¶ 7-11; Exhibit 18, Affidavit of Dr. Rick Levesque, at ¶¶ 7-11. APR claims that it is following “the very same guidelines for disease control that cattle ranchers do, as required by the Montana Department of Livestock.” American Prairie Reserve, *Bison FAQs*, <https://www.americanprairie.org/bison-faqs> (last visited August 24, 2022). While this may be true, the Montana Department of Livestock does not actually require vaccination of most animals unless they are being imported into the state. *See* MONT. ADMIN. R. 32.3.

Vaccinations and disease control in general are a product of best management practices implemented by ranchers who are incentivized to keep their animals healthy because they are engaged in the production livestock business. Exhibit 17, Affidavit of Dr. McKenna Levesque, at ¶ 6; Exhibit 18, Affidavit of Dr. Rick Levesque, at ¶ 6. Many ranchers utilize vaccines to protect their herds and limit infectious diseases, but it is true

that not all diseases of concern have a vaccine available. However, other best management practices such as culling (removal from the herd) and frequent herd inspections by ranchers, help to mitigate the diseases that cannot be vaccinated against. Exhibit 17, Affidavit of Dr. McKenna Levesque, at ¶ 6, 14; Exhibit 18, Affidavit of Dr. Rick Levesque, at ¶ 6, 14. These best management practices all help to keep a herd of cattle healthy, but are not employed by APR. Not only does APR not vaccinate, but it does not cull any bison based on health or condition. *See American Prairie Reserve, Bison FAQs* <https://www.americanprairie.org/bison-faqs> (last visited August 24, 2022). In addition, APR has difficulty keeping track of the bison in its herd, so it is unlikely they are conducting frequent inspections of their non-production livestock. *See Affidavit of Peggy Bergsagel, Exhibit 20.* Furthermore, APR's management plan provides little to no incentive to employ any of these practices because APR wishes to establish a bison refuge, not a production livestock operation.

The Appellants and other parties were aware of APR's shortcomings in disease mitigation, so they sought to protect local ranchers themselves. In 2020 the Phillips Conservation District, South Phillips County Co-operative State Grazing District, and the Phillips County Livestock Association reached an agreement with the APR which requires APR to annually test a portion of its non-production bison herd for a range of diseases and infections until 2025. *See Exhibit 19, Settlement Agreement, at ¶ 1-2.* APR must specifically test for Blue Tongue, Bovine Viral Diarrhea (BVD), Parainfluenza-3, Brucellosis, Anaplasmosis, Johne's, Infectious Bovine Rhinotracheitis (IBR), Leptospirosis, and Epizootic Hemorrhagic Disease (EHD). *Id.* at ¶ 2(a). Animals infected with these diseases may exhibit severe symptoms such as hemorrhaging, late term abortions, and even death. *See MONTANA FISH, WILDLIFE, AND PARKS, Bluetongue –*

Epizootic Hemorrhagic Disease, <https://fwp.mt.gov/conservation/diseases/ehd-blue-tongue> (last visited April 25, 2022); Editorial Journal of Veterinary Medicine Association, *Leptospirosis of Cattle*, IOWA BEEF CATTLE HANDBOOK, <https://www.iowabeefcenter.org/bch/Leptospirosis.pdf>; United States Department of Agriculture – Animal and Plant Health Inspection Service, *Facts About Brucellosis*, https://www.aphis.usda.gov/animal_health/animal_diseases/brucellosis/downloads/bruc-facts.pdf. The most recent data from the APR non-production bison herd reveals concerning levels of positive tests for multiple diseases, which translates to a heightened risk of infection to nearby cattle herds and wildlife populations. *See* Exhibit 15, Affidavit of Mark Manoukian, at ¶ 7. While this data is useful in identifying carriers of infectious diseases, the agreement only requires APR to take responsive action if bison exhibit “clinical signs.” *See* Exhibit 19, Settlement Agreement, at 2(b). However, even if an animal is not clinically infected, it can still be considered a carrier of the disease for which it tests positive; this means the animal is still capable of transmitting the disease to other animals. *See* Exhibit 17, Affidavit of Dr. McKenna Levesque, at ¶ 15; Exhibit 18, Affidavit of Dr. Rick Levesque, at ¶ 15. Therefore, this agreement is unable to fully protect local ranchers and their cowherds. Allowing these infected animals to expand their range to the allotments at issue here would further exacerbate the risk to cattle and wildlife in Phillips County.

Wildlife such as whitetail deer are especially susceptible to Bluetongue and EHD which recently appeared at rates of 19.0% and 56.7% respectively in the APR non-production bison herd. *See* MONTANA FISH, WILDLIFE, AND PARKS, *Bluetongue – Epizootic Hemorrhagic Disease*, <https://fwp.mt.gov/conservation/diseases/ehd-blue-tongue> (last visited April 25, 2022); Exhibit 15, Affidavit of Mark Manoukian, at ¶ 7.

These diseases have been known to cause high rates of mortality in both deer and antelope in Eastern Montana. *See* MONTANA FISH, WILDLIFE, AND PARKS, *Bluetongue – Epizootic Hemorrhagic Disease*, <https://fwp.mt.gov/conservation/diseases/ehd-bluetongue> (last visited April 25, 2022). Both Bluetongue and EHD can result in varying degrees of hemorrhaging of internal organs, with the heart, lungs, and intestinal tracts being some of the most common. *Id.* While the APR's infected non-production bison may not show any clinical signs and be relatively unaffected by the diseases, they can still transmit the disease to more susceptible animals through vectors such as biting flies. *Id.* The flies that commonly spread these diseases are known to inhabit areas surrounding water sources. *Id.* Due to the limited water sources on the grazing allotments in question, deer and antelope would be sure to water at the same sources as infected bison if said bison are permitted to graze on these allotments. This would thus create a significant risk of the deer and antelope becoming infected with Bluetongue or EHD, which could lead to large mortality rates in the region. The deer and antelope of Montana's Northern Plains help to sustain the Phillips County community by providing income from recreational activities; if the recreational opportunities were lost due to an EHD or Bluetongue outbreak, the community and the Appellants would greatly suffer. An outbreak of these diseases also poses an increased risk to the health of the livestock that share the plains with them.

The infection levels of Anaplasmosis and Leptospirosis in APR's non-production bison are quite concerning to the livestock industry. Phillips County and other surrounding counties depend on the agriculture industry as their primary source of revenue, a substantial portion of which is made up by the raising of livestock. *See* Exhibit 21, Declaration of Richard Dunbar, Phillips County Commission; Exhibit 22,

Declaration of John Fahlgren, Valley County Commission; Exhibit 23, Declaration of Ross Butcher, Fergus County Commissioner; Exhibit 28, Declaration of Carl Seilstad, Fergus County Commissioner. 27.3% of the APR animals tested positive for Anaplasmosis and 70.2% tested positive for one of the various strains of Leptospirosis. Exhibit 15, Affidavit of Mark Manoukian, at ¶ 7. This is concerning, not only because livestock could become infected, but also because these diseases are zoonotic, meaning they can also be transmitted to humans. “Anaplasmosis is an infectious disease of cattle that causes destruction of red blood cells... It can be transmitted from infected animals to healthy animals by insects or by surgical instruments.” Zerle L. Carpenter, *Anaplasmosis in Beef Cattle*, <https://agrillifeextension.tamu.edu/library/ranching/anaplasmosis-in-beef-cattle/#:~:text=Anaplasmosis%20is%20an%20infectious%20disease,insects%20or%20by%20surgical%20instruments>. As red blood cells are destroyed, an animal’s oxygen levels plummet, and it will become clinically anemic. This results in “a rapid decrease in milk production,” “rapid weight loss,” and weakness. *Id.* Simply moving or exciting an animal who is exhibiting symptoms could cause it to die from a lack of oxygen. *Id.* Even if an animal survives the disease, it can still have long term affects such as weight loss, abortion of pregnancy, and reduced weight gain of nursing calves. *Id.* Anaplasmosis is not known to be a problem in Northern Montana, but the presence of a large number of infected bison on the allotments in question could be detrimental to the Appellants’ members by causing an outbreak in the region. Diseases such as Anaplasmosis that are spread through biting flies and ticks are able to quickly spread across large areas because these vectors travel great distances; the non-production bison do not even have to come into direct contact with cattle herds or wildlife to spread the disease. Horn flies,

for example, are known to travel up to fifteen miles between herds. Bethany Johnston, Control Flies on Cattle Early, University of Nebraska-Lincoln Beef Watch (May 1, 2013), <https://newsroom.unl.edu/announce/beef/2206/12992>. Death, reduced weights, and pregnancy loss all have major impacts on family ranches like the Appellant's members because they depend on selling as many big, healthy calves as possible each year to stay in business. See Exhibit 21, Declaration of Richard Dunbar, Phillips County Commission; Exhibit 22, Declaration of John Fahlgren, Valley County Commission; Exhibit 23, Declaration of Ross Butcher, Fergus County Commission; and Exhibit 28, Declaration of Carl Seilstad, Fergus County Commission. In addition, the families that make up these ranches have made it their responsibility to care for the livestock under their guardianship. To watch these animals suffer with a disease such as Anaplasmosis and know there is little that can be done, would be extremely hard on the people who for care them.

Leptospirosis is a bacterial infection that tends to attack the reproductive tract, causing infections, abortions, and even infertility. Soren P. Rodning, Misty A. Edmondson, Julie A. Gard, Andrew S. Lovelady, *Leptospirosis in Cattle*, ALABAMA COOPERATIVE EXTENSION SYSTEM ANR-0858 (2012), <https://ssl.acesag.auburn.edu/pubs/docs/A/ANR-0858/ANR-0858-archive.pdf>. It can also cause fever, anemia, jaundice, and death, especially in younger cattle. *Id.* Leptospirosis is transmitted directly between animals or through exposure to urine or an aborted fetus from an infected animal. *Id.* However, the bacteria may be transmitted through water that has been contaminated and the bacteria can survive in the environment for months. *Id.* Cattle herds are typically vaccinated for Leptospirosis and this has helped to greatly reduce the infection rates of this disease, but younger cattle

are still at risk of contracting the disease because their immune systems are still developing. Since APR does not manage its bison as domestic livestock, they do not use the best management practices that are followed in the livestock industry, including implementing an annual vaccination program. American Prairie Reserve, *Bison FAQs*, <https://www.americanprairie.org/bison-faqs> (last visited June 16, 2022). APR's failure to vaccinate its animals for diseases such as Leptospirosis, combined with the high prevalence of the disease in its non-production bison herd, creates a notable risk to neighboring operations. Cattle on nearby allotments and private land can easily come into contact with Leptospirosis bacteria through water sources or directly with any escaped buffalo.

ii. Harm to the Allotments.

If the stay is not granted and APR is permitted to remove fences and begin grazing non-production bison, there will be immediate and irreparable harm to the BLM Allotments in question. The Final Decision calls for the removal, modification, and reconstruction of several fences in the allotments, but to allow the changes to these fences before all legal questions in this matter are resolved would be highly inappropriate. If it is determined that the change of use is improper on these allotments, then a removal of fences and other improvements would be extremely detrimental to the historically approved use – grazing cattle. The BLM originally required these internal fences to be constructed as they are crucial to properly managing livestock in a manner that supports biological goals on the allotments. These fences allow for livestock to be rotated throughout the allotments as necessary and to rest specific areas when required. In addition, the land will have to be disturbed to remove,

modify, and reconstruct these fences on the allotments, and should Appellants succeed on the merits, the land would have to be physically disturbed again to restore the current configurations. It would be a waste of resources to disturb these lands unnecessarily before it is even clear that the Final Decision will not be overturned and as already mentioned, if said decision is overturned, the fences would not be removed, modified, or reconstructed at all.

Furthermore, the Final Decision permits APR to graze non-production bison on the allotments which is a threat to the health of the allotments due to APR's history of poor management and the natural grazing habits of bison. The natural grazing habits of bison involve cropping vegetative growth closely to the ground in large areas. When bison graze all of the vegetation off of an area, they typically move on to a new area. See Richard Hart, *Where the Buffalo Roamed – Or Did They?*, 11 GREAT PLAINS RESEARCH 83, 101 (2001) (Discussing the historical movement of bison, “[b]ison appeared to move in response to local conditions of forage availability, as influenced by weather, fire, and previous grazing.”); American Prairie Reserve, *Bison FAQs*, <https://www.americanprairie.org/bison-faqs> (last visited June 16, 2022) (Explaining how the natural grazing instincts of wild bison, “results in some areas being grazed hard and others not grazed for years.”). While such tendencies were evidently part of a productive ecosystem on the historic great plains, they must be carefully managed in today's grazing environment because bison no longer have an endless prairie upon which to roam. Instead, based on the Congressional requirements of the Taylor Grazing Act the plains are now divided into relatively small pastures. Even if the fences slated for removal are eliminated despite the clear immediate and irreparable harm, the pastures would still be miniscule compared to the vast prairie bison once roamed.

These smaller pastures can inhibit the natural migration of wild bison and cause them to excessively trample and defoliate an area, which results in long term damage to local ecosystems and enables invasive species such as cheatgrass to take over an area.

Invasive species such as cheatgrass are a great fire risk in Northern Montana.

In addition, previous actions by the APR have proven its inability to follow BLM directives and place these allotments at great risk of immediate and irreparable harm due to mismanagement. In 2005, an Environmental Assessment (EA) was published by the BLM that authorized a change in the class of livestock for the APR's grazing permit on the Telegraph Creek Allotment. BUREAU OF LAND MANAGEMENT, MALTA FIELD OFFICE, ENVIRONMENTAL ASSESSMENT CHANGE IN CLASS OF LIVESTOCK (2005). The EA resulted in the decision to allow bison to graze the allotment during year-long grazing seasons. *Id.*

at 17. However, the EA made it clear that:

A year-long season does not mean bison will be in any pasture for twelve months. Bison would still only be in any one pasture for less than three months per year. Pastures would be utilized during the dormant season deferring use during the growing season on two or three pastures each year allowing plants to replenish root reserves over a larger area of the allotment.

Id. This statement in the EA is in line with the Telegraph Creek Allotment Management Plan developed in 1973 and still in effect today:

By rotating the livestock between pastures and allowing a systematic seasonally or yearly deferment on pastures, more vegetation will be produced per acre. Some of this vegetation will be left on the site for soil protection. Some of the forage may be used to satisfy livestock management demands in the allotment. Areas having important wildlife habitat will benefit from deferment and rest treatments by delaying livestock grazing.

BUREAU OF LAND MANAGEMENT, MALTA DISTRICT, TELEGRAPH CREEK ALLOTMENT
MANAGEMENT PLAN 6 (1973).

While these documents both make it clear that proper management of the allotment includes resting and rotating pastures, that is not what the APR has done. Instead of rotating from one pasture to another every couple of months, the APR has removed gates separating the pastures and allowed their animals to roam freely throughout the entire allotment. Exhibit 15, Affidavit of Mark Manoukian, at ¶ 11. This is not only mismanagement because it fails to follow the BLM's analyzed decision; it is a complete *lack* of management. Most of the allotments in question are to follow the rest-rotation system previously prescribed to the Telegraph Creek Allotment, but APR has already shown it could not follow this management system in the past, so it is unlikely to do so now. The failure to follow the management system prescribed by the BLM places the health of the range, wildlife, and entire ecosystem at great risk.

iii. Harm to APR.

In the case that a stay is granted, APR will suffer little to no harm. APR currently does not own enough bison to stock all of these allotments in addition to the other lands it already controls.¹⁸ The deeded lands owned by APR are more than enough to sustain its current bison population, so no harm will be suffered by granting a stay that prevents

¹⁸ APR's inability to currently stock the allotments in question is based on figures found on their website. The current population of APR's non-production bison herds is 813 head. See American Prairie Reserve, *Bison Restoration*, <https://www.americanprairie.org/project/bison-restoration> (last visited Aug. 25, 2022). APR already owns 118,371 acres of private lands. See American Prairie Reserve, *Assembling the Land*, <https://www.americanprairie.org/assembling-the-land> (last visited Aug. 25, 2022). Assuming there are 0.13 AUMs per acre (the average AUMs/acre under Table 1 of the EA), the private lands alone can run over 1,200 head of bison each year. Therefore, the private lands alone can sustain all of APR's currently owned bison and more.

it from grazing buffalo on these allotments. In addition, granting a stay would prevent APR from taking on the obligation to acquire more bison to adequately stock the allotments before it is determined if the Final Decision will stand. A stay would actually prevent harm to APR because the organization will not have to relocate newly acquired bison if the Final Decision is overturned. APR will also not suffer any harm by being prevented from modifying fences on the allotments because, if the change in type of livestock is stayed, the existing fences are adequate to maintain the current use of cattle grazing. The current fence configurations have been previously approved by the BLM for proper management of the allotments in a cattle grazing scenario.

c. Likelihood of Appellant's Success on the Merits.

As set forth above, the Grazing Districts' and the MSGA's request for a stay should be granted due to the overwhelming likelihood that they will be successful on the merits in this case. The Grazing Districts and MSGA have raised substantial questions going to the merits of whether the BLM can grant APR the grazing permits and alterations to the allotments in this case which support this request for stay. *See Tennessee Gas Pipeline Company Co., L.L.C.* 189 IBLA 108, 110 (Dec. 16, 2016) (stating "A stay may be granted when substantial questions are raised for our deciding an appeal that require careful consideration, provided the other three stay criteria are met."); *Wyoming Outdoor Council, et al.* 153 IBLA 379 (Oct. 6, 2000) (granting a stay when consideration of the merits requires "careful consideration."). In addition, when party moving for a stay has established that the "harm" factors tip decidedly in its favor, the requirement of showing probability of success on the merits is relaxed, and, in such cases, the movant need only show questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation. *See Star Fuel Marts,*

LLC v. Sam's East, Inc., 362 F.3d 639, 652-53 (10th Cir. 2004); *Longstreth v. Maynard*, 961 F.2d 895, 903 (10th Cir. 1992); and *Anthony v. Texaco, Inc.*, 803 F.2d 593, 599 (10th Cir. 1986).

The Appellants, as set forth above, have more than demonstrated questions going to the merits so serious, substantial, difficult, and doubtful as to make them fair ground for litigation. Accordingly, the Appellants have demonstrated a substantial likelihood of success on the merits to obtain a stay of the implementation of the Final Decision pending a factual finding by the Office of Hearings and Appeals that the APR's bison are "production livestock," as well as findings as to whether the BLM complied with NEPA requirements for consultation under the applicable MOU, its economic analysis, and evaluation of cumulative impacts, and whether the BLM's Final Decision violates the multiple use mandate.

d. The Appellants and the Allotments will suffer immediate and irreparable harm unless the stay is granted.

The granting of a stay is appropriate in this case due to the significant likelihood of immediate and irreparable harm to the Appellants, both financially and practically, if a stay is not granted. If non-production bison are permitted to roam on the allotments governed by this decision, members of the Appellants' groups will be irreparably harmed, and the Allotments will be severely damaged. The presence of non-production bison on these allotments is a threat to the health of existing wildlife and domestic cattle and, therefore, the livelihoods of Appellants' members and the future of the Phillips County community as a whole. The removal of range improvements promises to negatively impact range health by placing unnecessary pressure on areas of the allotments that could otherwise be avoided through pasture rotations. Electrifying

fences without adequate opening for members of the public to cross is dangerous and violates the multiple use mandates.

e. A Stay is in the Public Interest.

Granting a stay of the BLM's Final Decision is in the public interest. The federal courts have expressed a preference for maintaining the status quo pending the outcome of grazing appeals. In *Valdez v. Applegate*, the court held that:

The public has an interest in protecting the range from overgrazing. The public also has an interest in the economic stability of the area and plaintiffs assert that such stability will be damaged by loss of property values, the effect of the herds, the combination of individual holdings, and exercise of control over private and state lands. Also, the public has an interest in "preserving the *status quo ante litem* until the merits of a serious controversy can be fully considered before a trial court."

Valdez v. Applegate, 616 F.2d 570, 572–73 (10th Cir. 1980), quoting *Blackwelder Furniture Co. v. Seilig Mfg. Co., Inc.*, 550 F.2d 189, 197 (4th Cir. 1977).

Preventing the APR from reintroducing non-production bison onto federal grazing lands intended to be utilized by livestock maintains the status quo. The grazing of bison has not previously been a permitted use on most of the allotments in this decision, so the status quo would be for cattle to continue to graze the allotments. It would further be in the public interest to maintain the status quo of the fences and other improvements currently on the allotments because these fences are integral to the responsible grazing of cattle on the land. To allow the APR to remove improvements before this controversy is fully resolved would be very counterproductive to the uses of the allotment.

In addition, the Phillips County community is heavily reliant on cattle production and the agriculture industry as a whole. See Exhibit 21, Declaration of Richard Dunbar, Phillips County Commission; Exhibit 22, Declaration of John Fahlgren, Valley County

Commission; Exhibit 23, Declaration of Ross Butcher, Fergus County Commission; and Exhibit 28, Declaration of Carl Seilstad, Fergus County Commission. It is in the public's interest to maintain this viable economic base until this serious controversy can be fully resolved. The public has an interest in maintaining community stability and the livelihoods of ranchers. The public also has an interest in ensuring that the BLM follows applicable statutes and regulations, makes sound and unbiased decisions based on good science, and treats all members of the public fairly. Consequently, granting a stay of the implementation of the Final Decision is in the public interest.

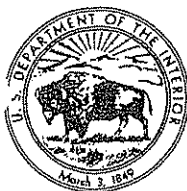
V. Request for Relief.

For all of the reasons stated above, the Appellants respectfully request that the Bureau of Land Management's July 28, 2022 Final Decision for the APR Grazing Proposal, DOI-BLM-MT-Lo10-2018-0007-EA, and FONSI which authorizes grazing by non-production livestock, the reconstruction and construction of fences, and modification of the season of use for multiple allotments, be vacated and that a stay be granted pending final resolution of this matter.

Respectfully submitted this 26th day of August 2022.



Karen Budd-Falen



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
Hearings Division
6432 Federal Building
Salt Lake City, Utah 84138

September 26, 1975

HAMPTON SHEEP COMPANY,	:	WYOMING 1-74-1
	:	
Appellant	:	Appeal from District
	:	Manager's Decision
v.	:	dated March 27, 1974,
	:	Worland District
BUREAU OF LAND MANAGEMENT,	:	
	:	
Respondent	:	
	:	
STATE OF WYOMING,	:	
	:	
Intervenor	:	

DECISION

Appearances: James Sperry, Esq., Worland, Wyoming, for Appellant;

George E. Longstreth, Esq., Office of the Solicitor, Department of the Interior, Denver, Colorado, for Respondent;

Donald H. Hall, Esq., Office of the Attorney General, State of Wyoming, Cheyenne, Wyoming, for Intervenor.

Before: Administrative Law Judge Sweitzer

Appellant filed a timely appeal from the captioned decision. A hearing on the appeal was held at Worland, Wyoming. Post-hearing briefs were filed on behalf of all parties and the

same have been duly considered along with all the evidence of the case.

The District Manager's decision rejected an application to graze "buffalo" (or "bison," these terms being used interchangeably herein).^{1/} The application was filed under the Taylor Grazing Act (43 U.S.C. § 315 et seq.), herein sometimes called "the Act," and requested a license to graze the bison under Section 3 of the Act (43 U.S.C. § 315b) in lieu of sheep on Federal range^{2/} in the Mahogany Butte Allotment of the Worland District. The State of Wyoming's intervention is based on the fact that the State is the present owner of the bison in question. It leases them to appellant.

The general issue of the case is whether appellant is entitled to the applied-for license. Specific issues for determination are: (1) whether bison may be classed as livestock under the meaning of the grazing authorization of Section 3 of the Act, *supra*; and (2) whether the licensing of bison in the circumstances of this case would vitiate the purposes of Section 6 of the Act (43 U.S.C. § 315e).^{3/}

Summary of Probative Evidence

Carl H. Hampton is president of the appellant company. He is founder of the company and a longtime livestock rancher. He

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- 1/ "Bison" is considered the proper designation, "buffalo" being a common misnomer. (See Tr. 175) The animals are scientifically classified as: Family BOVIDAE; Subfamily BOVINAE; Genus BISON; two major subclassifications are Bison bison bison (plains bison) and Bison bison athabasca (woodland bison). (See G. S. Miller and R. Kellog, North American Recent Animals, U. S. National Museum Bulletin 205, Smithsonian Institution, Washington, D.C., 1955; Tr. 224, 252).
 - 2/ For purposes of this decision, the terms "Federal range," "public lands" and "national resource lands," are used synonymously and interchangeably.
 - 3/ These specific issues in substance were stipulated by the parties. (Tr. 10, 15-17, 22-23; appellant-intervenor's brief filed March 3, 1975, at p. 4; respondent's brief filed May 5, 1975, at p. 2.)

testified to his familiarity with the Mahogany Butte Allotment: that it is an individual allotment which has been licensed exclusively to appellant under Section 3 of the Act; that it is correctly illustrated on a map designated Exhibit 1; that it consists of approximately 6 sections of land, the northerly portion thereof including somewhat more than one-half section of State land leased on a long-term basis by appellant, and somewhat less than one-half section of land owned by appellant; and that it is either fenced or bounded by relatively inaccessible terrain features on all sides. He observed that as of the time of the hearing, 26 "immature buffalo" were temporarily authorized to graze the Mahogany Butte Allotment under a special land use permit. (Ex. B) His opinion was that driving this bison herd was similar to driving a herd of cattle, except that the bison move a little faster, that they gather together to graze and do not scatter out; also, that they do not interfere with cattle or sheep grazing in the same vicinity.

Mr. Hampton gave his opinion that the allotment is well suited to bison and that they can satisfy their need for large quantities of water while using the allotment. He also stated that the bison could, and did under the special land use permit (Ex. B), utilize the Mahogany Butte Allotment without disturbing livestock in the surrounding allotments. He said that he was not aware of any problems encountered by fishermen with respect to the bison in the area and that there was no significant use of the area by hunters. He was not aware of any mining claims being in the allotment. Mr. Hampton observed that the bison constitute a significant attraction to tourists traveling the road around a portion of the allotment, and that it is his desire to maintain them there partly as a tourist attraction. He said that buffalo meat was commonly considered as being low in cholesterol. He gave his opinion that buffalo and cattle do not crossbreed naturally, but breeding is accomplished through artificial insemination.

Mr. Hampton conceded on cross-examination that his experience with bison was limited to this herd of immature animals, which he had observed for a year or less, plus some general observations of herds in South Dakota and other places. He acknowledged that the special land use permit was for "immature buffalo" and that these were animals approximately one year of age, also that these immature animals or "calves" would be easier to control than the mature bison would be.

Mr. Hampton stated that he has not constructed any fences on the allotment since placing the bison in there, and that a 32-inch high woven wire fence with two galvanized barbed wire

strands on top on the easterly side of the fence has been in existence for some 9 years by reason of Bureau of Land Management permission. He said that fence does not present a substantial barrier to wildlife. He indicated that, in his opinion, if the bison were permitted to continue to graze the allotment, no fences of further height than that just described would have to be constructed. He conceded that a person walking between a cow buffalo and her calf would be endangered but volunteered that, in his opinion, the danger would be as great respecting a Hereford cow and her calf.

Samuel R. Hampton, vice president of appellant company and son of Carl H. Hampton, testified to being 39 years of age and to being very familiar with appellant's operation in the Mahogany Butte Allotment. He described the southerly portion of the allotment as the higher portion in terms of elevation and the northerly portion as the lowest part of the area. A stream lies along most of the westerly portion of the allotment. He described the allotment as having natural barriers on the westerly side, a fence along the easterly side, and barriers also on the narrowed southerly and northerly ends. He stated that both cattle and sheep are run adjoining the allotment and that he has never observed any difficulty between the classes of animals either by the bison getting out, or the other livestock getting into the allotment, or otherwise.

So far as trucking and otherwise handling the bison, he characterized them as being a little faster in their movements but otherwise quite similar to cattle. He referred to several photographs (Exs. G-1 - G-13) with which he illustrated his contention that the bison were no more dangerous than cattle. The photographs show a few people in the proximity of the bison. They also show the animals feed at a feed lot in the allotment. Mr. Hampton stated that he did not observe anything in the bison's use of the allotment to indicate damage to the range by reason of the use.

Samuel Hampton said the bison would wallow in the banks of a reservoir and that this actually helped in the reservoir's retention of water. He also said that the bison appeared to voluntarily restrict their forage use to the area within the allotment, that being the range with which they were familiar. He made frequent observations of the bison utilizing the

allotment under the special land use permit and expressed the opinion that the herd had adopted this range and become accustomed to it.

He related that they had run some cattle and sheep in the allotment at the same time as the bison were there but that he observed no disturbances between these classes of animals. He said the facilities were ample for vaccinating the bison as a protection against disease, and that he felt there was no danger of the bison infecting other animals.

He stated that only a few fishermen crossed the land because of the difficulty of entering the allotment caused by terrain features, and he did not believe that the presence of the bison would jeopardize the fishermen. He said that he tested the animals by firing a big-game rifle in their proximity and they did not panic. From this test he concluded that hunting deer and other game animals in their vicinity would not cause them to stampede. It was his opinion that use of the lands in the allotment by recreationists, hunters, fishermen, and other lawful users would not be adversely affected by the grazing bison.

Samuel Hampton stated that he intended to utilize these buffalo for the production of meat similar to the manner in which cattle are utilized, although his later statement that "... I think there would be a chance of that" (Tr. 137-138), referring again to utilizing them for production of meat, makes the intention in this regard somewhat unclear. He also testified to tourist interest in the bison.

On cross-examination Mr. Hampton testified that he had not made a study of bison additional to that gained by observation of the animals. He conceded that he did not really know how many persons utilized the Mahogany Butte Allotment for ingress or egress. He gave his opinion that bison calves would tend to remain on a range area on which they were raised and that they could be trained to be trailed and herded but admitted that this was an unproved opinion that he was expressing.

Robert E. Johnstone is Superintendent of the Hot Springs State Park at Thermopolis, Wyoming, where he has resided since 1963. The Park has had a herd of between 22 and 40 bison from at least 1963 until the present. He said the

Park includes about a section of land where they roam free, which has an access road with many branches ". . . where the public is in there continually day and night intermingling with the buffalo" (Tr. 156) He said that, although the bison range area is not adequately fenced to retain all the animals, they generally, nevertheless, confine themselves to their designated range area and that if they do leave it, they can be easily returned to the area. He expressed the opinion that it was easier for him to return the bison to their normal range area than it would be to return cattle. The State of Wyoming has the bison at the park as a tourist attraction.

Mr. Johnstone said he was not aware of any person ever being injured by placing himself between a cow bison and her calf and related that the only occurrences to his knowledge of a bison injuring tourists were on two separate occasions where the injured party had been mistreating an animal. He testified he would not characterize the bison as being dangerous to the public, although he also stated they are active and quick and "capable of being dangerous." (Tr. 162) He suggested that a Hereford bull could be at least as dangerous. He said the State park personnel utilized signs to advise the public that the bison are "quick and dangerous and to leave them alone." (Tr. 163) But he emphasized his belief that the bison were no more dangerous than cattle. He gave his opinion that, inasmuch as cattle and bison can crossbreed, they are genetically similar. He indicated an opinion that there is a commercial market for bison at the present time and that this market is growing, although he did not support this opinion with any specific facts.

Mr. Johnstone testified to being familiar with the Mahogany Butte Allotment and he described it as suitable for bison use and amenable to their patterns of movement and migration. His opinion was that there would be no particular danger to the using public from bison on the allotment.

Intervenor placed into evidence an affidavit of the Wyoming State Veterinarian (Ex. AA) that as respects his testing for brucellosis, he regards bison and cattle as similar animals, referring to Wyoming statutes that provide, in part, ". . . All breeding cattle and buffalo entering the State of Wyoming shall be accompanied by a proper health certificate showing evidence of a negative blood test for brucellosis made within 30 days prior to entry," (Section 11-314.1, Wyoming Statutes, 1957 (Supp. 1973)).

Exhibit BB evidences the gift of the bison to the State of Wyoming on October 29, 1973. The donation was made from one Grace A. Werner to the State and totaled 130 head. Of this amount, 26 head of calves were to be transported to appellant's ranch.

Documents in evidence indicate that in Wyoming bison are treated as domestic livestock with regard to branding. (Exs. CC and DD) Pages from Annual Reports of the Wyoming State Board of Equalization and Taxation indicate that bison have been assessed as livestock since 1962. (Exs. EE and FF)

Exhibit GG is an opinion from the Attorney General of Wyoming dated September 10, 1974, holding that as to health and transportation requirements, bison are to be classified as livestock under the statutes of Wyoming. This opinion notes that an 1890 statute (Section 11-319, Wyoming Statutes) defines "livestock" only as "neat cattle, horses, mules, asses, sheep, and goats" The opinion, however, says that although bison were not considered as livestock in Wyoming in 1890, they are now considered as included in the category of livestock for the following reasons, as set out in the opinion:

1. Buffalo were appraised as other livestock in the Herman Werner Probate Proceedings and at a substantial figure based upon the market value.
2. Buffalo have been classified by statute along with cattle as to health requirements and in this respect the word "buffalo" and the word "cattle" are employed interchangeably as is the case in the above-quoted Import Proclamation.
3. According to the records of the Wyoming Livestock board, Department of Brands, there are presently eleven (11) duly recorded individual brands having been granted to Wyoming residents for indicia of ownership of livestock, including buffalo.
4. Durham Ranches, Inc., for some time have and do now operate a commercial enterprise on a large scale, utilizing

buffalo in breeding and processing meat products for an extensive market mainly on the West Coast.

Marvin R. Kaschke was the first witness called by respondent. He holds a bachelor's degree in wildlife management and has been Refuge Manager of the National Bison Range located at Moiese, Montana since 1968. The National Bison Range is one of the wildlife refuges of the U. S. Fish and Wildlife Service. It has approximately 325 to 400 bison in addition to other animals and fowl. He stated that approximately 100,000 tourists a year visit the Range and that he is in charge of the safety and direction of such visitors. He considered bison as a native game animal but was not sure whether they could be considered as livestock. In response to hypothetical questioning, he expressed the opinion that use of public lands for bison grazing could restrict, but not necessarily prevent, other lawful public uses of the lands. He was of the opinion that for positive confinement of bison to an area, a seven and one-half foot woven wire fence should be used, and that such a fence would interfere with movements of wildlife such as elk.

