



Montana Natural Resource Coalition of Counties, Inc.

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December 2, 2025

Honorable Doug Burgum
Secretary of the Interior
U.S. Department of the Interior
1849 C Street, NW - Rm 6154
Washington, DC 20240

William Groffy
Acting Director
Bureau of Land Management
1849 C Street, NW - MS 2134-LM
Washington, DC 20240

Re: 5 USC § 553(e) Petition for Rulemaking: Vacatur of BLM Record of Decision, American Prairie Reserve Bison Preference Right Permits, and Amendment to HiLine RMP for Consistency with General Regulations at 43 CFR § 4100.0-5.

Via: Certified Mail/Return Receipt, Hand Delivery, and Electronic Submission

Dear Secretary Burgum:

Through this correspondence the Montana Natural Resource Coalition of Counties (MtNRC) is submitting its Petition for Administrative Rulemaking (PAR) requesting Vacatur of a July 2022 BLM Record of Decision (ROD)¹ and amendment of the HiLine Montana Bureau of Land Management Resource Management Plan (HiLine RMP).²

As demonstrated in this PAR, the Secretary of the Department of the Interior (Secretary) relied upon an illegitimately expanded definition of domestic livestock and flawed reasoning to issue seven Preference Right Permits (PRP) to the American Prairie Reserve (APR) for grazing of bison in Chiefly Valuable for Grazing District 1 (CVG District) under the General Grazing Administration Regulations at 43 CFR § 4100.

Because bison cannot be defined as livestock under the general grazing regulations at 43 CFR § 4100.0-5 and the Secretary relied upon the expanded definition in his July 2022 ROD to conclude that APR is a qualified applicant to receive grazing preference under the Taylor Grazing Act at 43 USC § 315 b, the APR PRPs must be vacated and the HiLine RMP amended to remove the words “*bison, llamas, and alpacas*.”

MtNRC’s investigation into the APR PRP procedural process reveals that BLM has issued permits for wildlife grazing in CVG Districts in the states of Colorado, New Mexico, North and South Dakota and Wyoming.

¹ [Notice of Final Decision and Finding of No Significant Impact](#). American Prairie Reserve Bison Change of Use Environmental Assessment. DOI-BLM-MT-L010-2018-0007-EA. July 28, 2022.

² [HiLine District Office Approved Resource Management Plan](#). BLM/MT/PL-15/012+1610. September 15, 2015.

Given that since 2017 the United States has lost 17 percent of its cattle ranches and the domestic cattle herd is at a 75-year low,³ the threat of competition, incompatibility of wild bison grazing, and impact to the domestic livestock industry of the United States as a result of rewilding on TGA CVG lands should be investigated. This is particularly the case as incorporation of the expanded definition(s) of domestic livestock into BLM Resource Management Plans and flawed NEPA processes foreseeably set both a model and precedent for other BLM offices across the eleven state, 135-million-acre area managed by BLM.

MtNRC believes that the rulemaking actions proposed by this PAR could expeditiously be accomplished by applying the *Compliance Factors*⁴ and the *Good Cause Exception*⁵ of the Administrative Procedures Act (APA)⁶ identified in memoranda by the White House Office of Information and Regulatory Affairs (OIRA).

This PAR conforms to the statutory requirements at 5 USC § 553(e) and Department of Interior Regulations at [43 CFR § 14.2](#) and has been reviewed by the law firm Mohrman, Kaardal, and Erickson, LLP of Minneapolis, Minnesota.

Thank you in advance for the time taken to review this rulemaking proposal and agreeing to meet with MtNRC.

Sincerely,



Ross Butcher

cc: Hon. G. Gianforte - Governor of Montana
Hon. S. Daines - Senator Montana
Hon. K. MacGregor - DOI Deputy Secretary
K. Budd-Falen - DOI Deputy Assistant Secretary
M. Schafle - DOI Director Congressional and Legislative Affairs
R. Hoffmann - DOI/BLM Sr. Advisor BLM
A. Knudsen - AG of Montana
A. Kaster - Director Montana DNRC
MtNRC Directors

The Montana Natural Resource Coalition of Counties (MtNRC) is an IRS 501(c)(3) association of county governments who use their state constitutional and statutory authorities to engage federal agencies during administrative actions at the county level.

MtNRC operates as an informal governmental instrumentality that is entirely funded and exclusively governed by sitting Montana county commissioners. Collectively, the coalition maintains jurisdiction over 65,897.6 mi² of land and natural resources, which constitutes 45% of the state of Montana. Current MtNRC members are Beaverhead, Blaine, Carter, Fallon, Fergus, Flathead, Garfield, Madison, McCone, Musselshell, Petroleum, Phillips, Pondera, Powder River, Prairie, Richland, Roosevelt, Sweet Grass, Valley, Wibaux, and Yellowstone Counties.

³ [USDA Plan to Fortify the American Beef Industry: Strengthening Ranches, Rebuilding Capacity, And Lowering Costs for Consumers](#). October 20, 2025.

⁴ Memorandum M-25-28. [Guidance Implementing the President's Memorandum Direction the Repeal of Unlawful Regulations](#). Jeffrey Clark, Acting Administrator Office of Information and Regulatory Affairs. May 7, 2025.

⁵ Memorandum M-25-36. [Streamlining the Review of Deregulatory Actions](#). Jeffrey Clark, Acting Administrator Office of Information and Regulatory Affairs. October 21, 2025.

⁶ Administrative Procedures Act. 5 U.S.C. § 553(b)(B).

PETITION FOR RULEMAKING

5 USC § 553(e); 43 CFR § 14.2
*Vacatur of BLM Record of Decision
and
Amendment to the HiLine BLM
Resource Management Plan*

BACKGROUND

History of the TGA CVG District System -

Between 1935 and 1946 the Executive Branch and the Congress withdrew and reserved 135 million acres of marginal public lands from an eleven-state area of the Western United States for grazing of domestic livestock. The Chiefly Valuable for Grazing District System (CVG Districts) were cadastrally mapped and geopolitically subdivided into reservations that were set aside for land conservation, stabilization, and safeguarding of a domestic livestock industry dependent upon the range, with the overarching goal of ensuring a stable food supply chain for the United States.⁷

In 1936, administration of the CVG District program was delegated to the Division of Grazing (later the Grazing Service, and in 1946 the Bureau of Land Management). The controlling authorities that regulate issuance of preference-right domestic livestock grazing permits in the CVG District and allotment system include the Taylor Grazing Act, as adopted in the Federal Land Policy Management Act (FLPMA).

CVG Districts as Reservations under the FPA -

The Federal Power Act of June 1920 (FPA) defines *reservations* as “lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws.” The FPA definition of “reservations,” recognized through supreme court case law and Memoranda by the Solicitor of the Interior,⁸ distinguish only national monuments, national parks, and public lands from those lands withdrawn and reserved for a designated use.

The TGA CVG District system covers a vast, 135-million-acre area of BLM managed lands across [eleven western states](#). The preeminent and statutory Principal Use for the CVG Districts is grazing of domestic livestock through preference right permits issued under the BLM base property/commensurate grazing management system. Under the TGA, FLPMA, and other statutes, the Secretaries of the Interior and Agriculture are directed to provide for the protection, administration, regulation, and improvement of CVG Districts created under TGA Section 315 and through Executive Orders.

⁷ 43 U.S.C. §1701(a)(12) “The Congress declares that it is the policy of the United States that – (12) the public lands be managed in a manner which recognizes the Nation’s need for domestic sources of minerals, food, timber, and fiber from the public lands.”

⁸ [Memorandum M-37005](#). *Whether Public Lands Withdrawn by Executive Orders 6910 and 6964 or Established as Grazing Districts are “Reservations” within the Meaning of Section 4(e) of the Federal Power Act*. Solicitor of the Interior. January 19, 2001.

In his detailed 2001 Opinion the Solicitor of the Interior concluded that TGA CVG Districts are reservations as defined by the FPA:

"most enduringly public lands have been defined as those lands subject to sale and other disposal under the general land laws"

and,

"Public lands" means such lands and interests in lands owned by the United States as are subject to private appropriations and disposal under public land laws. It shall not include "reservations" as hereinafter defined. "Reservations" means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in land owned by the United States and withdrawn, reserved or withheld from private appropriation and disposal under the public land laws..."

and,

"Although the story is complex in its details, as discussed in the next few paragraphs, the bottom line for purposes of the legal question before me is simple: TGA lands are "withdrawn, reserved or withheld from private appropriation and disposal under the public land laws" in terms that fit the definition of "reservations" in the FPA." 16 USC § 796(2).

Courts have also affirmed that as long as the CVG District boundaries remain intact, that there is a legal presumption that CVG Districts are reserved for the preeminent principal use of domestic livestock grazing.⁹ When adopting the Federal Land Management and Policy Act the Congress did not repeal or modify the TGA grazing provisions, and expressly preserved the classifications and withdrawals that led to the creation of grazing districts.^{10,11}

The Reservation designation, cadastrally demarcated boundaries, and permanently appropriated nature of CVG District lands confers a preeminent first-in-time, first-in-right preference-right land use prerogative similar to Areas of Critical Environmental Concern, Wilderness Study Areas, National Petroleum Reserve Lands, Wild and Scenic River Designations, and other reservations for Resource Management.¹²

In a comprehensive policy survey filed in public record during the BLM Conservation, Landscape and Health Rulemaking, omission of TGA CVG Reservation Maps and any statutory discussion of the TGA from BLM Resource Management Plans and USDA Forest Plans was determined to be the leading factor toward decay of the TGA CVG District system:

⁹ [*PLC v. Babbitt*](#), 167 F.3d 1287, 1308 (10th Cir. 1999), affirmed on other grounds, 529 U.S. 728 (2000).; *NRDC v. Hodel*, 62 F. Supp. 1945, 1054 (D. Nev.1985) - "The Mandate of Congress in PRIA was that livestock use was to continue as an important use of public lands; they should be managed to maximize productivity for livestock and other specified uses."

¹⁰ [*Clarification of M-37008*](#). "All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act (Oct 21, 1976) shall remain in full force and effect until modified under the provisions of this Act or other applicable law." Solicitor of the Interior. May 13, 2003.