Mr. Kaschke said ". . . I think that we consider the bison as an unpredictable and potentially dangerous animal, and I'm sure that we could relate numerous experiences which would be reason for us to indicate this." (Tr. 201) He stated that bison are more dangerous during the rutting season (late July and early August) and during the calving season (mid-April until June) than at other times of the year. He referred to pamphlets of the Fish and Wildlife Service printed as handouts to visitors which contained cautions such as "Buffalo are totally unpredictable and may be quite dangerous. Remain in or near your car at all times." (Ex. 2; see also Ex. 3) He said that the Refuge had not experienced any injuries to the visitors from bison. He also indicated that Jersey and Holstein cattle were similar to the bison from the standpoint of dangerous propensities.

Mr. Kaschke said on cross-examination that zoologically, there is a close genetic relationship between bison and cattle. He was aware of a market in the United States for bison meat. He said he was aware of no detrimental effects from eating bison meat and recalled the results of a study published by the University of South Dakota indicating the meat has less cholesterol, more protein, less water, and is less allergenic than beef and pork. He described the flavor as

resembling the taste of beef more than of wild game. He responded to questioning as to indicate that the some 30,000 head of bison now in the United States are "... predominantly held in captivity now or domesticated" (Tr. 257)

Hugh Wall is a range specialist in the Wyoming State Office of the Bureau of Land Management. He stated Exhibit 4 to be a position statement letter issued by the office of the Director of the Bureau of Land Management, addressed to Senator Clifford P. Hansen, under date of December 7, 1973. The letter states in part:

... we prefer to maintain the present policy of no buffalo use under permit within the grazing districts. This policy is consistent with the Taylor Grazing Act and insures a measure of public safety.

[Section 3 of] The Taylor Grazing Act of 1934 . . . states, "The Secretary of the Interior is authorized to issue . . . permits to graze livestock to . . . bona fide settlers, residents and other stock owners" "Preference shall be given . . . to . . . landowners engaged in the livestock business"

Neither the State of Wyoming nor the Bureau recognizes the buffalo as a domesticated animal. Wyoming State statute (Sec. 23.1-1) classifies buffalo in the broad category of wildlife but not as a big game animal.

The grazing of buffalo on national resource lands was not envisioned by the Taylor Grazing Act or the subsequent Grazing Regulations. In fact, grazing of buffalo would not be consistent with the intent of the Act which is "To stop injury to the public grazing lands by preventing overgrazing and soil deterioration; to provide for their orderly use, improvement, and development; to stabilize the livestock industry dependent

upon the public range; and further purposes."

Mr. Wall identified Exhibit 5 as another position statement from the Office of the Bureau of Land Management Director. It is a letter from the Director's office to the Director of the Wyoming Wildlife Federation under date of September 9, 1974, and states in part:

[Neither the Taylor Grazing Act] . . .
nor [the grazing] regulations adopted
pursuant to the Act recognizes buffalo
grazing as a qualified use under pro-
visions of the Taylor Act. . . .

Rejection of applications under
. . . [this] criteria does not pre-
clude the possibility of providing for
buffalo on the public lands similar
to providing habitat for other wild-
life and wild horses or burros. . . .

During Mr Wall's direct examination, reference was made to the summary proceedings of the Wyoming State Multiple Use Advisory Board (Ex. 6) insofar as that document shows the recommendation of the public land policy committee "that grazing of buffalo on national resource lands not be allowed inside grazing districts under Section 3 licenses" which recommendation is shown to have been adopted by the Board. On cross-examination, Mr. Wall conceded he was advised bison were being grazed on certain Federal lands under leases issued pursuant to Section 15 of the Taylor Grazing Act (43 U.S.C. § 315m); also, that he was aware of bison being allowed on Federal lands as wildlife. He characterized bison as "good ranging" and "good forage" animals, and animals that consume most anything they can chew; so as a result they would be a desirable animal"; although he also said "they graze only the better areas." (Tr. 283)

Rex S. Zobell is wildlife specialist for the Bureau of Land Management in the Wyoming State Office. He testified to holding a bachelor of science degree with a major in range management and minors in wildlife management and in forestry. He related an instance in which bison broke out of a private ranging area, requiring some six months for recovery of them all.

Evaluation, Findings and Conclusions

The appellant has the burden of showing by substantial evidence that respondent's decision was improper. Joyce Livestock Company, 2 IBLA 322 (1971). If the decision is arbitrary or capricious, the challenge to it will be successful; but, if the decision has a rational basis, it is not to be considered arbitrary or capricious and must be upheld. United States v. Maher, 79 I.D. 109 (1972). Maher states at 114:

. . . An action of [a District Manager] . . . which is reasonably related to protection of the range, i.e., forage and other values or prevention of use by non-authorized parties, has a rational basis and is, therefore, not arbitrary or capricious.

Rather closely related to the facts under consideration, Elmer Nielson, IGD 423, 425 (1945) stated a similar rule 30 years ago:

. . . the function of determining the propriety of segregating certain areas of the Federal range for the use of particular kinds of stock, to insure their proper use or to promote the orderly administration of the range, is an administrative function committed primarily to the local grazing officials. Unless it is shown that the action taken is arbitrary or capricious or is based on insufficient or unreliable information, the Department will not disturb a determination made by the administrative officers after investigation of the local conditions and consideration of the administrative needs consistent with good range management.

The application here is for licensed use under Section 3 of the Act (43 U.S.C. § 315b) which provides authority for the issuance of permits to graze "livestock." Thus, the first question to be resolved is whether these bison can qualify as "livestock."

The Act does not define "livestock." Scanning more than 300 pages of legislative history pertaining to the Act produces no reference to either bison or buffalo. All counsel in this case also indicate they have found no such reference. Evidently, bison were not specifically considered in connection with the Act. Neither do the Grazing Regulations in 43 CFR, Part 4110 (The Federal Range Code for Grazing Districts) define "livestock," nor do they refer to bison. The absence of any reference thereto may be taken to indicate the framers of the Act and Federal Range Code did not contemplate the possible inclusion of bison. As examples, 43 CFR 4110.0-5(o) in defining "animal-unit month" refers to only cows, horses, sheep, and goats; and 43 CFR 1725.3-3(a) in referring to the management of livestock in connection with multiple use of lands, parenthetically refers to "livestock" as "cattle, sheep, horses, and goats." But it can be argued, more persuasively I think, that such regulations do not purport to be an all-inclusive list of "livestock." Seemingly supportive of this argument, it is noted that one of the regulations pertaining to game ranges and wildlife refuges, 43 CFR 4251.3 precludes from grazing thereon, ". . . cattle, sheep, horses, or other livestock" (Emphasis supplied.)

Neither is "wildlife" defined by the Federal Range Code nor by other regulations more specifically concerned with wildlife (43 CFR, Part 4200, see especially Section 4251.1). 43 CFR 4111.1-3(b) does make a distinction between the two by providing for reservation of a sufficient grazing capacity in the grazing districts for "wildlife" and then stating that these "wild game animals [are] to use the range in common with livestock grazing in the district." (Cf. Section 9 of the Act; 43 U.S.C. § 315h.)

It is my opinion that the probable fact is that neither the drafters of the Taylor Grazing Act nor the promulgators of its implementing regulations gave consideration, affirmatively or negatively, to the question of whether animals such as bison, considered "wildlife" under ordinary conditions, might nevertheless, under certain conditions, be considered "livestock" within the meaning of the Act's Section 3 authority.

The Department of the Interior does not appear to have defined "livestock." For example, the Glossary of Public Land Terms (Bureau of Land Management, Printed in 1949, Reprinted without revision in 1959) fails to include the word, although it does define various other terms found in the Taylor Act and Federal

Range Code. Nor does my research of Court or Departmental decisions which have dealt with the Taylor Grazing Act reveal anything of assistance in this respect, and counsel have pointed to nothing.

Contrary opinions as to whether bison may be "livestock" are expressed by the Attorney General of the State of Wyoming (answering "yes" in an opinion of September 10, 1974; Ex. GG) and the Director of the Bureau of Land Management (answering "no" in letters dated December 10, 1973, and September 9, 1974; Exs. 4 and 5). In deciding this case, I do not consider myself bound by either of these contrary expressions of opinion. I have, however, given consideration to the reasoning in each. I have noted also that respondent seems to have taken action inconsistent with the opinions expressed in Exhibits 4 and 5 in its apparent issuance of certain leases utilized by bison under Section 15 of the Act (43 U.S.C. § 315m; see 43 CFR, Part 4120). (Tr. 274-278)

I see no difficulty in holding that animals normally classified as "wildlife" may be "livestock" for a purpose such as application of Section 3 of the Act, when in substantial respects they are treated as livestock and have characteristics in common with livestock. A somewhat related holding is made in Fromm Bros., Inc. v. United States, 35 F. Supp. 145 (W.D. Wisc. 1940). That case held that although foxes in their natural state are wild animals, yet when raised in captivity as fur bearing animals, they are "livestock" within the meaning of the Social Security Act.

The evidence shows that the bison in question here are in many respects similar to cattle, and are to be utilized for the most part as cattle or other "livestock" might be. Treating them as "livestock" does no violence to the Taylor Grazing Act, one of the purposes of which (per its preamble) is "... to stabilize the livestock industry dependent upon the public range"

Also, this interpretation of the term "livestock" is consistent with commonly accepted definitions of the term; e.g.,

[T]he horses, cattle, sheep and other useful animals kept or raised on a farm or ranch.
(the Random House Dictionary of the English Language, the Unabridged Edition, 1966)

Domestic animals used or raised on a farm
(Black's Law Dictionary, 4th Ed., West)

Publishing Company, 1951; which defines
"domestic animals" as

Such as are habituated to live
in or about the habitations of
men, or such as contribute to
the support of a family or the
wealth of the community.)

I find that bison would ordinarily be categorized as wildlife; that, however, this does not perforce preclude their being considered "livestock" under provisions authorizing livestock licenses and permits on Federal range in appropriate circumstances; and I find the circumstances in this case are appropriate. Thus, I find that the District Manager's decision is in error insofar as it rejects the application on the ground that he is precluded from authorizing grazing of bison under any circumstances.

Concerning the question pertaining to Section 6 of the Act (43 U.S.C. § 315e), said section provides in pertinent part that nothing in the Act ". . . shall restrict . . . ingress or egress over the public lands . . . for all proper and lawful purposes" Respondent argues (page 8 of its brief filed May 5, 1975) that because of ". . . the unpredictable character of bison and the dangers attached to being in their proximity . . . [t]o permit the public to enter upon . . . lands [grazed by bison] subjects them to injury or death from bison." Respondent also argues (pp. 4, 8-9 of brief) that ". . . the grazing of bison on National Resource lands is incompatible with the other authorized uses for the land, as set out in the [Classification and] Multiple Use Act [43 U.S.C. § 1411 et seq.]." That act and its implementing 43 CFR 1725.3-3 list the following ten objectives of public land management: (a) domestic livestock grazing (which it parenthetically indicates includes grazing for "cattle, sheep, horses, and goats"); (b) fish and wildlife development and utilization (under which it includes "provision and maintenance of public access to fish and wildlife resources"); (c) industrial development; (d) mineral production; (e) occupancy; (f) outdoor recreation (including making the lands "available for appropriate recreation enjoyment by the public"); (g) timber production; (h) watershed protection; (i) wilderness preservation; and (j) preservation of public values.

Opinions were expressed to the effect that the grazing of the bison would not significantly interfere with ingress and egress

on these public lands for other lawful purposes. (Tr. 68-69, 101-102, 173-174, 181, 189-191, 231-234, 237-245) For reasons to be discussed, I find the weight of the probative evidence supports these opinions.

The specific reason given in the District Manager's March 27, 1974, decision for rejection of the application is as follows:

Grazing buffalo on national resource lands may adversely affect adjacent authorized livestock operators, and may pose a potential threat to the public using national resource lands for authorized purposes. (43 CFR 4112.2 and 4115.2-1(g) and (4) of the Federal Range Code for Grazing Districts).

In my opinion, neither of the cited regulations provides a valid reason for rejection of the application. 43 CFR 4112.2 states:

The District Manager may designate certain areas for use exclusively by a certain kind or class of livestock when necessary for the proper use or orderly administration of the Federal range.

This regulation does not preclude the granting of the application. There is no showing of necessity for exclusive use, e.g., by sheep or by cattle, under the criteria set out in the regulation. The showing is that bison may appropriately use the allotment. Contention is not made that the use should be exclusively for bison, and that is not at issue.

43 CFR 4115.2-1(g)(3) and (4) are contained within a regulation authorizing the District Manager to allow a requested change in grazing season to "... any period of time for which the Federal range is classified as proper for use, provided:

* * *

(3) Such use will not be detrimental to the Federal range, and

(4) Such use will not adversely affect other licensees or permittees.

This regulation is not really in point, season of use not being in issue. Nonetheless, for reasons stated in this decision, I adopt the contention asserted in appellant-intervenor's brief at page 9 that the evidence shows:

. . . that if the permit to graze buffalo (bison) is granted, that such use "will not be detrimental to the Federal range." Nor, will such use "adversely affect other licensees or permittees."

Protection of forage and related values of the range was not asserted to be an issue at the hearing of this case. The District Manager's decision does not specify this as a reason for the rejection, except insofar as its citation of 43 CFR 4115.2-1(g)(3), discussed above, might be taken as a reference to protection of forage in this case. Nevertheless, I feel this aspect must be considered, and I have considered it, particularly in view of the statement in the Mahe decision, supra, that "[a]n action . . . reasonably related to protection of the range . . . has a rational basis."

Rejection of the application is not shown to be called for by a need for protection of the range. Testimony indicates the allotment is particularly well suited for the grazing of bison. (Tr. 126-128, 170-172, 282) There is no convincing evidence that the bison will cause damage to forage of this range, at least no more than would be caused by cattle or sheep. Utilization under the special land use permit serves to suggest adaptation by the bison to appropriate use of the range. (Tr. 121-126, 128-129, 172) The tendency of the bison to "wallow" is indicated to be of benefit, in that it is done in a reservoir area, thus helping to seal the reservoir. (Tr. 84-85, 126-127)

The decision's stated reasons should themselves be discussed:

Grazing buffalo on national resource land [1] may adversely affect adjacent authorized livestock operators, and [2] may pose a potential threat to the public using national resource lands for authorized purposes.

[1] The preponderance of the evidence establishes that the grazing of bison on the Mahogany Butte Allotment would not adversely affect adjacent authorized livestock operators.

The allotment is fenced or is bounded by natural terrain features such as to render access into or egress from the allotment difficult. (Tr. 36-44, 104-107; Ex. 1) Evidently, there have been no complaints from adjacent operators while the herd has been run under the special land use permit (Ex. B; Tr. 58-60), and there is no problem as respects interbreeding with cattle. (Tr. 74-75) The bison herd is virtually brucellosis free (Tr. 166-167) and facilities for continued testing are available from the State of Wyoming and upon the Hampton ranch. (Tr. 165-166, 72-74) The evidence indicates that the grazing of bison is compatible with other species of livestock and wildlife utilizing the range in the allotment. (Tr. 58-60, 72-76, 127-128, 165-167, 224-227, 249-250)

[2] The preponderance of the evidence also establishes that any "potential threat" to the public lawfully using the lands should be no greater than would be posed by certain types of cattle which are licensed on Federal range. (Tr. 173-174, 181, 189-191, 231-245)

It is acknowledged by respondent that bison can graze as wildlife on Federal lands (See Ex. 5; and see Sec. 9, Taylor Grazing Act.) Assuming, arguendo, that bison are more dangerous to humans than are cattle, no explanation is offered as to why such additional danger would not be faced by lawful public land users on areas where bison graze as "wildlife" as much as on areas where they graze as "livestock." If, as the evidence shows, they are most dangerous during rutting and calving seasons, there is no reason to suggest they would be any less dangerous at such times if permitted to graze as "wildlife" than as "livestock."

The weight of the probative evidence denies respondent's assertion that the granting of the application would vitiate the purpose of Section 6 of the Act. In so stating, I am impelled to apply a standard of reasonableness to the meaning of Section 6 for, certainly any livestock grazing under Section 3 could, arguably, "restrict" ingress and egress to a limited degree. But the evidence is that any such "restriction" would not be significantly more, if indeed any more at all, for the bison use at issue in this case than it would be expected to be for cattle. Perhaps the most illuminating testimony on this point and related aspects of the case occurred during a portion of the direct and cross-examination of National Bison Range Manager Kaschke, who was called to testify by respondent.

[Direct examination]

Q Now, have you had any experiences with the temperament of the bison?

A Yes, sir. I think that we consider the bison as an unpredictable and potentially dangerous animal, and I'm sure that we could relate numerous experiences which would be reason for us to indicate this.
(Tr. 201)

* * *

Q Now, are there certain times of the year when the buffalo is more dangerous than other times?

A Yes, sir. We consider the rutting season, which is generally in late July and early August, as a time that the animals are more dangerous than other times in the year and then of course during the calving season.
(Tr. 202)

* * *

A The calving at the National Bison Range starts right at mid-April and continues through into June.

Q Now, let's talk about the rutting season. What is there about it that makes the animal more dangerous at that point in time?

A Well, in our operation we maintain about 45 per cent males and 55 per cent females because as I mentioned earlier, we're trying to assimilate what we think would have been a natural population.

And so with this herd, of course there are numerous bulls, and the bulls do a lot of fighting when a cow comes into heat and prior to the time that she

comes into heat. And they seem to kind of try to establish somewhat of a hierarchy. I guess that's a poor term because it's actually just a few bulls will try to establish which one is the king of the group. And it's not necessarily in the entire herd but just in a few of the bulls.

So there's a lot of fighting
(Tr. 202-203)

* * *

. . . at that time of the year, these animals get terribly worked up and they just seem to lose respect for everything.

We have been out with them, around them with horses at that time of the year, frequently been charged. We have had vehicles around that -- well, we haven't necessarily tested them to the fullest extent, but we have actually pulled away from areas where they were fighting to prevent the possibility of the animals hooking the pickup or getting bumped into the vehicle or something of this nature.

And of course certainly at that time of the year, we don't attempt to approach them on foot. However, we don't attempt to approach them on foot any time of the year.

But we consider these animals as free ranging animals and not as domesticated type animals, and we do nothing to attempt to domesticate them.

Q During this rutting period, are they rather irritable, the bulls?

A The bulls are extremely irritable, and the bulls, at that time, yes, as indicated by the fighting that they do.

And we also lose from two to four bulls either during or after the breeding season from injuries that they received from fighting.

Q Now, is the danger more present in the case of the calves with the mother and the calf by her, the mother and the calf?

A Yes.

Q During calving season, is that a critical period in the handling of buffalo?

A It very definitely is, and we certainly approach the herd with extreme caution during that time of the year.
(Tr. 203-205)

* * *

. . . we caution the general public and tell them that the animals are unpredictable and potentially dangerous because they don't have the opportunity to know these little signs, like the raised tail that Mr. Johnstone mentioned. (Tr. 205) [Mr. Johnstone had testified that bison raise their tails "if they're going to act up." (Tr. 181)]

Q Now, you spoke of the buffalo being unpredictable.

A That's a term that we have used, that we think fit the behavior of the animal about as good as any we could use.

Q Now, handing you what is BLM Exhibit 3, will you read the last sentence in the first full paragraph on the front page where there's a check mark.

A "This is a precaution for the safety of the visitors, as bison are unpredictable and may charge people or horses without warning."

Q Now, is this a document that was a hand out or was it in the shelf or was it handed out to tourists as they went through?

A That document is a hand out that is available in our office at all times on a leaf rack. It is also available in the yard outside of the office so that when the office is closed that people can pick it up. It's our main leaflet for handing out to school groups and other visitors of the area.

Q Have these admonishments been satisfactory? Do they accomplish their purpose?

A Well, we feel they have because we haven't, as yet, had an injury to the tourists from bison.

Q Now, you've been present here today during the testimony this morning. I'd like to ask you a hypothetical question if I might.

Now, you are familiar with the multiple resource program of the Department of Interior.

A Yes, sir.

Q And you're familiar with the Taylor Grazing Act lands.

A Yes.

Q Now, taking into account the multiple resource program and the Taylor Grazing Act lands, do you have an opinion as to whether buffalo being placed on those lands would be inconsistent with the other uses, other resources?
(Tr. 208-209)

* * *

A Well, my opinion would be that it would complicate the other resource management to the degree of whatever resources were available on certain lands, and I think that's actually about as far as I would want to go not feeling real confident about all the rules of the Taylor Grazing Act and so forth. (Tr. 210)

* * *

Q BY MR. LONGSTRETH: Minerals are one of the other resources. The management of the land is a resource. Grazing is a resource. Recreation is a resource. Wildlife is a resource. Watershed is a resource. Now, many of those resources are unknown until they're found, which means they have to be searched for.

Now, does the fact that buffalo around there create a hazard that might deteriorate or prevent prospectors, for instance, people going on and trying to make use of these resources?

A It could certainly restrict the uses. I'm not sure that it would necessarily prevent the other things from happening, but it could restrict them.

Q It would restrict them?

A It could.
(Tr. 211)

* * *

[Cross-examination]

Q I believe, Mr. Kaschke, you indicated that occasionally that bulls, I think, you said maybe three or four or five injured themselves, that they became deceased as a result of the rutting.

A Yes, sir.

Q Now, have there been occasions when you have, so to speak, put these animals out of their misery by shooting them?

A Yes, sir, in some cases. . . .
(Tr. 231)

* * *

Q Now, do you ever shoot them with firearms upon the range?

A Yes, sir, we have.

Q On how many occasions have you done this? I know you don't know exactly, but approximately how often does this occur?

A Well, I can think of about three in the five years that I've been there.

Q And has this been in the proximity of other buffalo?

A Yes, sir.

* * *

Q In the first incident within the past five years, how far were the other animals from the buffalo that was shot?

A A matter of feet or certainly yards away. We stayed, remained near the vehicle for a short period of time, and the other animals just moved away. (Tr. 232)

* * *

Q Their behavior didn't alarm you?

A In fact in both of the other cases this is what happened. (Tr. 233)

* * *

Q BY MR. SPERRY: You were very careful -- and I appreciate it, Mr. Kaschke, in pointing out that in the herd management, you keep approximately 45 per cent bulls to 55 per cent cows in the breeding herd; is this correct?

A That's right, in the entire herd.

Q And that certainly your intent is to duplicate the actual conditions of these animals in the wild state so nearly as possible.

A Yes, sir.

Q And this being one of the conditions that you can control, you do do so; correct?

A That's right.

Q Now, this would not be the normal ratio of bulls to cows in a breeding herd, would it, where you raise them?

A That's right.

Q How would it differ? Can you tell us just from your knowledge what the disparity might then be?

A As I understand, most private herds have one bull for about 20, breeding each cow, or then depending on the size of the herd as to how many bulls there might be. Now, I would assume that if they had a large herd like had been mentioned, one that was 2,000 or even larger, that there would be numerous bulls that would get bunched up and that there would be some of this fighting that I described with out animals. But certainly it would be much more limited than what it would be with our herd.

Q In other words, where we're talking about Mr. Hampton, I believe, 19 heifers was alluded to here. I hope I'm correct.

A Yes.

Q You would expect certainly not more than one or two bulls would be requisite to service that herd of females?

A That's right.

Q And consequently there would be a minimization of this rutting season carrying on that you detailed.

A Yes.

Q The cows don't enter into any of this, do they? They're more or less passive.

A Right.

Q So it's really the conduct of the bulls that we're talking about.

A That's right, at that time of the year.

Q Now, certainly there are other ways that your wild herd or what you attempt to keep as a wild herd would differ from a domestic herd managed as Mr. Hampton and his son have indicated here as their intent and contemplation. Aren't there other ways?

A Well, I'm sure that there are other ways that it would differ from this operation because we attempt to keep them -- we never feed our animals in the winter-time as they are remaining free ranging. The only animals that are fed are the ones within the exhibition pasture which we keep there in a smaller area.

Q So it would be a fair statement to say then that there would be more direct human contact and acquaintance with the animals under the running on the Mahogany

Butte Allotment that's here in contemplation than what you're doing up there in the National Bison Range?

A I would assume there would be.

Q You indicated that on one particular cow that had been raised as a calf -- I believe she's an eight-year old now?

A Approximately.

Q Though she does revert -- I believe you used the word when the calf comes for four or five months -- nevertheless she still retains an affection or an affinity for human beings; does she not?

A Yes, she does.

Q So there is a possible trait that is in the buffalo when around human beings for an extended period of time as affinity or affection developed?

A I would very definitely think it would be. In most of the instances, like I say, we have still considered them as an unpredictable animal that we wouldn't depend on this. But they very definitely can, and maybe a large portion of them would.

Q Mr. Kaschke, you're a Nebraska farm boy?

A Yes, sir.

Q And you've been around Jersey bulls and Holstein bulls; haven't you?

A Yes, sir.

Q Perhaps Angus or Herefords or other species.

A Yes.

Q Wouldn't you also consider a Jersey bull and a Holstein bull and a dairy bull particularly very dangerous animals?

A Yes, I would.

Q And perhaps nearly as dangerous as the buffalo if not more so?

A Yes, with the exception that they probably aren't quite as fast.

Q But their propensities --

A Right.

Q So there is a tendency in all these males, be they cattle or be they buffalo, to be aggressive and pose a certain amount of danger?

A Yes.

Q And you don't determine any significant difference between a Jersey and a Holstein bull and the buffalo, do you, in this regard?

A Well, I would consider them both dangerous and be very careful and approach them very cautiously, and certainly if the public was to be permitted, I would want to take all the precautions that I thought was necessary to prevent somebody from getting injured.

Q You surely wouldn't want a person out around a Hereford bull that was active in the breeding season say up on the Taylor Grazing lands here?

A No.

Q You advise against it, and if you could, put out a pamphlet to advise the

using public of that danger; would you not?

A On the public domain lands, you're speaking of?

Q Yes.

A Well, Hereford bulls, depending on the bull, the individual bull. I think again they're probably similar to buffalo in that there are certain animals that are probably a little more dangerous than others.

Q Individuals?

A Individuals, yes. And again they're unpredictable.

Q Of course almost any animal you could use that characteristic of unpredictable; couldn't you?

A I assume you could.

Q You're saying in effect that buffalo are predictably unpredictable. Is this what you're saying, Mr. Kaschke, in effect?

A Right.

Q Now, you have had 100,000 plus tourists there in each of the last two or three years or perhaps more, and you have not had one injury; have you?

A Not to my knowledge -- being injured with a buffalo, encounter with a bison.
(Tr. 234-239)

* * *

Q Would there be many days where there would be 1,500 or so people there?

A Yes. From 1,000 to 1,500.

Q That would not be uncommon during the tourist season?

A Not during the tourist season.

Q And that would extend for several months. When would those months be?

A The busiest months would be July and August, and that would be the months that you would expect that many people probably -- well, one July we had 2,500 people go through so that would average about 1,000 a day.

Q And that's during the rutting season really; isn't it?

A Yes, sir.

Q When the peak load of visitors --

A However, of the hundred thousand people that go through the bison range, only about 40 per cent take the self-guided tour out through the 19 mile self-guided tour.
(Tr. 244-245)

This evidence, when coupled with the evidence mentioned hereinbefore to the effect that the Mahogany Butte Allotment is suited to bison by reason of geographical configuration and grazing suitability, and that the use would not be detrimental to the Federal range, nor adversely affect other licensees or permittees, constrains a holding favorable to appellant (and intervenor) in view of my finding that bison are not per se precluded from being licensed under Section 3 of the Act.

The evidence shows that in the circumstances of this case, not only would the granting of the application not vitiate Section 6 of the Act, but also it would be consistent with the general purposes of the Act which, as stated in its preamble, are "... to stop injury to the public grazing lands by preventing overgrazing and soil deterioration, to provide for their orderly use, improvement, and development, [and] to stabilize the livestock industry dependent upon the

public range" (Cf. United States v. Hatahley, 220 F.2d 666 (10th Cir. 1955), rev'd on other grounds 351 U.S. 173; Walter K. Ellis, 57 I.D. 113, 115 (1940).) And the granting of the application would not be inconsistent with the Classification and Multiple Use Act, supra.

My determination in no way purports to limit the responsibilities of the respondent to take necessary steps to promote the orderly administration of the Federal range, to adopt appropriate corrective measures to conserve the forage and protect the range from improper use, and to take all proper steps to comply with applicable law, including the Taylor Grazing Act and the Classification and Multiple Use Act, both supra, and their implementing regulations, specifically 43 CFR, Parts 4110 and 1720. Neither does it purport to preclude any future action by respondent in the event, e.g., the bison are no longer maintained as "livestock"; one of the bases for my holding herein being that a finding that they are substantially so maintained.

Appellant is, in effect, applying to change certain sheep animal-unit months for which it has been recognized, to animal-unit months for bison. This arithmetical conversion should not be difficult. Although 43 CFR 4110.0-5(o), in defining "animal-unit month" does not refer to bison, official notice is taken that at least one standard reference work contains a forage consumption equivalent table which may be of assistance: L. A. Stoddard and A. D. Smith, Range Management, American Forestry Series, McGraw-Hill (2d Ed. 1955), Table 30 at page 192.^{4/}

My determination herein is limited in scope: that bison are not precluded per se from authorization to graze under Section 3 of the Act; and that in the circumstances shown by the evidence in this case, the appellant and intervenor have satisfied the burden of showing by substantial evidence that respondent's decision was improper, without a rational basis, and not reasonably related to protection of the range. While not essential to my determination in this respect, I deem it appropriate

4/ While I observe that this table converts AUM's from cattle to bison on a one-to-one basis, I make no finding herein as to whether this is the correct conversion basis, this aspect not being at issue, and evidence not having been submitted pertaining thereto.


to suggest that the primary basis for the decision may have been an understanding by the District Manager that he was precluded from issuing a license by the mere fact that the application concerned bison; this assumed understanding I have found to be incorrect.

Accordingly, I find as follows as regards specific issues of the case:

(1) Bison may be classed as livestock under the meaning of Section 3 of the Taylor Grazing Act.

(2) The licensing in the Mahogany Butte Allotment, of the bison for which the application was made, would not vitiate the purposes of Section 6 of the Taylor Grazing Act.

The case is remanded to the District Manager for the issuance of a grazing license pursuant to the appellant's application.


Harvey C. Sweitzer
Administrative Law Judge

APPEAL INFORMATION

The respondent, as the party adversely affected by this decision, has the right of appeal to the Interior Board of Land Appeals. The appeal must be in strict compliance with the regulations in 43 CFR, Part 4.

If an appeal is taken, the adverse parties, the Hampton Sheep Company and the State of Wyoming, can be served by service upon Mr. James Sperry, Attorney at Law, and Mr. Donald H. Hall, Special Assistant Attorney General, respectively, at the addresses listed on page 32.

Enclosure: Information Pertaining to Appeals Procedures.

See page 32 for distribution.

DISCOVERING MONTANA

The American Prairie Reserve, Montana

August 10, 2022

The American Prairie Reserve is located across the expansive Northern Great Plains of Montana. The untouched, shortgrass prairie landscape spreads out in both northern and southern directions from the Missouri River. Unlike the state's famous developed national parks the entire area is both privately-funded and owned.

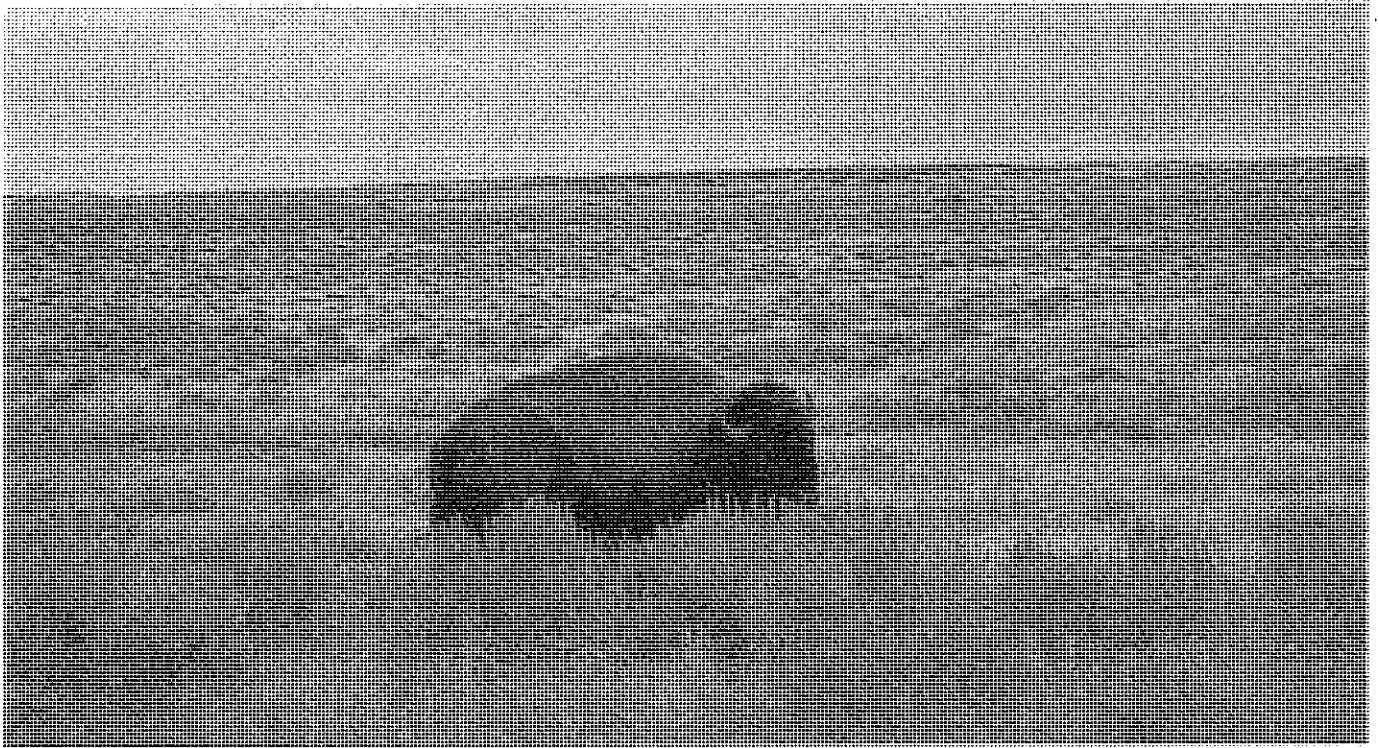
So what you get in the reserve is something altogether more unspoiled and rugged than you would likely encounter in a national park geared towards tourism. The reserve is closer to a safari park than a theme park.

That means stunning landscapes and topography that are something of an open playground in terms of recreation. With peaceful trails and remote, never-ending land, the prairie landscapes hold something of interest for a variety of visitors whether they are hiking, driving, biking, or horseback riding in the reserve.

Established in 2004, American Prairie Reserve is a non-profit project with the aim of establishing the largest wildlife reserve in the continental United States.

There are further and continuous plans to expand and connect over 3 million acres of public and private land.

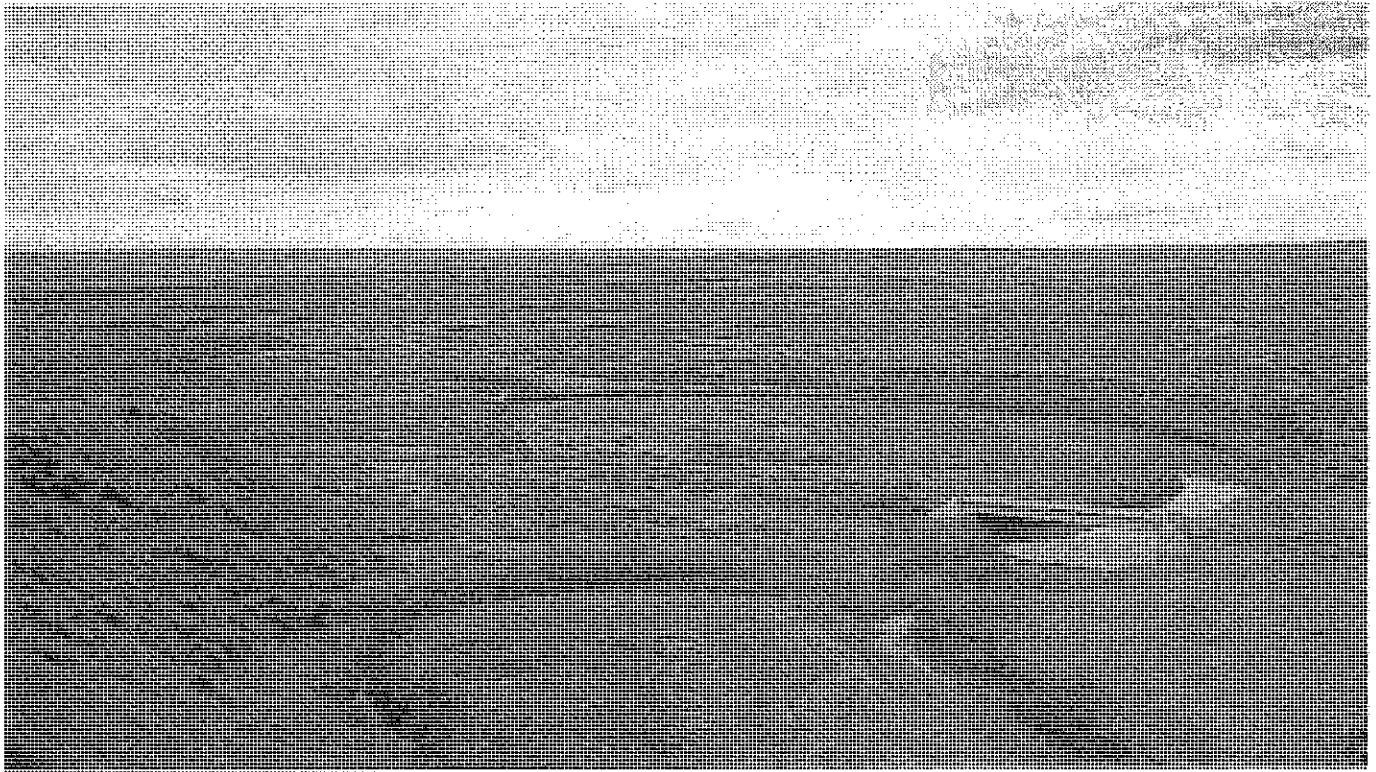
The purpose of the completed reserve is to provide critical habitat for a range of endangered species and those with rapidly-declining populations. At the same time, it offers the opportunity for visitors to experience a unique angle of the wildlife and natural terrain of Montana.



American Prairie Reserve Stats

- Approximately 3.2-million acres

Main Areas and Attractions



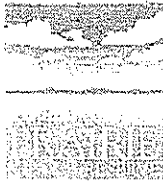
The main visitor areas usually fall within the various zones known as the **PN**, **Mars Vista**, and **Sun Prairie** properties. These areas include the campgrounds and the hut system as well.

You can get to the Mars Vista property off a paved road. Of all the spots to visit this is the one that likely remains most accessible in all types of weather, and with all types of vehicles.

The PN and Sun Prairie properties are something of a different matter when it comes to access. You are basically looking at a dirt road for about 50 miles which wouldn't be an option without a 4WD vehicle.

Anyone intent on getting to these regions of the reserve off their own back might want to keep in mind that the area may not always be accessible in harsh weather conditions.

Recreational Activities in the American Prairie Reserve



RECEIVED

SEP 07 2017

FISH, WILDLIFE & PARKS
DIRECTOR'S OFFICE

Mike V
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Helena, MT 59601
Tel: 406.458.4000
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americanprairie.org

September 5, 2017

The Honorable Steve Bullock and Director Martha Williams
Office of the Governor
State Capitol, Room 204
P.O. Box 200801
Helena, MT 59620-0801

Dear Governor Bullock and Director Williams,

Thank you for taking the time to visit American Prairie Reserve this summer. I appreciated the opportunity to share a project update with you, introduce you to some of the APR team, and show you around the Reserve. As a follow-up to our conversation that day, I am writing to reiterate American Prairie Reserve's interest in helping to advance a decision on Montana's *Draft Environmental Impact Statement for Bison Conservation and Management*. APR will be pleased to engage with principles from any relevant parties, including the Charles M. Russell National Wildlife Refuge (CMR) and the State of Montana, to explore a cooperative arrangement that advances an alternative that will result in wild bison one day inhabiting the Charles M. Russell National Wildlife Refuge and, eventually, the surrounding areas.

As you know, the mission of American Prairie Reserve is to create the largest nature reserve in the continental United States, a refuge for people and wildlife preserved forever as part of America's heritage.

Among American Prairie Reserve's primary objectives is the development of the largest, most genetically-diverse conservation bison herd in North America. In 2005, we began this effort with the introduction of sixteen bison imported from Wind Cave National Park. Today, due to natural growth rates and additional imports from Canada's Elk Island National Park, our herd numbers close to 1,000 animals. Our herd is free of all reportable diseases and currently resides on three separate parcels including the Sun Prairie, Sun Prairie North, and Dry Fork management units. (See attached map.) On Sun Prairie alone, we have removed more than fifteen miles of interior fencing, allowing bison to graze naturally and wildlife to move throughout the 31,000 acres with minimal hindrance. As our bison population grows, we will expand the land base to keep pace with our progress toward our minimum goal of 10,000 bison.

In the past decade, American Prairie Reserve's bison management track record is known for its lack of contention with our neighbors. In fact, most of them consider American Prairie Reserve an excellent example of how bison can be managed effectively on a relatively large landscape with no negative effects on nearby livestock operations. This speaks to American Prairie Reserve's effective and responsible management as well as our demonstrated commitment to securing the resources necessary to nurture and grow this herd.

As a way of contributing to the potential of wild bison inhabiting the CMR and surrounding areas, American Prairie Reserve is willing to:

- Provide, free of charge to the State of Montana, an ecologically significant number of bison to occupy, as wild animals, an appropriately large area of the UL Bend Wilderness or some other suitably large area in the CMR. The yet-to-be-determined number of bison will be large enough to assure genetic diversity is maintained.
- Participate in frequent evaluations conducted by a management team made up of representatives from FWP, the CMR, and American Prairie Reserve to evaluate progress and identify continuous improvement opportunities.
- Commit the financial and human resources necessary to construct wildlife-friendly fencing and other infrastructure on the CMR, which has been successfully used and refined since 2005 on American Prairie Reserve lands, including those along the boundary of Sun Prairie and the Refuge. We also commit to allocating American Prairie Reserve staff time and equipment to conduct research and co-manage this effort.
- Participate with collaborators such as the National Wildlife Federation, Natural Resources Defense Council, Defenders of Wildlife, and others to work on a coordinated, multi-year effort to increase social acceptance for bison in the six-county area surrounding the CMR.
- Commit to contributing future instalments of APR bison as requested to augment the CMR's population.
- At the discretion of Fish, Wildlife and Parks and the Charles M. Russell National Wildlife Refuge, we will take back the bison and reestablish them on American Prairie Reserve private lands in the event of the project's failure.
- Finally, commit to the intent to donate all of APR's bison herd to Montana Fish, Wildlife and Parks for a future, larger, regional wild bison herd to be managed in the public trust. (APR's current bison population, commercially valued at an estimated \$1500-\$2500 per animal, has a total value of nearly \$2,000,000.)

At the same time that a new wild herd is growing on the C.M. Russell Wildlife Refuge, APR will continue to build its bison population north and south of the Refuge using our combined 400,000 acres of private, BLM, and State land sections. Importantly, at such time that the state of Montana is ready to begin the process of converting all of APR's remaining bison into wild animals to be managed by Fish, Wildlife and Parks, APR stands ready to participate. The main requirement APR has to begin this conversion process is a written commitment from Fish, Wildlife and Parks agreeing to maintain, in perpetuity, a minimum population of ten thousand wild bison in the

immediate region of the American Prairie Reserve, a number that represents an "extraordinary" contribution to conservation as defined by Eric Sanderson et al (see enclosed article).

American Prairie Reserve is a uniquely-suited collaborator. We have more than a decade of proven success restoring, researching, monitoring, and managing bison in this region of Montana. Our positive reputation with neighbors and federal and state land management partners has been earned over many years of doing what we say we are going to do.

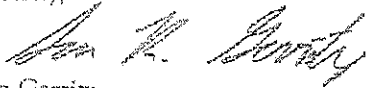
We believe we have not only the best source herd of bison in the nation - including genetic diversity, no detectable cattle gene introgression, no Department of Livestock reportable diseases, and already on the particular prairie landscape under natural management conditions - but also the talent, resources, and organizational willingness and enthusiasm to help make this effort a stunning and highly appreciated success for future generations of Montanans.

We are excited that the time finally appears to be upon us for Montana to act boldly in establishing new, landscape-scale habitat for our national mammal. Further, the American public's knowledge and appreciation for bison's important ecological role on our country's grasslands is growing steadily and Montana's Native American tribes are expressing more hope and gratitude than ever that bison may finally be coming back and be on their way to taking their rightful place in the cherished, and globally admired, phenomenon that is Montana's reverence for wildlife and nature.

We are enormously appreciative of the Bullock administration's willingness to think big and to emerge as the progressive thought-leader on bison in the American West. Montana's future generations will look back on this period in history as an incredible point of pride.

We are delighted to be a part of this unfolding process and are eager to hear your thoughts on how we can best assist you and participate most productively in this effort. Thank you for considering us a partner and collaborator. We look forward to working with you over the next few years.

Sincerely,



Sean Gerrity
CEO

CC

Mr. Mike Volesky, Chief of Operations, Montana Department of Fish, Wildlife, and Parks
Mr. Paul Santavy, Project Leader, Charles M. Russell National Wildlife Refuge
Mr. Tom France and Mrs. Tracy Stone-Manning, National Wildlife Federation
Representative Mike Phillips



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August 9, 2021

CERTIFIED MAIL NO.
RETURN RECEIPT REQUESTED
70051820000086093900

Bureau of Land Management
Malta Field Office
FOIA Officer
501 South 2nd St East
Malta, MT 59538
BLM_MT_Malta_FO@blm.gov

Re: Freedom of Information Act Request

Dear Sirs:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of the Phillips County Livestock Association, this letter requests that you mail to my office the following information:

All documents including but not limited to letters, electronic mail, maps, conversation notes, cooperative agreements, environmental assessments or environmental impact statements or other documents prepared in compliance with the National Environmental Policy Act (NEPA), and all other documents authorizing or noting the Bureau of Land Management's (BLM) authorization or agreement for the American Prairie Reserve to either remove any interior fencing or construct or reconstruct and allotment fencing on any allotment currently leased or subleased by the American Prairie Reserve (APR). This request includes all fence modifications discussed in the June 18, 2018 letter from BLM Field Manager Tom Darrington to Mr. Roy Taylor that have occurred since that time including all fencing on attached Exhibit A.

EXHIBIT 4-1

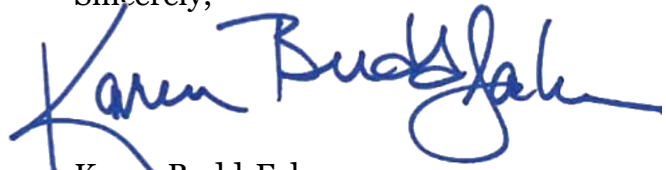
This information should not be subject to the Freedom of Information Act exemptions and access to the requested documents should be granted within twenty (20) working days.

I also request that if you determine that some of the information requested is exempt from FOIA, that this information be identified by document, along with the statutory basis for your claim and your reasons for not exercising your discretion to release this information. FOIA also provides that if only portions of the file are exempt from release, the remainder of the file must be released. Therefore, I request that I be provided with all non-exempt portions that can reasonably be segregated.

If there is any problem in providing this information, please let me know so that further arrangements can be made. I can be reached at the phone number above or via email at karen@buddfalen.com. In addition, please contact me if the estimated cost of responding to this request for information exceeds one hundred dollars (\$100.00).

Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink that reads "Karen Budd-Falen". The signature is fluid and cursive, with the first name "Karen" being more prominent and the last name "Budd-Falen" following in a similar style.

Karen Budd-Falen
Budd-Falen Law Offices, LLC

I, Greg Oxarart, after being first duly sworn do affirm and state as follows:

1. I, Greg Oxarart, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My mailing address is 38094 Content Road, Malta, MT 59538.
3. I am the President of the South Phillips County Cooperative State Grazing District.
4. I have served as the President of the South Phillips County Cooperative State Grazing District since 1993.
5. The South Phillips County Cooperative State Grazing District holds an annual meeting each year.
6. On the day of its annual meeting, the South Phillips County Cooperative State Grazing District and the North Phillips County Cooperative State Grazing District hold a joint annual meeting.
7. The BLM is invited to these annual meetings.
8. At no time since 2017 has the BLM raised issues related to American Prairie Reserve's grazing plan or application during an annual meeting.
9. Attached as Exhibit GO-1 is the MOU between the Montana Grass Conservation Commission and the Bureau of Land Management U.S. Department of the Interior Montana State Office.
10. Attached as Exhibit GO-2 is the Cooperative Agreement between the South Phillips County Cooperative State Grazing District, the Montana Grass Conservation Commission, and the Bureau of Land Management U.S. Department of Interior Malta Field Office authorized by the MOU.

11. Outside of public meetings for all of the general public, the BLM did not directly engage in consultation, cooperation, or coordination with the South Phillips County Cooperative State Grazing District to determine the time, intensity, and duration of grazing lands intermingled with State District Lands as required by the MOU.
12. Outside of public meetings for all of the general public, the BLM did not directly consult with the South Phillips County Cooperative State Grazing District during the Development of the Environmental Assessment as required by the MOU.
13. Other than notices to the general public, the BLM did not directly notify the South Phillips County Cooperative State Grazing District for recommendations on the Environmental Assessment as required by the Cooperative Agreement.
14. The BLM did not involve the South Phillips County Cooperative State Grazing District in the development of the Final Decision which the BLM has stated serves as a “functional allotment management plan” as required by the MOU and Cooperative Agreement.
15. The BLM did not request the South Phillips County Cooperative State Grazing District’s approval of the Final Decision which is the “functional allotment management plan” as required by the Cooperative Agreement.
16. The BLM did not request the South Phillips County Cooperative State Grazing District’s approval for any allotment assessments for the Environmental Assessment required by the Cooperative Agreement.

Under penalty of perjury, I declare the foregoing to be true and correct.

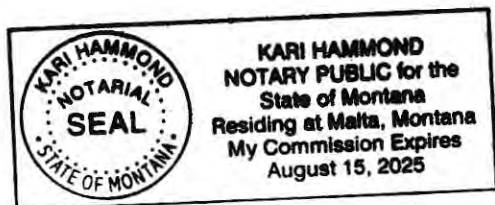
FURTHER AFFIANT SAYETH NAUGHT.

STATE OF MONTANA)
) ss.
COUNTY OF PHILLIPS)


Greg Oxarart

On the 24 day of August, 2022, before me personally appeared Greg Oxarart, and acknowledged that he signed the above declaration on his own free act and deed.

IN TESIMONY WHEREOF, I have hereunto signed my name and affixed my seal, the day and year above-written.




Notary Public

My Commission expires: Aug. 15, 2025

MEMORANDUM OF UNDERSTANDING

Between

MONTANA GRASS CONSERVATION COMMISSION

And

BUREAU OF LAND MANAGEMENT

U.S. DEPARTMENT OF THE INTERIOR

MONTANA STATE OFFICE

I. PURPOSE

This Memorandum of Understanding is between the Bureau of Land Management, hereinafter called the Bureau, and the Montana Grass Conservation Commission, hereinafter called the Commission.

The purpose of this agreement is to create an atmosphere of cooperation and mutual trust between the Bureau and the Commission. A working agreement founded on these principles will allow the Bureau, the Commission and the Cooperative State Grazing Districts to achieve the objectives spelled out in the Federal Land Policy and Management Act, Public Rangelands Improvement Act, the Taylor Grazing Act and the Montana Grass Conservation Act.

II. DEFINITIONS

A. Cooperative State Grazing District (hereinafter called State District) - a district organized and operating under the provisions of the Montana Grass Conservation Act of 1939 as amended.

B. Bureau Field Office - An administrative subdivision of the Bureau of Land Management.

C. Cooperative Agreement - an agreement between the Commission, State Districts, and the BLM to foster coordination and cooperation in the management of State District lands and BLM public lands.

D. Public lands - those lands owned by the United States under the jurisdiction of the Bureau of Land Management.

E. State District Lands - all lands owned, leased or controlled by the State District or its members.

F. Multiple Use - the doctrine that a given piece of land may have many uses to people. (FLPMA - PL94-579 - Sec. 103 (c))

G. Montana Grass Conservation Commission (hereafter called Commission) was created in 1999, and was given the powers necessary or incidental to carry out the full purposes of the Grass Conservation Act.

III. POLICY

The Commission, State Districts, and the Bureau are interested in livestock grazing and the management of forage producing BLM lands. This Memorandum of

Understanding reaffirms that interest, but also recognizes that non-livestock uses (multiple-use) of BLM lands depend on the cooperation of many. Through consultation, cooperation, and coordination the parties will work to resolve management issues and conflicts which may occur.

To coordinate the use of public lands and the State District-controlled lands within the boundaries of Cooperative State Grazing Districts, the Commission, and the Bureau set forth the following policies, objectives and principles.

IV. AUTHORITY

The Bureau of Land Management, in accordance with the Federal Land Policy and Management Act, Public Rangeland Improvement Act, Taylor Grazing Act, the National Environmental Policy Act and the Commission under the Grass Conservation Act, Title 76, Chapter 16, Montana Code Ann., have similar purposes in providing for (but not limited to) the conservation, protection, restoration, productivity, and proper utilization of forage and rangeland resources.

V. RESPONSIBILITY

A. The Bureau

Regulations implementing the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), the Public Rangeland Improvement Act of 1978 (43 U.S.C. 1901), the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315n), the National Environmental Policy Act (42 U.S.C. 4321), and other applicable Federal Law regulate the management and use of the public lands. The Secretary of the Interior sets policies and establishes rules having the force and effect of law, which control and define the duties and authorities of Bureau officials. The Bureau may enter into cooperative agreements that are consistent with Federal laws and regulations. The Bureau must consider environmental implications of all actions planned or taken, as required by applicable law. The following major principles result:

The Bureau will manage the public lands in accordance with the Congressional directives provided in the Federal Land Management and Policy Act, the Public Rangeland Improvement Act, the National Environmental Policy Act and the Taylor Grazing Act, as well as other public land laws. In furtherance of these directives, the Bureau will manage the grazing use of the public lands based on the principle of multiple use and sustained yield in accordance with applicable land use plans, while providing for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.

1. Grazing preferences are attached to base property owned or controlled by a permittee or lessee.
2. Federal grazing preferences and the use and enjoyment thereof may be established, revoked, reduced or otherwise modified under the provisions of the Federal Land Policy and Management Act, Public Rangeland Improvement Act, the Taylor Grazing Act, in accordance with the grazing regulations.

B. The Commission

The Commission supervises and coordinates the formation and operation of State Districts. The Commission, on behalf of and with the consent of State Districts, is empowered to cooperate and enter agreements on behalf

of a State District to administratively promote and foster cooperation with the Secretary of the Interior through the federal agencies. State Districts are a form of grazing administration set up to aid in the unification or control of all grazing lands within the state where ownership is diverse and the lands intermingled. They promote stabilization of the livestock industry and the improved management and protection of dependent commensurate ranch properties.

C. Coordinated Administration

In order that the highest possible degree of coordination can exist, the State District(s) will designate a representative or key-contacts and the BLM Field Office Manager(s) will furnish a representative to meet with the State District Boards at their regular meetings. The representative from the BLM will confer with the boards on all matters concerning the administration of the lands involved in this agreement, such as considering applications, issuance of permits, actions regarding excess and unauthorized use, range improvements, allotment management plans, etc.

VI. MANAGEMENT CONSIDERATIONS

A. Cooperative agreements

1. A cooperative agreement may be entered into between the Commission and a BLM Field Manager, on behalf of and with the consent of any State District. The cooperative agreement, which implements this memorandum of understanding, provides the opportunity to identify and cope with unique operational problems peculiar to individual State Districts and the BLM Field Office.
2. Each agreement will be effective upon consent by the State District, and approval by the Commission and the BLM Field Office. Provisions for review, updating and cancellation will be the same as for this Memorandum of Understanding.
3. Once consummated, a new Cooperative agreement, together with this memorandum of understanding, supersedes any existing cooperative agreement between the Bureau and an individual State District.

B. Grazing Capacities and Levels of Uses

1. Allowable grazing authorizations, and forage allocations will be determined and made for all BLM allotments based upon assessment and monitoring in accordance with BLM land management plans.
2. Where BLM has authorized grazing of BLM lands, and these lands are intermingled with and grazed at the same a time as State District lands, the BLM, the State District and the affected permittees or lessees, through consultation, cooperation and coordination, shall determine the time, intensity and duration of grazing of the intermingled lands.
3. The State District will make the final determination of grazing capacities on all other State District lands.

C. Management Plans

1. Allotment management plans are provided for in the Federal Land Policy and Management Act, Public Rangeland Improvement Act and Taylor Grazing Act. Allotment management plans may be

cooperatively developed between the affected permittees or lessees involved the State Districts and the BLM Field Manager.

2. A State District may develop allotment management plans on its own initiative using technical information made available by the Bureau and others. Bureau review and approval of an AMP, is required where public lands are involved.

D. Environmental Impact Statement

When the Bureau undertakes to write Environmental Impact Statement on any of the federal/public lands within State Grazing Districts, the Bureau will notify the Commission and the Grazing District involved prior to drafting the EIS and will call for their comment and review during each stage of the EIS process.

E. Trespass

In the event a trespass is discovered or brought to the attention of either party, the other party will be immediately notified and immediate action will be taken to resolve the trespass in accordance with the Cooperative Agreement.

F. Communication

The BLM and Commission agree to keep each other informed at least annually of all ongoing programs and activities. Each party also agrees, in the event special actions require immediate attention, they will notify the other party before such action is taken.

VI. ADMINISTRATIVE CONSIDERATIONS

A. Reviewing and Updating

The parties to this memorandum of understanding will meet at least once a year to review progress and/or problems and will review and update this memorandum as changes in policy and other needs as required.

B. Effective Date - Termination

This Memorandum of Understanding will be effective when signed by the parties and will continue in effect unless terminated by the parties involved. Further, this memorandum may be terminated by either party after thirty (30) days notice. Cancellation or termination of the MOU shall not affect existing grazing permits.

1. Nothing in this MOU will be construed as affecting the authorities of the participants or as binding beyond their respective authorities.
2. Nothing in this MOU shall obligate the BLM to expend appropriations or to enter into any contract or other obligation. Specific work projects of activities that involve the transfer of funds, services, or property between the parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property between the parties to the MOU must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.

Bureau of Land Management

By

Marvin L. Jinn
State Director-Montana

Date

12/10/03

Montana Grass Conservation Commission

By

Bill Lehdning
Grass Commission - Chairman

Date

12/14/03

COOPERATIVE AGREEMENT
Between
SOUTH PHILLIPS COOPERATIVE STATE GRAZING DISTRICT
And
THE MONTANA GRASS CONSERVATION COMMISSION
And
BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF INTERIOR
MALTA FIELD OFFICE

I. PURPOSE

This Cooperative Agreement is between the South Phillips Cooperative State Grazing District, hereinafter called the District, and the Malta Field Office of the Bureau of Land Management, hereinafter called the Bureau and the Montana Grass Conservation Commission hereinafter referred to as the Commission.

The provisions of the Memorandum of Understanding between the Montana State Director of the Bureau of Land Management and the Montana Grass Conservation Commission, dated December 10, 2003, are hereby incorporated into this agreement.

Where appropriate delegations of authority have been made from the Bureau District Manager to a Bureau Field Manager.

II. POLICY

Subject to the policy stated in the Memorandum of Understanding dated December 10, 2003 between the Montana Grass Conservation Commission and the Bureau of Land Management.

III. AUTHORITY

Subject to the authority stated in the Memorandum of Understanding dated December 10, 2003 between the Montana Grass Conservation Commission and the Bureau of Land Management.

IV. RESPONSIBILITY

Subject to the responsibility stated in the Memorandum of Understanding dated December 10, 2003 between the Montana Grass Conservation Commission and the Bureau of Land Management.

V. MANAGEMENT CONSIDERATIONS

The parties hereby do agree to the following rules and procedures:

- 1.) Environmental Impact Statements

RECEIVED
FEB 17 2016
MALTA FIELD
OFFICE

EXHIBIT 5-GO-2-1

When Grazing or other Environmental Impact Statements involve any of the lands within a State Grazing District, the Bureau will notify the Commission and Grazing District(s) involved and will call for their recommendations, usually through public meetings with the District membership. Allowable grazing authorizations and forage allocations will be determined and made for all allotments based upon assessments and monitoring in accordance with BLM land use planning process after public review with the public at large.

2.) Allotment Management Plans

The Bureau Field Manager/Field Station Manager will periodically review with the District the priority lists for new plans as well as progress on existing plans.

In accordance with the Federal Land Policy and Management Act and Public Rangeland Improvement Act, AMPs will be prepared in careful and considered consultation, cooperation, and coordination with lessees, permittees and landowners involved, the Bureau's advisory councils established pursuant to Section 403 of the Federal Land Policy and Management Act (43 USC 1753 as amended and updated), and any State or States having lands or other affected interest to be covered by such allotment management plan. After the details are worked out, the AMP will be presented to the District for review. District approval will be requested when District controlled lands, as defined in the Memorandum of Understanding, are involved. Where permittee/lessee, District, and BLM are unable to agree on an AMP and intensive grazing management has been determined necessary, a meeting of the District, BLM, permittee(s) and the Commission will be held to resolve concerns. When resolution cannot be reached, the Bureau in accordance with applicable law, may incorporate a grazing treatment with specific terms and conditions into a permit by decision.

3.) Standards for Rangeland Health and Guidelines for Livestock Grazing

In accordance with the Standards for Rangeland Health and Guidelines for Livestock Grazing Management EIS, allotments will be assessed in careful and considered consultation, cooperation with permittees/lessees and landowners involved. Decisions will be presented to the District for review. District approval will be requested when District controlled lands, as defined in the Memorandum of Understanding, are involved.

4.) Authorized Grazing Use

a.) Term Permits: The Bureau will offer grazing permits for a term not to exceed 10 years to users of federal lands in the District as qualifications and circumstance allow. These permits will be computer printed and distributed to the individual operators by the Bureau Manager, with signed copies sent to the District. Grazing permits will authorize grazing use and will specify the grazing capacity available and the kind and class and numbers of domestic livestock use, the period of time which the lands may be used by allotment, and may contain other specific terms and conditions. Grazing systems may be incorporated into permits or leases by the Bureau.

All grazing permits or adjustments in grazing permits will be determined for all allotments based on periodic field assessments and forage allocations in the Bureau Land Use Planning Process after public review. Adjustments may also be needed to conform to existing law or regulation.

A term permit that is in question will be discussed with the District before action is taken.

b.) Grazing Applications: The Grazing applications will be computer printed by the Bureau's Grazing Automated Billing System (GABS) (or updated system replacing GABS). This statement will state the allocation of forage and authorized use the grazing permittee qualifies for on public land. It will show the basic grazing schedule including the allotment name or number, kind and class of livestock and periods (seasons) of use. In case of an allotment management plan it will so indicate.

The Bureau will forward the Grazing Application to the Grazing District Secretary for each federal land operator in the State District. The District Secretary will send each member his application by 14 days after receipt each year.

The permittee will indicate brands of livestock, sign and return the application to the Bureau regardless if there is a change or not. Failure to return an application may delay or prevent authorizing grazing on the public land.

Change in Grazing Schedule: If the operator wants to change his grazing schedule, he will make application to the Bureau at least 30 days prior to the earliest turning out, and to the District Secretary, using the Grazing Application Form, or a format, which indicates the following:

Grazing Area or Allotment
Number, Kind & Class of Livestock
Grazing Season From: ____ To: ____
Active or Nonuse

This application will be considered by the District and the Bureau prior to any District protest meeting. If a change is authorized, the Bureau will make the change and the billing will be issued to the District for payment. (If the requested change is made after irretrievable billing action has been taken, a \$10 service charge will be required.)

Any operator served with an adverse notice by the District shall have the right of appeal to the Montana Grass Conservation Commission as set out in the Montana Grass Conservation Act.

If the change in grazing use as requested is considered unacceptable by the Bureau Manager, a proposed decision will be issued to the operator by certified mail providing the right of protest to the Bureau Manager as set out in the Grazing Regulations. If no protest is filed within 15 days, the proposed decision becomes the final decision. If a protest is filed, it will be considered in the issuance of the final decisions. In either case,

the final decision may be appealed to an Administrative Law Judge as provided for in the Administrative Remedies (43 CFR 4160).

c.) Non-use and temporary non-renewable: Applications for extended non-use and temporary nonrenewable will be reviewed by the District and Bureau in accordance to regulations and policies of each before being authorized.

d.) Grazing Fees and Billings: Federal land grazing fees are established annually. Immediately upon receipt of notice of the fee for the forthcoming grazing season, the Bureau Manager will notify the District. Payment will be in accordance with the billing notices.

After the District members' applications have been approved by the Bureau Manager, the individual grazing billings will be transmitted to the District for payment. Routine grazing bills will be generated approximately 30 days before the earliest turn out on the grazing schedule and sent to the District secretary.

The District will prepare the overall ranch unit permit conforming with Bureau billing and District preference. Where District forms are used, copies will be furnished the Bureau Field Office/Field Station Manager upon request.

Bureau regulations require payments for grazing use of public land before the grazing would begin unless specifically provided for by an allotment management plan. Payment not received within 15 days of the due date may be subject to late fees in accordance with 43 CFR 4130.8-1(f).

Where grazing is authorized on the basis of an allotment management plan, either of two optional billing procedures may be used as specified (in 43 CFR 4130.8-1(e)). The option used will be mutually agreed upon by the Bureau, the District, and the operator.

Grazing will be authorized in conformance with the plan which will include the operators providing an accurate actual use report to the Bureau within 15 days of leaving the federal land allotment. Bills will be prepared from the actual use report and sent to the District for payment. Failure to return or inaccurate actual use reports may be basis for billing on the basic schedule plus surcharges by the Bureau and District. Failure to return an accurate actual use report as specified may be basis for cancellation of actual use billing privileges in accordance with Bureau regulations.

e.) Transfers: Documentation of transfer of ownership or control of base properties and other private lands grazed in conjunction with the public lands will be furnished to the Bureau by the applicant. Each application transfer requires a \$10 service charge, which is nonrefundable. Documentation of ownership or control of District controlled lands upon which the State District issues a permit to graze in conjunction with public lands will be furnished to the Bureau Manager by the District upon request. The Bureau will consult with the District on transfers of grazing privileges occurring in the District. The Bureau, District, Commission and applicant shall meet to resolve problems arising from a

transfer. Signed concurrence of the District and the Commission shall be requested in cases of changing base property or changing of allotment designations or allocations.

f.) Exchange of Use Agreements: If a District member wishes to offer private, state or district lands for additional grazing capacity, the exchange will be recognized only through a formal agreement between the Bureau Manager and the member on the standard Bureau form. In the event District lands are involved, District and Commission approval will be required. The District will be consulted on Exchange of Use applications and will be furnished copies of the consummated agreement on request.

g.) Livestock control agreements and transfers based on lease of base property: Transfers of grazing privileges based on leases of base property and/or pasturing of livestock not owned by the permittee must be approved by the Bureau, District and Commission may be subject to additional fees assessed by the Bureau and or District in accordance with 43 CFR 4130.8-1(d)

5.) TRESPASS

In the event a trespass is discovered or brought to the attention of either party, the other party will be immediately notified. If only District-controlled lands are involved, the District will take action. If federal lands are involved, joint action will be taken. Whenever possible, the Bureau and District will cooperate in counting livestock and verification of a trespass. The notice of trespass will be served upon the individual in trespass, with a copy sent to the District.