¹¹ [*The Repurposing of Federally Reserved Taylor Grazing Districts For Wildlife Rewilding: A Statutory, Administrative and Legal Analysis*](#). "Section 1.2.4. **CVG Districts as Reservations under the Federal Power Act of 1920**. Stillwater Technical Solutions. April 22, 2020.

¹² [*Clarification of M-37008*](#). "Congress set apart the chiefly-valuable-for-grazing classification from other classifications by requiring the Secretary to adequately safeguard grazing privileges."

61 “Administrative repackaging of the Planning 2.0 Rule as the Comprehensive
62 Landscape and Health Rule signals a need for collective advocacy and
63 active engagement with Secretary of the Interior and BLM Director as they
64 align their policymaking with the statutory requirements of the public land
65 laws of the United States. To that end, we offer the following for
66 consideration by county governments, the Congress, and the interested
67 public:

68 “Facilitate and support legislation that requires the
69 Secretaries of the Interior and Agriculture to recognize,
70 inventory, and incorporate Taylor Grazing Act Chiefly
71 Valuable for Grazing District Reservation Maps in all
72 forest and Resource Management Plans...”

73 and,

74 “Encourage states and counties host to Taylor Grazing
75 Act Chiefly Valuable for Grazing Districts to identify and
76 incorporate TGA CVG District maps in all state, county,
77 and local land use plans...”¹³

78 *Conservation Ideology, The APR, and Conflicts with TGA CVG District System -*

79 The precursor to the American Prairie Reserve (APR) is the American Prairie Foundation
80 (APF). APF was founded in June 2001 with assistance from the multinational environmental
81 conglomerate World Wildlife Fund (WWF) and the Northern Plains Conservation Network
82 (NPCN).¹⁴

83 In 2002 APF partnered with WWF to launch the American Prairie Restoration Project
84 (APRP), a multistate wildlife rewilding program with a stated goal of combining Federal,
85 State, and private lands, with the US Fish and Wildlife Service managed Charles M. Russell
86 Wildlife Refuge into a single wild bison reserve.

87 APR’s stated mission is to “create the largest nature reserve in the continental United States,
88 a refuge for people and wildlife preserved forever as part of America’s heritage.”¹⁵ APR’s
89 central purpose, organizational structure, funding sources, and ideologic trajectory to achieve
90 landscape level rewilding clearly distinguishes it as not being engaged in the domestic
91 livestock business as contemplated by the TGA CVG preference right permitting system.

92 The fact that APR is not meaningfully engaged in the domestic livestock industry, and that
93 bison are not considered domestic livestock for purposes of receiving preference right
94 grazing privileges means that APR cannot be considered to be a qualified applicant for
95 purposes of receiving preference right grazing privileges in Montana TGA CVG District 1.

¹³ [Survey of the History, Background, and Compliance of the Proposed BLM Landscape, Conservation and Health Rule with the Public Land Laws of the United States](#). The Boundary Line Foundation. June 29, 2023.

¹⁴ [The History, Ideology, and Multinational Participants of the Landscape Conservation Movement](#). MacLeod, Norman, et. al. Reprinted from [Repurposing of Federally Reserved Taylor Grazing Districts For Wildlife Rewilding: A Statutory, Administrative and Legal Analysis](#). Stillwater Technical Solutions. April 22, 2020. (Attachment A)

¹⁵ [Correspondence. APR CEO Sean Gerrity to Montana Governor Steve Bullock and Department of Fish Wildlife and Parks Director Martha Williams](#). September 5, 2017. (Attachment B)

PURPOSE AND NEED FOR RULEMAKING

Legal Basis for Petition and Statement of Issues -

- In the 1930s and 1940s the Congress and Department of the Interior established the TGA base property/preference-right grazing system that gives statutory preference to local interests engaged in the domestic livestock industry for grazing domestic livestock in CVG Districts. In a 1978 rulemaking the Secretary narrowly defined by regulation the type of livestock for which preference right grazing permits under the TGA may be issued: *cattle, sheep, horses, burros, and goats*.¹⁶
- A plain rendering of the TGA statutes demonstrate that CVG Districts are to be administrated for land improvement, that preference right privileges are to be granted to US citizens engaged in the domestic livestock business, and that when issuing preference right grazing permits, the Secretary is to adequately safeguard grazing privileges of those in the CVG District.¹⁷
- During the 2015 amendment of the HiLine Montana BLM Resource Management Plan, the Secretary of the Interior illegitimately expanded the 1978 regulatory definition of “*domestic livestock*” to include bison, llamas, and alpacas.¹⁸
- On July 28, 2022, in a NEPA Record of Decision¹⁹ that relied upon the expanded domestic livestock definition, the Malta BLM Field Office granted seven PRPs to the American Prairie Reserve for grazing of bison on allotments within Montana CVG District 1.²⁰
- The intelligible principle of statutory construction precludes administrative expansion of the definition of domestic livestock outside of congressional action or formal APA rulemaking processes. Yet on September 15, 2015, BLM engaged in an illegitimate rulemaking by amending the HiLine Resource Management Plan to include *bison, llamas, and alpacas*.
- The Secretary’s action in expanding the definition of domestic livestock in the HiLine RMP and ROD and issuing the APR PRPs sets agency policy and can be shown to be national precedent for CVG Districts across eleven western states and the 135 million acres of CVG Districts managed by BLM, as in the ROD the Secretary references similar permitting actions in Colorado, New Mexico, North and South Dakota and Wyoming as justification for his decision.²¹

¹⁶ [43 Fed. Reg. No. 129 at 29068](#). Wednesday, July 5, 1978. Codified at 43 CFR § 4100.0-5. (Attachment C)

¹⁷ 43 USC § 315b; MCA 76-16-102. Purpose.

¹⁸ [HiLine Montana Resource Management Plan](#), Excerpt - Pages 3-26 and 3-27. September 2015. (Attachment D)

¹⁹ [July 28, 2022 ROD](#). Excerpt: Protest Response #1. (Attachment E)

²⁰ [Map 1. CVG Districts](#), Regional Land Use and Geopolitical Boundaries, Montana. Stillwater Technical Solutions. May, 2020.

²¹ [July 28, 2022 ROD](#). Rational. Pg. 8-9.

- Administrative expansion of the definition of livestock to justify the PRP permits for grazing of wild indigenous animals in CVG District lands is impacting other PRP landowners engaged in the livestock business, sets a dangerous precedent, and foreseeably will disrupt the US food supply over time through destabilization of the domestic cattle industry and communities on BLM and the USDA Forest lands dependent upon the range.
- The *Special Grazing and Lease Regulations* at 43 CFR § 4130.6-4 allow “*other terms and conditions*” (43 CFR 4130.3–2 and 43 CFR 4130.6) that may provide the Secretary and APR with an alternate regulatory pathway to continue grazing of privately owned, indigenous bison. This option would require demonstration that bison grazing is consistent with the multiple-use objectives of the Federal Land Policy and Management Act.

APPLICATION OF AUTHORITIES

I. Expansion of the definition of “domestic livestock” in the 2015 BLM HiLine Resource Management Plan to include bison, llamas, and alpacas constitutes a rulemaking under Executive Order 12866:

- a. Section 3 (d) “Regulation” or “Rule” *means an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law...or prescribe law or policy, or describe the procedure of practice requirements of an agency.*

and,

- b. “Regulatory action” *means any substantive action by an agency...that promulgates or is expected to lead to the promulgation of a final rule or regulation...*”

II. The decision to issue the APR Preference Right Permits relies on a nullified 1976 DOI Administrative Court Decision and an illegitimately expanded definition of domestic livestock from the 2015 BLM HiLine Resource Management Plan:

- a. When justifying whether bison qualify as livestock for the purpose of issuing seven APR preference right permits, the ROD references a September 25, 1976 decision by Administrative Law Judge Harvey Sweitzer:

“The issue of whether bison may qualify as ‘livestock’ for which grazing permits may be issued under the TGA was addressed by the Department of the Interior through the Office of Hearings and Appeals Administrative Law Judge Harvey C. Sweitzer in a Decision issued on September 25, 1976, in the case of Hampton Sheep Co. v. Bureau of Land Management, Docket No. Wyoming 1-71-1. That Decision recognized 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.” (ROD Protest Response #1.)

- b. On July 5 1978, Judge Sweitzer’s 1976 opinion in the Hampton Sheep v. BLM case 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”* was nullified by a Final BLM Rule that codified *“cattle, sheep, horses, burros and goats as the five types of animals that are considered domestic livestock for purposes of issuing preference right permits in TGA CVG Districts.”*²²

²² [Fed. Reg. Vol. 43 No.129 at 29068](#). Wednesday July 5, 1978.

- 179 c. On September 15, 2015, the HiLine BLM District Office expanded
180 the 43 CFR 4100.0-5 definition of livestock to include *bison, llamas*
181 *and alpacas* in an amended Resource Management Plan. (HiLine
182 RMP at “**Processing Grazing Permits/Leases**,” page 3-26.)
- 183 d. In the March 2022 EA, the Secretary relies upon the illegitimately
184 expanded definition of livestock from the HiLine RMP to justify
185 issuing the APR preference right permits. (EA Section 1.3
186 “**Conformance with BLM Land Use Plans**,” pages 1-3.)
- 187 e. In the July 28, 2022, ROD, the Secretary invents the term *indigenous*
188 *livestock* to conclude that the APR herds are domestic livestock and
189 not wildlife for the purpose of issuing the seven PRPs.
- 190 f. For purposes of issuing preference right grazing privileges in TGA
191 CVG Districts the Secretary is bound to the regulatory definition at
192 43 CFR § 4100.0-5: *cattle, sheep, horses, burros and goats*.
- 193 g. The Secretary erred when applying Judge Sweitzer’s opinion in the
194 July 28, 2022, ROD to issue the APR PRPs because that opinion was
195 rendered moot through a federal rulemaking that statutorily defined
196 what animals constitute domestic livestock. (ROD Protest Response
197 #1.)

198 **III. The expanded definition of domestic livestock in the HiLine District**
199 **RMP and July 28, 2022, ROD are contradicted by a major rulemaking**
200 **action, and bison permitting policies codified in the Lewistown**
201 **Resource Management Plan:**

- 202 a. In a July 2006 Rulemaking on Grazing Preference Administration the
203 Secretary addressed the issue of what body of law applies to
204 preference-right permits that may be issued for grazing of buffalo
205 (bison) in CVG Districts.