- a.) Either party may take immediate action after notification of the other party.
- b.) The bill for trespass damages will be issued to the individual through the District.
- c.) Trespass and trespass charges will be handled in accordance with 43 CFR 4150, Unauthorized Grazing Use.
- d.) The District may incur expenses associated with the administration, time and travel and other reasonable costs which can be charged to the violator in settlement of the trespass obligation.
- e.) Settlement for willful, and repeated willful violations shall also include all damages to the public lands and other property of the United States; all reasonable expenses incurred by the United States in detecting, resolving violations, and livestock impoundment costs.

6.) Other Special Provisions:

Project Maintenance: As for all range improvements covered by a cooperative agreement, permittees are responsible for repair and maintenance in good and serviceable condition. Installation, abandonment, relocation, enlargement or other modifications.

VI. ADMINISTRATIVE CONSIDERATIONS

Review and Updating

The parties to this Cooperative Agreement will meet at least once a year to review progress and/or problems and will review and update this agreement as changes in policy and other needs require. Changes shall not affect outstanding licenses, permits, or leases.

This Cooperative Agreement shall be effective when signed by the parties and shall continue in effect unless sooner canceled by the mutual agreement of the parties. Further, should either party violate any of the terms of this Cooperative Agreement the other party may give the violating party written notice of such violations, said notice to specify the violation. Should said violation not be corrected or discontinued within thirty (30) days after giving such written notice, the other party may cancel this Cooperative Agreement upon thirty (30) days written notice to the violating party. Cancellation shall not affect outstanding permits or leases.


Chairman, South Phillips Cooperative State Grazing District

2-2-16
date


Bureau of Land Management, Malta Field Manager

Feb 2, 2016
date


Chairman, Montana Grass Conservation Commission

2-12-2016
date

I, Dean Kienenberger, after being first duly sworn do affirm and state as follows:

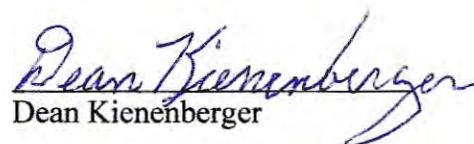
1. I, Dean Kienenberger, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My mailing address is PO Box 187 Dodson, MT 59524.
3. I am the President of the North Phillips County Cooperative State Grazing District.
4. I have served as the President of the North Phillips County Cooperative State Grazing District since 1970.
5. The North Phillips County Cooperative State Grazing District holds an annual meeting each year.
6. On the day of its annual meeting, the North Phillips County Cooperative State Grazing District and the South Phillips County Cooperative State Grazing District hold a joint annual meeting.
7. The BLM is invited to these annual meetings.
8. At no time since 2017 has the BLM raised issues related to American Prairie Reserve's grazing plan or application during an annual meeting.
9. Attached as Exhibit DK-1 is the MOU between the Montana Grass Conservation Commission and the Bureau of Land Management U.S. Department of the Interior Montana State Office.
10. Attached as Exhibit DK-2 is the Cooperative Agreement between the North Phillips County Cooperative State Grazing District, the Montana Grass Conservation Commission, and the Bureau of Land Management U.S. Department of Interior Malta Field Office authorized by the MOU.

11. Outside of public meetings for all of the general public, the BLM did not directly engage in consultation, cooperation, or coordination with the North Phillips County Cooperative State Grazing District to determine the time, intensity, and duration of grazing lands intermingled with State District Lands as required by the MOU.
12. Outside of public meetings for all of the general public, the BLM did not directly consult with the North Phillips County Cooperative State Grazing District during the Development of the Environmental Assessment as required by the MOU.
13. Other than notices to the general public, the BLM did directly not notify the North Phillips County Cooperative State Grazing District for recommendations on the Environmental Assessment as required by the Cooperative Agreement.
14. The BLM did not involve the North Phillips County Cooperative State Grazing District in the development of the Final Decision which the BLM has stated serves as a “functional allotment management plan” as required by the MOU and Cooperative Agreement.
15. The BLM did not request the North Phillips County Cooperative State Grazing District’s approval of the Final Decision which is the “functional allotment management plan” as required by the Cooperative Agreement.
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Under penalty of perjury, I declare the foregoing to be true and correct.

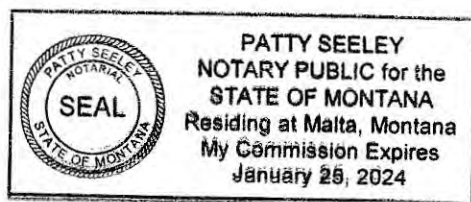
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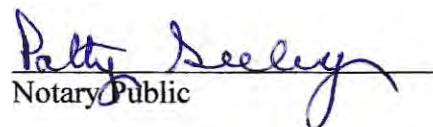
STATE OF MONTANA)
) ss.
COUNTY OF PHILLIPS)


Dean Kienenberger

On the 3rd day of August, 2022, before me personally
appeared Dean Kienenberger, and acknowledged that he signed the above declaration on
his own free act and deed.

IN TESIMONY WHEREOF, I have hereunto signed my name and affixed my
seal, the day and year above-written.




Notary Public

My Commission expires: 01-25-2024

MEMORANDUM OF UNDERSTANDING

Between

MONTANA GRASS CONSERVATION COMMISSION

And

BUREAU OF LAND MANAGEMENT

U.S. DEPARTMENT OF THE INTERIOR

MONTANA STATE OFFICE

I. PURPOSE

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The purpose of this agreement is to create an atmosphere of cooperation and mutual trust between the Bureau and the Commission. A working agreement founded on these principles will allow the Bureau, the Commission and the Cooperative State Grazing Districts to achieve the objectives spelled out in the Federal Land Policy and Management Act, Public Rangelands Improvement Act, the Taylor Grazing Act and the Montana Grass Conservation Act.

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D. Public lands - those lands owned by the United States under the jurisdiction of the Bureau of Land Management.

E. State District Lands - all lands owned, leased or controlled by the State District or its members.

F. Multiple Use - the doctrine that a given piece of land may have many uses to people. (FLPMA - PL94-579 - Sec. 103 (c))

G. Montana Grass Conservation Commission (hereafter called Commission) was created in 1999, and was given the powers necessary or incidental to carry out the full purposes of the Grass Conservation Act.

III. POLICY

The Commission, State Districts, and the Bureau are interested in livestock grazing and the management of forage producing BLM lands. This Memorandum of

Understanding reaffirms that interest, but also recognizes that non-livestock uses (multiple-use) of BLM lands depend on the cooperation of many. Through consultation, cooperation, and coordination the parties will work to resolve management issues and conflicts which may occur.

To coordinate the use of public lands and the State District-controlled lands within the boundaries of Cooperative State Grazing Districts, the Commission, and the Bureau set forth the following policies, objectives and principles.

IV. AUTHORITY

The Bureau of Land Management, in accordance with the Federal Land Policy and Management Act, Public Rangeland Improvement Act, Taylor Grazing Act, the National Environmental Policy Act and the Commission under the Grass Conservation Act, Title 76, Chapter 16, Montana Code Ann., have similar purposes in providing for (but not limited to) the conservation, protection, restoration, productivity, and proper utilization of forage and rangeland resources.

V. RESPONSIBILITY

A. The Bureau

Regulations implementing the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), the Public Rangeland Improvement Act of 1978 (43 U.S.C. 1901), the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a-315n), the National Environmental Policy Act (42 U.S.C. 4321), and other applicable Federal Law regulate the management and use of the public lands. The Secretary of the Interior sets policies and establishes rules having the force and effect of law, which control and define the duties and authorities of Bureau officials. The Bureau may enter into cooperative agreements that are consistent with Federal laws and regulations. The Bureau must consider environmental implications of all actions planned or taken, as required by applicable law. The following major principles result:

The Bureau will manage the public lands in accordance with the Congressional directives provided in the Federal Land Management and Policy Act, the Public Rangeland Improvement Act, the National Environmental Policy Act and the Taylor Grazing Act, as well as other public land laws. In furtherance of these directives, the Bureau will manage the grazing use of the public lands based on the principle of multiple use and sustained yield in accordance with applicable land use plans, while providing for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands.

1. Grazing preferences are attached to base property owned or controlled by a permittee or lessee.
2. Federal grazing preferences and the use and enjoyment thereof may be established, revoked, reduced or otherwise modified under the provisions of the Federal Land Policy and Management Act, Public Rangeland Improvement Act, the Taylor Grazing Act, in accordance with the grazing regulations.

B. The Commission

The Commission supervises and coordinates the formation and operation of State Districts. The Commission, on behalf of and with the consent of State Districts, is empowered to cooperate and enter agreements on behalf

of a State District to administratively promote and foster cooperation with the Secretary of the Interior through the federal agencies. State Districts are a form of grazing administration set up to aid in the unification or control of all grazing lands within the state where ownership is diverse and the lands intermingled. They promote stabilization of the livestock industry and the improved management and protection of dependent commensurate ranch properties.

C. Coordinated Administration

In order that the highest possible degree of coordination can exist, the State District(s) will designate a representative or key-contacts and the BLM Field Office Manager(s) will furnish a representative to meet with the State District Boards at their regular meetings. The representative from the BLM will confer with the boards on all matters concerning the administration of the lands involved in this agreement, such as considering applications, issuance of permits, actions regarding excess and unauthorized use, range improvements, allotment management plans, etc.

VI. MANAGEMENT CONSIDERATIONS

A. Cooperative agreements

1. A cooperative agreement may be entered into between the Commission and a BLM Field Manager, on behalf of and with the consent of any State District. The cooperative agreement, which implements this memorandum of understanding, provides the opportunity to identify and cope with unique operational problems peculiar to individual State Districts and the BLM Field Office.
2. Each agreement will be effective upon consent by the State District, and approval by the Commission and the BLM Field Office. Provisions for review, updating and cancellation will be the same as for this Memorandum of Understanding.
3. Once consummated, a new Cooperative agreement, together with this memorandum of understanding, supersedes any existing cooperative agreement between the Bureau and an individual State District.

B. Grazing Capacities and Levels of Uses

1. Allowable grazing authorizations, and forage allocations will be determined and made for all BLM allotments based upon assessment and monitoring in accordance with BLM land management plans.
2. Where BLM has authorized grazing of BLM lands, and these lands are intermingled with and grazed at the same a time as State District lands, the BLM, the State District and the affected permittees or lessees, through consultation, cooperation and coordination, shall determine the time, intensity and duration of grazing of the intermingled lands.
3. The State District will make the final determination of grazing capacities on all other State District lands.

C. Management Plans

1. Allotment management plans are provided for in the Federal Land Policy and Management Act, Public Rangeland Improvement Act and Taylor Grazing Act. Allotment management plans may be

cooperatively developed between the affected permittees or lessees involved the State Districts and the BLM Field Manager.

2. A State District may develop allotment management plans on its own initiative using technical information made available by the Bureau and others. Bureau review and approval of an AMP, is required where public lands are involved.

D. Environmental Impact Statement

When the Bureau undertakes to write Environmental Impact Statement on any of the federal/public lands within State Grazing Districts, the Bureau will notify the Commission and the Grazing District involved prior to drafting the EIS and will call for their comment and review during each stage of the EIS process.

E. Trespass

In the event a trespass is discovered or brought to the attention of either party, the other party will be immediately notified and immediate action will be taken to resolve the trespass in accordance with the Cooperative Agreement.

F. Communication

The BLM and Commission agree to keep each other informed at least annually of all ongoing programs and activities. Each party also agrees, in the event special actions require immediate attention, they will notify the other party before such action is taken.

VI. ADMINISTRATIVE CONSIDERATIONS

A. Reviewing and Updating

The parties to this memorandum of understanding will meet at least once a year to review progress and/or problems and will review and update this memorandum as changes in policy and other needs as required.

B. Effective Date - Termination

This Memorandum of Understanding will be effective when signed by the parties and will continue in effect unless terminated by the parties involved. Further, this memorandum may be terminated by either party after thirty (30) days notice. Cancellation or termination of the MOU shall not affect existing grazing permits.

1. Nothing in this MOU will be construed as affecting the authorities of the participants or as binding beyond their respective authorities.
2. Nothing in this MOU shall obligate the BLM to expend appropriations or to enter into any contract or other obligation. Specific work projects of activities that involve the transfer of funds, services, or property between the parties to this MOU will require the execution of separate agreements or contracts, contingent upon the availability of funds as appropriated by Congress. Each subsequent agreement or arrangement involving the transfer of funds, services, or property between the parties to the MOU must comply with all applicable statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.

Bureau of Land Management

By

Martin V. Jim
State Director-Montana

Date

12/10/03

Montana Grass Conservation Commission

By

Bill Lehdning
Grass Commission - Chairman

Date

12/14/03

COOPERATIVE AGREEMENT
Between
NORTH PHILLIPS COOPERATIVE STATE GRAZING DISTRICT
And
THE MONTANA GRASS CONSERVATION COMMISSION
And
BUREAU OF LAND MANAGEMENT
U.S. DEPARTMENT OF INTERIOR
MALTA FIELD OFFICE

I. PURPOSE

This Cooperative Agreement is between the North Phillips Cooperative State Grazing District, hereinafter called the District, and the Malta Field Office of the Bureau of Land Management, hereinafter called the Bureau and the Montana Grass Conservation Commission hereinafter referred to as the Commission.

The provisions of the Memorandum of Understanding between the Montana State Director of the Bureau of Land Management and the Montana Grass Conservation Commission, dated December 10, 2003, are hereby incorporated into this agreement.

Where appropriate delegations of authority have been made from the Bureau District Manager to a Bureau Field Manager..

II. POLICY

Subject to the policy stated in the Memorandum of Understanding dated December 10, 2003 between the Montana Grass Conservation Commission and the Bureau of Land Management.

III. AUTHORITY

Subject to the authority stated in the Memorandum of Understanding dated December 10, 2003 between the Montana Grass Conservation Commission and the Bureau of Land Management.

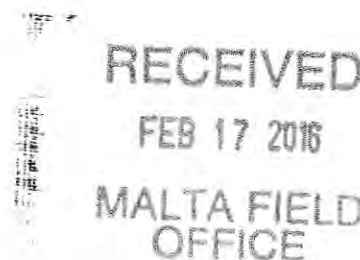
IV. RESPONSIBILITY

Subject to the responsibility stated in the Memorandum of Understanding dated December 10, 2003 between the Montana Grass Conservation Commission and the Bureau of Land Management.

V. MANAGEMENT CONSIDERATIONS

The parties hereby do agree to the following rules and procedures:

- 1.) Environmental Impact Statements



When Grazing or other Environmental Impact Statements involve any of the lands within a State Grazing District, the Bureau will notify the Commission and Grazing District(s) involved and will call for their recommendations, usually through public meetings with the District membership. Allowable grazing authorizations and forage allocations will be determined and made for all allotments based upon assessments and monitoring in accordance with BLM land use planning process after public review with the public at large.

2.) Allotment Management Plans

The Bureau Field Office Manager/Field Station Manager will periodically review with the District the priority lists for new plans as well as progress on existing plans.

In accordance with the Federal Land Policy and Management Act and Public Rangeland Improvement Act, AMPs will be prepared in careful and considered consultation, cooperation, and coordination with lessees, permittees and landowners involved, the Bureau's advisory councils established pursuant to Section 403 of the Federal Land Policy and Management Act (43 USC 1753 as amended and updated), and any State or States having lands or other affected interest to be covered by such allotment management plan. After the details are worked out, the AMP will be presented to the District for review. District approval will be requested when District controlled lands, as defined in the Memorandum of Understanding, are involved. Where permittee/lessee, District, and BLM are unable to agree on an AMP and intensive grazing management has been determined necessary, a meeting of the District, BLM, permittee(s) and the Commission will be held to resolve concerns. When resolution cannot be reached, the Bureau in accordance with applicable law, may incorporate a grazing treatment with specific terms and conditions into a permit by decision.

3.) Standards for Rangeland Health and Guidelines for Livestock Grazing

In accordance with the Standards for Rangeland Health and Guidelines for Livestock Grazing Management EIS, allotments will be assessed in careful and considered consultation, cooperation with permittees/lessees and landowners involved. Decisions will be presented to the District for review. District approval will be requested when District controlled lands, as defined in the Memorandum of Understanding, are involved.

4.) Authorized Grazing Use

a.) Term Permits: The Bureau will offer grazing permits for a term not to exceed 10 years to users of federal lands in the District as qualifications and circumstance allow. These permits will be computer printed and distributed to the individual operators by the Bureau Manager, with signed copies sent to the District. Grazing permits will authorize grazing use and will specify the grazing capacity available and the kind and class and numbers of domestic livestock use, the period of time which the lands may be used by allotment, and may contain other specific terms and conditions. Grazing systems may be incorporated into permits or leases by the Bureau.

All grazing permits or adjustments in grazing permits will be determined for all allotments based on periodic field assessments and forage allocations in the Bureau Land Use Planning Process after public review. Adjustments may also be needed to conform to existing law or regulation.

A term permit that is in question will be discussed with the District before action is taken.

b.) Grazing Applications: The Grazing applications will be computer printed by the Bureau's Grazing Automated Billing System (GABS) (or updated system replacing GABS). This statement will state the allocation of forage and authorized use the grazing permittee qualifies for on public land. It will show the basic grazing schedule including the allotment name or number, kind and class of livestock and periods (seasons) of use. In case of an allotment management plan it will so indicate.

The Bureau will forward the Grazing Application to the Grazing District Secretary for each federal land operator in the State District. The District Secretary will send each member his application by 14 days after receipt each year.

The permittee will indicate brands of livestock, sign and return the application to the Bureau regardless if there is a change or not. Failure to return an application may delay or prevent authorizing grazing on the public land.

Change in Grazing Schedule: If the operator wants to change his grazing schedule, he will make application to the Bureau at least 30 days prior to the earliest turning out, and to the District Secretary, using the Grazing Application Form, or a format, which indicates the following:

Grazing Area or Allotment
Number, Kind & Class of Livestock
Grazing Season From: ____ To: ____
Active or Nonuse

This application will be considered by the District and the Bureau prior to any District protest meeting. If a change is authorized, the Bureau will make the change and the billing will be issued to the District for payment. (If the requested change is made after irretrievable billing action has been taken, a \$10 service charge will be required.)

Any operator served with an adverse notice by the District shall have the right of appeal to the Montana Grass Conservation Commission as set out in the Montana Grass Conservation Act.

If the change in grazing use as requested is considered unacceptable by the Bureau Manager, a proposed decision will be issued to the operator by certified mail providing the right of protest to the Bureau Manager as set out in the Grazing Regulations. If no protest is filed within 15 days, the proposed decision becomes the final decision. If a protest is filed, it will be considered in the issuance of the final decisions. In either case,

the final decision may be appealed to an Administrative Law Judge as provided for in the Administrative Remedies (43 CFR 4160).

c.) Non-use and temporary non-renewable: Applications for extended non-use and temporary nonrenewable will be reviewed by the District and Bureau in accordance to regulations and policies of each before being authorized.

d.) Grazing Fees and Billings: Federal land grazing fees are established annually. Immediately upon receipt of notice of the fee for the forthcoming grazing season, the Bureau Manager will notify the District. Payment will be in accordance with the billing notices.

After the District members' applications have been approved by the Bureau Manager, the individual grazing billings will be transmitted to the District for payment. Routine grazing bills will be generated approximately 30 days before the earliest turn out on the grazing schedule and sent to the District secretary.

The District will prepare the overall ranch unit permit conforming with Bureau billing and District preference. Where District forms are used, copies will be furnished the Bureau Field Office/Field Station Manager upon request.

Bureau regulations require payments for grazing use of public land before the grazing would begin unless specifically provided for by an allotment management plan. Payment not received within 15 days of the due date may be subject to late fees in accordance with 43 CFR 4130.8-1(f).

Where grazing is authorized on the basis of an allotment management plan, either of two optional billing procedures may be used as specified (in 43 CFR 4130.8-1(e)). The option used will be mutually agreed upon by the Bureau, the District, and the operator.

Grazing will be authorized in conformance with the plan which will include the operators providing an accurate actual use report to the Bureau within 15 days of leaving the federal land allotment. Bills will be prepared from the actual use report and sent to the District for payment. Failure to return or inaccurate actual use reports may be basis for billing on the basic schedule plus surcharges by the Bureau and District. Failure to return an accurate actual use report as specified may be basis for cancellation of actual use billing privileges in accordance with Bureau regulations.

e.) Transfers: Documentation of transfer of ownership or control of base properties and other private lands grazed in conjunction with the public lands will be furnished to the Bureau by the applicant. Each application transfer requires a \$10 service charge, which is nonrefundable. Documentation of ownership or control of District controlled lands upon which the State District issues a permit to graze in conjunction with public lands will be furnished to the Bureau Manager by the District upon request. The Bureau will consult with the District on transfers of grazing privileges occurring in the District. The Bureau, District, Commission and applicant shall meet to resolve problems arising from a

transfer. Signed concurrence of the District and the Commission shall be requested in cases of changing base property or changing of allotment designations or allocations.

f.) Exchange of Use Agreements: If a District member wishes to offer private, state or district lands for additional grazing capacity, the exchange will be recognized only through a formal agreement between the Bureau Manager and the member on the standard Bureau form. In the event District lands are involved, District and Commission approval will be required. The District will be consulted on Exchange of Use applications and will be furnished copies of the consummated agreement on request.

g.) Livestock control agreements and transfers based on lease of base property: Transfers of grazing privileges based on leases of base property and/or pasturing of livestock not owned by the permittee must be approved by the Bureau, District and Commission may be subject to additional fees assessed by the Bureau and or District in accordance with 43 CFR 4130.8-1(d)

5.) TRESPASS

In the event a trespass is discovered or brought to the attention of either party, the other party will be immediately notified. If only District-controlled lands are involved, the District will take action. If federal lands are involved, joint action will be taken. Whenever possible, the Bureau and District will cooperate in counting livestock and verification of a trespass. The notice of trespass will be served upon the individual in trespass, with a copy sent to the District.

- a.) Either party may take immediate action after notification of the other party.
- b.) The bill for trespass damages will be issued to the individual through the District.
- c.) Trespass and trespass charges will be handled in accordance with 43 CFR 4150, Unauthorized Grazing Use.
- d.) The District may incur expenses associated with the administration, time and travel and other reasonable costs which can be charged to the violator in settlement of the trespass obligation.
- e.) Settlement for willful, and repeated willful violations shall also include all damages to the public lands and other property of the United States; all reasonable expenses incurred by the United States in detecting, resolving violations, and livestock impoundment costs.

6.) Other Special Provisions:

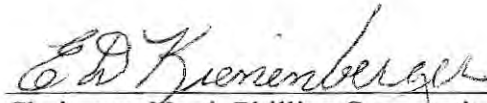
Project Maintenance: As for all range improvements covered by a cooperative agreement, permittees are responsible for repair and maintenance in good and serviceable condition. Installation, abandonment, relocation, enlargement or other modifications.

VI. ADMINISTRATIVE CONSIDERATIONS


Review and Updating

The parties to this Cooperative Agreement will meet at least once a year to review progress and/or problems and will review and update this agreement as changes in policy and other needs require. Changes shall not affect outstanding licenses, permits, or leases.

This Cooperative Agreement shall be effective when signed by the parties and shall continue in effect unless sooner canceled by the mutual agreement of the parties. Further, should either party violate any of the terms of this Cooperative Agreement the other party may give the violating party written notice of such violations, said notice to specify the violation. Should said violation not be corrected or discontinued within thirty (30) days after giving such written notice, the other party may cancel this Cooperative Agreement upon thirty (30) days written notice to the violating party. Cancellation shall not affect outstanding permits or leases.


Chairman, North Phillips Cooperative State Grazing District 2-2-16
date


Bureau of Land Management, Malta Field Manager Feb 2, 2016
date


Chairman, Montana Grass Conservation Commission 2-12-2016
date



BISON REPORT

2016 – 2017

AMERICAN
PRAIRIE
RESERVE

EXHIBIT 7-1

BISON REPORT

INTRODUCTION

Since last reporting in 2015, American Prairie Reserve (Reserve) has made great strides in bison conservation and is methodically bringing bison back to their historically pivotal role on the prairie. Increased numbers of bison, more land, more support and collaboration, along with advanced research surrounding bison restoration and management, is furthering the health of North America's grassland ecosystems for the benefit of both the public and biodiversity.

Over the last two years:

- The Reserve's bison population has grown more than 40%, from fewer than 600 to approximately 860 animals.
- The bison herd continues to be healthy by every measure: genetics, disease, reproduction, and survivorship.
- The land occupied by bison has grown 36%, from 27,585 acres to 37,385 acres, and the total acreage of former cropland restored to native vegetation reached 4,182 acres.
- The total land base acquired increased 31%, from 304,785 acres to 399,379 acres.
- The amount of interior fence removed increased 40%, from roughly 50 miles to 70 miles, to enable bison and other wildlife to graze more naturally.
- Valuable research was completed regarding how the transition from cattle grazing to bison grazing on Reserve lands affects the grassland ecosystem. In addition, new publications from previous researchers continued to broaden our base of knowledge about bison conservation, americanprairie.org/project/research-and-reports.
- We have published a new, comprehensive bison management plan that will guide the next five to ten years of American Prairie Reserve's bison

BISON MANAGEMENT TEAM



Damien Austin
Reserve Operations
Manager



Lars Anderson
Reserve Assistant



Ellen Anderson
Reserve Assistant
Manager



Scott Heidebrink
Bison Management
Specialist



Kyran Kunkel
Director of Wildlife
Restoration and Science



Betty Holder
Land Manager

BISON REPORT



restoration work.

POPULATION

Through a combination of additional translocations and natural growth, American Prairie Reserve's bison population reached approximately 860 animals in 2017. It is estimated that the natural rate of increase of the bison herd is a healthy 20%. We will slow the rate of population growth to 10% from 2018 through 2020 in an effort to stay within the carrying capacity of available land. The reduction in growth rate (20% to 10%) will be achieved through the use of contraceptives, harvesting, and/or translocation to other herds.

In order to return to and keep pace with a natural population growth rate, we will need to expand the land base through additional property acquisition, gain approval from the Bureau of Land Management (BLM) and the state of Montana to replace cattle with bison on leased land, continue removing interior fencing where possible, and continue replacing livestock fence with bison fence. All of these efforts require time, money, careful planning, and expertise.

Bison Translocated from APR		
2008	Fort Niobrara National Wildlife Refuge, Nebraska	1
2010	Rocky Mountain Arsenal National Wildlife Refuge, Colorado	1
2010	Fort Peck Interpretive Center, US Army Corps of Engineers, Montana	1
2011	Fort Peck Reservation, Montana	36
2011	Wildlife Conservation Society; Bronx Zoo, New York	30
2011	USDA-APHIS National Wildlife Research Center, Colorado State University	30
2012	USDA-APHIS National Wildlife Research Center, Colorado State University	12
2014	Smithsonian National Zoo, Washington, DC	2
2017	Fort Belknap Reservation, Montana	12
2018	Fort Peck Reservation, Montana	30
2018	Blackfeet Reservation, Montana	30
2018	Pe'sla, South Dakota	25
2018	Fort Belknap Reservation, Montana	30



HERD HEALTH

The health of the bison herd is judged based on four criteria and methods of monitoring.

- **Disease:** monitored through visual inspection and by periodic testing of blood samples.
- **Reproduction:** as measured by the number of adult females that produce offspring and the survival of their offspring.
- **Genetic Variation:** evaluated by genetic testing.
- **Physical Condition:** monitored through periodic visual inspection of the herd.

Native pathogens are an integral component of ecosystems and an important factor in natural selection and evolution of wildlife. Disease management and herd health are essential to the long-term wellbeing of the bison herd and the success of our mission, and are important to neighboring livestock owners. Disease management of bison falls under the policies and regulations of the Montana Department of

Livestock and U.S. Department of Agriculture, which include requirements and guidelines for disease monitoring and control, including import requirements, reportable diseases, animal disease traceability, and other measures. We also follow the International Union for Conservation of Nature (IUCN) guidelines for managing bison health.

Blood is drawn annually for disease screening by tranquilizing a sample of the herd in the field. The Montana State Diagnostic Laboratory in Bozeman Montana conducts all disease screening and reports any relevant exposures required by the state. American Prairie Reserve has never had positive returns for brucellosis or tuberculosis and we have seen no active clinical signs of any disease since the establishment of the herd.

Reproduction of the herd has continued to be excellent, with 80 to 90% of adult females producing calves every year and a high survival rate of calves. The resulting 20% annual growth is equal to or greater than the early stages of herd restoration growth exhibited by other conservation herds, such as those of the National Bison Range and Yellowstone National Park. It should be noted that this



growth is under conditions of a natural sex ratio—roughly 40% bulls and 60% cows. Domesticated herds aim for a higher reproductive rate by culling the herd to increase the proportion of cows to bulls.

Finally, observations of the herd during daily travel of Reserve staff, visiting scientists and others, as well as tracking of several animals with radio collars, enable us to monitor the general condition of the herd and to spot any problems that may emerge. During the last two years, animals in the herd have continued to look healthy and vigorous.

GENETIC DIVERSITY

Building and maintaining a genetically robust herd is a priority for American Prairie Reserve. We have sourced bison from two important conservation herds with different genetics, the Wind Cave National Park herd in South Dakota and the Elk Island National Park herd in Alberta, Canada. Extensive genetic testing of mitochondrial DNA and a suite of nuclear DNA microsatellites and SNPs (single nucleotide polymorphism) analyses show substantial genetic diversity and heterozygosity in the Reserve's bison.

As part of our goal to foster collaboration with managers of other important bison herds, we developed an agreement with the Fort Belknap Indian Reservation to exchange bison bulls to enhance the genetic diversity of both our herd and Fort Belknap's bison. Fort Belknap and Reserve staff have collaborated in exchanging important technical and labor assistance in this and other bison management work. We also have developed an agreement with Arizona Game and Fish to translocate 15 bison from the Reserve to Arizona Game and Fish's House Rock Wildlife area near the Grand Canyon to augment the genetics of that herd.

We minimize manipulation of the bison population to allow it to develop a natural sex ratio and age structure. Removal of bison by whatever means is carefully designed to avoid loss of genetic diversity or directional selection for certain traits. Mortality from competition among bulls, from native predators, and from other natural causes is permitted.

BISON REPORT

HERD MANAGEMENT

American Prairie Reserve uses the Freese Scale for Grassland Biodiversity to evaluate progress toward restoring the ecological conditions required for significant and comprehensive biodiversity conservation on its lands. The scale is also used to determine herd management goals in order to ensure bison restoration is aligned with the biodiversity and conservation goals of the organization.

Our policy is to minimize hands-on manipulation or management of the bison herd. As such, bison management focuses primarily on securing more land and habitat to

accommodate population increases, and to restore the full array of plant and animal species with which bison interact.

Significant progress toward ecological restoration has been made in recent years. For example:

- Most of the Reserve bison's diet consists of native grasses. Restoration of bison habitat on 4,182 acres of previous cropland has driven the implementation and execution of a comprehensive weed control program.
- To allow bison to roam across the landscape and to graze more naturally, we have completed the





transition from the traditional cattle ranching practice of rotational grazing to the more natural condition of continuous, year-round grazing on the entire 27,585 acres of the Sun Prairie Unit. In addition to the 70 miles of fence removed to enable this transition, 125 miles of existing fence has been altered or replaced with wildlife friendly fencing to enable elk, pronghorn and other wildlife to move much more freely across the land.

- With the help of partner organizations, we have undertaken various forms of stream restoration—including the removal of seven dams and the breaching of numerous spreader dikes—to create more natural hydrological conditions. Because bison are less dependent on permanent water sources and come to water less frequently and for shorter periods than cattle, it is expected that the transition to bison grazing will improve water quality in streams and reservoirs, and aid in the restoration of streams and riparian areas for wildlife.
- Bison are a highly interactive “foundation species,” which means they have a central, highly influential role in shaping the structure and diversity of grassland ecosystems. For example, grassland birds, swift fox, black-footed ferrets, and many other species benefit from the diversity of habitats created by bison interacting with prairie dogs. To foster that interaction, we have accelerated the growth of prairie dog colonies by prohibiting shooting of prairie dogs, mowing areas to create more prairie dog habitat, installing artificial burrows and nest boxes, translocating prairie dogs, and applying insecticide to colonies to prevent the spread of sylvatic plague by fleas. Approximately 50 black-tailed prairie dog colonies now exist on the Reserve. We also have cooperated with the U.S. Fish and Wildlife Service to restore prairie dog populations on the Charles M. Russell National Wildlife Refuge (CMR Refuge), a critical step for restoration of the Refuge’s population of the highly endangered black-footed ferret.

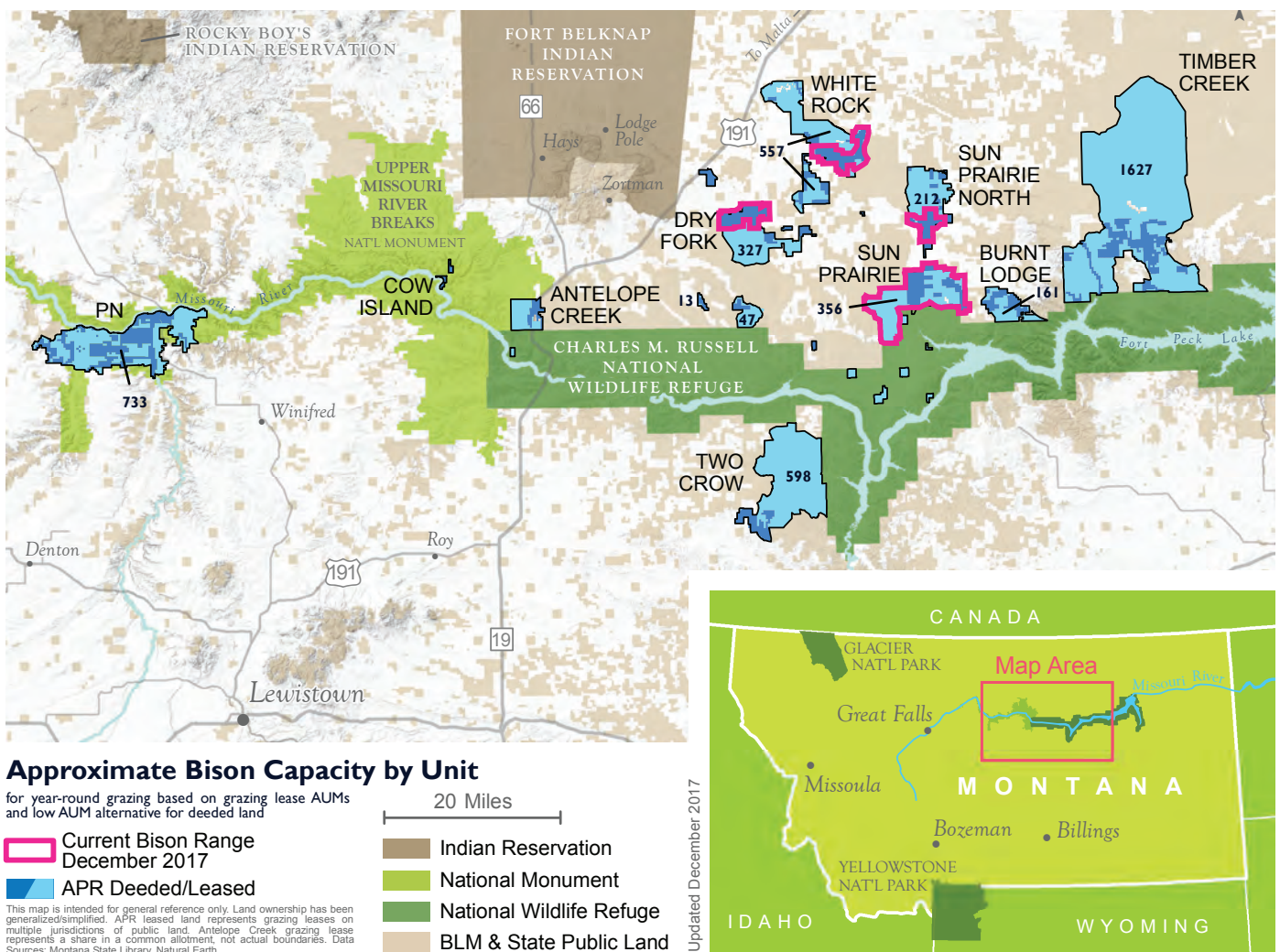
BISON REPORT

• While bison occupy center stage with respect to restoring the full ecological role of ungulates on the Reserve, we also are working to restore populations of other ungulates whose numbers (with the possible exception of deer) have been reduced far below levels that the habitat could support. Increased populations of elk, deer, pronghorn, and bighorn sheep are supported by the organization incentivizing neighboring ranchers to practice greater tolerance of these species, by removing fences or converting fences to wildlife-friendly designs, by increasing landscape connectivity, and by proposing reintroductions.

• We also have enabled bison to fulfill another ecological role by allowing the carcasses of bison that have died of natural causes to remain on the land. The carcasses feed a food web ranging from coyotes, badgers, eagles and other scavengers, to hundreds of invertebrate species involved in carcass decomposition, to plants, especially forbs, that thrive on the nitrogen and other nutrients released into the soil during composition.

DISTRIBUTION ACROSS THE LANDSCAPE

By 2016, the bison population had outgrown the carrying capacity of the 27,585 acres available on the Sun Prairie



APR management units at the end of 2017. The number on each unit is the year-long carrying capacity of that unit, which, following BLM's definition, is the number of bison more than 6 months old that the unit will support. If the APR grazing proposal is approved, the current land base could potentially support around 6,000 bison.

BISON REPORT

Unit, where the Reserve's leased BLM and state lands are approved for bison grazing. Some bison from Sun Prairie were moved to our deeded land on the Sun Prairie North Unit in 2016 to accommodate the population growth. Additional bison were moved to deeded land on the Dry Fork Unit in early 2017.

Bison grazing on the BLM and state portions of the lands in these units has not yet been approved, and some of our deeded lands have not yet been fenced for bison. Thus, although we had an entire land base of 399,379 acres of deeded and leased public lands at the end of 2017, only 37,385 acres were available for use by bison.

SCIENCE AND COLLABORATION

We are committed to supporting science that leads to better understanding and management of bison conservation. Central to this effort is the ongoing work to collect and share bison data generated by our genetic analyses, by periodic blood sampling for disease testing, by radio-collared bison that provide data on movement and habitat use, and by periodic censuses that track the population size and reproduction of the herd.

We also encourage and support research by other institutions. The Enrico Education & Science Center, opened in 2015, has been invaluable for offering outstanding accommodations for visiting scientists and educators. You can see a list of published research and reports on the American Prairie Reserve website: americanprairie.org/project/research-and-reports.

Research by Michel Kohl, at the time a University of Montana master's student, contributed greatly to our knowledge of the differences between cattle and bison grazing. His latest article based on that research, "Bison versus Beef: Today's Western Range War," appeared in the May/June 2017 issue of *The Wildlife Professional*.

During 2015 and 2016, Nicholas McMillan, a master's student studying wildlife at Clemson University, studied the effects on vegetation of ten years of bison grazing compared to cattle grazing and no grazing. McMillan observed higher species richness and compositional heterogeneity in the landscape and vegetation grazed by bison, compared to either the land grazed by cattle or the land that was not grazed.





During 2014 – 2016, volunteers with the non-profit Adventurers and Scientists for Conservation provided crucial assistance by monitoring bison movements and evaluating the effectiveness of wildlife-friendly fences, as well as other important assessment and monitoring work.

American Prairie Reserve released a white paper in 2016 that comprehensively assessed the potential effects of climate change on reserve land, and the organization's potential role in mitigating greenhouse gas (GHG) emissions, americanprairie.org/project/research-and-reports. Considering that rangelands cover 40% of the Earth's land surface, store 50% more carbon than forests worldwide, and store around 20% of global soil organic carbon (SOC), our wise land stewardship is crucial for mitigating climate change. Practices like plowing intact grasslands results in the loss of habitat for bison and other wildlife, and contributes to climate change by causing the loss of an estimated 33 tons of CO₂ per acre. Because Great Plains ecosystems and species evolved under boom-and-bust climatic conditions, the region's biodiversity, to some degree, may be pre-adapted to withstand the greater extremes that climate change portends. Compared to the homogenized landscape of agriculture (especially cropland), a biologically diverse landscape (particularly a great diversity of grasses and forbs) offers the best chance for ecological adaptation to climate change.

PUBLIC BENEFITS OF BISON CONSERVATION

Public benefit from and support of bison conservation is central to American Prairie Reserve's vision of building a vast wildlife reserve. The signing of the National Bison Legacy Act in 2016, which designated the American bison as the official mammal of the United States, codified the bison's special place in the minds of Americans.

In 2015, when Montana Fish, Wildlife & Parks conducted an environmental impact review for bison restoration in Montana, the organization offered to contribute bison and significant resources, such as fencing and management assistance, to the state to create a herd in the CMR Refuge. We will continue to work with the state and CMR Refuge on ideas for restoration in the area.

American Prairie Reserve's bison population provides diverse cultural, educational, and economic benefits to people near and far, and visitors to the Reserve look forward to seeing bison more than any other species. We are not able to track the number of visitors because there are no designated entrance stations, however, Buffalo Camp on the Sun Prairie Unit has had roughly 250 campers annually over the last three years. That usage is a good indicator of the Reserve's popularity.

BISON REPORT

In 2017, we hosted an annual community day to discuss bison management with local residents and hosted students from Great Falls, Montana Wilderness School, University of Nebraska, Clemson University, New York City SEO Scholars, Montana State University International Students, Rocky Mountain College, and Aaniiih Nakoda College. Volunteer groups and artists from around the United States and the world have been guests at the Reserve. We also have hosted visits from Montana elected officials and thought leaders, Indian tribal leaders, Audubon organizations, native plant society groups, and guests from the National Geographic Society. Meanwhile, Zora and Wilma, the two bison that American Prairie Reserve donated to the Smithsonian's National Zoo in 2014, continue to offer an up-close educational experience for more than two million annual zoo visitors from around the world.

A 2017 publication of the University of Montana's Institute for Tourism and Recreation Research, titled *Analyzing Economic and Social Opportunities and Challenges Related to Bison Conservation in Northeast Montana*, by J. Sage and N. Nickerson, estimated that the development of the Reserve and its association with the CMR Refuge could

generate \$13.4 – \$56.3 million dollars in additional non-resident expenditures in the region when the organization's vision is fully realized.

American Prairie Reserve's investments are already contributing significantly to that projected economic activity. Management of bison has constituted a major share of the more than \$1.9 million in average annual expenditures by the Reserve in the region, exclusive of land acquisitions, from 2015 – 2017. More than 40 "Band of Bison" members have contributed \$25,000 each to support conservation of bison and other wildlife.

Finally, American Prairie Reserve has served as a good neighbor and demonstration project. We actively monitor our wildlife-friendly fences for efficacy in containing bison. Since the reintroduction of bison onto Sun Prairie, only twice has a portion of the cow herd escaped — once in 2011 when record snowfall followed by chinook winds allowed the herd to walk up a crusted snow bank over the perimeter fence, and once in January of 2015 when a perimeter gate leading into the CMR Refuge was chained open. There are other sporadic instances of bull bison outside of perimeter fences, but those





cases typically involve one or two animals. The number of cattle trespasses onto Reserve property and the number of bison trespasses onto neighbors' property are roughly equal.

For more than a decade, the organization has demonstrated that large-scale bison restoration poses no negative impacts to ranchers but instead provides significant economic and public benefit. We look forward to improving on these successes in the future.

LOOKING FORWARD

An important challenge for the conservation of a foundation species such as bison is to determine and subsequently achieve an ecologically effective population size. Failure to reach this size may result in ecosystem degradation and biodiversity loss. One million acres of bison habitat should be more than sufficient for achieving our long-term goal of at least 10,000 bison, twice the size of any other conservation herd in North America. American Prairie Reserve's long-term goal of assembling a reserve of 3.5 million acres—with habitats ranging from Missouri River bottomlands to forested Missouri River Breaks to vast expanses of rolling grasslands and sagebrush steppe—

will enable bison to fully express their natural behavior, their dominant role as grazers, and their interactions with other native species. We will assemble this vast area through the acquisition and management of private lands that provide the base properties for leasing and connecting BLM lands, Montana's school trust lands, and the 1.1-million-acre CMR Refuge. We have and will continue to work cooperatively with BLM, Montana Department of Natural Resources and Conservation, CMR Refuge, and Montana Fish, Wildlife & Parks to accomplish mutually beneficial land and wildlife management goals.

By 2020, we project the herd will number more than 1,000, a minimum number for maintaining long-term genetic health. A population of 2,000 – 3,000 (anticipated to be reached 5 to 7 years later) is widely considered even better. Building and maintaining a large population with a high level of genetic variation is important for not only avoiding problems such as inbreeding, but also for enabling the population to adapt and evolve to conditions such as new diseases and climate change.



SUMMARY

American Prairie Reserve has come a long way since 2005 when the first 16 bison arrived to Sun Prairie on a rainy October night after a 560-mile journey from Wind Cave National Park in South Dakota. One month later, the animals received a welcome-back-home blessing of an Assiniboine spiritual leader and then surged out of the open gate of the quarantine enclosure to once again roam this land for the first time in some 125 years.

From that modest start, we are on track toward more than 1,000 bison gracing these grasslands by 2020. We have made exciting progress, but much remains to be done to reach our long-term goal of 10,000 bison spread across more than a million acres. As public and donor support grows for American Prairie Reserve's vision, and collaboration from science and management institutions expands, the path to reaching that goal becomes ever clearer. We look forward to your support in realizing this grand vision, and welcome any feedback or questions.

ACKNOWLEDGMENTS

We cannot begin to list all of the individuals and institutions that have contributed so generously in so many ways to our bison restoration work. They include our Band of Bison members, donors, scientists, state and federal resource management agencies, tribal leaders, ranchers, writers and artists, community and political leaders, and members of the public near and far who value the return of bison to their historic home. Whether the contributions are financial, technical, spiritual, political, collegial, or simply expressing support for American Prairie Reserve to family, friends and elected officials, all collectively create the foundation for realizing our vision for bison conservation. Thank you.



Our mission 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.

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Photos by Dennis Linghor, Gib Myers, and Gordon Wiltsie.

AMERICAN
PRAIRIE
RESERVE
EXHIBIT 7-14



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B-1092

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Cooperative Extension Service

**UNIVERSITY OF
WYOMING**
College of Agriculture

EXHIBIT 8-1

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Background

Bison have inseparable cultural and historical links with North America. Native Americans hunted bison for millennia before Europeans arrived. Plains Indians used virtually every part of the bison. Bison meat ensured the survival of many settlers as they pushed west. The bison is a symbol not only of westward expansion, but also of a lost way of nomadic life on the plains.

At the beginning of the eighteenth century, there were estimated to be between 40 to 60 million bison in North America. Unregulated hunting reduced the numbers to only about 1,500 animals by the late nineteenth century. The last century has been devoted to protecting the species from extinction and to developing viable herds.

Herds grew sufficiently in size by the 1980s that bison meat started to be available for sale to the general public. The leanness of bison meat, combined with society's increased health awareness, helped to create the bison industry we see today.

There were approximately 107,000 head of bison in the United States in 1997 (NBA-UW, 1997). Presently, the industry is in a formative phase. Production and



marketing infrastructure are still being established. Bison meat is marketed as an “upscale” product, commanding premium prices. Bison breeding stock are also commanding premium prices since many bison producers are still building their herds. Currently, very few bison heifer calves are slaughtered.

The budget

This budget estimates the costs and returns for a bison cow-calf enterprise. A note of caution is in order, however: the market for bison and bison products is not fully developed, so the prices that producers pay for breeding stock and receive for bison sold may vary markedly from the values used in this study. Potential producers are encouraged to thoroughly study their markets before starting a bison enterprise. The budget is intended as a guide only; it is not representative of any particular ranch. The major assumptions are presented below.

Stock characteristics

As their long history of survival demonstrates, bison are particularly well adapted to the harsh conditions of the open plains. The bison's digestive system allows it to eat some of the less desirable plant varieties found on the plains. However, bison prefer and perform better in areas that have significantly more grass cover (SAF, 1999). It is estimated that a mature bison cow, being a more effective feeder than a beef cow, represents 0.80AU (Animal Units) versus the 1.0AU of a beef cow (AAFRD, 1999). One AU equals the amount of feed one cow consumes in one year (NRPH, 1997). Yet it is also recommended that the stocking rate for the beginning bison breeder be the same as for cattle until the producer understands how bison use the available

range (NBA, 1990). For that reason, this study uses the same stocking rate for bison as for beef cattle.

Herd size is a difficult parameter to quantify. Since the industry is in a developmental phase, there does not appear to be a typical herd size. The National Bison Survey (NBA-UW, 1997) revealed there are extremes at both ends of the spectrum, though there appears to be a level at which the capital expenditure for necessary equipment seems justified. This level, approximately 100 head of breeding cows, is used in the budget.

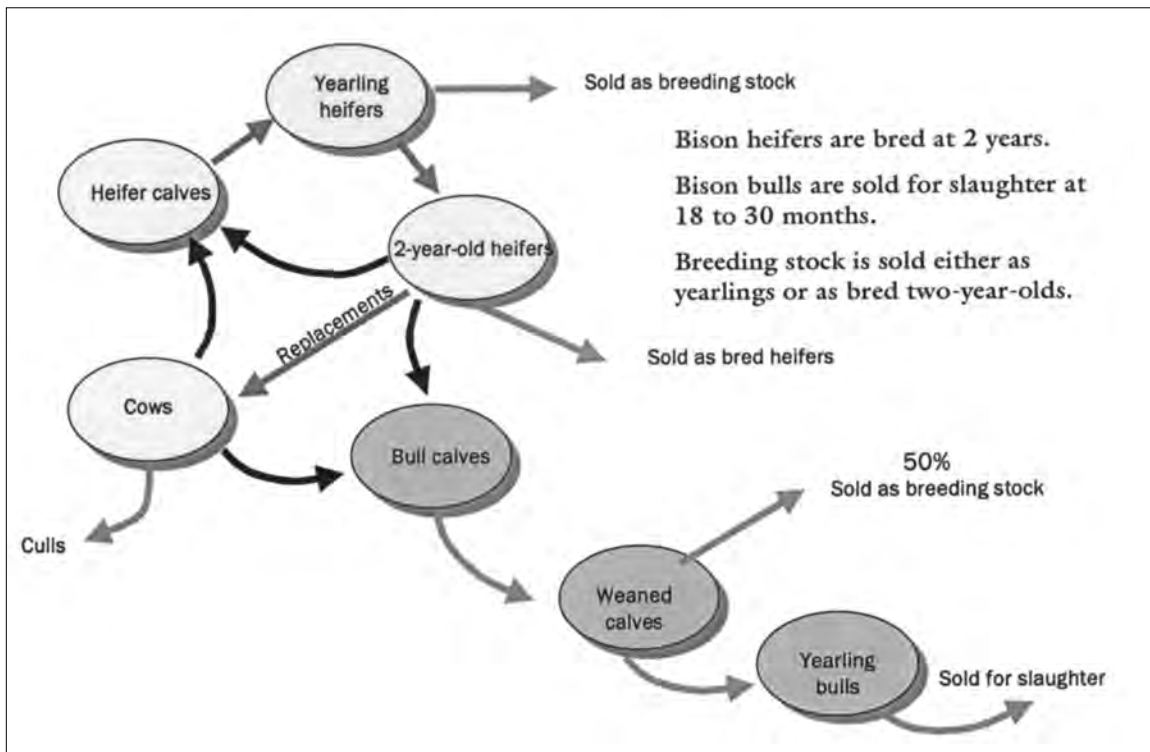
The budget assumes an established bison herd where most replacements are ranch raised. A linear livestock flow chart was created in a spreadsheet to determine production numbers. The spreadsheet represents three years' worth of bison production (three years represents the time it takes for a bison heifer 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.



Due to the variety of marketing strategies employed by bison producers, it is impossible to reflect the entire industry structure here. This is especially true for bull calves destined for slaughter. Bison bulls are typically slaughtered at 18 to 24 months of age, with some kept as long as 30 months. While virtually all of the heifers are used as breeding stock, there are varying strategies for bull calves. Conversations with individuals close to the industry indicate that there appear to be three “marketing windows” for bulls. The first is at six months of age, right after the calves are weaned. These calves are sold to a feedlot. The second marketing option is to keep the bull calves for another year and sell them as yearlings to be fed out. Finally, some producers choose to feed their own bulls until they reach slaughter weight. In order to reflect this variety in marketing behavior, the budget sells one half of the bull calves at six months and the other half as yearlings the following year. This means there will be less stock to feed during the winter and that less pasture will be required in the summer. The trade-off is that the producer must accept less revenue for the calves than he or she would for the finished animal.

Older (trophy) bulls do not bring as much in the market, but bison producers have been particularly innovative at marketing their products. Online offerings of steaks, jerky, sausage, robes, and skulls were encountered in the course of research for this report. Hunting also is done on some operations to generate additional revenue. However, this enterprise budget is only concerned with costs and returns from a cow-calf enterprise. Other alternatives would require separate budgets outlining

Figure 1. Simplified bison production cycle.



the set of costs and returns associated with that enterprise.

Since bison mature more slowly than cattle and since there are no steers, some different classes of livestock had to be added for the budget (e.g. two-year-old heifers, cows three to nine years, cows older than 10 years, two-year-old bulls, and bulls older than two years). The classes used in this study are the same as used in the 1997 National Bison Survey. The weights and prices for these classes are from the same source. Figure 1 shows a simplified production cycle for bison. The significant difference from beef cattle is that bison heifers are bred at two years of age, whereas beef cattle are bred after one year.

Land

The variety of bison operations varies as much as the methods used to market bison. That is, no dominant form of bison production has yet emerged. In developing this enterprise budget, it was necessary to make a number of assumptions regarding the size of the operation, as well as the type and amount of land used. It is assumed that the ranch is located on the eastern plains of Wyoming and has an average productive capacity of 0.32 AUM/acre (Animal Unit Months per acre). One AUM is one twelfth of an AU or the amount of feed that one mature cow will consume in one month. The above AUM/acre figure is considered typical for the region (Bastian and Hewlett, 1996). In addition, it is assumed that bison will be fed

for four months out of the year. The implied acreage and associated land capacity is calculated at 6,541 acres or 2,077 AUMs of range forage and 1,038 AUMs fed for a total of 3,116 AUMs of feed requirement (Table 4). The budget assumes all hay is purchased, since there would be no difference in hay production for cattle or bison. The authors chose to focus the budget on the livestock aspect, given that bison production represents a departure from traditional stock-raising practices. Many producers may have a hay enterprise included in their operations, which would need to be evaluated separately.

Labor

Bison, being considered non-domestic animals, typically do not benefit from much human contact. Some producers report working their animals only once per year (NBA-UW, 1997). Most sources report that it is best to handle bison as little as possible. When working bison only once per year, vaccination, testing, sorting, culling, and shipping take place all at once. These activities normally occur in the fall. However, the amount of time spent on maintenance and repair of facilities is higher for bison due to the increased fencing

and handling equipment required. It was assumed that the enterprise requires one full-time employee and that the owner is employed one-half time in the enterprise with management duties. Both the owner and the employee are paid at the rate of \$7 per hour (including benefits).

Capital

Table 5 shows the investment summary for the budget. This is where the economic costs of the enterprise are outlined. An economic budget differs from a cash budget in that all costs are included. In other words, an economic budget includes all cash cost information but goes further to include all non-cash costs as well.

One of the largest non-cash costs in an economic budget, after depreciation, is opportunity cost. The term opportunity cost is used by economists to describe the cost of investing capital in a particular enterprise rather than an alternative investment. Short-term U.S. Treasury bills are often used as an example investment because they carry no risk and a current interest rate (about 6 percent as of December 2000). Another method, the one used in this budget, is to use a long-term real (inflation adjusted) interest rate plus a risk premium to value the cost of capital investment. Whatever method is used, the economic budget tries to capture the true enterprise costs.

The budget assumes that 100 percent of the operating capital is borrowed. The authors realize that this is not always the equity ratio that producers face. But regardless of the source, there is a cost to using capital, even one's own. By assuming that 100 percent of the operating capital is bor-



Table 1. Rangeland ownership information.

Grazed forage (AUMs)	2,077.2
Dollars per Animal Unit	\$2,718.00
Estimated dollars/AU/year	\$163.08
Total rangeland cost	\$470,485.80
Real estate taxes (65.7 mills)	\$1,934.80
Opportunity cost interest rate	6 percent
Annualized opportunity cost	\$28,299.15

rowed, opportunity costs for this asset are fully accounted for. A nominal interest rate of 9 percent was used for operating capital, while an 8.75 percent interest rate was applied to livestock, machinery, and buildings.

The costs associated with rangeland ownership are shown in Table 1. The opportunity cost of owning land was estimated by using the implied acreage previously calculated for forage base and multiplying it by the average price per acre for rangeland sold in eastern Wyoming from 1993-95 (NBA-UW, 1996). This total land cost, \$470,485.80, was multiplied by a real long-term interest rate (3 percent) plus a risk capital rate (3 percent) to come up with a surrogate for opportunity cost of capital (AAEA, 1998). The resultant \$28,229.15 is the estimated annual opportunity cost for land. This number was divided by the number of AUs of forage provided by the land to give a commonly-used value on a per AU basis.

Land costs represented a special challenge in developing the budget. The authors developed the land base from feed requirements and productivity data as outlined in the land section above. Economists consider land a capital input since it is a re-

source that is not used up in a single production cycle, but provides a string of inputs (feed) over time without losing its intrinsic value (given proper stewardship). Even if the land is owned and paid for, there is an opportunity cost associated with its ownership and use. That is, the money tied up in land could be used for other purposes, such as operating capital. Land costs are shown in Table 1 and in the budget in Tables 2 and 5.

Breeding stock

Interest on retained livestock is a significant ownership cost. The value of replacement heifers includes an interest charge relating to the cost of raising the animal. This opportunity cost tries to capture the value of what it actually costs to raise a calf as opposed to buying yearling heifers and breeding them.

Bison add a new dimension to the retained livestock issue. Since bison mature more slowly than cattle, often not breeding until their second year, the costs of raising an animal are carried for a second year (until the heifer enters the herd as breeding stock). More research is needed to uncover and value these costs for bison. In this study, all bison not sold in the fall are considered retained. Consequently, interest on

retained livestock in Tables 2 and 5 may be higher than expected.

The budget assumes an established herd in which most of the breeding stock is ranch raised. Some heifers and most bulls are purchased to enhance genetic diversity. Costs for these animals are listed in Table 5.

Machinery and equipment

The machinery and equipment complement for this enterprise was assumed to be optimal for the number of bison produced. That is, all equipment is fully utilized by the enterprise. New machinery costs were used in the budget, as this provides a conservative estimate of ownership and capital costs. Most producers already own at least some equipment, and many do not purchase new equipment. However, this method allows a more complete look at the full costs of ownership. Table 4 shows a list of the equipment used in the budget. Of particular concern is the cost of fencing and handling equipment, which must be suited for bison. A wide array of fencing and handling equipment is available for bison. A discussion of these can be found in a variety of sources, both in print and on



various Web sites (SAF, 1999). Fencing estimates run from \$3,500 to \$6,000 per mile. A value of \$4,500 per mile for 16 miles was used to represent the fencing investment in this study.

Handling facilities represent a significant cost associated with a bison enterprise. Recommendations for bison handling facilities typically call for chutes 6½ to 7½ feet high and strong enough to withstand the abuse of a bull bison weighing upwards of 2,000 pounds. Producers reporting on operations of this size provided cost estimates from \$10,000 to \$40,000 for these facilities. An estimated value of \$23,000 was used in this budget. This value represents the average reported for this size of operation. It is slightly higher than the \$22,000 reported for a facility in Canada (SAF, 1999).

Taxes, insurance, and overhead

Property taxes and insurance costs were valued at 60 cents per hundred dollars of assets. Real estate taxes were valued using the productivity assumptions and the Wyoming Department of Revenue's *Mapping and Agricultural Manual* to classify typical eastern Wyoming rangeland. An average mill levy of four eastern Wyoming counties of 65.7 mills was calculated to generate taxes of \$1,934 on rangeland.

A flat rate of \$20,000 per year was chosen for the overhead costs. This value represents professional services such as accounting, tax preparation, subscriptions, and minimal legal fees.

Summary

Recognizing there are a wide variety of options available to bison producers in both structure and herd size, this budget estimates the costs and returns for a bison operation of 100 breeding cows on the eastern plains of Wyoming. The budget presented shows gross receipts of \$191,248.02 or \$1,912.48 per head. Operating costs are \$67,415.03 or \$674.15 per head. Ownership costs are \$110,594.55 or \$1,105.95 per head. Total costs are \$178,009.59 or \$1,780.10 per head. This leaves returns to risk and management, or net profit, of \$13,238.43 or \$132.38 per head.

It should be noted that a large part of the profitability of the bison enterprise shown here is due to the prices currently being received for breeding stock. Should there be a dramatic decrease in prices, the enterprise would suffer significantly. To illustrate this point, the budget was re-evaluated with the price for two-year-old heifers reduced by 50 percent (from \$366 per hundred weight to \$183 per hundred weight). With that change in place, the returns to risk and management (net profit or loss) were -\$40,146.57 or -\$401.48 per head. This represents a decrease of \$53,384.76 or \$533.85 per head from current prices and illustrates the sensitivity of the enterprise to fluctuations in market prices.



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Be aware that due to the dynamic nature of the World Wide Web, Internet sources may be difficult to find. Addresses change and pages can disappear over time. If you find problems with any of the listed Web sites in this publication, please contact Tom Foulke, P.O. Box 3354, Laramie, WY 82071; (307) 766-6205; foulke@uwyo.edu.

Table 2. Enterprise budget, bison cow-calf.

	Weight	Units	Total head units	Price/cost unit	Total value	Value cost/head	Your value
1. Gross receipts							
Heifer calves	3.5	cwt	0	603	0.00	0.00	
Yearling heifers	7.25	cwt	0	312	0.00	0.00	
2-yr-old heifers	7.48	cwt	39	366	106,769.52	1,067.70	
Cows 3-9	9.27	cwt	6	285	15,851.70	158.52	
Cows >10	9.27	cwt	6	240	13,348.80	133.49	
Bull calves	4	cwt	24	237	22,752.00	227.52	
Yearling bulls	9.75	cwt	24	139	32,526.00	325.26	
Total receipts					\$191,248.02	\$1,912.48	
2. Operating costs							
Native hay		ton	218	79	17,222.00	172.22	
Protein cake 14%		ton	11.24	160	1,798.40	17.98	
Corn (whole-bulk)		cwt	180	5.5	990.00	9.90	
Mineral		lb.	4,000.00	0.22	880.00	8.80	
Salt		lb.	3,185.04	0.06	191.10	1.91	
Freight/trucking		head	427	7	2,989.00	29.89	
Advertising		ad	13	50	650.00	6.50	
Electricity		kwh	7,000.00	0.05	350.00	3.50	
Veterinary medicine		\$	301.27	1	301.27	3.01	
Machinery (fuel, lube, repair)		\$	5,041.76	1	5,041.76	50.42	
Vehicles (fuel, repair)		\$	3,972.50	1	3,972.50	39.73	
Equipment (repair)		\$	975.14	1	975.14	9.75	
Housing and improvements		\$	2,005.90	1	2,005.90	20.06	
Hired labor		hour	2,496.00	7	17,472.00	174.72	
Owner labor		hour	1,248.00	7	8,736.00	87.36	
Interest on operating capital		\$	42,668.92	0.09	3,840.20	38.40	
Total operating costs					\$67,415.03	\$674.15	
3. Income above operating costs					\$123,832.98	\$1,238.33	
4. Ownership costs							
Buildings, improvements, and equipment							
Capital recovery		\$			16,159.09	161.59	
Annual taxes and insurance		\$			894.20	8.94	
Purchased livestock							
Capital recovery		\$			1,465.72	14.66	
Annual taxes and insurance		\$			-----	-----	
Retained livestock							
Long-term interest		\$			27,423.29	274.23	
Machinery and vehicles							
Capital recovery		\$			13,613.66	136.14	
Annual taxes and insurance		\$			875.44	8.75	
Land resources							
Annual taxes		\$			1,934.00	19.34	
Long-term interest		\$			28,229.15	282.29	
Overhead		\$			20,000.00	200.00	
Total ownership costs					\$110,594.55	\$1,105.95	
5. Total costs					\$178,009.59	\$1,780.10	
6. Returns to capital, risk and management					\$13,238.43	\$132.38	

Table 3: Monthly summary of returns and expenses.

	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Value
1. Production:													
Heifer calves													0
Yearling heifers													0
2 yr old heifers													106,770
Cows 3-9													15,852
Cows > 10													13,349
Bull calves													22,752
Yearling bulls													32,526
2 yr old bulls													0
Bulls >2													0
Total receipts													\$191,249
													\$191,249

2. Operating inputs:															
Native hay	4,306	4,306	4,306	4,306	4,306									17,224	
Protein cake 14%	416	416	416	416	416									1,798	
Corn (whole-bulk)						495	495							990	
Mineral	110	110	110	110	110									880	
Salt	16	16	16	16	16	16	16	16	16	16	110	110	16	192	
Freight/trucking													2,989	2,989	
Advertising	50	50	50	50	50	50	50	50	50	50	50	50	100	650	
Electricity	40	40	40	40	40	30	20	20	20	20	20	20	30	350	
Veterinary medicine													301	301	
Machinery (fuel, lube, repair)	422	420	420	420	420	420	420	420	420	420	420	420	420	5,042	
Vehicles (fuel and repair)	332	331	331	331	331	331	331	331	331	331	331	331	331	3,973	
Equipment (repair)	82	81	81	81	81	81	81	81	81	81	81	81	81	973	
Housing, improvements (repair)	168	167	167	167	167	167	167	167	167	167	167	167	167	2,005	
Taxes and insurance*		2,137					1567							3704	
Hired labor	1,456	1,456	1,456	1,456	1,456	1,456	1,456	1,456	1,456	1,456	1,456	1,456	1,456	17,472	
Total costs	\$7,398	\$9,530	\$7,393	\$7,393	\$2,661	\$3,036	\$4603	\$2,541	\$2,541	\$2,651	\$2,795		\$6,001	\$58,543	
Net returns	-\$7,398	-\$9,625	-\$7,393	-\$7,393	-\$2,661	-\$3,036	-\$4,394	-\$2,541	-\$2,541	-\$2,651	-\$2,795		\$185,248	\$132,706	

*Includes property and real estate taxes

Table 4: Monthly feed requirements.

Feed	Units	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.
Rangeland	AUM	0	0	0	0	260	260	260	260	260	260	260	260
Native hay	ton	55	55	55	55	0	0	0	0	0	0	0	0
Protein cake 14%	ton	3	3	3	3	0	0	0	0	0	1	0	0
Corn (whole-bulk)	cwt	0	0	0	0	0	90	90	0	0	0	0	0
Mineral	lb	500	500	500	500	500	0	0	0	0	500	500	500
Salt	lb.	265	265	265	265	265	265	265	265	265	265	265	265

Table 5: Investment summary.