206 The July 2006 Final Rule determined that “*The Secretary must give*
207 *preference to landowners engaged in the livestock business*” and
208 *owners, homesteaders, lessees, and other proximal occupants of*
209 *public lands*.

210 The July 2006 Final Rule is unambiguous that permits to graze bison
211 or other wild indigenous animals are to be issued under the “**Special**
212 **Grazing Permits or Leases**” at 43 CFR 4130.6–4, “*so long as the*
213 *use is consistent with multiple use objectives expressed in [county]*
214 *land use plans*”:

215 “*One comment on this section urged BLM to give*
216 *preference to buffalo ranchers in issuing grazing permits*
217 *because use by buffalo pre-dates use by cattle on the*
218 *range, and they therefore have right by history to receive*
219 *first consideration for grazing use*”

220 and,

221 “*We have not changed the final rule in response to*
222 *these comments. BLM has no authority to give priority*
223 *to buffalo ranchers when issuing grazing permits or*

leases. The TGA requires that when issuing grazing permits, the Secretary must give preference to landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. (Grazing permits authorize grazing use on lands within grazing districts established under Section 1 of the Act.)”

“The Act also requires that when issuing grazing leases, the Secretary must give preference to owners, homesteaders, lessees, or other lawful occupants of lands contiguous to the public lands available for lease, to the extent necessary to permit proper use of such contiguous lands, with certain exceptions”

and,

“BLM may issue permits to graze privately owned or controlled buffalo under the regulations that provide for “Special Grazing Permits or Leases” for indigenous animals (section 4130.6–4), so long as the use is consistent with multiple use objectives expressed in land use plans.”²³

- b. The rationale in the July 28, 2022 ROD that the preference right grazing permits can legitimately be issued for grazing of bison livestock under the general grazing regulations is directly contradicted by a January 2021 Record of Decision for the Lewistown Montana Resource Management Plan:

Relocate Bison as Wildlife onto Public Lands -

“Privately owned bison are considered livestock and, as such can be permitted by the BLM (43 CFR 4130.6-4). The primary test in making this distinction is whether the owner of the animals qualifies as an applicant under the requirements of the grazing regulations. The grazing regulations define qualified applicants and apply equally to all qualified applicants, regardless of the class of livestock. Privately owned bison may be authorized to graze under the regulations, provided it is consistent with multiple-use objectives.”²⁴

²³ [Fed. Reg. Vol. 71, No. 133 at 39447](#). July 12, 2006. (Attachment F)

²⁴ [Record of Decision and Approved Lewistown Resource Management Plan](#). Relocate Bison as Wildlife onto Public Lands at Page 1-8. July 2020.

262 **IV. The Secretary erred when classifying bison as privately owned,**
263 **domestic indigenous livestock for the purpose of issuing APR preference**
264 **right grazing permits under the General Regulations of 43 CFR §4100**
265 **and 43 USC § 315b:**

- 266 a. Under the TGA at 43 USC § 315b²⁵ and the implementing General
267 Grazing Administration regulations at 43 CFR § 4100.0-5, bison do
268 not fall within the definition of livestock: “*Livestock or ‘kind of*
269 *livestock’ means species of domestic livestock—cattle, sheep, horses,*
270 *burros, and goats.*”²⁶
- 271 b. The Secretary does not have the authority to administratively issue
272 preference right permits for grazing of wild bison in CVG Districts.²⁷
- 273 i. Federal Land Management and Policy Act (FLMPA)
274 definitions are structured around the livestock industry,
275 maintaining consistency and supplementing TGA
276 reserved lands. Allotment Management Plans (AMP)
277 are required by statute to be consistent with the
278 definition at 43 USC 1702(k), which states that AMPs
279 “...*apply to livestock operations on the public lands or*
280 *on lands within National Forests in the eleven*
281 *contiguous Western States ...*”
- 282 c. In the July 28, 2022, ROD, the Secretary engages in circuitous
283 reasoning to classify the APR bison herds as “*domestic indigenous*
284 *livestock*” or “*privately owned or controlled indigenous animals*.”
- 285 “*The final decision addresses the management of*
286 *domestic bison, which would be pastured by authorized*
287 *permittees and does not pertain to wild herds. A*
288 *distinction is made between bison that are privately*
289 *owned and considered livestock and those that are*
290 *considered wildlife (publicly owned) that fall under the*
291 *jurisdiction of the State of Montana. Authorization of*
292 *bison grazing through a grazing permit identifies bison*
293 *as domestic and provides for management and control of*
294 *these livestock.*”

²⁵ “... Preference shall be given in the issuance of grazing permits to those within or near a district who are landowners engaged in the livestock business. . .”

²⁶ BLM’s Handbook on Rangeland Health Standards under definitions in defining *Allotment*, *Permitted Use*, and *Range improvements* are also structured around the grazing of livestock, with all three definitions providing explicit reference to the definition of livestock at 43 CFR § 4100.0-5. (BLM Handbook 4180-1 Rangeland Health Standards).

²⁷ Public Lands Council v. Babbitt, 167 F.3d 1287 (10th Cir. 1999), aff’d, 529 U.S. 728 (2000), which found that the Secretary of the Interior (acting through the BLM) lacked the statutory authority to issue grazing permits intended exclusively for “conservation use.” 167 F.3d at 1308.

V. The Secretary's assertion that the APR "*domestic indigenous livestock*" herd is not "wildlife" is contradicted by a September 5, 2017, correspondence between APR CEO Gerrity and Montana Governor Bullock:

- a. APR's objective is to establish a landscape-level wild bison herd in Montana by merging contiguous private, state, BLM, and US Fish and Wildlife Service owned lands.
- b. The mission of the Northern Plains Conservation Network (NPCN),²⁸ of which APR was a member, is to implement vast, landscape-level wildlife conservation initiatives *that transcend municipal and political boundaries*.²⁹
- c. The reasoning by the Secretary that the APR bison herds are not wild animals and therefore can be classified as *domestic indigenous livestock* is flatly contradicted by 2017 correspondence from APR President Gerrity to Montana Governor Bullock and FWP Director Martha Williams designed to influence state policy:
 - APR's purpose for the use of BLM lands is to "*create the largest nature reserve in the continental United States*" ...that will... "*result in wild bison one day inhabiting the Charles M. Russell National Wildlife Refuge and, eventually, the surrounding areas.*"
 - "*As a way of contributing to the potential of wild bison inhabiting the CMR and surrounding areas, American Prairie Reserve is willing to:*
 - i. "*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.*"
 - ii. "*...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.*"
 - iii. "*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.*"
 - iv. "*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.*"³⁰

²⁸ The Northern Plains Conservation Network has been renamed the Great Plains Conservation Network.

²⁹ Ibid. MacLeod, Norman. [*The History, Ideology, and Multinational Participants of the Landscape Conservation Movement*](#).

³⁰ [Correspondence. American Prairie Reserve President Sean Gerrity](#) to Montana Governor Steve Bullock and Montana Department of Fish, Wildlife, and Parks Director Martha Williams. September 5, 2017.

337 **VI. The scope and magnitude of the expanded definition of domestic**
338 **livestock in the HiLine RMP and July 28, 2022, ROD must be viewed**
339 **in the totality of impacts to the domestic livestock industry dependent**
340 **upon 135 million acres of CVG District Lands:**

- 341 a. In the “**RATIONALE**” discussion of the ROD the Secretary states
342 conformance with the HiLine RMP and introductions of wild bison
343 into CVG Districts in *Colorado, New Mexico, North Dakota, South*
344 *Dakota, and Wyoming* as justification of his decision to issue the APR
345 preference right permits:

346 *“Implementing the Selected Alternatives is in*
347 *conformance with the Hi-Line District Resource*
348 *Management Plan (RMP), approved in September*
349 *2015, The RMP considered a No-Bison Grazing*
350 *Alternative but eliminated the alternative from detailed*
351 *study because domestic bison grazing was determined*
352 *to be consistent with federal regulations. Page 13 of*
353 *the Hi-Line Proposed RMP/Final EIS states, “Any*
354 *future proposals to change the class of livestock from*
355 *cattle to bison would be considered as provided by the*
356 *grazing regulation.” The grazing regulations provide*
357 *for authorizing grazing permits for privately owned*
358 *indigenous animals. BLM has also permitted bison on*
359 *allotments in other areas of Montana, Colorado, New*
360 *Mexico, North Dakota, South Dakota, and Wyoming.”*

- 361 b. The potential approval of PRPs for grazing wild animals (bison) in
362 CVG Districts across five states raises the question of how many other
363 BLM offices have expanded RMPs or have been issuing bison grazing
364 permits for CVG District lands across an eleven-state area.
- 365 c. Because the definition of livestock at 43 CFR § 4100.0-5 constrains
366 the issuance of preference right permitting on all TGA CVG District
367 lands to *cattle, sheep, horses, burros, and goats*, the cascading
368 national impact of rewilding to the domestic livestock industry and
369 food supply of the United States should [must] be investigated.

370 **VII. Special use permits at 43 CFR 4130.6-4 function as an exception to the**
371 **rule and may be an alternative regulatory pathway for grazing of**
372 **bison:**

- 373 a. Special [Conditional] Use Permits (SUP) are typically employed in
374 governmental permitting settings at the local, state, and federal levels.
375 SUPs are conditional in nature, allowing a specified use on parcel(s)
376 of land that otherwise deviates from the purposes for which such lands
377 are allocated under current regulations.
- 378 b. Under the BLM grazing regulations, privately owned indigenous
379 animals permitted under the SUP framework are not designated as
380 livestock.
- 381 c. The only pathway for bison grazing on BLM lands is through the
382 special use permitting framework. The special use framework is an
383 exception to the rule. (4130.6-4).

PETITION FOR RULEMAKING

MtNRC asserts that because of the forgoing procedural issues and evidence, that the seven APR preference right permits for grazing of wild bison in Montana CVG District 1 must be vacated.