	Purchase price	Salvage/cull value	Livestock share	Useful life	Capital ¹ recovery	Annual taxes and insurance	Long -term interest	Total ownership
Buildings, improvements and equipment								
Shop (40x60)	\$20,000.00	\$2,000.00	100	30	\$1,888.35	\$114.40	-----	\$2,002.75
Fencing	\$72,000.00	\$7,200.00	100	25	\$7,093.89	\$411.84	-----	\$7,505.73
Corral/handling (7ft)	\$23,000.00	\$2,300.00	100	30	\$2,171.60	\$131.56	-----	\$2,303.16
Water developments	\$15,000.00	\$1,500.00	100	30	\$1,416.26	\$85.80	-----	\$1,502.06
Gooseneck trailer	\$5,000.00	\$1,000.00	100	10	\$703.94	\$31.20	-----	\$735.14
Squeeze chute	\$1,950.00	\$390.00	100	10	\$274.54	\$12.17	-----	\$286.71
Vet equipment	\$650.00	\$65.00	100	10	\$95.84	\$3.72	-----	\$99.56
Mobil feeders	\$5,000.00	\$500.00	100	15	\$593.80	\$28.60	-----	\$622.40
Post hole auger	\$750.00	\$75.00	100	10	\$110.59	\$4.29	-----	\$114.88
Rear blade	\$1,100.00	\$110.00	100	10	\$162.19	\$6.29	-----	\$168.48
Shop equipment	\$2,500.00	\$250.00	100	10	\$368.62	\$14.30	-----	\$382.92
Granary (300bu)	\$500.00	\$100.00	100	10	\$70.39	\$3.12	-----	\$73.51
6-feed bunks	\$1,400.00	\$140.00	100	10	\$206.43	\$8.01	-----	\$214.44
Grain grinder	\$6,800.00	\$680.00	100	10	\$1,002.65	\$38.90	-----	\$1,041.55
Total	\$155,650.00	\$16,310.00			\$16,159.09	\$894.20		\$17,053.29
Purchased livestock								
Yearling bull	\$2,714.00	\$272.00	100	6	\$564.12	-----	-----	\$564.12
Yearling heifer	\$6,786.00	\$678.00	100	12	\$901.60	-----	-----	\$901.60
Total	\$9,500.00	\$950.00			\$1,465.72			\$1,465.72
Retained livestock								
Heifer calves	\$113,940.00	\$11,394.00	100		-----	-----	\$5,483.36	\$5,483.36 ²
Yearling heifers	\$119,886.00	\$11,978.00	100		-----	-----	\$5,769.05	\$5,769.05
2-yr-old heifers	\$30,085.00	\$3,014.00	100		-----	-----	\$1,448.08	\$1,448.08
Cows 3 to 9	\$195,504.30	\$19,536.00	100		-----	-----	\$9,408.01	\$9,408.01
Cows > 10	\$55,620.00	\$5,550.00	100		-----	-----	\$2,676.19	\$2,676.19
Bull calves	\$26,544.00	\$2,660.00	100		-----	-----	\$1,277.68	\$1,277.68
Yearling bulls	\$2,710.50	\$272.00	100		-----	-----	\$130.48	\$130.48
2-year-old bulls	\$0.00	\$0.00	100		-----	-----	\$0.00	\$0.00
Bulls > 2	\$25,568.40	\$2,556.00	100		-----	-----	\$1,230.44	\$1,230.44
Total	\$569,858.20	\$56,960.00					\$27,423.29	\$27,423.29
Machinery and vehicles								
Tractor loader	\$35,600.00	\$7,100.00	100	30	\$3,334.05	\$222.04	-----	\$3,556.09
Tractor - 80hp	\$30,000.00	\$6,000.00	100	30	\$2,809.46	\$187.20	-----	\$2,996.66
Pickup 4x4 3/4 ton	\$27,000.00	\$5,400.00	100	6	\$5,251.73	\$340.20	-----	\$5,591.93
4 wheeler nr1	\$5,000.00	\$1,000.00	100	5	\$1,109.21	\$63.00	-----	\$1,172.21
4 wheeler nr2	\$5,000.00	\$1,000.00	100	5	\$1,109.21	\$63.00	-----	\$1,172.21
Total	\$102,600.00	\$20,500.00			\$13,613.66	\$875.44		\$14,489.10
Land resources								
Rangeland	\$470,486.00		100		-----	\$1,934.00	\$28,229.15	\$30,163.15
Total	\$470,486.00					\$1,934.00	\$28,229.15	\$30,163.15

¹ Annual capital recovery is the method of calculating depreciation and interest recommended by the National Task Force on Commodity Costs and Returns.

² Interest on average investment.



MTL0100 (4100)

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

Malta Field Office
501 South 2nd Street East
Malta, Montana 59538
<http://www.blm.gov/mt>



CERTIFIED MAIL 7013 1090 0001 6322 3974
RETURN RECEIPT REQUESTED

June 20, 2018

Mr. Roy Taylor
PO Box 1352
Malta, MT 59538

Dear Mr. Taylor,

I am in receipt of your letter dated April 9, 2018 and have been examining the concerns you have brought forward.

In regards to the fence reconstruction which has taken place on BLM administered land: According to the BLM Fencing Handbook H-1741-1 (Handbook) there are three ways changes to a current fence can be categorized: maintained, reconstructed or modified. In general terms, maintenance consists of normal repair of the fence to keep it in useable condition, reconstruction involves replacing or rebuilding the current fence, and modification would consist of an alteration to the previous design needed to meet specific resource needs. Beyond giving recommendations for height and spacing requirements, the Handbook gives latitude to the type of fence that can be built and materials used. The Handbook suggests consulting with stakeholders when considering fence modifications, but it is not required.

BLM allows maintenance to occur on authorized BLM fence without further environmental review. This includes removing old fence materials and replacing with new. BLM has also allowed general modifications to existing fence that would include types of wire used and spacing criteria to meet resource objectives. Due to the nature of the current fence modification, BLM has directed American Prairie Reserve (APR) to stop until the proper analysis in regard to this type of fence modification can be conducted. This precludes boundaries that are directly adjacent to deeded lands where BLM has no jurisdictional authority.

The issues surrounding the use of the Telegraph Creek Allotment will be analyzed in the upcoming NEPA document which will consider the adaptations that have become necessary since the 2005 decision. When APR acquired the Telegraph Creek Allotment they were no longer permitted use from the Fish and Wildlife Service for a pasture contained within the Charles M. Russell National Wildlife Refuge boundary. Without use of this pasture the current Allotment Management Plan (AMP) became non-operational. The management on many of our grazing allotments has evolved over time necessitating the need to adapt grazing. As a result, many of our AMPs have become outdated. As time allows, we are updating these documents to conform to BLM policies.

In regards to your concerns of base property and trespass, Malta BLM takes these issues seriously. I expect all permittees to be treated impartially and will be looking into these allegations.

Some of your inquiries involve a Freedom of Information Act request filed with this office. If you believe there is information that was not provided to you through this process, please let me know and I will facilitate the collection of these records where possible.

I am still becoming familiar with the numerous issues surrounding the multifaceted programs managed out of this office and appreciate your patience in this matter. I hope the following information adequately addresses your questions or concerns. If you would like to meet in person, I would welcome the opportunity. If I can be of further assistance please contact me directly at (406) 654-5131. Thank you for your interest in our public lands.

Sincerely,



Tom Darrington
Field Manager

From: [Scott Heidebrink](#)
To: [Darrington, Thomas C](#)
Subject: [EXTERNAL] APR Modified Fences
Date: Thursday, September 20, 2018 3:28:55 PM
Attachments: [Modified BLM Border Fence Sept 2018.pdf](#)
Importance: High

Tom,

The maps show the areas that we have modified fence that is adjacent to BLM land on either side. Modified fences are present in the gaps between pink lines but are not shown because they are adjacent to deeded lands on both sides. If you have any questions feel free to call or email.

Thanks,

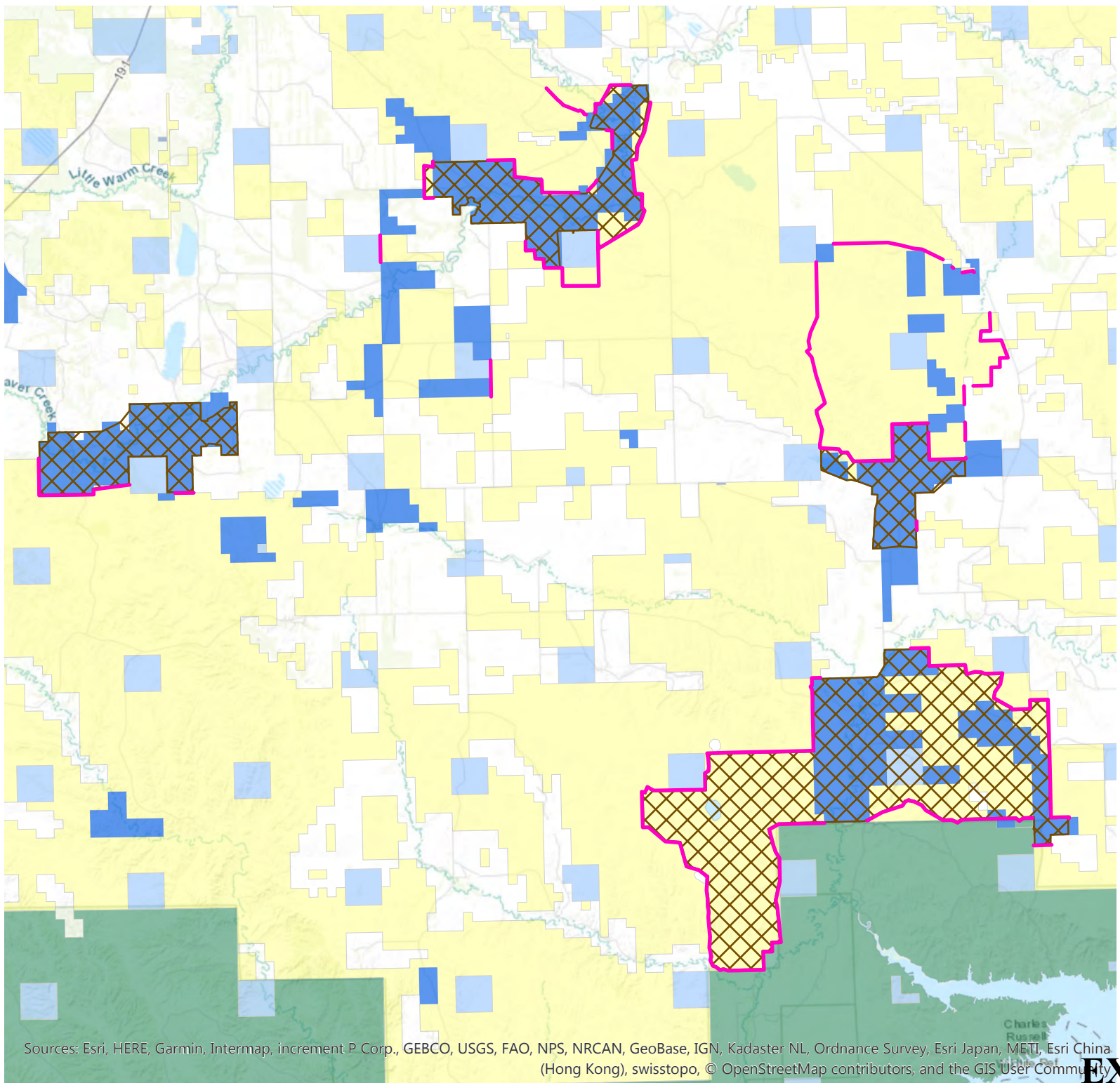
Scott



Scott Heidebrink
Bison Management Specialist
American Prairie Reserve
Mobile (406) 589-6220

Join Us:





- Modified (to electric) fence that borders BLM
- X APR Bison Pastures
- Land Ownership**
 - APR Deeded
 - Montana State Trust Lands
 - US Bureau of Land Management
 - US Fish and Wildlife Service

Allotment	Modified BLM Fence (miles)
Box Elder	17.4
Telegraph Creek	19.2
Flat Creek	20.0
Whiterock Coulee	18.6
East Dry Fork & French Coulee	4.2
Upper First Coulee	1.7
Total	81.1



BUDD-FALEN LAW OFFICES
L.L.C.
ATTORNEYS FOR THE WEST

KAREN BUDD-FALEN ¹
FRANKLIN J. FALEN ²
BRANDON L. JENSEN ³

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TERESA L. SLATTERY ⁴
CONNER G. NICKLAS ⁵
KATHERINE E. MERCK ⁶

¹ ALSO LICENSED IN ID & NM

² ALSO LICENSED IN NE, SD & ND

³ ALSO LICENSED IN CO & NM

⁴ ALSO LICENSED IN IL & TX

⁵ ALSO LICENSED IN CO & MT

⁶ ALSO LICENSED IN ID & MT

August 5, 2021

CERTIFIED MAIL NO.
RETURN RECEIPT REQUESTED
70160910000195123117

Bureau of Land Management
Malta Field Office
FOIA Officer
501 South 2nd St East
Malta, MT 59538
BLM_MT_Malta_FO@blm.gov

Re: Freedom of Information Act Request

Dear Sirs:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of the Phillip County Livestock Association, this letter requests that you mail to my office the following information:

A copy of all grazing applications submitted by the American Prairie Reserve pursuant to 43 CFR 4130.1 et seq. which are being evaluated in the American Prairie Reserve Bison Change of Use Environmental Assessment dated June 2021 and identified as DOI-BLM-L010-2018-0007-EA. This includes all grazing applications under consideration as part of the DOI-BLM-L010-2018-0007-EA for the following allotments: East Dry Fork (Pastures 1 and 3), French Coulee, Garey Coulee, Box Elder, Telegraph Creek, Flat Creek, and Whiterock Coulee.

EXHIBIT 11-1

This information should not be subject to the Freedom of Information Act exemptions and access to the requested documents should be granted within twenty (20) working days.

I also request that if you determine that some of the information requested is exempt from FOIA, that this information be identified by document, along with the statutory basis for your claim and your reasons for not exercising your discretion to release this information. FOIA also provides that if only portions of the file are exempt from release, the remainder of the file must be released. Therefore, I request that I be provided with all non-exempt portions that can reasonably be segregated.

If there is any problem in providing this information, please let me know so that further arrangements can be made. I can be reached at the phone number above or via email at teresa@buddfalen.com. In addition, please contact me if the estimated cost of responding to this request for information exceeds one hundred dollars (\$100.00).

Thank you for your cooperation.

Sincerely,



Teresa Slattery
Budd-Falen Law Offices, LLC



Betty Holder <betty@americanprairie.org>

Re: Actual Use

1 message

Betty Holder <betty@americanprairie.org>

Tue, May 24, 2016 at 9:14 AM

To: "Rhodes, Burk" <brhodes@blm.gov>

I am on the road today but will get with Damien and get it to you tomorrow.

On Tuesday, May 24, 2016, Rhodes, Burk <brhodes@blm.gov> wrote:

Hi Betty,

Could I get you guys to submit actual use for me for the past several years? I need it at least since 2014, but further back would be better.

Attached is the form.

Just list the dates from 3/1-2/28 (ex. 3/1/2014 - 2/28/2015) for each year and indicate it is for both Telegraph Creek and Box Elder Allotments jointly. Provide the head count as best you know it for the time periods.

I need these asap for a FOIA request.

Thanks,
BJ

--

BJ Rhodes
Rangeland Management Specialist
406.654.5120

**Betty Holder**

Reserve Land Manager
American Prairie Reserve
Work/Home (406) 658-2226
Mobile (406) 788-5269

Join Us:



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

RECEIVED

FORM APPROVED
OMB NO. 1004-0041
Expires: October 31, 2017

ACTUAL GRAZING USE REPORT

JUN 02 2016

MALTA FIELD
OFFICE

Dear Grazing Operator:

In accordance with the terms and conditions of the permit or lease with authorizes your grazing use, please complete this form and return to the Field Office within 15 days after completing your authorized grazing use (43 CFR 4130.3-2(d)). This information, along with other studies data, is needed to evaluate the effectiveness of present management. Use a separate line for every day that you either turn livestock in or take livestock out of an allotment or pasture. Your cooperation in providing accurate information will be appreciated.

ALLOTMENT (NAME AND NUMBER)				FOR BUREAU OF LAND MANAGEMENT (BLM) USE ONLY				
ACTUAL GRAZING USE				CALCULATION OF AUM'S GRAZING USE				
PASTURE	DATE mm/dd/yyyy	NUMBER AND KIND OR CLASS OF LIVESTOCK		NO. AND KIND OF LIVE- STOCK	GRAZING PERIOD		% PL USE	AUM'S
		TURNED IN	TAKEN OUT		BEGIN	END		
Box Elder, Telegraph Cree	10/2005	12 Bison						
Box Elder, Telegraph Cree	3/1/2006	17 Bison						
Box Elder, Telegraph Cree	10/2006	11 Bison						
Box Elder, Telegraph Cree	3/1/2007	39 Bison						
Box Elder, Telegraph Cree	10/2007	7 Bison						
Box Elder, Telegraph Cree	3/1/2008	67 Bison						
Box Elder, Telegraph Cree	3/1/2009	87 Bison						
Box Elder, Telegraph Cree	3/1/2010	110 Bison						
Box Elder, Telegraph Cree	5/1/2010	87 Bison						
Box Elder, Telegraph Cree	3/1/2011	99 Bison						
Box Elder, Telegraph Cree	3/1/2011	98 Bison						
Box Elder, Telegraph Cree	3/1/2012	142 Bison						
Box Elder, Telegraph Cree	4/1/2012	74 Bison						
Box Elder, Telegraph Cree	3/1/2013	192 Bison						
Box Elder, Telegraph Cree	3/1/2014	197 Bison						
Box Elder, Telegraph Cree	4/1/2014	73 Bison						
Box Elder, Telegraph Cree	3/1/2015	351 Bison						

I CERTIFY That this is a complete and accurate report of my grazing use.

Signature of Permittee/Lessee <i>[Signature]</i>	Printed Name of Permittee/Lessee <i>Donna Holder, APR Ranch Land mgr</i>	Date <i>5-31-16</i>
---	---	------------------------

Title U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statement or presentations as to any matter within its jurisdiction.

(Continued on page 2)

Remarks (Include other information such as death losses, disease, and unauthorized use by strays):

PVT = Private land

3/9/16 moved 210 to deeded land at old Holzhey property

NOTICES

The Privacy Act and 43 CFR 2.48(d) require that you be furnished with the following information in connection with information requested by this form.

AUTHORITY: 43 U.S.C. 315, 316, 1701, 1901, 1181d, and 43 CFR 4100.

PRINCIPAL PURPOSE: Information will be used to document the actual amount of livestock grazing use on the public lands to calculate your billing, and to help evaluate the effectiveness of management actions in meeting resource management objectives.

ROUTINE USES: In accordance with the Bureau of Land Management's (BLM) System of Records Notice published in the Federal Register on December 29, 2010 [Bureau of Land Management's Range Management System—Interior, LLM-2; Notice To Amend an Existing System of Records; Privacy Act of 1974; as Amended], names and addresses provided by the applicant on this form will be publically available in reports on the BLM public website.

EFFECT OF NOT PROVIDING INFORMATION: Disclosure of the information is required to obtain or retain a benefit. Failure to submit all of the requested information or to complete this form may result in delayed payment due the Government or insufficient data needed to manage the program.

The Paperwork Reduction Act requires us to inform you that: BLM collects this information to document the purpose, need, and other information for grazing use on the public lands. Response to this request is required to obtain or retain a benefit. You do not have to respond to this or any other Federal agency-sponsored information collection unless it displays a currently valid OMB control number.

BURDEN HOURS STATEMENT: Public reporting burden for this form is estimated to average 15 minutes per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. Direct comments regarding the burden estimate or any other aspect of this form to: U.S. Department of the Interior, Bureau of Land Management (1004-0041), Bureau Information Collection Clearance Officer (WO-630), 1849 C Street, N.W., Room 2134LM, Washington, D.C. 20240.

Remarks (Include other information such as death losses, disease, and unauthorized use by strays):

PVT = Private land

2/22/18: Moved 74 bison to old Ereaux property. 115 bison were given to InterTribal Bison Council. 6 bison were publically hunted on private land.

NOTICES

The Privacy Act and 43 CFR 2.48(d) require that you be furnished with the following information in connection with information requested by this form.

AUTHORITY: 43 U.S.C. 315, 316, 1701, 1901, 1181d, and 43 CFR 4100.

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RECEIVED
MAR 17 2021
MALTA FIELD
OFFICE

Field Office within 15 days after

Telegraph Creek #05854, Box Elder #15634, & PVT (private)

ACTUAL GRAZING USE

[illegible]

Signature of Permittee/Lessee

Printed Name of Permittee/Lessee

Dentist

3/15/2021

Title U.S.C. Section 1001, makes it a crime for any person knowingly and willfully to make to any department or agency of the United States any false, fictitious, or fraudulent statement or presentations as to any matter within its jurisdiction.

(Continued on page 2)

EXHIBIT 14-5

I, Mark Manoukian, after being first duly sworn do affirm and state as follows:

1. I, Mark Manoukian, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My mailing address is PO Box 430, Malta, Montana 59538.
3. I am the Secretary/Treasurer of the Phillips County Livestock Association.
4. I have been an active member of the Phillips County Livestock Association (“Association”) since 1999.
5. In 2020 the Association signed an agreement with the American Prairie Reserve (APR) that requires the APR to test a portion of its bison herd for specific diseases for five years (2021-2025).
6. APR is required to submit the annual test results to the Association for our review.
7. As part of my duties with the Association I reviewed the data we received from APR in 2022 and compiled it into a spreadsheet for our membership to more easily review. *See Exhibit MM-4.*
8. The Association and its membership are greatly concerned about the disease testing results we received from APR and what it could mean for the viability of our livestock industry here in Phillips County.
9. As a result of my involvement in the Association and the group’s concerns regarding the APR, I have visited the allotments upon which APR intends to manage its bison as wild animals.
10. On one such visit on March 8, 2022, I witnessed the severe over-grazing that had occurred in the Box Elder Allotment as a result of APR’s bison management. *See Exhibit MM-1.*

11. On another visit on April 8, 2022, I witnessed the absence of a gate on the Telegraph Creek Allotment that should have been present to restrict the migration of bison into a pasture that was intended to be in a rest cycle. *See* Exhibit MM-2.
12. The removal of this gate allowed the bison to wander freely between the pastures and shows a complete disregard for the Bureau of Land Management's rest rotation plan that was supposed to be used on the allotment.
13. I have also witnessed gates utilized by APR on public lands that were electrified.
14. I took the pictures in Exhibit MM-3 labeled A-C on August 12, 2021 which demonstrate that APR has installed equipment to electrify fences and gates on public lands without posting any notice of the electrical current that runs through said fences and gates.
15. Photograph A of Exhibit MM-3 is at the corner Section 1 of Township 25 North, Range 29 East (a BLM section).
16. Photograph B of Exhibit MM-3 is of Section 36, Township 26 North, Range 29 East and it has been reported by a neighbor that the entire area, including State and BLM lands, is electrified on all four sides.
17. Photograph C of Exhibit MM-3 shows an electrified gate and how it is dangerous for individuals seeking to enter the allotment because it requires the electrical connection to be disconnected and reconnected.

Under penalty of perjury, I declare the foregoing to be true and correct.

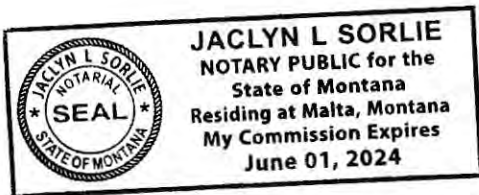
FURTHER AFFIANT SAYETH NAUGHT.

STATE OF MONTANA)
) ss.
COUNTY OF PHILLIPS)


Mark Manoukian

On the 23rd day of August, 2022, before me personally
appeared Mark Manoukian, and acknowledged that he signed the above declaration on
his own free act and deed.

IN TESIMONY WHEREOF, I have hereunto signed my name and affixed my
seal, the day and year above-written.



My Commission expires:

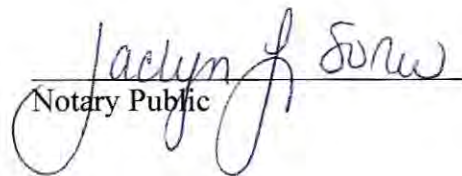

Notary Public



EXHIBIT 15 MM-1



EXHIBIT 15 MM-2



EXHIBIT 15-MM-3-A



EXHIBIT 15-MM-3-B



EXHIBIT 15-MM-3-C

2022 apr test results			
	Positive	Tested	% Positive
Bluetongue	23	121	19.0%
Anaplasmosis	33	121	27.3%
Parainfluenza 3	72	121	59.5%
EHD	17	30	56.7%
Bovine Herpesvirus -1 SN	3	120	2.5%
Lepto			
Canicola	0	121	0.0%
hardjo	0	121	0.0%
ictero	6	121	5.0%
grippe	8	121	6.6%
poona	13	121	10.7%
autumnalis	27	121	22.3%
bratislava	31	121	25.6%
Lepto total	85	121	70.2%



3/22

Photos by Diane Hargreaves, Heidi Linghorn, Dennis Myers, and Gordon White.

Bozeman, MT 59771
americanprairie.org
(406) 585-4600

americanprairie.org

Get a digital version of this map with the Avenza Maps app.

Give today at americanprairie.org/give

Through your gift to American Prairie, you are helping us restore and protect the shortgrass prairie ecosystem for possibilities in the near and distant future.

We invite you to join us in this movement of ecosystem preservation and restoration, funded entirely by everyday philanthropists like you. Every dollar donated to American Prairie makes a tangible impact to the flora and fauna that thrive in the Northern Great Plains of Montana, and is an investment in the incredible development, spirit, and ecological diversity of America. Now is the time to build American Prairie.

As land use patterns shift in the region, now is the a special place that is largely unplowed and intact. Temperate grasslands are the least protected biome only place in the United States.

Those four places are the last in the world home to American Prairie in Montana—is the ecosystem, and the Northern Great Plains—where we can save an entire prairie grassland.

Kazakhstan, Mongolia, Patagonia, The Northern Great Plains.

AMERICAN PRAIRIE

MAP & GUIDE

THE VISION

Established in 2001, American Prairie represents a bold effort to create the largest wildlife reserve in the lower 48. By linking together more than three million acres of private and public land, American Prairie will conserve a significant portion of the iconic landscape that once dominated central North America – Montana’s legendary Northern Great Plains.

Herds of elk, deer, pronghorn, and bison once roamed these grasslands in great numbers. When complete, American Prairie will provide critical habitat for a variety of species, offering visitors the opportunity to experience nature and wildlife as it existed when Lewis and Clark first explored the region and as Indigenous Peoples experienced it for thousands of years.

WHY HERE AND WHY NOW

Temperate grasslands are the least protected biome on Earth, with only four places left in the world that are viable options for landscape-scale conservation. One of those places is the Northern Great Plains, a landscape that shaped America’s history.

With an estimated two-thirds of the nation’s mixed- and short-grass prairies already lost to development, surviving grasslands have the potential for incredible biodiversity and discovery. Much of the native prairie and its wildlife has disappeared over time, but the good stewardship of the landowners in the American Prairie area has resulted in a special place that is largely unplowed and intact. As land-use patterns shift in the region, now is the time to secure the future of the prairie and restore a seamless ecosystem renowned for its wildlife.

WELCOME TO AMERICAN PRAIRIE

PRAIRIE & WILDLIFE TIMELINE

MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER
Sharp-tailed & Sage Grouse Lek		Pronghorn Fawns Born		Bison Rut		Fall Colors		
Bison Calves Born			Prairie Wildflowers Bloom		Elk Rut		Bird Migration	
Bird Migration		Burrowing Owl Young		Grassland Bird Breeding				

VISITOR ACTIVITIES

Stunning vistas and unique topography provide an impressive backdrop for recreation. American Prairie has a truly rugged quality and a sense of uninterrupted nature. Discover the power of dark skies, and remote, unbroken land. Each visit offers something new whether you are on foot, wheels, or horseback.

HITTING THE TRAIL

Explore the vastness of the landscape, smell the sage, and listen to birds call. Enjoy hiking, biking, and horseback riding on two-track roads.

DRIVING TOURS

In addition to the county roads and two-tracks that cross American Prairie lands, roads 201, 321, and 844 in the Charles M. Russell National Wildlife Refuge (CMR) are suggested for driving tours. Many roads in the region are not signed; a GPS or GPS phone app with preloaded maps is highly recommended. See the back of this map for a QR code to a free digital GPS version of this map.

WILDLIFE AND BISON VIEWING

Observe prairie dog behavior or keep an eye out for the many species of migrating birds traveling through American Prairie land. Spot elk, bison, and pronghorn, and look for hawks and eagles overhead.

PHOTOGRAPHY

From spectacular sunsets and the dazzling night sky to unique wildlife behavior and beautiful blooming flowers, the prairie offers vast opportunities for amateur or professional photographers.

HUNTING

Tens of thousands of acres owned by American Prairie are available for hunting via Montana Fish, Wildlife and Park’s Block Management program. Access is also available to adjacent and landlocked public land. Check americanprairie.org/hunting for the most up-to-date hunting information.

CAMPING

Several public facilities are available including tent camping, huts with kitchens and bunks, RV spaces with full hookups, sleeping cabins, and shower facilities. See the reverse side of the map for locations. Make reservations online at americanprairie.org/visit. Dispersed tent camping is also permitted on American Prairie land. See americanprairie.org/camping-on-public-lands for guidelines.

BIKING

Bikers will find a great variety of riding on the American Prairie property. There are innumerable two-tracks to explore on day trips, as well as potential to create multi-day bikepacking routes through American Prairie, state, and federal lands. E-bikes are allowed on motorized travel routes. Bring a full repair kit and bike pump.

NATIONAL DISCOVERY CENTER

Visit the National Discovery Center at 302 W Main Street in Lewistown on your way to the prairie. The Center features interactive exhibits about the prairie ecosystem, community meeting spaces, and a film theater. Check americanprairie.org/national-discovery-center for hours and more information.

SAFETY AND WELL-BEING

American Prairie is situated in a remote location where services (including cell phone coverage) are extremely limited. Be prepared to self-rescue and remember that American Prairie is not responsible for any damage or harm done to your vehicle, belongings, or person while you are on American Prairie property.

GEAR

Visitors should prepare for a range of weather conditions. We recommend layering clothing and wearing sturdy shoes. We also recommend bringing a wind and rainproof jacket, a sun hat, water (see below), food, binoculars, a camera, a first aid kit, a flashlight or headlamp, sunscreen, and bug spray. Many roads in the region are not signed; a GPS or GPS phone app with preloaded maps is highly recommended. See the back of this map for a QR code to a free digital GPS version of this map.

WATER

Bring enough drinking water for the duration of your stay plus extra just in case. There is no potable water available on American Prairie property at this time, unless where specified in association with camping.

VEHICLE

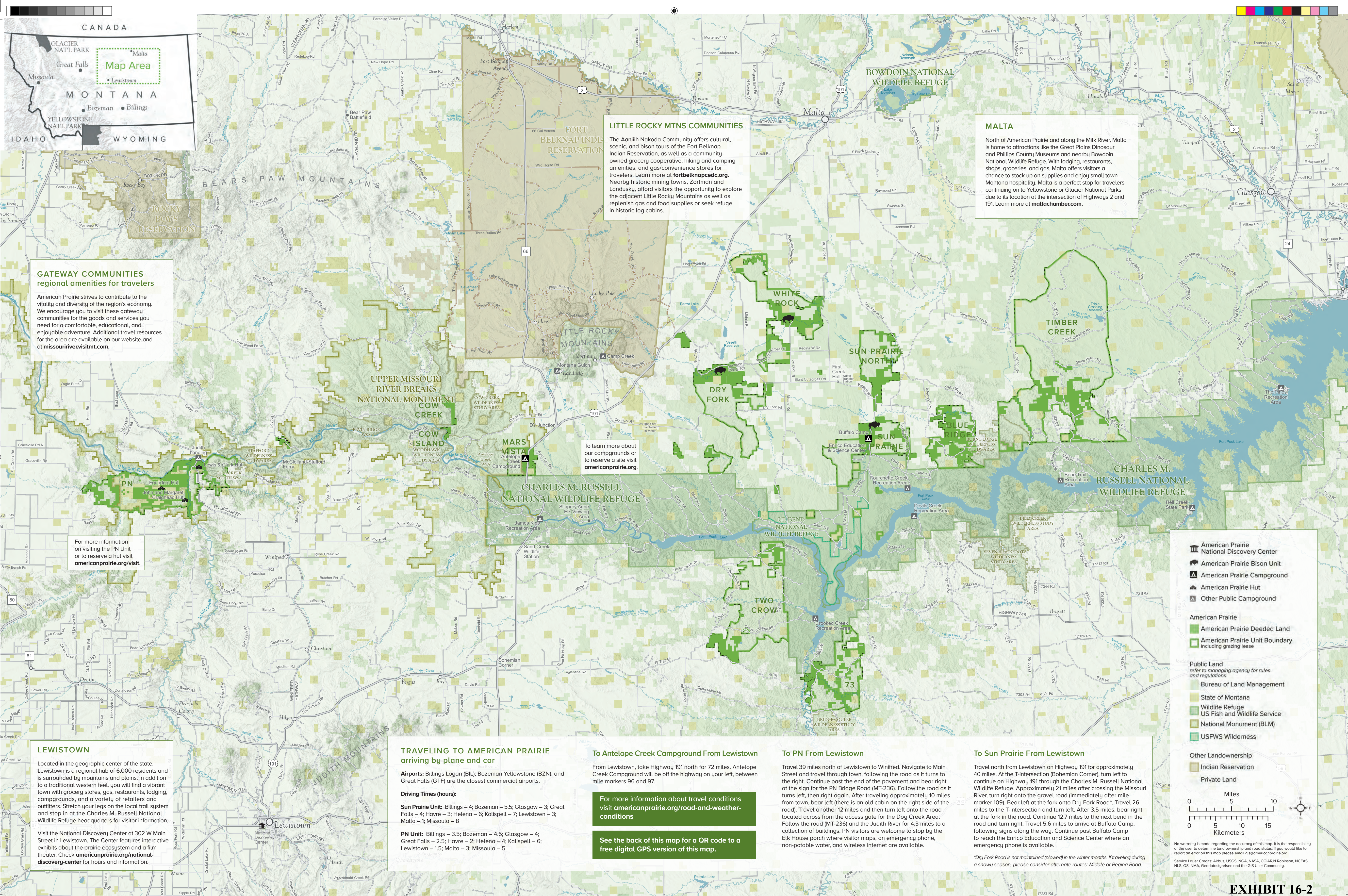
Visit in a reliable four-wheel-drive vehicle with at least 8 inches of clearance and a full tank of gas. (See the opposite side of the map for recommendations on where to fill up before getting to American Prairie property). Roads are primarily dirt and gravel, and often are unmaintained. Check the forecast and avoid driving in wet conditions. Heavy rains mix with bentonite clay found in the soil to produce a very slippery and sticky driving surface, also known as “gumbo.” **Many roads become impassable when wet.** Check your spare prior to your visit, pack a patch kit and pressure gauge, and do not drive off designated roads. Visit americanprairie.org/road-and-weather-conditions for more information.