Because the 2015 HiLine RMP was expanded through an illegitimate rulemaking and was cited by the Secretary as rationale to determine that there are no significant environmental impacts, the HiLine RMP must be revised to remove the words “*bison, llamas, and alpacas.*” Since TGA CVG Districts are designated as reservations under the Federal Power Act, and BLM Resource Management Plans routinely document the presence of most types of reserved, withdrawn, or special use lands within a given RMP area, MtNRC requests the Secretary to incorporate a detailed TGA CVG District Map and TGA statutory discussion in the revised HiLine RMP.

The March 2022 Environmental Assessment and July 28, 2022 Notice of Final Decision and Finding of No Significant Impact granting preference right grazing privileges to the APR are irreparably flawed and must be rescinded.

The potential for other BLM District Offices across an eleven-state area to replicate the HiLine approach during RMP revision and issuance of preference right permits for grazing of wild animals is real. As part of the Secretary’s responsibility to adequately safeguard preference right permit holders in CVG Districts in Colorado, New Mexico, North Dakota, South Dakota, and Wyoming, we respectfully request the Secretary to consider an inquiry into the procedures used to issue permits in those states.

Because APR holds BLM base properties and is both a neighbor and a private property holder, grazing bison under the Special Use Permits regulations at 43 CFR 4130.6-4 may be an option for ongoing operation.

MtNRC believes that the rulemaking actions proposed by this PAR could expeditiously be accomplished by applying the Compliance Factors and the Good Cause Exception of the Administrative Procedures Act identified in memoranda by the White House Office of Information and Regulatory Affairs.

Attachment A

The History, Ideology, and Multinational Participants of
the Landscape Conservation Movement

April 22, 2020



The History, Ideology, and Multinational Participants of the Landscape Conservation Movement

April 22, 2020

Norman MacLeod, Author

J.R. Carlson, Editor

In December 1987, the American Planning Association published an article titled *The Great Plains: From Dust to Dust* by Deborah and Frank Popper in its journal, *Planning*. The Poppers describe a Great Plains in decline populated largely by people increasingly unable to produce a living from the land. Private interests, they contended, were rapidly degrading the land and abandoning it.

Their solution was to call for large regions of the plains to be restored to pre-settlement conditions, creating what they termed the “Buffalo Commons.” The word “buffalo” was used rather than the more proper term “bison” because it is more familiar to the public and tapped more allusions – buffalo as wildlife, myth, and merchandise. The word “commons” was used to communicate the need for land to be treated as a common property resource, like air or water.

To facilitate rewilding, large amounts of land would be acquired, with distinctions between national parks, grasslands, grazing lands, wildlife refuges, forests, and Indian reservations dissolving over time. In this vision, state and federal management would also blur and blend over time. Bison would fully occupy the commons. It would be the world’s largest historic preservation project, a vast land mass in a ten-state national reserve, largely empty, unexploited, and devoid of most human activity.

The project would be a massive federal undertaking requiring land use planning to identify areas for acquisition, determine uses, and devise property buyouts. It would also demand “compassionate treatment” for the displaced Great Plains “refugees.” There would need to be coordination between federal agencies, state agencies, and local governments. Congress would have to create a regional agency with a Plains-specific mandate akin to the BLM, but with “much more sweeping powers.”

The Poppers’ vision was not well received by people who own, live, and work lands in the Great Plains.

Thirty years later, Maxwell Hartt interviewed the Poppers for an article titled *After the Dust Settles* that appeared in the October 2018 edition of *Planning*.¹ He asked if they expected the strong response the 1987 article generated. Frank answered:

¹ Hartt, M. *After the Dust Settles — Revisiting the Buffalo Commons 30 years later*. American Planning Association. *Planning*. October 2018.

“We never expected any response at all! This was a total surprise to us. And it just kept going and going! This is the first article that Deborah and I had ever written together. We didn’t know that much about what to expect. We thought that nobody would actually care. We did it partly for fun, as sort of a marital exercise, as a kind of strange intellectual hobby. We never expected it to be picked up!”

While the Buffalo Commons notion may have been born as an intellectual exercise, the Poppers’ 1987 article was declared one of the most significant that the American Planning Association had published in *Planning* in the 35 years prior to 2003.

The Poppers began speaking at forums organized around their vision of the region that would host the Buffalo Commons then became focused on practicalities, including a focus on commercial bison and converting from cattle to bison production.

Land trusts, particularly The Nature Conservancy, entered the picture, and began to include bison as part of their fundraising initiatives, habitat restoration programs, and literature outreach. Some were coordinating their work with private bison ranchers through easement land use practices.

Other land preservation groups found it profitable to promote bison acquisition and restoration programs as part of their missions. Tribes with bison were expanding their herds and increasing numbers of tribes were starting herds. They were generally supportive of the Buffalo Commons vision, with the Rosebud Sioux being the first to endorse the concept as part of the tribe’s conservation efforts.

Over time, progressive conservation ideas have shifted from a paradigm of mastery over nature to one of ecosystem-based management. Hierarchical policy was shifting to system-based approaches that rely on a wide range of inputs. Regulatory approaches were starting to make way for grassroots-driven public-private partnerships. Conservation biology became a formal academic field and the identification of the landscape by ecoregion became institutionalized. It is noteworthy that the public-private partnership discussion contains no meaningful discussion of jurisdictional boundaries, state or local responsibilities, or how public private partnerships may blur or impact political and administrative decision making.

In the Spring 2006 issue of the *Journal of Wildlife*, the Poppers authored an article titled *The Onset of the Buffalo Commons*² in which they stated that their Buffalo Commons work seemed to be poised to take fantasy to reality. While the nineteenth century had been catastrophic in their minds for bison, the buffalo were starting to come back in the early twenty-first century.

For example, during 2005-2006 the Wildlife Conservation Society hosted a series of meetings to cast a vision for the future of bison. These meetings were reported in a USGS Staff-Published scholarly research paper titled *The Ecological Future of the North American Bison: Conceiving Long-Term, Large-Scale Conservation of Wildlife*.³ The second meeting comprised of indigenous groups, bison producers, conservation organizations, and government and private land managers,

² Popper, D., Popper, F. (2010). *The Onset of the Buffalo Commons*. *Journal of the West*. 49. 65-7.

³ Sanderson, Eric W.; Redford, Kent H.; Weber, Bill; Aune, Keith; Baldes, Dick; Berger, Joel; Carter, Dave; Curtin, Charles; Derr, James N.; Dobrott, Steve; Fearn, Eva; Fleener, Craig; Forrest, Steve; Gerlach, Craig; Gates, C. Cormack; Gross, John E.; Gogan, Peter; Grassel, Shaun; Hilty, Jodi A.; Jensen, Marv; Kunkel, Kyran; Lammers, Duane; List, Rurik; Minkowski, Karen; Olson, Tom; Pague, Chris; Robertson, Paul B.; and Stephenson, Bob, *"The Ecological Future of the North American Bison: Conceiving Long-Term, Large-Scale Conservation of Wildlife"* (2008). USGS Staff - Published Research. 608. <https://digitalcommons.unl.edu/usgsstaffpub/608>.

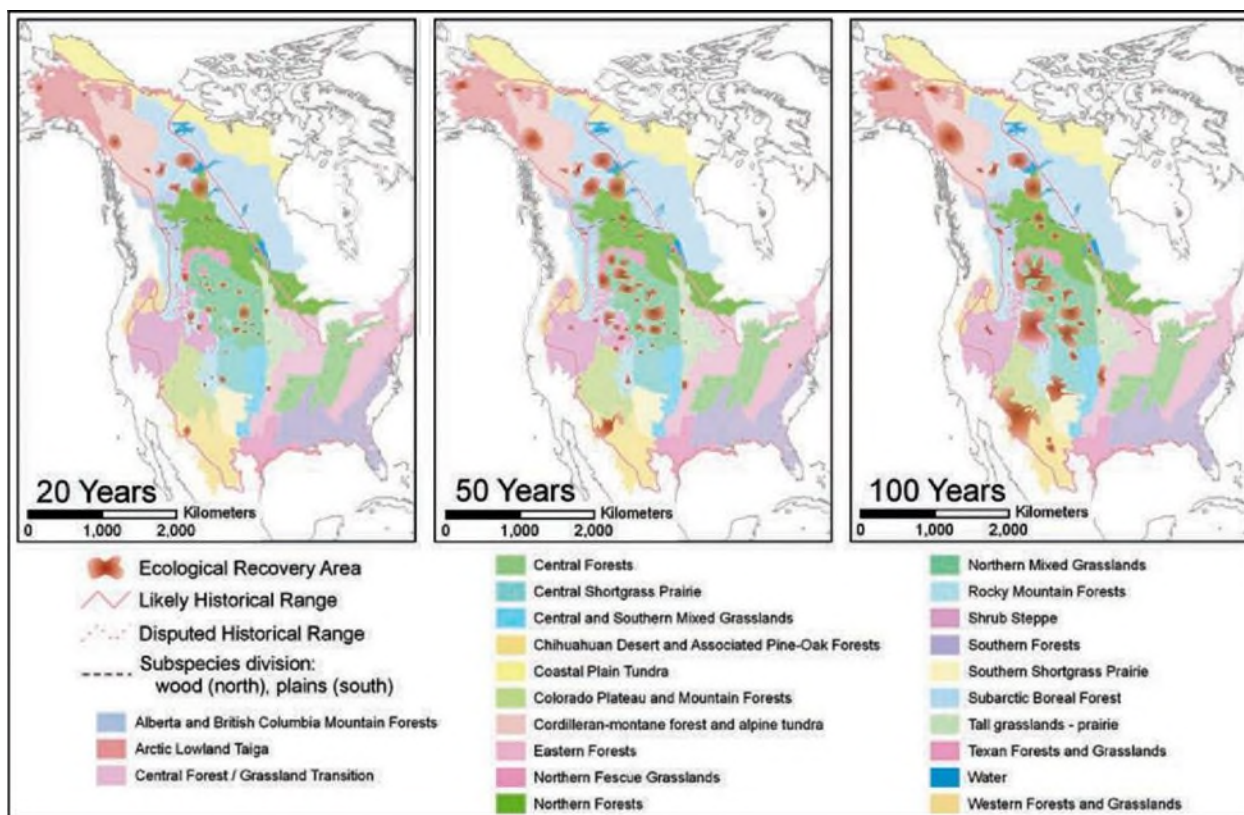
was held at the Vermejo Park Ranch in New Mexico. The result was the creation of the Vermejo Statement:

“Over the next century, the ecological recovery of the North American Bison will occur when multiple large herds move freely across extensive landscapes within all major habitats of their historic range, interacting in ecologically significant ways with the fullest possible set of other native species, and inspiring, sustaining and connecting human cultures.”

The Vermejo Statement is explicitly: (1) large scale; (2) long term; (3) inclusive; (4) fulfilling of different values; and (5) ambitious. Its authors were professionals employed by state/provincial and federal agencies, tribal governments, universities, nonprofit organizations, and bison ranchers from the United States, Canada, and Mexico. Notably absent were independent livestock associations, local governments, or representatives of grazing organizations dependent on the CVG districts.

Fulfillment of the Vermejo Statement vision, as well as that of the Buffalo Commons in general, requires the blurring of state and local geo-political boundaries. It also requires transitioning CVG districts from domestic livestock to wildlife and indigenous animal use. This will lead to conflicts with CVG lands and programs that were purposed by Congress for domestic livestock.

Potential bison recovery zones from 2008-2108



The Northern Plains Conservation Network, recently renamed the Great Plains Conservation Network, is an example of a collaborative effort made up of more than 25 nonprofit and tribal organizations operating in portions of two Canadian provinces and five states, including two-thirds of Montana.⁴ Their mission:

“The mission of the Great Plains Conservation Network (GPCN) is to restore and maintain the native species, habitats, and natural processes of the Great Plains.

Our strategy is to work in partnerships with those who live, work, and recreate in this region to identify and maintain the areas that best contribute to this mission. Through collaboration, we seek to prevent loss or fragmentation of these areas, restore wildlife where possible, and facilitate wildlife movement and other important processes.

To succeed, we must identify and link much larger areas than are designated for wildlife and natural habitat today. We must begin to think and act on a different scale – the scale of natural processes (wildlife migrations, fire, hydrology) that transcend municipal and political boundaries.”⁵

One of the GPCN’s member nonprofit organizations, the American Prairie Reserve, is attempting to create the Lower 48 states’ largest nature reserve in central Montana. Its goal is to combine APR-owned base properties with commensurate grazing allotments into a 3.2-million-acre preserve. The initiative includes migration corridors and native wildlife species thought to be present prior to human settlement. The APR project proposes deconstruction of improvements, removal of dams, and creation of wildlife corridors. In time, domestic livestock grazing would be discontinued.

The federal government has become increasingly involved in landscape conservation. On September 14, 2009 Department of the Interior Secretary Salazar signed Secretarial Order 3289 directing DOI bureaus to stimulate the development of the Landscape Conservation Cooperative Network as a response to landscape-scale stressors, including climate change. There remain 22 Landscape Conservation Cooperatives (LCCs) designed to address the Department of the Interior policy to utilize landscape-level approaches, when appropriate, to achieve landscape goals at multiple spatial and temporal scales. The objective is to integrate the management of resources across spatial and temporal scales, often across administrative boundaries and political jurisdictions, to enable efficient and effective resource management.⁶ The current DOI policy governing the LCCs became effective on January 19, 2017.

Wildlife connectivity between habitat cores is another aspect of landscape conservation and planning. A recent paper in the journal *Conservation Science and Practice* titled *Incorporating wildlife connectivity into forest plan revision under the United States Forest Service’s 2012 planning rule*⁷ reported on the use of modeling using generic species, defined as virtual species

⁴ <https://plainsconservation.org/>

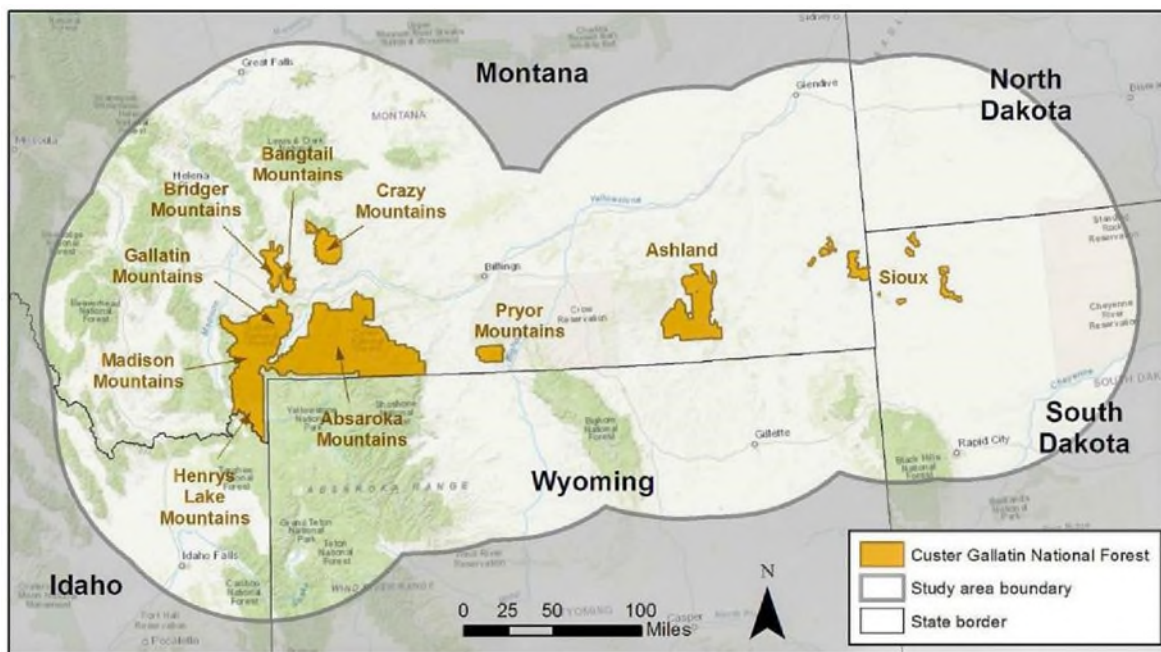
⁵ <https://plainsconservation.org/our-vision/>

⁶ Department of the Interior 604 DM 1 § 1.5 policy.

⁷ Williamson, M., Creech, T., Carnwath, G., Dixon, b., Kelly, V. *[Incorporating wildlife connectivity into forest plan revision under the United States Forest Service’s 2012 Planning rule.](#)* Society for Conservation Biology. *Conservation Science and Practice*. 2019:e155

whose profile consists of ecological requirements designed to reflect the needs of real species. The results were used in the development of alternatives for the Custer-Gallatin National Forest (CGNF) in Montana and South Dakota during the ongoing revision of its forest plan. The authors maintain that their results and process could be readily exported for use in forest plan revisions for all the national forests.

The study carries future implications for federal landscape conservation and wildlife connectivity policy. For instance, in order to assess connectivity throughout the region, the authors buffered each of the CGNF administrative units by 100 miles, resulting in a study area incorporating vast amounts of private lands and state and federal public lands. The study area was then represented using this map:



While the authors did not include recommendations for regulating private property for the purpose of wildlife connectivity, the inclusion of the regional buffer area has the potential to impact county planning departments to further regulate private property for wildlife and landscape conservation. Indeed, they highlighted the “critical role of focusing conservation efforts on private lands to maintain regional connectivity.”⁸

Throughout the paper, humans and human activities are portrayed as threats to wildlife and wildlife movement across the vast landscape of the study area. The authors stated that their work facilitated the development of potential connectivity-related plan components and provided CGNF staff with regional connectivity information that can be incorporated into the effects analyses conducted for NEPA purposes.

⁸ Ibid.

American Prairie Reserve

We do not have to search very far to find a significant example of rewilding taking place in a landscape dominated today by domestic livestock public lands grazing. The American Prairie Foundation (APF) was founded as a Montana non-profit organization in 2001 with the assistance of the World Wildlife Fund (WWF) and the Northern Plains Conservation Network. As organizational capacity increased APF was renamed the American Prairie Reserve (APR) and the NPCN was more recently renamed The Great Plains Conservation Network (GPCN). APR is a rewilding project that incorporates both the Buffalo Commons and landscape-scale conservation philosophies. Within its area of influence, it implements the Vermejo Statement's goals for restoring bison to the Great Plains over the course of this century and beyond. APR is pioneering a private property-based approach that employs purchases from willing sellers of private ranch properties (base properties) that have appurtenant public land livestock grazing allotments on Taylor Grazing Act grazing districts and surrounding lands.

APR's stated goal is to develop and manage a 3.5 million-acre nature preserve that will be the largest nature reserve in the continental United States.⁹ In the APR reintroduction plan the organization reported to the WWF in 2005¹⁰, the organization's overall rewilding goal indicated that APR recognized a short-term need to manage their bison as semi-domestic and confined, but that they intend to eventually manage them to become a naturally-regulated free-ranging population of wildlife. Their intent is to establish an ecologically effective population of bison.

APR went on to say that their goal is vastly different than managing bison for production or in the traditional livestock management paradigm. The organization does not believe that domestic livestock operations are often incompatible with biodiversity conservation goals and projects.

Once a property has been purchased and APR is ready, the organization's practice for BLM-managed public lands is to apply for a change in use to replace the existing domestic livestock with bison. Bison do not qualify in statute or rule as domestic livestock¹¹ and are thus ineligible for normal domestic livestock grazing privileges. They can, however, be granted special grazing permits or leases as privately owned or controlled indigenous animals:

*"BLM may issue permits to graze privately owned or controlled buffalo under the regulations that provide for (Special Grazing Permits or Leases)" fir indigenous animals (section 4130.6-4). So long as the use is consistent with multiple use objectives expressed in land use plans."*¹²

Such permits or leases are locally discretionary and subordinate to those for domestic livestock grazing and are issued at the discretion of the official responsible for issuing grazing permits and leases. They are issued for a term the official deems appropriate, not to exceed ten years.¹³ They have no priority for renewal and unlike standard grazing permits and leases, cannot be transferred or assigned.¹⁴ They do not have the same assurance for long-term continuation of grazing

⁹ <https://americanprairie.org/>

¹⁰ Kunkel, K., S. Forrest, and C. Freese. 2005. Reintroducing Plains Bison (*Bos bison*) to American Prairie Foundation lands in Northcentral Montana: 5-year conservation and management plan. Report to the World Wildlife Fund. 62 p.