FIRE

Dry conditions, strong winds, and low humidity create potential for grass fires, regardless of season. Wildfires can start from a campfire outside a designated fire ring, a cigarette that has not been properly extinguished, a vehicle undercarriage, or lightning strikes. Check americanprairie.org/road-and-weather-conditions for the most up-to-date fire conditions on American Prairie land.

WILDLIFE & LIVESTOCK

Do not approach any animals, including bison, and always view from a safe distance (100 yards). American Prairie includes occupied bear habitat and we encourage all visitors to be bear-aware. American Prairie includes active ranching operations; do not approach livestock and leave all fence gates as you find them.



I, Dr. McKenna Levesque, after being first duly sworn do affirm and state as follows:

1. I, Dr. McKenna Levesque, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My address is 47452 U.S. Highway 2, Malta, Montana 59538
3. I am an owner and operator of the Milk River Veterinary Services Clinic located at 47452 U.S. Highway, Malta MT 59538.
4. I have owned and operated Milk River Veterinary Clinic for ____ years and have been a practicing veterinarian for 1 years.
5. Much of our veterinary clinic's clientele consists of local livestock producers and it is our job as veterinarians to help them monitor and maintain the health of their cattle herds.
6. Our clients' herd health programs include but are not limited to: multiple vaccine protocols, regular deworming and external parasite control, testing of diseases and appropriate culling. This not only protects the herds being treated but also the neighboring herds.
7. While our clients are doing their best to maintain healthy herds of cattle, one of the greatest risks to these herds at this point in time, is the spread of disease through bison inhabiting range controlled by the American Prairie Reserve (APR).
8. On February 1-3, 2022, Brock Aiton, DVM, performed and interpreted testing on APR bison from APR's Sun Prairie location.
9. Dr. Aiton tested 121 buffalo, revealing 19% positive for Bluetongue, 27% for Anaplasmosis, Parainfluenza III had 60% positive and Leptospirosis had a total of 70% positive.

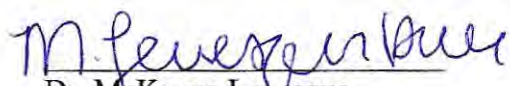
10. These numbers are worrisome to us. Many of these diseases cause abortions and illness effecting overall production loss in cattle.
11. These bison are not vaccinated for these pathogens, nor other important diseases.
12. Dr. Aiton concluded that "these test results do not show any evidence of disease that would pose a risk to any surrounding livestock."
13. While Dr. Aiton believes that Anaplasmosis is "more prevalent" in Montana than once thought, the Anaplasmosis test results from APR bison are especially concerning to us.
14. We have not diagnosed any Anaplasmosis in our clients' herds in Phillips County nor seen signs of this disease. However, this is one of those diseases that monitoring of incoming herds is especially important, as we do have the vectors that can transmit the disease.
15. Dr. Aiton states that the positive results surrounding Anaplasmosis are from past exposures, which is correct, but he fails to mention that these individuals are now carriers of the disease. This means they carry the bacterium in their red blood cells, that can then be transmitted by the appropriate vectors, commonly ticks, but has also been found to be transmitted by biting flies.
16. We DO have clients that border the APR and are within vector range; knowingly introducing this disease as well as the other mentioned diseases is very concerning to us.
17. The other diseases these bison tested positive for were written off by Dr. Aiton as just "indicating prior exposure."
18. While this may be true, we cannot say with 100% certainty that they are pathogen free.

19. There are also other diseases not addressed, such as trichomoniasis. Trichomoniasis is a very serious reproductive disease that causes abortions and infertility in livestock and has been known to decimate herds in Montana.
20. Considering the extremely poor reproduction rates of APR's bison, reproductive diseases are of great concern to us.
21. It is known that in the past there have been incidences where bison have been found comingling with surrounding cattle herds, which increases the risk of the spread of diseases.
22. We would not want to knowingly bring any of these diseases in and around the current production herds.
23. In conclusion, to have a viable cattle population in Phillips County, proper herd health regulations and management should apply to cattle and bison herds alike.
24. At the least, bison that test positive should be removed from the herd.
25. It is my professional, non-compensated, opinion that these issues need to be further addressed and actions should be taken to protect our client herds, our community, and our future.

Under penalty of perjury, I declare the foregoing to be true and correct.

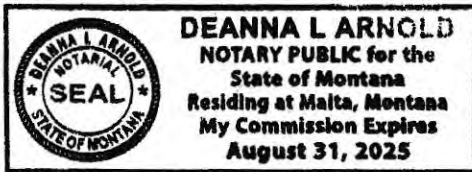
FURTHER AFFIANT SAYETH NAUGHT.

STATE OF MONTANA)
) ss.
COUNTY OF PHILLIPS)


Dr. McKenna Levesque

On the 22nd day of August, 2022, before me personally appeared Dr. McKenna Levesque, and acknowledged that she signed the above declaration on her own free act and deed.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed my seal, the day and year above-written.



Deanna L. Arnold
Notary Public

My Commission expires: 8/31/25

I, Dr. Rick Levesque, after being first duly sworn do affirm and state as follows:

1. I, Dr. Rick Levesque, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My address is 47452 U.S. Highway 2, Malta, Montana 59538
3. I am an owner and operator of the Milk River Veterinary Services Clinic located at 47452 U.S. Highway, Malta MT 59538.
4. I have owned and operated Milk River Veterinary Clinic for 28 years and have been a practicing veterinarian for 38 years.
5. Much of our veterinary clinic's clientele consists of local livestock producers and it is our job as veterinarians to help them monitor and maintain the health of their cattle herds.
6. Our clients' herd health programs include but are not limited to: multiple vaccine protocols, regular deworming and external parasite control, testing of diseases and appropriate culling. This not only protects the herds being treated but also the neighboring herds.
7. While our clients are doing their best to maintain healthy herds of cattle, one of the greatest risks to these herds at this point in time, is the spread of disease through bison inhabiting range controlled by the American Prairie Reserve (APR).
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25. It is my professional, non-compensated, opinion that these issues need to be further addressed and actions should be taken to protect our client herds, our community, and our future.

Under penalty of perjury, I declare the foregoing to be true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

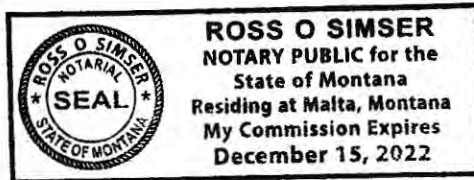
STATE OF MONTANA)
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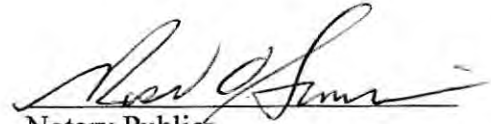


Dr. Rick Levesque

On the 22 day of August, 2022, before me personally appeared Dr. Rick Levesque, and acknowledged that he signed the above declaration on his own free act and deed.

IN TESIMONY WHEREOF, I have hereunto signed my name and affixed my seal, the day and year above-written.




Notary Public

My Commission expires:

**BEFORE THE PHILLIPS CONSERVATION DISTRICT
BOARD OF ADJUSTMENT**

<p>IN THE MATTER OF American Prairie Reserve's Petition for Variance from Phillips Conservation District Ordinance 2016-1</p>	<p style="text-align:center">SETTLEMENT AGREEMENT</p>
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This Settlement Agreement is entered into by and between Petitioner American Prairie Reserve, Respondent Phillips Conservation District ("Conservation District"), and Intervenor South Phillips County Co-operative State Grazing District and Phillips County Livestock Association ("Intervenor") (collectively, "the Parties") concerning American Prairie Reserve's petition for a variance in this proceeding.

WHEREAS the Phillips Conservation District in June 2016 enacted "An Ordinance for the Protection of Soil and Water from All Bison/Buffalo Grazing in Phillips Conservation District" ("the Ordinance");

WHEREAS Section 7(1)(b) of the Ordinance provides that "All bison/buffalo must be tested and certified, by a state veterinarian to be disease free.";

WHEREAS Section 7(1)(e) of the Ordinance provides that "Bison/buffalo must be branded, tattooed, tagged or otherwise identified to track its health status.";

WHEREAS the American Prairie Reserve on October 28, 2016 submitted a petition for a variance from Sections 7(1)(b) and 7(1)(e) of the Ordinance;

WHEREAS the Montana Department of Natural Resources and Conservation convened a Board of Adjustment and appointed a Hearing Examiner to address and resolve the American Prairie Reserve's variance petition;

WHEREAS the Hearing Examiner on June 19, 2019 acknowledged intervention in the Board of Adjustment proceeding by the South Phillips County Co-operative State Grazing District and Phillips County Livestock Association;

WHEREAS the Hearing Examiner on February 10, 2020, issued a recommended decision to the Board of Adjustment that it grant the American Prairie Reserve's motion for summary judgment in the variance proceeding and issue the variance requested by American Prairie Reserve;

WHEREAS the Parties subsequently engaged in good-faith settlement negotiations in an effort to reach a mutually acceptable negotiated resolution in this matter; and

WHEREAS the Parties have now reached a settlement agreement to fully resolve the American Prairie Reserve's variance petition that they wish to present for consideration, approval, and entry of an appropriate order by the Hearing Examiner and Board of Adjustment;

NOW, THEREFORE, through their undersigned counsel, the Parties hereby agree and stipulate as follows:

1. Disease Identification and Management Plan – The American Prairie Reserve will, on an annual basis, consult with a Montana licensed veterinarian to develop or update a written disease identification and management plan based on prior test results and herd observations. As part of the plan, if an occurrence of disease is detected, as defined in paragraph 2.b, the American Prairie Reserve will take responsive action as recommended by a licensed veterinarian and/or directed by any state or federal regulatory agency with jurisdiction over the American Prairie Reserve's operations. The written disease identification and management plan and the results of disease testing will be shared with the Conservation District and Intervenors as described in paragraph 4, infra.

2. Disease Testing and Tagging – The American Prairie Reserve agrees to conduct disease testing of bison in its herd as follows:

a. During the five (5) years following the effective date of this agreement, the American Prairie Reserve will conduct bison-handling operations at each of the properties where it holds bison. During those operations, the American Prairie Reserve will conduct disease testing on an aggregate total of 325 bison. Testing will be conducted for the following diseases (“monitored diseases”):

- Blue tongue
- Bovine viral diarrhea (BVD) types 1 and 2
- Parainfluenza-3 virus (PI3)
- Brucellosis
- Anaplasmosis
- Johne’s disease
- Infectious bovine rhinotracheitis (IBR)
- Leptospirosis

Testing will also be conducted for epizootic hemorrhagic disease (EHD), provided that the number of bison tested for EHD will be consistent with APR’s level of testing for this disease during the five (5) years preceding this agreement. All test samples will be collected by a Montana licensed veterinarian and submitted to the Montana State Diagnostic Lab for evaluation. Testing will be stratified by herd, age, and gender and will focus on testing animals that have never been tested or have not been tested in the last three (3) years. All tested animals will be retained on American Prairie Reserve deeded and/or leased property pending review and evaluation of test results and therefore will be capable of prompt relocation in the event of a test result that necessitates such action. The American Prairie Reserve will invite representatives of the Conservation District and Intervenors to attend and observe all testing events conducted pursuant to this provision.

b. If no occurrence of disease is detected by the conclusion of this initial five-year testing effort described in paragraph 2.a, the American Prairie Reserve will conduct disease testing for the monitored diseases on an aggregate total of 150 bison over the following five years. "Occurrence of disease" shall mean infection with one of the monitored diseases. As to brucellosis, infection will be established by a positive diagnosis based on laboratory testing as determined by the Montana State Veterinarian's office. For other monitored diseases, infection will be established by both development of typical clinical signs as confirmed by a Montana-licensed veterinarian and a confirmed laboratory test result as determined by the Montana State Veterinarian's office. If an occurrence of disease is detected during the duration of this agreement, the resulting response, including any additional monitoring beyond the levels set forth in this agreement, will be established by applicable regulatory authority (e.g., Montana Department of Livestock) if a regulatory response is triggered, or otherwise pursuant to recommendation by a Montana-licensed veterinarian retained by the American Prairie Reserve. The American Prairie Reserve will invite representatives of the Conservation District and Intervenor to attend and observe all testing events conducted pursuant to this provision.

c. The American Prairie Reserve will, on an ongoing basis for the duration of this agreement, observe its bison herd for signs of disease two days per year with American Prairie Reserve staff and a Montana licensed veterinarian present. If the veterinarian deems a bison suspect of any monitored disease through observation, American Prairie Reserve staff will immobilize the bison and the veterinarian will collect samples for testing. All samples will be submitted to the Montana State Diagnostic Lab for evaluation. Immobilization is contingent on acceptable environmental conditions and impacts on animal health. Observation dates will be determined by the availability of American Prairie Reserve staff and the veterinarian. The

American Prairie Reserve will invite representatives of the Conservation District and Intervenor to attend and observe all activities conducted pursuant to this provision.

d. With respect to bison that escape from American Prairie Reserve deeded and/or leased property and, in the judgment of responsible American Prairie Reserve staff, must be chemically immobilized to be returned to American Prairie Reserve deeded and/or leased property, the American Prairie Reserve will, on an ongoing basis for the duration of this agreement, test such bison for monitored diseases, provided that a Montana licensed veterinarian is available to collect testing samples. In addition, if the escaped bison are off of American Prairie Reserve deeded and/or leased property for more than 24 hours and observed to be in close contact with other livestock (in the same confined area or within 200 feet), at least one of the bison will be captured or chemically immobilized and a sample will be collected for testing for monitored diseases, provided that a Montana licensed veterinarian is available to collect testing samples. All samples will be submitted to the Montana State Diagnostic Lab for evaluation. The results of any testing conducted on escaped bison will be shared with the Conservation District, Intervenor, and the landowner(s) whose deeded or leased property was occupied by any such escaped bison.

e. All bison that are tested or otherwise handled by the American Prairie Reserve pursuant to this agreement or for any other reason as part of the American Prairie Reserve's ongoing operations will, on an ongoing basis for the duration of this agreement, be individually identified and tagged.

3. Vaccination – The American Prairie Reserve will, on an ongoing basis for the duration of this agreement, vaccinate for brucellosis any pre-yearling heifers that are imported to the American Prairie Reserve's herd.

4. Information Sharing – The American Prairie Reserve will, on an annual basis for the duration of this agreement, share information with the Phillips Conservation District as follows:

a. The American Prairie Reserve will coordinate with the Conservation District and Intervenors to jointly schedule a meeting at which representatives of the American Prairie Reserve will provide an update on American Prairie Reserve operations, including sharing the American Prairie Reserve's disease identification and management plan and/or any updates to that plan; all disease testing results from that year; current bison ear tag and/or other identification data; any fence maintenance or construction on American Prairie Reserve property; and any imports or exports of bison to or from the American Prairie Reserve's herd.

b. The American Prairie Reserve will provide the Conservation District and Intervenors with a written report of any bison escapes from its property, including the location and details of any such escape; any remedial measures undertaken; and the results of any disease testing conducted at any time on escaped animals. During the annual meeting provided for in Section 4.a, supra, the American Prairie Reserve will discuss with representatives of the Conservation District and Intervenors any escape incidents and any proposals for additional remedial or preventive measures.

c. The American Prairie Reserve will invite representatives of the Conservation District and Intervenors on a tour of the American Prairie Reserve's year-round bison grazing pastures, which will include observation of range conditions and discussion of any concerns regarding range conditions in American Prairie Reserve's bison grazing pastures.

5. Joint Proposal for Variance Order – The Parties will submit a joint proposal to the Board of Adjustment for entry of an order pursuant to Mont. Code Ann. § 76-15-725 and Section

13 of Phillips County Ordinance 2016-1 granting to the American Prairie Reserve a variance from sections 7(1)(b) and 7(1)(e) of the Ordinance on the terms set forth in this agreement. This joint proposal will include stipulated findings as to the requirements for entry of a variance order set out in Mont. Code Ann. § 76-15-725 and section 13 of the Ordinance. Further, the joint proposal will provide that the terms of the Parties' settlement agreement, as embodied in the proposed variance order, will be enforceable pursuant to sections 8 through 11 of Ordinance 2016-1 and Mont. Code Ann. § 76-15-709. The stipulated findings are limited to this variance proceeding. By stipulating to these findings no party waives any future claim or argument as to the Ordinance except as specified in this settlement agreement.

6. Duration – The Parties agree that, except as provided in paragraph 12, infra, this agreement and the stipulations thereto shall be in effect for a term of ten (10) years.

7. Future Conduct – After the effective date of this agreement and for the duration of this agreement, the American Prairie Reserve agrees to forego any further challenge to sections 7(1)(b) and 7(1)(e) of the Ordinance. After the effective date of this agreement and for the duration of this agreement, the Conservation District and Intervenors agree to forego any further proposals or attempts to enact land use regulations imposing animal disease-testing or identification requirements that are inconsistent with the terms of this settlement agreement.

8. Changed Circumstances – If there is a change in the circumstances upon which this agreement is based, the Parties will meet and attempt to negotiate in good faith an amendment to the foregoing agreed terms.

9. Entire Agreement – This Settlement Agreement contains all of the agreement between the Parties, and is intended to be the final and sole agreement between them. The Parties agree that any prior or contemporaneous representations or understanding not explicitly


contained in this written agreement, whether written or oral, are of no further legal or equitable force or effect.

10. Authorization to Act – The undersigned representatives of each party certify that they are fully authorized by the party they represent to enter into the terms of this agreement and do hereby agree to its terms.

11. Choice of Law – The laws of the State of Montana shall govern the interpretation of this agreement.

12. Effective Date – The effective date of this agreement shall be the date upon which the Board of Adjustment issues an order granting to the American Prairie Reserve a variance from sections 7(1)(b) and 7(1)(e) of the Ordinance on the terms set forth in this agreement. If, for any reason, the Board of Adjustment rejects or otherwise fails to grant to the American Prairie Reserve a variance from sections 7(1)(b) and 7(1)(e) of the Ordinance on the terms set forth in this agreement, or if such variance is invalidated or otherwise terminated for any reason, then this agreement will become null and void and the American Prairie Reserve may resume efforts to advance its petition for variance in this proceeding.

Dated: December 11, 2020



Timothy J. Preso
Counsel for American Prairie Reserve

Dated: December 11, 2020

Caitlin Overland
Counsel for Phillips Conservation District

Dated: December 11, 2020

Jack G. Connors
Counsel for South Phillips County Co-operative State Grazing District and Phillips County Livestock Association


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Timothy J. Presb
Counsel for American Prairie Reserve

Dated: December 11, 2020



Caitlin Overland
Counsel for Phillips Conservation District

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Counsel for South Phillips County Co-operative State Grazing District and Phillips County Livestock Association

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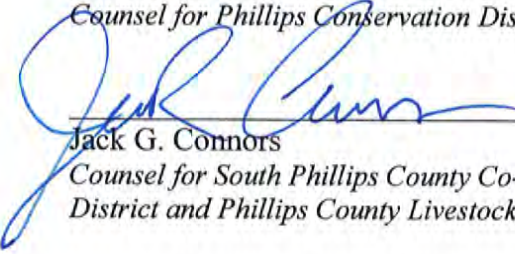
Timothy J. Press
Counsel for American Prairie Reserve

Dated: December 11, 2020



Caitlin Overland
Counsel for Phillips Conservation District

Dated: December 11, 2020



Jack G. Connors
Counsel for South Phillips County Co-operative State Grazing District and Phillips County Livestock Association

I, Peggy Bergsagel, after being first duly sworn do affirm and state as follows:

1. I, Peggy Bergsagel, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My address is 5247 Telegraph Rd., Malta, Montana 59538.
3. My family owns and operates the Heart Bar X Ranch located near Malta, Montana.
4. The Heart Bar X is a historic ranch that was founded by my family in 1909.
5. The Heart Bar X Ranch consists of over 12,000 acres, much of which is private land.
6. My ranch is surrounded by the American Prairie Reserve (APR) on three sides, sharing about 1- to 20 miles of fence.
7. I returned to the ranch about seven years ago and in that time I have had several incidents where APR bison have forced their way onto my property.
8. The most recent incident was on April 28, 2022.
9. I went to check a pasture for water and grass before moving my cows there and found a set of tracks leading down the road to the pasture.
10. When I came over the hill into the pasture there was a bison by the reservoir, explaining the tracks.
11. This pasture is surrounded on three sides by land that APR controls, but there was not supposed to be bison in any of these neighboring pastures. I thought about trying to move the bison through one of three nearby gates onto APR's land, but that parcel was supposed to be leased for cattle, so the bison should not have been in there either.
12. The closest area with bison that I could think of was the Box Elder Allotment, which was five or six miles away as the crow flies.

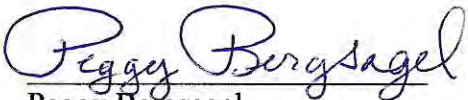
13. When the bison saw me, he ran a short way, laid down dusted himself, jumped back up and watch to see what I was doing.
14. I was concerned for my own safety and did not know what to do with the bison, so I called and left a message for APR, Phillips County Sheriff's Office, Phillips County Extension office, and Bureau of Land Management.
15. Scott Heidebrink, manager of the APR bison, texted me that they were on the way to retrieve the bison.
16. Scott showed up with a crew of people, including four people on ATVs, one person in a pickup, and another person in a pickup pulling a trailer with a UTV and a Skidsteer on it.
17. Scott informed me that he also had another man on the way who was bringing a gun in case they needed to euthanize the animal.
18. I informed Scott where the animal was on my property and he was surprised at how far it had come from its home on the Box Elder Allotment.
19. To get to my property from there, the bison likely went through five fences. This caused me great concern as to how many of my fences were destroyed from the animal and if it had come into contact with my cattle along the way.
20. APR's land is currently understocked, yet some of its bison are traveling out of bounds for several miles; I can only imagine how many of their bison will travel when their lands are fully stocked.
21. Apparently, Scott and his crew were unable to herd the bison, so they shot the animal.
22. This is also very concerning to me; if a crew of that size cannot manage one bison, I fear what they would do if a larger number escaped. This could mean slaughtering a small herd of bison.

23. Furthermore, APR would not even have known the bison was even missing if I had not called them, let alone where the animal went.
24. In contrast, I found a neighbor's bull on my property shortly after this incident. When I called him, he was already aware the bull was missing and was able to get the bull home with a one-man crew and without slaughtering.
25. It is also troubling that the crew from APR had little to no regard for the risk their poor management skills pose to my cattle operation.
26. Even though I instructed Scott and his crew to follow the ranch road to find the bison, they ignored this. APR has made it clear that they believe a payment for damaged grass somehow entitles them to drive their vehicles over my property. They have no comprehension of what the damage really is.
27. This incident and others have made it very clear that APR is struggling to manage the resources and animals that it already controls, so it is of great concern that the BLM plans to allow them to run on yet more land. This threatens to be detrimental to both the landscape and the people like me who depend on it.

Under penalty of perjury, I declare the foregoing to be true and correct.

FURTHER AFFIANT SAYETH NAUGHT.

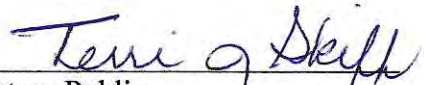
STATE OF MONTANA)
) ss.
COUNTY OF PHILLIPS)


Peggy Bergsagel

On the 17th day of August, 2022, before me personally appeared Peggy Bergsagel, and acknowledged that she signed the above declaration on her own free act and deed.

IN TESIMONY WHEREOF, I have hereunto signed my name and affixed my seal, the day and year above-written.




Notary Public

My Commission expires:

I, Richard Dunbar, after being first duly sworn do affirm and state as follows:

1. I, Richard Dunbar, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My address is: PO Box 360 Malta, MT 59538.
3. I am a duly elected member of the Phillips County Board of County Commissioners of Phillips County Montana.
4. The population of Phillips County is only 4,000 people with Malta being the County seat. The County was named after rancher and State senator Benjamin Phillips.
5. The American Prairie Reserve (APR) has purchased several ranches in Phillips County, resulting in it controlling over 350,000 acres in the county.
6. The APR's removal of this land from production agriculture is greatly concerning to the County.
7. Ranches like the Wiederrick, Holzey, Frye, Ereaux and Cowl that APR purchased in the southwest part of Phillips County are crucial to our local economy and the sustainability of our small towns. Those towns include Malta, Saco, and Zortman.
8. Agriculture has long been the primary industry in Phillips County, and it is what a great deal of our community members rely upon to make a living – both those who are directly involved in production agriculture and those who work in the businesses that support agriculture. It is estimated that APR has removed 2,500 head of cattle from Phillips County. If every cow's total cost is \$850 annually the total negative impact is \$2,125,000 annually to the economy of Phillips County.
9. Taking a ranch such as the Wiederrick, Holzey, Frye, Ereauc and Cowl out of production hurts the small businesses, schools, and sense of community here in Phillips County.

APR inflates the purchase price well beyond the ability of agriculture to pay and compete with them. Removing 2,500 head of cattle also impacts food production and 15,328 people could be fed annually from this loss based on US annual consumption of beef.

10. APR may believe that the lands it manages will draw tourists to the area, but so far, our communities have seen little to no benefit from this.
11. Even if tourism increases as a result of APR's efforts, this still threatens to greatly change our communities in ways that are not always desirable.
12. Not only is APR changing our communities, but it has also failed to follow some of the directives for utilizing state and federal lands. For example, it has removed gates and overgrazed public range lands.
13. These actions are of great concern to our county because these lands are cherished by those who live here, and they are important to the viability of our communities.
14. As elected representatives of the people of Phillips County, we represent the local public interest of our citizens. We, as a commission believe it is in the public interest to grant a stay in this case until the merits of the appeal can be heard.


Phillips County Commissioner

1; John Fahlgren, after being first duly sworn do affirm and state as follows:

1. I, John Fahlgren, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My address is: 501 Court Square #1 Glasgow, MT, 59230. I am a duly elected member of the Valley County Board of County Commissioners of Valley County Montana.
3. Valley County is situated in North East Montana; it is home to 7,500 people, many of whom reside in the county seat of Glasgow.
4. The American Prairie Reserve (APR) owns and controls almost 150,000 acres of land in Valley County.
5. The APR's removal of this land from production agriculture is greatly concerning to the County.
6. Ranches like the Timber Creek Ranch (Page-Whitham Ranch) that APR purchased in the southwest part of Valley County are crucial to our local economy and the sustainability of our small towns, including Glasgow, Hinsdale, and Fort Peck.
7. Agriculture has long been the primary industry in Valley County, and it is what a great deal of our community members rely upon to make a living – both those who are directly involved in production agriculture and those who work in the businesses that support agriculture. An estimated 62,000 cattle were raised in the county in 2019, generating an sales of over \$30 million. Sale of crops in the county totaled 67 million in 2018 (Valley County Growth Policy 2021).
8. Taking a ranch such as the Timber Creek Ranch out of production hurts the small businesses, schools, and sense of community here in Valley County.

9. APR may believe that the lands it manages will draw tourists to the area, but so far, our communities have seen little to no benefit from this.
10. Even if tourism increases as a result of APR's efforts, this still threatens to greatly change our communities in ways that are not always desirable.
11. Not only is APR changing our communities, but it has also failed to follow some of the directives for utilizing state and federal lands, such as removing gates and overgrazing public lands.
12. These actions are of great concern to our county because these lands are cherished by those who live here and they are important to the viability of our communities.
13. The long-term plans of APR are of grave concern to our citizens, these ultimate plans have not been addressed in the BLM's EA.
14. As elected representatives of the people of Valley County, we represent the local public interest of our citizens. We, as a commission believe it is in the public interest to grant a stay in this case until the merits of the appeal can be heard.


Valley County Commission

I, Ross Butcher, after being first duly sworn do affirm and state as follows:

1. I, Ross Butcher, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My address is: 712 W. Main St., Lewistown, MT 59457.
3. I am a duly elected member of the Fergus County Board of County Commissioners of Fergus County Montana.
4. Fergus County is situated in the center of Montana and is home to 11,500 people; it is also the location of part of the Upper Missouri River Breaks National Monument and the Upper Missouri National Wild and Scenic River.
5. The American Prairie Reserve (APR) owns and controls a large area of land in Fergus County along both of these areas.
6. The APR's potential removal of this land from production agriculture is greatly concerning to the County.
7. Ranches like the PN Ranch that APR purchased in the northern part of Fergus County are crucial to our local economy and the sustainability of our small towns, including Lewistown, Denton, and Winifred.
8. Agriculture has long been the primary industry in Fergus County and it is what a great deal of our community members rely upon to make a living – both those who are directly involved in production agriculture and those who work in the businesses that support agriculture.
9. Taking a ranch such as the PN out of production hurts the small businesses, schools, and sense of community here in Fergus County.

10. APR may believe that the lands it manages will draw tourists to the area, but so far, our communities have seen little to no benefit from this.
11. Even if tourism increases as a result of APR's efforts, this still threatens to greatly change our communities in ways that are not always desirable.
12. Not only is APR changing our communities, but it has also failed to follow some of the directives for utilizing state and federal lands in other counties and it is a concern APR will do the same in our county.
13. These actions are of great concern to our county because these lands are cherished by those who live here and they are important to the viability of our communities.
14. As elected representatives of the people of Fergus County, we represent the local public interest of our citizens. We, as a commission believe it is in the public interest to grant a stay in this case until the merits of the appeal can be heard.

A handwritten signature in black ink, appearing to read "Ross Butcher", is written over a horizontal line. To the right of the signature, the date "8/25/2022" is handwritten.

Ross Butcher
Fergus County Commissioner

[DONATE \(HISTORY\)](#) [VISIT \(/VISIT\)](#)

[DONATE \(HTTPS://DONATE.AMERICANPRAIRIE.ORG/GIVE/133746/#!/DONATION/CHECKOUT\)](https://donate.americanprairie.org/give/133746/#!/DONATION/CHECKOUT)

Bison Restoration Timeline

[STAY INFORMED \(HTTPS://WWW.AMERICANPRAIRIE.ORG/STAY-INFORMED\)](https://www.americanprairie.org/stay-informed)

PROGRESS TO DATE: BISON RESTORATION

American Prairie's growing and healthy bison herd is the result of a decade of dedication and hard work by collaborators, scientists, veterinarians, donors, and staff. At a glance, here's how the herd has progressed:

Bison Import History

Year	Number of Bison	Source
2005	16	Wind Cave National Park, SD
2006	20	Wind Cave National Park, SD
2007	22	Wind Cave National Park, SD
2008	10	TNC Broken Kettle Grasslands Preserve, IA
2010	93	Elk Island National Park, Edmonton, Alberta
2012	72	Elk Island National Park, Edmonton, Alberta
2014	73	Elk Island National Park, Edmonton, Alberta

2005: First Bison Introduced to American Prairie

EXHIBIT 24-1

On a cold and rainy night, not long past midnight on October 20, 2005, 16 bison stepped back onto the Montana prairie after an absence of more than 120 years. APR and World Wildlife Fund staff watched as the bison began to graze in their holding pasture, acclimating to their new home before being turned out onto American Prairie. Several of these bison were pregnant cows. After much waiting, the American Prairie Reserve Manager was proud to report the births of five baby bison on the prairie in April 2006.

2006-2009: A Growing Herd

From 2006 to 2009, the herd continued to grow with the addition of new arrivals from Wind Cave National Park and The Nature Conservancy of South Dakota. Additional calves have been born on American Prairie each spring since 2006.

2012-2014

In early 2010, we greatly increased the size of our herd with the addition of 94 bison from Elk Island National Park in Alberta, Canada. The ancestors of these bison originally came from Montana and were part of the Pablo herd, the largest herd of bison left in North America in the early 1900s, after they were largely extirpated from the Great Plains. The Pablo herd was privately owned until the Canadian government purchased the bison in 1907. The return of these bison to Montana continues to be a historic homecoming – 71 additional bison calves were transferred from Elk Island to American Prairie in early 2012 and another 73 calves were relocated in early 2014.

2012 Bison Transfer from Canada's Elk Island National Park to American Prairie



2015-2016

With rapid population growth of the herd, we knew we would quickly reach the carrying capacity of the Sun Prairie unit and started the Environmental Assessment process to expand the bison herd onto the Bureau of Land Management (BLM) allotments. The carrying capacity of Sun Prairie was reached in early 2016. While going through the Environmental Assessment process with the BLM, we expanded the herd to the deeded portion of the

Sun Prairie North unit in early 2016. In 2017 and 2018, we also expanded the herd onto the deeded portions of the Dry Fork and White Rock units. During these expansions, a portion of the surplus bison were distributed to Tribal, Agency and other conservation partners marking the first time that a large number of American Prairie bison were able to be distributed to start new herds and improve the genetics of others.

2019-Present

American Prairie is continuing to work through the Environmental Assessment process with the Bureau of Land Management and hopes to expand bison herds onto the public land allotments in the coming years. We are proud to continue to distribute bison to tribal and conservation partners, and to exchange bison with nearby tribes (/tribal-communities).

With an eye to the future, we are also reassessing and developing our long-term vision for bison expansion, genetic diversification, and public benefit at American Prairie.

WHAT'S NEXT FOR BISON ON THE PRAIRIE?

The American Prairie bison herd is already ten years old! What does the future look like?

BISON ACROSS THE BORDER: YOUR QUESTIONS ANSWERED

Find answers to common questions about American Prairie's transfer of bison from Canada's Elk Island National Park.

7 GENERATIONS AND 130 YEARS LATER, A CIRCLE IS COMPLETE

The calves' journey to this area started 130 years ago. In 1873, Samuel Walking Coyote brought six bison to northwest Montana after a hunting trip on the east side of the state.