¹¹ 43 CFR § 410010-5 Definitions.

¹² Federal Register / Vol. 71, No. 133 / Wednesday, July 12, 2006 / Rules and Regulations, Page 39448.

¹³ 43 CFR § 4130.6-4 Special grazing permits or leases.

¹⁴ 43 CFR § 4130.6 Other grazing authorizations.

privileges to the extent that standard domestic livestock grazing carry. Thus, they do not represent an adequate foundation upon which to build a species restoration project thoroughly dependent upon long-term land use certainty for success.

For USFWS-managed lands on the Charles M. Russell National Wildlife Refuge, domestic livestock grazing is automatically retired by the agency upon APR's purchase of the private base property whose previous owner held grazing permits or leases on the refuge. In this manner, 63,777 acres of public land domestic livestock grazing have already been retired on the CMR (as reported on APR's website).¹⁵

¹⁵ <https://americanprairie.org/building-the-reserve> (as of Jan. 27, 2020) "American Prairie Reserve's acquisitions have also resulted in the retirement of 63,777 acres of cattle grazing leases in the neighboring Charles M. Russell National Wildlife Refuge."

Attachment B

Correspondence: APR CEO Sean Gerrity
to Montana Governor Steve Bullock and Martha Williams.
September 5, 2017



RECEIVED

SEP 07 2017

FISH, WILDLIFE & PARKS
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Mike ✓
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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

Attachment C

BLM Grazing Administration
and
Trespass Regulations

TGA Definition: Livestock and Kind of Livestock
43 Fed. Reg. No. 129 at 29068
Wednesday, July 5, 1978

WEDNESDAY, JULY 5, 1978
PART II



**DEPARTMENT OF
THE INTERIOR**

**Bureau of Land
Management**

**RANGE MANAGEMENT
AND TECHNICAL
SERVICES**

**Grazing Administration and
Trespass Regulations**

Range Management
and Technical
Services
Grazing Administration and
Trespass Regulations

in consultation with the permittee(s) or lessee(s) involved, and which: (1) Prescribes the manner in and extent to which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic, and other needs and objectives as determined for the public lands through land use planning; and (2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the public lands to meet the livestock grazing and other objectives of land management; and (3) contains such other provisions relating to livestock grazing and other objectives as may be prescribed by the authorized officer consistent with applicable law.

(d) "Animal unit month (AUM)" means the amount of forage necessary for the sustenance of one cow or its equivalent for a period of 1 month.

(e) "Authorized officer" means any person authorized by the Secretary to administer regulations in this part.

(f) "Base property" means: (1) Land that has the capability to produce crops or forage that can be used to support authorized livestock for a specified period of the year, or (2) water that is suitable for consumption by livestock and is available and accessible, to the authorized livestock when the public lands are used for livestock grazing.

(g) "Cancellation" means a permanent termination of a grazing permit or grazing lease and grazing preference, or free-use grazing permit or other grazing authorization, in whole or in part.

(h) "Class of livestock" means age and/or sex groups of a kind of livestock.

(i) "Contiguous land" means land that borders or touches upon public land.

(j) "District" means the specific area of public lands administered by a District Manager.

(k) "Grazing district" means the specific area within which the public lands are administered under section 3 of the act. Public lands outside grazing district boundaries are administered under section 15 of the act.

(l) "Grazing fee year" means the year March 1 to the last day of February which is used for billing purposes.

(m) "Grazing lease" means a document authorizing use of the public lands outside grazing districts under section 15 of the act for the purpose of grazing livestock.

(n) "Grazing permit" means a document authorizing use of the public lands within grazing districts under section 3 of the act for the purpose of grazing livestock.

(o) "Grazing preference" means the total number of animal unit months of livestock grazing on public lands apportioned and attached to base property

owned or controlled by a permittee or lessee.

(p) "Indigenous animal" means an animal which is or was part of the original fauna of the area in question.

(q) "Land use plan" means a planning decision document which establishes resource allocations and coordinated objectives and constraints for all forms of public land and resource use within the area covered by the plan.

(r) "Livestock" or "kind of livestock" means species of domestic livestock—cattle, sheep, horses, burros, and goats.

(s) "Livestock grazing capacity" means the number of animal unit months of forage available for livestock grazing on a sustained yield basis on the public lands as determined through land use planning.

(t) "Modification" means a change or revision of the terms and conditions of an unexpired grazing permit or lease including changes in kind or class and number of livestock, period(s) of use, and area(s) of use.

(u) "Other lands under Bureau of Land Management control" means those State or private lands controlled by the Bureau of Land Management through lease, agreement, or otherwise.

(v) "Public lands" means any land and interest in land outside of Alaska owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians.

(w) "Range betterment" means on-the-ground rehabilitation, protection, and improvement of the public lands to arrest range deterioration and to improve forage conditions, fish and wildlife, habitat, watershed protection, and livestock production consistent with land use plans.

(x) "Range betterment fund" means the separate account in the Treasury established by section 401(b)(1) of the Federal Land Policy and Management Act of 1976 consisting of 50 per centum of all moneys received by the United States as fees for grazing livestock on public lands.

(y) "Range improvement" means a structure, development, or treatment used to rehabilitate, protect, or improve the public lands to advance range betterment.

(z) "Secretary" means the Secretary of the Interior or his authorized officer.

(aa) "Service area" means the area that can be properly grazed by livestock watering at a certain water. In determining this area, natural and cultural barriers, recognized habits of livestock, proper livestock practices, and range management factors shall be considered.

(bb) "Supplemental feed" means concentrates or harvested feed sup-

plied to livestock to supplement the range forage.

(cc) "Suspension" means temporarily withholding a grazing permit or lease in whole or in part.

§ 4100.0-7 Cross-references.

The regulations in subpart 1784 of this chapter govern advisory boards and the regulations in part 4 of this title govern appeals and hearings.

Subpart 4110—Allocation of Grazing Use

§ 4110.1 Mandatory qualifications.

Except as provided under §§ 4130.3 and 4130.4-3, to qualify for grazing use on the public lands an applicant must be engaged in the livestock business, must own or control land or water base property, and must be:

(a) A citizen of the United States or have properly filed a valid declaration of intention to become a citizen or a valid petition for naturalization; or

(b) A group or association authorized to conduct business in the State in which the grazing use is sought, all members of which are qualified under paragraph (a) of this section; or

(c) A corporation authorized to conduct business in the State in which the grazing use is sought.

§ 4110.2 Grazing preference.

§ 4110.2-1 Base property.

(a) The authorized officer shall find land or water owned or controlled by an applicant to be base property (see § 4100.0-5(f)) if:

(1) It serves as a base for a livestock operation which utilizes public lands within a grazing district; or

(2) It is contiguous land, or noncontiguous land when no applicant owns or controls contiguous land, used in conjunction with a livestock operation which utilizes public lands outside a grazing district.

(b) The authorized officer shall specify the length of time for which land base property shall be capable of supporting authorized livestock during the year, based on the management requirements for the public lands.

(c) An applicant shall provide a legal description, or plat, of his base property and shall certify to the authorized officer that this base property meets the requirements under paragraph (a) and (b) of this section and § 4100.0-5(f).

§ 4110.2-2 Grazing preference allocation.

(a) Grazing preference shall be allocated to qualified applicants following the allocation of the vegetation resources among livestock grazing, wild free-roaming horses and burros, wildlife, and other uses in the land use plans.

(b) Applicants who own or control base property contiguous to or corner-

Attachment D

Excerpt
from the
HiLine Montana Resource Management Plan
Expanded Definition of Type of Livestock
Pages 3-26 and 3-27

HiLine District Office Approved Resource Management Plan

Attachment 8

From the Record of Decision and Approved Resource Management Plan Amendments for the Rocky Mountain Region including the Greater Sage-Grouse Sub-Regions of: Lewistown, North Dakota, Northwest Colorado, and Wyoming and the Approved Resource Management Plans for: Billings, Buffalo, Cody, HiLine, Miles City, Pompeys Pillar National Monument, South Dakota, and Worland

Prepared by
US Department of the Interior
Bureau of Land Management
HiLine District Office, Montana

September 2015



MISSION STATEMENT

The BLM manages more than 245 million acres of public land, the most of any Federal agency. This land, known as the National System of Public Lands, is primarily located in 12 Western states, including Alaska.

The BLM also administers 700 million acres of sub-surface mineral estate throughout the nation. The BLM's mission is to manage and conserve the public lands for the use and enjoyment of present and future generations under our mandate of multiple-use and sustained yield. In Fiscal Year 2014, the BLM generated \$5.2 billion in receipts from public lands.

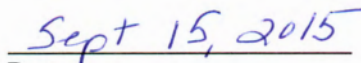
BLM/MT/PL-15/012+1610

State Director Recommendation for Approval

I hereby recommend for approval the HiLine Resource Management Plan.



Jamie E. Connell, Montana/Dakotas State Director



Date

If monitoring data demonstrate that livestock use on an allotment is adversely affecting Greater Sage-Grouse or their habitat, the terms and conditions of grazing permits may be modified (43 CFR, Parts 4130.3, 4130.3-1, 4130.3-2), or changes in active use (43 CFR, Part 4110.3-3) could be considered in order to meet the standards for rangeland health as described in 43 CFR, Part 4180 and the Lewistown Standards for Rangeland Health and Guidelines for Livestock Grazing Management or to otherwise manage, maintain, or improve sage-grouse habitat.

Appropriate indicators and measurements specific to habitat for Greater Sage-Grouse, or any other wildlife species of concern, will be evaluated as part of standards and guidelines assessment (43 CFR, Part 4180) and any necessary and appropriate habitat objectives specific to meeting the wildlife health standard for the site will be identified and incorporated into AMPs or the terms and conditions (43 CFR, Parts 4130.3, 4130.3-1, 4130.3-2) of livestock grazing permits.

Newly acquired lands will be evaluated to determine if they should be designated as reserve common allotments, allocated for grazing, or designated as unavailable for livestock grazing in consideration of the management needs and objectives for the acquisition, with the exception of lands covered under 43 CFR, Part 4110.1-1 (e.g., where lands have been acquired through purchase or exchange, and an agreement provides that the BLM will honor existing grazing permits or leases).

Yearling factors will be considered according to the framework laid out in BLM 2015, Appendix I.

Processing Grazing Permits/Leases

The BLM will prioritize (1) the review of grazing permits/leases, in particular to determine if modification is necessary prior to renewal, and (2) the processing of grazing permits/leases in SFA followed by PHMA outside of the SFA. In setting workload priorities, precedence will be given to existing permits/leases in these areas not meeting Land Health Standards, with focus on those containing riparian areas, including wet meadows. The BLM may use other criteria for prioritization to respond to urgent natural resource concerns (e.g., fire) and legal obligations.

The NEPA analysis for renewals and modifications of livestock grazing permits/leases that include lands within SFA and PHMA will include specific management thresholds based on the Desired Conditions for Greater Sage-Grouse Habitat (habitat objectives) presented in Table 2.2 and Land Health Standards (43 CFR, Part 4180.2) and ecological site potential, and one or more defined responses that will allow the authorizing officer to make adjustments to livestock grazing that have already been subjected to NEPA analysis. Adjustments to meet seasonal Sage-Grouse habitat requirements could include:

- season or timing of use;
- numbers of livestock (includes temporary non-use or livestock removal);
- distribution of livestock use;
- intensity of use; and
- type of livestock (e.g., cattle, sheep, horses, bison, llamas, alpacas and goats).

The BLM will develop criteria to prioritize the workload to process permits/leases (either fully processed or reauthorized based on the Appropriations rider, or issued under Section 402(c)(2) of FLPMA) and determine whether modification is necessary prior to renewal within PHMA, beginning with

those in SFA. In setting priorities, those containing riparian areas and areas not meeting Land Health Standards (43 C.F.R. 4180) will take precedence. Potential criteria for prioritizing permit modifications could include:

- Are there riparian areas or wet meadows in the permit/lease area?
- Was current livestock grazing identified as a causal factor for not meeting Land Health Standards?
- Since the last allotment/watershed evaluation, is there current monitoring information to determine that the watershed/allotment is currently achieving or making significant progress towards achieving land health standards?
- Does the permit have terms and conditions adequate to ensure proper grazing practices to meet Greater Sage-Grouse habitat objectives found in the Special Status Species section of the land use plan?
- Is there data that indicates that the Greater Sage-Grouse habitat objectives, including the Habitat Objectives table found in the Special Status Species section of the land use plan are being met?
- Is there a request from the permittee to modify the terms and conditions of his/her permit?

Additionally, if an existing permit/lease within PHMA requires modification because current grazing is a significant causal factor for not meeting the Land Health Standards, the BLM will prepare the appropriate NEPA analysis and issue the proposed/final grazing decision under 43 C.F.R. Subpart 4160, subject to administrative appeal and potential judicial challenge.

At the time a permittee or lessee voluntarily relinquishes a permit or lease, the BLM will consider whether the public lands where that permitted use was authorized should remain available for livestock grazing or be used for other resource management objectives, such as reserve common allotments or fire breaks. This does not apply to or impact grazing preference transfers, which are addressed in 43 CFR, Part 4110.2-3.

Compliance Monitoring

Allotments within SFA, followed by those in other PHMA, and focusing on those with riparian areas, will be prioritized for monitoring to ensure compliance with the terms and conditions in the permits. The BLM will collect, at a minimum, the following monitoring data:

- vegetation condition
- actual use
- utilization
- use supervision

3.2.9 Noxious Weeds and Other Invasive Non-Native Species

Goal: Prevent the introduction and spread of noxious weeds and invasive species through cooperative Integrated Pest Management practices.

Attachment E

Excerpt
from the
July 28, 2022 ROD
Protest Response #1

Protesting Party	Protest Text	Response #	Protest Response
Doug & Jill Flament	The APR is in direct violation of the Taylor Grazing Act of 1934 that stipulates the specific named animals that are considered livestock that are allowed to graze on the grazing allotments set up by this act. Only the animals listed in the Taylor Grazing Act are eligible to graze in these grazing allotments. Bison is not on the approved species list; there has not been any change or amendment to the original act, hence, the presence of bison on the grazing areas is illegal. The Congress of the United States is the only entity that can change the status of which animals are considered livestock, and to date, that has not occurred.	1	<p>The regulations at 43 CFR §4100.0-5 define livestock as cattle, sheep, horses, burros, and goats. This definition was first added to the grazing regulations in 1978; the TGA did not expressly define livestock. However, the regulations at 43 CFR §4130.6-4 state special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorized officer. (This regulation was added to the grazing regulations at the same time as the definition of livestock in 1978.) The H-4130-1 handbook further clarifies that special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals (including bison) may be issued at the discretion of the authorized officer. 43 CFR §4130.2; §4130.3-2 allows an authorized officer to specify other terms and conditions into a grazing permit which will assist in proper range management and orderly administration that includes specifying class of livestock and the kinds of indigenous animals authorized to graze under specific terms and conditions.</p> <p>The issue of whether bison may qualify as "livestock" for which grazing permits may be issued under the TGA was addressed by the Department of the Interior through the Office of Hearings and Appeals Administrative Law Judge Harvey C. Sweitzer in a Decision issued on September 25, 1976, in the case of Hampton Sheep Co. v. Bureau of Land Management, Docket No. Wyoming 1-71-1. That Decision recognized 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.</p> <p>The final decision is consistent with the approved Hi Line District Office Resource Management Plan (RMP). (EA: Section 1.3.) The allotments included in the proposed action are located within the boundary of the RMP. Responding to an application for changes to permit terms and conditions, changing the seasons of use in certain allotments, modifying terms and conditions of grazing permits, changing classes of livestock, and modifying range improvements are all standard actions incorporated in the RMP. The final decision is consistent with the direction found on page 3-25 and 3-26 of the ARMP, which states: "Adjustments to livestock management practices or livestock numbers including increases or decreases will be made based on results of monitoring studies, rangeland health assessments, allotment evaluations, and through an environmental review process. Adjustments to meet seasonal Sage-Grouse habitat requirements could include: season or timing of use; numbers of livestock (includes temporary non-use or livestock removal); distribution of livestock use; intensity of use; and type of livestock (e.g., cattle, sheep, horses, bison, llamas, alpacas and goats).</p>
Fergus County Commissioners	Language chosen by the agency in relationship to this permit such as "bison and/or cattle" or "privately owned indigenous livestock" blurs the distinction between domestic livestock grazing permitted under the general grazing regulations per 4100.0-5 and indigenous animal grazing permitted at 4130.6-4. Because livestock is explicitly defined in Federal Code the agency does not have the discretion to redefine livestock in a permitting process and blur distinctions between livestock permits and special use permits within the boundary of TGA Federally Reserved Grazing Districts. The special grazing permits are analogous to the conditional use permits found in permit regulations for land use in that they function as exceptions to the general rules of how land may be used under laws governing the region of concern.	2	<p>Grazing regulations in 43 CFR Part 4100 refer to "indigenous animals" or "privately owned or controlled indigenous animals". The EA refers to domestic bison from both a biological and rangeland management standpoint as specified in 43 CFR Part 4100. The terms "bison" and domestic indigenous livestock" are used interchangeably. The final decision addresses the management of domestic bison, which would be pastured by authorized permittees and does not pertain to wild herds. A distinction is made between bison that are privately owned and considered livestock and those that are considered wildlife (publicly owned) that fall under the jurisdiction of the State of Montana. Authorization of bison grazing through a grazing permit identifies bison as domestic and provides for management and control of these livestock.</p> <p>Under 43 CFR §4130.3-2 an authorized officer may specify the kinds of indigenous animals authorized to graze under specific terms and conditions for a grazing permit issued under 43 CFR §4130.2. Other authorities (43 CFR §4130.6) can also be issued to authorize grazing use by privately owned or controlled indigenous animals. Other authorities, specifically special grazing permits (43 CFR §4130.6-4) are not administratively unique from any other grazing permit or lease. As such, there is no distinction in BLM's Rangeland Administration permitting system (RAS) to issue special grazing permits separate from other types of permits and leases and the authority is seldom used. While there are many similarities, 43 CFR §4130.6-4 states that these other grazing authorizations are discretionary and have no priority for renewal, and cannot be transferred or assigned. Provisions under §4130.2 are more applicable to permits contained in the final decision because the permittees meet the mandatory qualifications and maintain established grazing preference through demonstrated control of associated base properties. This authority allows authorization of both cattle and cattle/indigenous (C/I) category that better responds to the permittee's proposal for both kinds of livestock. Authorizations contained in the final decision allow for phased implementation of the proposed action and fully processes and renews permits, as specified in the purpose and need section of the EA. Permit issuance in the final decision best ensures management of bison and cattle to assist in the orderly administration and use of the public rangelands (43 CFR §4100.0-2, 43 CFR §4130.2-2).</p> <p>Prior to, and subsequent to, the 1978 regulation re-write, which added the provision for grazing permits or leases for authorizing grazing use by privately owned or controlled indigenous livestock, the BLM has approved grazing permits and leases for bison. Bison have been approved as a kind of livestock in other allotments in Montana, North Dakota, South Dakota, Wyoming, Colorado, and New Mexico.</p> <p>The final decision recognizes that bison 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. The final decision addresses the management of domestic bison, which would be pastured by authorized permittees and does not pertain to wild herds. The final decision is also in conformance with the HiLine RMP (2015) which contains decisions that discuss bison in relation to permitting and multiple-management. Grazing regulations in 43 CFR Part 4100 do not contain reference or authority for issuing conditional use permits. See further discussions in Response #1.</p>

Attachment F

Excerpt
Grazing Administration
Fed. Reg. Vol. 71 No. 133 at 39447
Specifying Grazing Preference
July 12, 2006
Final Rule

BLM has suspended, are not at risk of loss for failure to use.

One comment urged BLM to address the concept of grazing associations, explain what they are, and examine if all members of an association must own base property.

A grazing association is a group of ranchers organized into an association for the common benefit and welfare of the members. Grazing associations are organized under the laws of the state where they are located. Under section 4110.1(a)(2), a grazing association may apply and qualify for grazing use on public lands if all members of the association own or control land or water base property.