SUBSCRIBE

First Name	Last Name
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Email

Submit

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[Why Create American Prairie? \(/why-apr\)](#)

[Where is American Prairie? \(/how-to-get-here\)](#)

Mailing Address

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(<mailto:mail@americanprairie.org>)

Where to Stay

(<https://www.americanprairie.org/where-to-stay>)

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ALLOTMENT RECORD

Malta Field Office

Survey Date: 53-54

Allotment Name: Box Elder

Page 1 of 2

Date: 3-Nov-08

Compiled By: BJ Rhodes

			FEDERAL											
			PD		LU		State		Private		Other		Total	
Twn	Rgn	Sec	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs
Pasture 1														
23	31	1	641	128									641	128
		2	562	89					80	16			642	105
		3	642	79									642	79
		10	300	23									300	23
		11	15	2					530	104			545	106
		12							320	64			320	64
24	31	34	80	5									80	5
		35	45	3									45	3
Pasture 1 Total*			2285	323					930	184			3215	513

Pasture 2														
23	31	10	340	30									340	30
		11	65	8					30	5			95	13
		13	320	64									320	64
		14	640	121									640	121
		15	320	36					320	53			640	89
		22	595	107									595	107
		23	410	83							160	32	570	115
Pasture 2 Total*			2690	441					350	58	160	32	3200	539

Pasture 3														
23	31	4	323	29					320	58			643	87
Pasture 3 Total			323	29					320	58			643	87

Pasture 4														
23	31	9			320	78			250	50			570	128
Pasture 4 Total					320	78			250	50			570	128

* Represents a 1.7% Wildlife Reduction

ALLOTMENT RECORD

Malta Field Office

Page 2 of 2

Survey Date: 53-54

Date: 3-Nov-08

Allotment Name: Box Elder

Compiled By: BJ Rhodes

			FEDERAL											
			PD		LU		State		Private		Other		Total	
Twn	Rgn	Sec	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs
Pasture 5														
23	31	12							80	16			80	16
		13	160	31					160	31			320	62
		23	30	5					40	8			70	13
		24	600	118					40	8			640	126
		25							80	12	240	36	320	48
		26									120	11	120	11
23	32	7	40	8					40	8			80	16
		18	40	8					273	55			313	63
		19							312	62			312	62
		29							80	16			80	16
		30							373	72			373	72
Pasture 5 Total			870	170					1478	288	360	47	2708	505

SUMMARY

	PD		LU		State		Private		Other		Total	
	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs	Acres	AUMs
Pasture 1 Total	2285	323					930	184			3215	513
Pasture 2 Total	2690	441					350	58	160	32	3200	539
Pasture 3 Total	323	29					320	58			643	87
Pasture 4 Total			320	78			250	50			570	128
Pasture 5 Total	870	170					1478	288	360	47	2708	505

Grand Totals	6168	963	320	78			3328	638	520	79	10336	1758
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Total Federal	6168	963	320	78							6488	1041
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AGRICULTURAL & GRAZING LEASE OF STATE LANDS

This lease is entered into by the State of Montana, Board of Land Commissioners and Department of Natural Resources & Conservation (Department) as lessor, and the person herein named, as the lessee.

Date this lease takes effect: March 01, 2015

Customer #: 141488

Name of Lessee: AMERICAN PRAIRIE FOUNDATION

Address or Box No.: PO BOX 908

City/State/Zip: BOZEMAN MT 59771

Land Located in Phillips County.

DESCRIPTION	Sec.	Twp.	Rge.	Acres
ALL	36	23N	30E	640.00

Total number of leased acres, 640

more or less belonging to

Common Schools

Grant.

Grazing Acres: 640

Agricultural Acres: 0

Unsuitable Acres: 0

Other Acres 0

Hayland Acres 0

CRP Acres 0

Terms of Grazing Use and Rental Rate: Minimum

Terms of Agricultural Use and Rental Rate: Minimum

Purpose for which the land is leased: GRAZING

Term of lease: 10 years

Date of expiration: February 28, 2025

THIS LEASE HAS A CARRYING CAPACITY OF 75 ANIMAL UNIT MONTHS. THE LESSEE SHALL NOT EXCEED SUCH CARRYING CAPACITY. THE ANNUAL GRAZING RENTAL IS BASED ON THIS CARRYING CAPACITY.

The State of Montana, in consideration of the payment of rentals as specified in this lease and the mutual agreements contained in this lease hereby leases the above-described lands to the lessee(s) named above.

The lessee(s) in consideration of the lease of the above-described lands and the mutual agreements contained in this lease hereby agrees to pay the rentals as specified in the lease and to perform all the conditions as specified in this lease, the applicable rules and the applicable statutes.

The parties to this lease mutually agree to the following terms and conditions:

1. ALL GRAZING RENTALS ARE DUE BY MARCH 1 EACH YEAR AND FAILURE TO PAY BY APRIL 1 AUTOMATICALLY CANCELS THE ENTIRE LEASE. A NOTICE OF RENTAL DUE OR ANY OTHER CORRESPONDENCE OR NOTICE FROM THE LESSOR WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS REQUESTED IN WRITING, SIGNED BY THE LESSEE AND RECORDED BY THE LESSOR.
2. ALL AGRICULTURAL RENTALS ARE DUE ON NOVEMBER 15 OF THE YEAR IN WHICH CROPS OR HAY ARE HARVESTED. IF THE RENTAL IS NOT PAID BY DECEMBER 31 OF THE SAME YEAR, THE ENTIRE LEASE IS CANCELED.
3. CONVERSION OF CLASSIFIED GRAZING LANDS TO CROPLAND WITHOUT PRIOR APPROVAL AS REQUIRED BY LAW SUBJECTS THIS ENTIRE LEASE TO CANCELLATION.
4. SUBLEASING (allowing any other person and/or their livestock to utilize the State land) WITHOUT FILING A FORM AND RECEIVING APPROVAL FROM THE DEPARTMENT MAY SUBJECT THE LEASE TO CANCELLATION. SUBLEASING ON TERMS LESS ADVANTAGEOUS TO THE SUBLESSEE THAN THE TERMS GIVEN BY THE STATE SHALL RESULT IN CANCELLATION.
(a) SUBLEASING FOR MORE THAN TWO YEARS WILL RESULT IN LOSS OF THE PREFERENCE RIGHT.
(b) SUBLEASING FOR MORE THAN THREE YEARS WILL RESULT IN THE LEASE BEING CANCELED. (The department's rules and applicable statutes concerning subleasing and pasturing agreements should be consulted.)
5. REPORTS--Lessee is required to submit reports as requested by the Director, including seeding and production reports. Failure to submit such reports may result in cancellation of the lease.
6. CULTIVATION--In the case of lands leased for agricultural purposes, the lessee hereby agrees to seed and cultivate such land in a husbandman-like manner and to strip farm if the land is subject to soil blowing. The lessee further agrees to keep the land clear of weeds and care for it in accordance with approved farm methods as determined by the state. The state shall have the right to impose reasonable restrictions on all state leases as are necessary to adequately protect the land, water, air or improvements in the area. Grain crops are to be delivered free of charge to the nearest elevator to the credit of the state of Montana on or before the fifteenth of November of each year. Other crops, including hay, are to be disposed of at the going market price unless otherwise directed. If a lessee decides to graze the stubble of harvested crops or hayland or grazes unharvested crops for haylands, he must contact the Department regarding payment for such grazing in classified agricultural lands. The Department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under Section 77-6-507, MCA or the competitive bid amount, whichever is greater. Failure or refusal to pay said rental or to notify the department of such grazing may be cause for cancellation of the lease.

7. **FEDERAL FARM PROGRAM COMPLIANCE**--If a lessee or licensee has his lease or license canceled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payment or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a cropshare, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose of receiving the state's share of the federal farm payments.
8. **IMPROVEMENTS**--The lessee may place a reasonable amount of improvements upon the lands under this lease upon approval of an improvement permit by the Department. A report of proposed improvements, containing such information as the Director may request concerning the cost of the improvements, their suitability for the uses ordinarily made of the land, and their character whether fixed or movable, shall be submitted to the Director before installation thereof on the premises. Failure to obtain approval prior to placement of the improvement may result in such improvements not being recognized by the Department for purposes of reimbursement of such improvements. In addition, placing improvements on state lands without receiving prior approval, may result in cancellation of the lease.
9. **LIENS ON BUILDINGS AND CROPS**--The state shall have a lien upon all buildings, structures, fences and all other improvements, whether movable or not, and also upon all crops growing upon the land for any rentals due the Department.
10. **COMPENSATION FOR IMPROVEMENTS**--(a) If the land under this lease is sold or exchanged to a party other than the present lessee, or is leased to another party while the present lessee owns improvements lawfully remaining thereon, on which the state has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements. If any of the improvements consist of approved breaking (meaning the original plowing of the land) and one year's crop has been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two or more crops have been raised on the land after the breaking thereof, the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators so appointed. The former lessee must initiate arbitration within 60 days of notification from the Department that there is a new lessee or purchaser. Failure to initiate this process within this time period results in all improvements becoming property of the state. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements as ascertained and fixed shall be binding upon both parties; provided, however, that if either party is dissatisfied with the valuation so fixed he may within ten (10) days appeal from their decision to the Director who shall thereupon cause his agent to examine such improvements and whose decision shall be final. The Director shall charge and collect the actual cost of such reexamination to the owner and new lessee or purchaser in such proportion as in his judgment may be demanded.
(b) Upon the termination of a lease, the Department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.
(c) Summer fallowing (necessary cultivation done after the last crop grown) seeding, and growing crops on the land, which have not been harvested prior to March 1 next succeeding the date of sale or at the time of change of lessee, shall be considered as improvements. Their value shall be determined in the same manner as other improvements and shall be taken over by the purchaser or new lessee and paid for by him as other improvements.
11. **ASSIGNMENT OF LEASE**--If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on the forms provided for that purpose by the Director, but no such assignment shall be binding on the state unless the assignment is filed with the Director, approved by him, and the appropriate assignment fees submitted for such assignment. An assignment which is signed by both parties shall be conclusive proof that all payments for improvements have been paid to the assignor by the assignee. The leasehold interest herein may only be transferred to any other party by a properly executed assignment which must be approved by the Director prior to such transfer becoming effective. Until an assignment becomes effective, the Department will consider the lessee listed above to be the lessee for all purposes. There may be no consideration given for the assignment of a lease other than the value of the improvements, if any.
12. **RENEWAL LEASE**--If all rentals due under this lease have been paid, the lessee shall upon making proper application to the Director be entitled to have this lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten years; and if there is no other applicant then offering to lease the land, the lease shall be issued at the minimum rental as determined under statutes then in effect. If there are two or more persons desiring to lease the same tract, the former lessee shall have the preference right to the lease to the extent that he may take the lease at the highest bid made by any other applicant. However, subleasing may cause loss of this renewal right. The department's rules concerning subleasing should be consulted. The lessee desiring to renew the lease must make application to the Department prior to January 28 of the year of expiration. Failure to do so will result in the lease becoming an unleased tract upon expiration, with the loss of the preference right and subject to competitive bidding.
13. **CANCELLATION OF LEASE BY THE STATE**--The Director shall have the power and authority in his discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, for overgrazing or any other misuse of the state lands involved, and for any other cause which in the judgement of the Director makes the cancellation of the lease necessary in order to do justice to all parties concerned, and to protect the interest of the state. Such cancellation shall not entitle the lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the state. Lease cancellation for these causes is subject to appeal as provided in Section 77-6-211, MCA.
14. **LANDS MAY BE SOLD**--The Board of Land Commissioners may in their discretion exchange the lands under this lease for other lands, offer the lands under this lease for sale at any regular public sale of state lands held in the county where the land is situated upon the same terms and in the same manner as land not under lease, subject, however, to the rights of the lessee to compensation for improvements as herein provided; and subject also to the provision that the new owner will not be given possession by the state prior to March 1 next succeeding the date of exchange or sale unless the lease expires prior to that date, except through special agreement with the lessee.
15. **RESERVATION**--The state reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:
(a) **MINERAL AND TIMBER RESERVATION**--All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining or other commercial purposes and all timber and trees are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals or nonminerals mentioned above from any mine or any quarry, pit or diggings situated on said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, sell, remove, use or destroy any such timber dead or alive, or standing or fallen trees without the appropriate permit, license or lease.
(b) **ADDITIONAL RESERVATIONS**--The state reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed or to be constructed by the United States Government in furtherance of the reclamation of arid lands. The state also reserves the right of granting rights-of-way on the above-described land for other purposes. The state also reserves to itself and its representatives and other lessees or permittees the right to enter upon the lands embraced by this lease for the purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto and for any other management or administrative purposes; it also reserves to itself and its permittees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other nonminerals. The state reserves the right to grant licenses, permits or leases for any alternative uses on state lands.
16. **NOXIOUS WEEDS AND PESTS**--The lessee agrees, at his own expense and cost, to keep the land free from noxious weeds, and if noxious weeds are present, then chemical application or other appropriate weed control measures must occur in time to prevent seed-set according to state law and to exterminate pests to the extent as required by the Department. In the event the land described in this lease shall be included in a weed control and weed seed extermination district, the lessee shall be required to comply with the provisions of Section 77-6-114, MCA, which provides as follows. "It shall be the duty of the Board in leasing any agricultural state land to provide in such lease, that the lessee of lands so leased lying within the boundaries of any noxious weed control and weed seed extermination district shall assume and pay all assessments and taxes levied by the board of County Commissioners for such district on such state lands, and such assessments and tax levy shall be imposed on such lessee as a personal property tax and shall be collected by the County Treasurer in the same manner as regular personal property taxes are collected." Failure to comply with this provision when directed to do so by the Department may result in cancellation of the entire lease.

17. **FIRE PREVENTION AND SUPPRESSION**--The lessee assumes all responsibility for carrying on at his own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the land. The lessee is not responsible for the suppression of or damages resulting from a fire caused by a general recreational user, except that he or she shall make reasonable efforts to suppress the fire or report it to the proper firefighting authority or both, as circumstances dictate.
18. **UNLAWFUL USE OF LANDS OR PREMISES**--If any part of the lands or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this state or the United States, such unlawful use shall in the discretion of the Board of Land Commissioners constitute sufficient reason for the cancellation of the lease. The lessee shall not utilize or allow to be utilized any state land under the lease for purposes other than the purpose for which it is granted.
19. **SURRENDER OF THE PREMISES UPON TERMINATION OF THE LEASE**--The lessee shall upon the expiration, cancellation, or termination of this lease peaceably yield up and surrender the possession of the land to the state of Montana or its agents or to subsequent lessees or grantees.
20. **INCREASED RENTAL**--If the Montana Legislature or the Board of Land Commissioners raises the rentals on state grazing or agriculture lands during the term of this lease, the lessee agrees to pay such increased rental for the years after such increase becomes effective. Also, the state reserves the right to determine the grazing capacity of said lands annually or from time to time as the Director in his discretion shall determine necessary and increase or decrease the rental thereon accordingly. In the event the Director should increase or decrease the carrying capacity of said lands, the lessee agrees to pay an increased or decreased rental based upon the Director's determination, and to adjust livestock numbers accordingly.
21. **INDEMNIFICATION**--The lessee agrees to save harmless and indemnify the State of Montana for any losses to the state occasioned by the levy of any penalties, fines, charges or assessments made against the above lands or crops grown upon the lands, by the U.S. Government because of any violation of or noncompliance with, any federal farm program or other acts by the lessee.
22. **LAWS AND RULES**--The lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted.
23. **MULTIPLE-USE MANAGEMENT**--Pursuant to the obligations imposed by law, to administer state lands under a multiple-use management concept, the state reserves the right to dispose of any and all interests in the above-described land, subject, however to such interests granted to the lessee under the terms of this lease. The lessee may not close the land under lease at any time to the public for general recreational use," as defined in A.R.M. 36.25.145, without advanced written permission of the Department. Permission to close lands categorically closed under A.R.M. 36.25.150 is hereby granted and no further permission is required.
24. **LEASE WITHDRAWAL**--All or any portion of the land under lease may be withdrawn from this lease by the state. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the Board of Land Commissioners.
25. **SPECIAL CONDITIONS**--

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has

hereunto set his hand and affixed the seal of the said Board of Land Commissioners this _____ day of APR 2 2015, 20____.

Betty Hodeler

LESSEE SIGNATURE

JOHN E. TUBBS

DIRECTOR, DEPT OF NATURAL RESOURCES & CONSERVATION

by: _____

Amanda Taylor

by: _____

PO Box 908

ADDRESS OR BOX NO.

Bozeman *MT* *59721*

CITY STATE ZIP CODE

406-788-5269

PHONE NUMBER



AGRICULTURAL & GRAZING LEASE OF STATE LANDS

This lease is entered into by the State of Montana, Board of Land Commissioners and Department of Natural Resources & Conservation (Department) as lessor, and the person herein named, as the lessee.

Date this lease takes effect: March 01, 2020 Customer #: 141488

Name of Lessee: AMERICAN PRAIRIE FOUNDATION

Address or Box No.: ATTN: ACCOUNTING DEP PO BOX 908

City/State/Zip: BOZEMAN MT 59771

Land Located in Phillips County.

DESCRIPTION	Sec.	Twp.	Rge.	Acres
ALL	16	23N	31E	640.00

Total number of leased acres, 640 more or less belonging to Common Schools Grant.

Grazing Acres: 640 Agricultural Acres: 0 Unsuitable Acres: 0
Other Acres 0 Hayland Acres 0 CRP Acres 0

Terms of Grazing Use and Rental Rate: Minimum

Terms of Agricultural Use and Rental Rate: Minimum

Purpose for which the land is leased: GRAZING

Term of lease: 10 years Date of expiration: February 28, 2030

THIS LEASE HAS A CARRYING CAPACITY OF 104 ANIMAL UNIT MONTHS. THE LESSEE SHALL NOT EXCEED SUCH CARRYING CAPACITY. THE ANNUAL GRAZING RENTAL IS BASED ON THIS CARRYING CAPACITY.

The State of Montana, in consideration of the payment of rentals as specified in this lease and the mutual agreements contained in this lease hereby leases the above-described lands to the lessee(s) named above.

The lessee(s) in consideration of the lease of the above-described lands and the mutual agreements contained in this lease hereby agrees to pay the rentals as specified in the lease and to perform all the conditions as specified in this lease, the applicable rules and the applicable statutes.

The parties to this lease mutually agree to the following terms and conditions:

- ALL GRAZING RENTALS ARE DUE BY MARCH 1 EACH YEAR AND FAILURE TO PAY BY APRIL 1 AUTOMATICALLY CANCELS THE ENTIRE LEASE. A NOTICE OF RENTAL DUE OR ANY OTHER CORRESPONDENCE OR NOTICE FROM THE LESSOR WILL BE SENT TO THE ABOVE ADDRESS ONLY, UNLESS A CHANGE OF ADDRESS IS REQUESTED IN WRITING, SIGNED BY THE LESSEE AND RECORDED BY THE LESSOR.
- ALL AGRICULTURAL RENTALS ARE DUE ON NOVEMBER 15 OF THE YEAR IN WHICH CROPS OR HAY ARE HARVESTED. IF THE RENTAL IS NOT PAID BY DECEMBER 31 OF THE SAME YEAR, THE ENTIRE LEASE IS CANCELED.
- CONVERSION OF CLASSIFIED GRAZING LANDS TO CROPLAND WITHOUT PRIOR APPROVAL AS REQUIRED BY LAW SUBJECTS THIS ENTIRE LEASE TO CANCELLATION.
- SUBLEASING (allowing any other person and/or their livestock to utilize the State land) WITHOUT FILING A FORM AND RECEIVING APPROVAL FROM THE DEPARTMENT MAY SUBJECT THE LEASE TO CANCELLATION. SUBLEASING ON TERMS LESS ADVANTAGEOUS TO THE SUBLESSEE THAN THE TERMS GIVEN BY THE STATE SHALL RESULT IN CANCELLATION.
(a) SUBLEASING FOR MORE THAN TWO YEARS WILL RESULT IN LOSS OF THE PREFERENCE RIGHT.
(b) SUBLEASING FOR MORE THAN THREE YEARS WILL RESULT IN THE LEASE BEING CANCELED. (The department's rules and applicable statutes concerning subleasing and pasturing agreements should be consulted.)
- REPORTS--Lessee is required to submit reports as requested by the Director, including seeding and production reports. Failure to submit such reports may result in cancellation of the lease.
- CULTIVATION--In the case of lands leased for agricultural purposes, the lessee hereby agrees to seed and cultivate such land in a husbandman-like manner and to strip farm if the land is subject to soil blowing. The lessee further agrees to keep the land clear of weeds and care for it in accordance with approved farm methods as determined by the state. The state shall have the right to impose reasonable restrictions on all state leases as are necessary to adequately protect the land, water, air or improvements in the area. Grain crops are to be delivered free of charge to the nearest elevator to the credit of the state of Montana on or before the fifteenth of November of each year. Other crops, including hay, are to be disposed of at the going market price unless otherwise directed. If a lessee decides to graze the stubble of harvested crops or hayland or grazes unharvested crops for haylands, he must contact the Department regarding payment for such grazing in classified agricultural lands. The Department shall determine the number of animal unit months of grazing available on the land and shall bill the lessee or licensee for the grazing use based on the minimum grazing rental established under Section 77-6-507, MCA or the competitive bid amount, whichever is greater. Failure or refusal to pay said rental or to notify the department of such grazing may be cause for cancellation of the lease.

7. **FEDERAL FARM PROGRAM COMPLIANCE**--If a lessee or licensee has his lease or license canceled or terminated or for any reason is no longer the lessee or licensee, then he shall no longer be entitled to any payment or benefits from any federal farm program. If such a lessee or licensee does receive any such federal payment or benefit in connection with the state lease or license he shall be liable to the state for any amounts received after he is no longer recognized as the lessee or licensee. The lessee or licensee of any state land shall comply with the provisions of the federal farm program when applicable and shall indemnify the state against any loss occasioned by noncompliance with such provisions. In addition to any rentals provided in the lease or license, the state shall receive the same share as it receives for crops of all payments pursuant to any act or acts of the congress of the United States in connection with state lands under lease or license and the crops thereof. The state shall be entitled to such amounts annually for all leases based upon a cropshare, even if the lease states that the rental is based upon a crop share/cash basis, whichever is greater. All such leases shall be considered crop share leases for the purpose of receiving the state's share of the federal farm payments.
8. **IMPROVEMENTS**--The lessee may place a reasonable amount of improvements upon the lands under this lease upon approval of an improvement permit by the Department. A report of proposed improvements, containing such information as the Director may request concerning the cost of the improvements, their suitability for the uses ordinarily made of the land, and their character whether fixed or movable, shall be submitted to the Director before installation thereof on the premises. Failure to obtain approval prior to placement of the improvement may result in such improvements not being recognized by the Department for purposes of reimbursement of such improvements. In addition, placing improvements on state lands without receiving prior approval, may result in cancellation of the lease.
9. **LIENS ON BUILDINGS AND CROPS**--The state shall have a lien upon all buildings, structures, fences and all other improvements, whether movable or not, and also upon all crops growing upon the land for any rentals due the Department.
10. **COMPENSATION FOR IMPROVEMENTS**--(a) If the land under this lease is sold or exchanged to a party other than the present lessee, or is leased to another party while the present lessee owns improvements lawfully remaining thereon, on which the state has no lien for rentals or penalties, as herein provided, and which he desires to sell and dispose of, such purchaser or new lessee shall pay the former lessee the reasonable value of such improvements. If any of the improvements consist of approved breaking (meaning the original plowing of the land) and one year's crop has been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two or more crops have been raised on the land after the breaking thereof, the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee or purchaser are unable to agree on the reasonable value of such improvements, such value shall be ascertained and fixed by three arbitrators, one of whom shall be appointed by the owner of the improvements, one by the new lessee or purchaser and the third by the two arbitrators so appointed. The former lessee must initiate arbitration within 60 days of notification from the Department that there is a new lessee or purchaser. Failure to initiate this process within this time period results in all improvements becoming property of the state. The reasonable compensation that such arbitrators may charge for their services shall be paid in equal shares by the owner of the improvements and the purchaser or new lessee. The value of such improvements as ascertained and fixed shall be binding upon both parties; provided, however, that if either party is dissatisfied with the valuation so fixed he may within ten (10) days appeal from their decision to the Director who shall thereupon cause his agent to examine such improvements and whose decision shall be final. The Director shall charge and collect the actual cost of such reexamination to the owner and new lessee or purchaser in such proportion as in his judgment may be demanded.
(b) Upon the termination of a lease, the Department may grant a license to the former lessee to remove the movable improvements from the land. Upon authorization, the movable improvements must be removed within 60 days or they become the property of the state unless the department for good cause grants additional time for the removal. The department shall charge the former lessee for the period of time that the improvements remain on the land after the termination of the lease.
(c) Summer fallowing (necessary cultivation done after the last crop grown) seeding, and growing crops on the land, which have not been harvested prior to March 1 next succeeding the date of sale or at the time of change of lessee, shall be considered as improvements. Their value shall be determined in the same manner as other improvements and shall be taken over by the purchaser or new lessee and paid for by him as other improvements.
11. **ASSIGNMENT OF LEASE**--If all rentals due have been paid and the terms of this lease have not been violated, the lease may be assigned on the forms provided for that purpose by the Director, but no such assignment shall be binding on the state unless the assignment is filed with the Director, approved by him, and the appropriate assignment fees submitted for such assignment. An assignment which is signed by both parties shall be conclusive proof that all payments for improvements have been paid to the assignor by the assignee. The leasehold interest herein may only be transferred to any other party by a properly executed assignment which must be approved by the Director prior to such transfer becoming effective. Until an assignment becomes effective, the Department will consider the lessee listed above to be the lessee for all purposes. There may be no consideration given for the assignment of a lease other than the value of the improvements, if any.
12. **RENEWAL LEASE**--If all rentals due under this lease have been paid, the lessee shall upon making proper application to the Director be entitled to have this lease renewed at any time within thirty (30) days prior to its expiration for an additional period of not exceeding ten years; and if there is no other applicant then offering to lease the land, the lease shall be issued at the minimum rental as determined under statutes then in effect. If there are two or more persons desiring to lease the same tract, the former lessee shall have the preference right to the lease to the extent that he may take the lease at the highest bid made by any other applicant. However, subleasing may cause loss of this renewal right. The department's rules concerning subleasing should be consulted. The lessee desiring to renew the lease must make application to the Department prior to January 28 of the year of expiration. Failure to do so will result in the lease becoming an unleased tract upon expiration, with the loss of the preference right and subject to competitive bidding.
13. **CANCELLATION OF LEASE BY THE STATE**--The Director shall have the power and authority in his discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, for overgrazing or any other misuse of the state lands involved, and for any other cause which in the judgement of the Director makes the cancellation of the lease necessary in order to do justice to all parties concerned, and to protect the interest of the state. Such cancellation shall not entitle the lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due the state. Lease cancellation for these causes is subject to appeal as provided in Section 77-6-211, MCA.
14. **LANDS MAY BE SOLD**--The Board of Land Commissioners may in their discretion exchange the lands under this lease for other lands, offer the lands under this lease for sale at any regular public sale of state lands held in the county where the land is situated upon the same terms and in the same manner as land not under lease, subject, however, to the rights of the lessee to compensation for improvements as herein provided; and subject also to the provision that the new owner will not be given possession by the state prior to March 1 next succeeding the date of exchange or sale unless the lease expires prior to that date, except through special agreement with the lessee.
15. **RESERVATION**--The state reserves all rights and interests to the land under this lease other than those specifically granted by this lease. These reservations include but are not limited to the following:
(a) **MINERAL AND TIMBER RESERVATION**--All coal, oil, gas and other minerals and all deposits of stone, gravel, sand, gems, and other nonminerals valuable for building, mining or other commercial purposes and all timber and trees are excepted from the operation of this lease. The lessee shall not open any mine or quarry or work or dig any of the minerals or nonminerals mentioned above from any mine or any quarry, pit or diggings situated on said land whether such mine, quarry, pit or diggings was open at the date of this lease or not. The lessee shall not cut, sell, remove, use or destroy any such timber dead or alive, or standing or fallen trees without the appropriate permit, license or lease.
(b) **ADDITIONAL RESERVATIONS**--The state reserves a right-of-way to the United States over the land above-described for ditches, canals, tunnels, telephone and telegraph, and power lines now constructed or to be constructed by the United States Government in furtherance of the reclamation of arid lands. The state also reserves the right of granting rights-of-way on the above-described land for other purposes. The state also reserves to itself and its representatives and other lessees or permittees the right to enter upon the lands embraced by this lease for the purpose of prospecting and exploring for minerals and for the purpose of mining, drilling for, developing and removing such minerals and for carrying on all operations related thereto and for any other management or administrative purposes; it also reserves to itself and its permittees the right to enter upon the said lands for the purpose of cutting and removing timber, wood and other forest products, and for removing gravel, sand, building stone, and other nonminerals. The state reserves the right to grant licenses, permits or leases for any alternative uses on state lands.
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18. UNLAWFUL USE OF LANDS OR PREMISES--If any part of the lands or premises under this lease are used or allowed or permitted to be used for any purpose contrary to the laws of this state or the United States, such unlawful use shall in the discretion of the Board of Land Commissioners constitute sufficient reason for the cancellation of the lease. The lessee shall not utilize or allow to be utilized any state land under the lease for purposes other than the purpose for which it is granted.
19. SURRENDER OF THE PREMISES UPON TERMINATION OF THE LEASE--The lessee shall upon the expiration, cancellation, or termination of this lease peaceably yield up and surrender the possession of the land to the state of Montana or its agents or to subsequent lessees or grantees.
20. INCREASED RENTAL--If the Montana Legislature or the Board of Land Commissioners raises the rentals on state grazing or agriculture lands during the term of this lease, the lessee agrees to pay such increased rental for the years after such increase becomes effective. Also, the state reserves the right to determine the grazing capacity of said lands annually or from time to time as the Director in his discretion shall determine necessary and increase or decrease the rental thereon accordingly. In the event the Director should increase or decrease the carrying capacity of said lands, the lessee agrees to pay an increased or decreased rental based upon the Director's determination, and to adjust livestock numbers accordingly.
21. INDEMNIFICATION--The lessee agrees to save harmless and indemnify the State of Montana for any losses to the state occasioned by the levy of any penalties, fines, charges or assessments made against the above lands or crops grown upon the lands, by the U.S. Government because of any violation of or noncompliance with, any federal farm program or other acts by the lessee.
22. LAWS AND RULES--The lessee agrees to comply with all applicable laws and rules in effect at the date of this lease, or which may, from time to time, be adopted.
23. MULTIPLE-USE MANAGEMENT--Pursuant to the obligations imposed by law, to administer state lands under a multiple-use management concept, the state reserves the right to dispose of any and all interests in the above-described land, subject, however to such interests granted to the lessee under the terms of this lease. The lessee may not close the land under lease at any time to the public for general recreational use, as defined in A.R.M. 36.25.145, without advanced written permission of the Department. Permission to close lands categorically closed under A.R.M. 36.25.150 is hereby granted and no further permission is required.
24. LEASE WITHDRAWAL--All or any portion of the land under lease may be withdrawn from this lease by the state. The lessee shall be entitled to reasonable compensation for any improvements thereon. The lands may be withdrawn to promote the duties and responsibilities of the Board of Land Commissioners.
25. SPECIAL CONDITIONS--

IN WITNESS WHEREOF, The State of Montana and the lessee have caused this lease to be executed in duplicate and the Director of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the State Board of Land Commissioners of the State of Montana, has

hereunto set his hand and affixed the seal of the said Board of Land Commissioners this _____ day of JUN 19 2020, 20_____.

Heather Guiner
LESSEE SIGNATURE
Heather Guiner, CFO
PO BOX 908
ADDRESS OR BOX NO.

Bozeman MT 59771
CITY STATE ZIP CODE

406-585-4600
PHONE NUMBER

JOHN E. TUBBS

DIRECTOR, DEPT OF NATURAL RESOURCES & CONSERVATION

by: Amanda Taylor

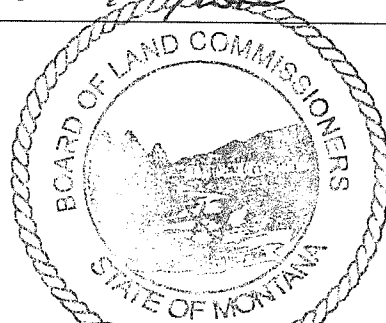


EXHIBIT 27-3

I, Carl Seilstad, after being first duly sworn do affirm and state as follows:

1. I, Carl Seilstad, am over the age of 18 years and have personal knowledge of the facts contained herein.
2. My address is: 712 W. Main St., Lewistown, MT 59457.
3. I am a duly elected member of the Fergus County Board of County Commissioners of Fergus County Montana.
4. Fergus County is situated in the center of Montana and is home to 11,500 people; it is also the location of part of the Upper Missouri River Breaks National Monument and the Upper Missouri National Wild and Scenic River.
5. The American Prairie Reserve (APR) owns and controls a large area of land in Fergus County along both of these areas.
6. The APR's potential removal of this land from production agriculture is greatly concerning to the County.
7. Ranches like the PN Ranch that APR purchased in the northern part of Fergus County are crucial to our local economy and the sustainability of our small towns, including Lewistown, Denton, and Winifred.
8. Agriculture has long been the primary industry in Fergus County and it is what a great deal of our community members rely upon to make a living – both those who are directly involved in production agriculture and those who work in the businesses that support agriculture.
9. Taking a ranch such as the PN out of production hurts the small businesses, schools, and sense of community here in Fergus County.

10. APR may believe that the lands it manages will draw tourists to the area, but so far, our communities have seen little to no benefit from this.
11. Even if tourism increases as a result of APR's efforts, this still threatens to greatly change our communities in ways that are not always desirable.
12. Not only is APR changing our communities, but it has also failed to follow some of the directives for utilizing state and federal lands in other counties and it is a concern APR will do the same in our county.
13. These actions are of great concern to our county because these lands are cherished by those who live here and they are important to the viability of our communities.
14. As elected representatives of the people of Fergus County, we represent the local public interest of our citizens. We, as a commission believe it is in the public interest to grant a stay in this case until the merits of the appeal can be heard.

 8/25/2022
Carl Seilstad
Fergus County Commissioner