One comment stated that BLM should not allow large corporations to acquire grazing permits but instead reserve permits for local families who have a tradition of farming and ranching in the area.

It is not within BLM's authority to adopt this suggestion. The TGA authorizes the Secretary to issue grazing permits to "corporations authorized to conduct business under the laws of the State in which the grazing district is located." The TGA does not place limits on which corporations may be issued permits based on their size.

One comment asked BLM to clarify whether state government agencies are qualified to hold public land grazing permits.

Section 4110.1 on mandatory qualifications states that to qualify for grazing use on public lands, one must own land or water base property and must be a citizen or have filed a declaration of intention to become a citizen or petition for naturalization, or be a group or association authorized to conduct business in the state where the grazing use is sought, all members of which are citizens or have filed petitions for citizenship or naturalization, or be a corporation authorized to conduct business in the state in which the grazing use is sought. Although state agencies may acquire base property, they are not a citizen, group, association, or corporation authorized to conduct business in the state in which the grazing use is sought. Therefore, state agencies are not qualified under the grazing regulations for grazing use on public lands. Thus, unless the exception for base property acquisition by an "unqualified transferee" in the circumstances described at section 4110.2-2(e) applies (which provides for issuing a permit or lease to an unqualified transferee for up to two years when they acquire base property by "operation of law or testamentary disposition"), state

agencies may not be granted a grazing permit or lease.

BLM recognizes that at times a state agency, typically the state wildlife agency, will acquire base property for various purposes, may apply for the associated grazing preference on public lands, and may express their wishes that the grazing preference be reallocated to wildlife, or express an interest to limit use of the grazing preference and permit to grazing treatments that are, for example, necessary for maintenance or improvement of habitat for wildlife. BLM will cooperate with state agencies wherever possible to pursue common goals. However, BLM land use plans set forth management goals and objectives and the ways and means available for achieving those objectives. Where state agencies have acquired base property and do not wish to use the public land grazing preference associated with that property in conformance to the governing land use plan, BLM may work with the state agency, affected permittees or lessees, and any interested public to consider options regarding the management of affected public lands. This could include reallocating the forage to another permittee or lessee. It is not within BLM's authority to issue term grazing permits to state agencies, even if they own livestock, because they do not meet mandatory requirements to qualify for grazing use on public lands. This, however, does not preclude other arrangements such as where the state agency may form a separate corporation chartered by the state for purposes of holding and managing a public lands grazing permit.

One comment suggested that we amend section 4130.1-1 to require that BLM offer permittees and lessees a new permit or lease 150 days in advance of their permit or lease expiration date, and suggested that we amend section 4110.1(b) to refer to this proposed requirement.

We have not adopted this comment in the final rule. Permit renewal time frames are best addressed in BLM's policy guidance and the BLM Manual rather than in regulations. Also, section 4110.1 deals only with qualifications of applicants, and the only necessary cross-reference is to provisions in section 4130.1-1 on determining satisfactory performance, which is a mandatory qualification. Other procedural matters are not relevant to section 4110.1.

Finally, one comment urged BLM to prohibit the transfer of preference to groups seeking to eliminate grazing.

BLM has not changed its regulations in response to this comment. In order to qualify for grazing use on public lands,

one must still meet the requirements of section 4110.1. Other regulatory provisions allow BLM to cancel preference should a permittee or lessee fail to make grazing use as authorized.

Section 4110.2-1 Base Property

In this section, we proposed an editorial change, dividing paragraph (c) of the existing regulations into two parts, designated (c) and (d), since the paragraph addressed two subjects: the requirement to provide a legal description of the base property, and the sufficiency of water as base property. No public comments addressed this section, and we have made no changes in the final rule.

Section 4110.2-2 Specifying Grazing Preference

We amended this section in the proposed rule to replace the term "permitted use" with the term "grazing preference" or "preference." We discuss comments on the change in terminology under the definitions section. No comments addressed this section as such, and we have made no changes in the final rule.

One comment on this section urged BLM to give preference to buffalo ranchers in issuing grazing permits because use by buffalo pre-dates use by cattle on the range, and they therefore have right by history to receive first consideration for grazing use. Another comment stated that BLM should let ranchers decide how many livestock should be grazed and adjusted based on their judgment because most ranchers are good stewards of the land. Another comment urged BLM not to make changes in preference solely on the basis of forage allocations in land use plans, stating that monitoring must be used to justify changes in authorized levels of grazing use.

We have not changed the final rule in response to these comments. BLM has no authority to give priority to buffalo ranchers when issuing grazing permits or leases. The TGA requires that when issuing grazing permits, the Secretary must give preference to landowners engaged in the livestock business, bona fide occupants or settlers, or owners of water or water rights, as may be necessary to permit the proper use of lands, water, or water rights owned, occupied, or leased by them. (Grazing permits authorize grazing use on lands within grazing districts established under Section 1 of the Act.) The Act also requires that when issuing grazing leases, the Secretary must give preference to owners, homesteaders, lessees, or other lawful occupants of lands contiguous to the public lands

available for lease, to the extent necessary to permit proper use of such contiguous lands, with certain exceptions. (Grazing leases authorize grazing on public lands outside grazing districts.) Therefore, under the TGA, the kind of animal an applicant for a permit or lease wishes to graze on public lands has no bearing on whether the applicant has or will be granted preference for a grazing permit or lease. BLM may issue permits to graze privately owned or controlled buffalo under the regulations that provide for "Special Grazing Permits or Leases" for indigenous animals (section 4130.6-4), so long as the use is consistent with multiple use objectives expressed in land use plans.

Both Sections 3 and 15 of the TGA and Sections 402(d) and (e) of FLPMA entrust to the Secretary of Interior the responsibility for determining and adjusting livestock numbers on public lands. The Secretary has delegated this responsibility to BLM. BLM may not delegate this responsibility to the ranchers. BLM works cooperatively with ranchers, the state having lands or responsibility for managing resources, and the interested public in determining terms and conditions of grazing permits and leases, including the number of livestock to be grazed. Permits and leases contain terms and conditions to ensure that grazing occurs in conformance to land use plans, which are developed with public involvement.

The regulations at section 4110.2-2 do not provide for the establishment of preference solely on the basis of the forage allocation contained in the land use plan. Rather, they state that, alternatively, preference may be established in an activity plan or by decision of the authorized officer under section 4110.3-3. Some land use plans determined a forage allocation for livestock on an area-wide basis and apportioned that allocation among qualified applicants. Other land use plans simply recognized previous allocations and stated that future adjustments to these allocations would be guided by the multiple use objectives contained in the land use plan, be implemented by grazing decisions, and be supported by monitoring information.

Section 4110.2-3 Transfer of Grazing Preference

The proposed rule made editorial changes to this section to conform the rule to the definition of "grazing preference."

A comment on this section suggested that before issuing a permit or lease that arises from transfer of preference, BLM should conduct capacity surveys,

condition assessments, evaluate monitoring data, and complete NEPA compliance documentation so that the terms and conditions of the permit or lease that we issue reflects current allotment conditions.

BLM does not control when or for what allotments it will receive applications to transfer grazing preference and issue a permit arising from that transfer. By the end of fiscal year 2003, BLM had assessed about 40 percent of its allotments for achievement of standards of rangeland health. In these areas, BLM reviews the application in light of the existing assessment and NEPA compliance documentation, and issues the permit or lease with appropriate terms and conditions. BLM continues to prioritize its data gathering needs based on known resource management issues. If BLM does not conduct an assessment of rangeland health and otherwise "fully process" a permit or lease application that accompanies a preference transfer, it includes terms and conditions on the newly issued permit or lease to ensure achievement of the standards and conformance to appropriate guidelines. These permit or lease terms and conditions include a statement that, if a future assessment results in a determination that changes are necessary in order to comply with the standards and guidelines, BLM will revise the permit or lease terms and conditions to reflect the needed changes.

Section 4110.2-4 Allotments

In the proposed rule, we removed the requirement that BLM consult with the interested public before making an allotment boundary adjustment because it is primarily an administrative matter that we implement by decision or agreement following a NEPA analysis of the action. This means that, under the final rule, allotment boundary changes will no longer trigger required consultation, cooperation, and coordination with the interested public. This change is intended to improve the administrative efficiency of grazing management.

Many comments expressed opposition to any reduction in the role of the interested public, but relatively few comments addressed this particular function. One comment stated that this change would affect the public role in NEPA analysis of boundary changes. That is incorrect. The public role under NEPA is unaffected by this rule change.

One comment stated that boundary adjustments could affect native plant populations and requested continued public involvement. Environmental

issues such as impacts on native plants are best addressed through the NEPA process, which is unaffected by this change. BLM has found that much of the required consultation with the interested public is duplicative of these other processes and often delays routine, non-controversial decisions.

In BLM's view, the NEPA process, informal consultations and the ability to protest before a decision is final provide adequate mechanisms to identify legitimate public concerns over boundary changes. Thus, no changes have been made in the final rule.

One comment on this section suggested that BLM should consult with base property lien holders before adjusting allotment boundaries, and should remove its authority to adjust allotment boundaries by decision so that the permittee or lessee has control over allotment boundaries rather than BLM.

We have not adopted these comments in the final rule. Under section 4110.2-4, BLM will consult with affected permittees or lessees before adjusting allotment boundaries. Should permittees or lessees wish to consult regarding boundary adjustment proposals with those holding liens on their base properties, they may do so at their option. It is necessary for BLM to retain authority to adjust allotment boundaries by decision for those situations where all affected parties cannot reach consensus regarding an allotment boundary adjustment.

Section 4110.3 Changes in Grazing Preference

In the proposed rule, we removed the term "permitted use" wherever it occurred in this section and replaced it with the term "grazing preference" for the reasons explained previously. We also added a third paragraph to provide that our NEPA documentation addressing changes in grazing preference would include consideration of the effects of changes in grazing preference on relevant social, economic, and cultural factors.

Numerous comments addressed both aspects of this section.

One comment stated that BLM should only consider changes in preference when there has been a permanent change in the number of AUMs available for attachment to base property. The comment asserted that, because AUMs of preference were established through formal adjudication, it would be inappropriate for BLM to change grazing preference as needed to manage, maintain, or improve rangeland productivity, to assist in restoring ecosystems to properly functioning condition, to conform to land use plans