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Counsel for Plaintiff American Prairie

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

AMERICAN PRAIRIE FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
INTERIOR; DOUG BURGUM, in his official
capacity as Secretary of the United States
Department of the Interior; UNITED STATES
BUREAU OF LAND MANAGEMENT; and
STEVEAN PEARCE, in his official capacity as
Director of the United States Bureau of Land
Management,

Defendants.

Dkt. No. 4:26-cv-00282-BMM

**AMERICAN PRAIRIE'S
REPLY BRIEF IN
SUPPORT OF MOTION
FOR TEMPORARY
RESTRAINING ORDER,
PRELIMINARY
INJUNCTION OR STAY**

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American Prairie has demonstrated that injunctive relief is warranted to maintain the 20-year status quo of bison grazing on public lands while this case is adjudicated to avoid the immediate and irreparable harm from being forced to remove almost 1,000 bison from federal allotments by September 30, 2026. Because those harms are already occurring as American Prairie prepares to meet BLM’s deadline, American Prairie requests relief—either preliminary injunction or temporary restraining order—by September 15, 2026.

**I. DEFENDANTS DO NOT DEFEAT AMERICAN PRAIRIE’S
LIKELIHOOD-OF-SUCCESS DEMONSTRATION.**

**A. BLM and Montana Do Not Present the Best Reading of the
Taylor Grazing Act.**

The Taylor Grazing Act’s (TGA) “best reading” does not support Defendants’ position that American Prairie’s bison are statutorily disqualified from grazing permits. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). Their strained interpretation—polar opposite BLM’s interpretation just three years ago—reinforces the inference that the agency’s new position is not a “correction,” BLM Resp. 19, but is instead driven by the kind of “individual policy preferences” that judicial statutory interpretation is designed to avoid. *Loper Bright Enters.*, 603 U.S. at 403. Consistent with the TGA’s eligibility and grazing use requirements, American Prairie grazes livestock—both bison and cattle—on the allotments at

issue, while it also holds conservation values that are not foreclosed by the statutory language, purpose, or any other statute.

1. BLM and Montana advance a statutory interpretation that *Public Lands Council* rejected.

Defendants fail to establish that the TGA’s plain language, which authorizes BLM to “issue or cause to be issued permits to graze livestock” to “bona fide settlers, residents, and other stock owners,” 43 U.S.C. § 315b, inherently demands a production-oriented purpose. Indeed, *Public Lands Council v. Babbitt*, 529 U.S. 728 (2000), forecloses their position.

Defendants focus on the term “stock owners,” claiming it excludes American Prairie because it is “not a ‘merchant’ and its bison are not ‘kept for sale or trade.’” Mont. Resp. 14 (quoting Black’s Law Dictionary (12th ed. 2024)); see BLM Resp. 11 (same). But their decontextualized definition of “stock” runs headlong into the same textual defect the Supreme Court rejected in *Public Lands Council*. The Court rebuffed the livestock industry’s attempt to limit permit eligibility to only stock owners “engaged in the livestock business,” explaining that doing so would impermissibly render the TGA’s separate clause granting special preference to that same subset of commerce-oriented stock owners superfluous. *Pub. Lands Council*, 529 U.S. at 746–47 (quoting 43 U.S.C. § 315b). Similarly, if “stock” refers only to commercial “goods ... kept for sale or trade,” as Defendants claim, then every “stock owner” is necessarily a person “engaged in the livestock

business”—collapsing the very distinction the preference clause depends on and that *Public Lands Council* held Congress intended to preserve. *See Stewart v. Kempthorne*, 554 F.3d 1245, 1251 n.2 (10th Cir. 2009) (noting that “Plaintiffs’ contention that an applicant must be engaged in the livestock business and for profit” was rejected in *Public Lands Council*).

BLM and Montana unpersuasively seek to distinguish *Public Lands Council* by claiming it addressed only “who may apply” for a TGA permit—“stock owners”—and not “what use a TGA permit may authorize” —“to graze livestock.” BLM Resp. 16 (emphasis orig.); *see* Mont. Resp. 15. But Defendants’ own arguments merge the two by claiming “stock owners” means owners of “domestic livestock used for productive purposes.” BLM Resp. 20 (emphasis orig). Their production requirement would therefore narrow both the permit use and the eligible class of “stock owners,” which *Public Lands Council* forbids. 529 U.S. at 746–47.

Defendants’ intent-based standard also conflicts with *Stewart v. Kempthorne*, where the Tenth Circuit rejected the argument that BLM must examine an “applicant’s ‘intent to graze,’” before granting a permit, calling such a subjective inquiry “untenable.” *Stewart*, 554 F.3d at 1253. Thus, in addition to violating *Public Land Council*, Defendants’ position would require precisely the “subjective inquiry” that *Stewart* rejected.

2. The TGA’s purpose does not create a production requirement.

BLM and Montana misuse the TGA’s purpose of “stabiliz[ing] the livestock industry dependent on the public range,” Pub. L. No. 73-482, 48 Stat. 1269, 1269 (1934), to imply a production requirement. On the contrary, legislative history confirms that Congress adopted the TGA to curb overgrazing that harmed public lands by regulating grazing *practices* rather than grazing *purposes*. The Interior Secretary at the time emphasized the TGA’s importance “to prevent, or at least check in some degree, the injuries that are resulting to the public domain through the lack of adequate control or regulatory authority in this Department.” H.R. Rep. No. 73-903, at 6 (1934). Representative John Evans of Montana likewise explained that: “Overgrazing of many areas has not only greatly reduced the carrying capacity for livestock generally but has greatly injured the land.” H.R. Rep. No. 72-1719, at 3 (1932). Thus, Congress sought to stabilize the livestock industry not by excluding non-commercial grazing, but by limiting harmful grazing practices by all stock owners. Indeed, American Prairie’s grazing advances the TGA’s purposes by improving rangeland conditions. *See* Pl.’s Br. 27–28.

Defendants’ repeated refrain that the grazing statutes treat grazing and conservation as distinct uses does not bear the inference that American Prairie’s bison are disqualified simply because they serve both purposes. Crucially, American Prairie uses their permits to graze their animals. Like most cattle

ranchers, American Prairie sought federal permits to expand access to forage to sustain its livestock herd. ECF No. 4 ¶ 8 [hereinafter Heidebrink Decl.]. That bison grazing also has conservation benefits, Pl.’s Br. 2–3, does not negate American Prairie’s actual grazing use.

For this same reason, Defendants’ reliance on the Tenth Circuit’s holding in *Public Lands Council* is misplaced. BLM Resp. 15; Mont. Resp. 11. The court held only that BLM exceeded its authority by authorizing “conservation use” to retire grazing from allotments. *Public Lands Council v. Babbitt*, 167 F.3d 1287, 1307–08 (10th Cir. 1999), *aff’d on other grounds*, 529 U.S. 728 (2000). American Prairie’s permits were issued and are used for grazing, so that holding does not apply.

Likewise, the Federal Land Policy and Management Act (“FLPMA”) does not alter the TGA’s eligibility and grazing use language. *See* Fed. Resp. 13–14. FLPMA’s multiple-use, sustained-yield mandate contemplates the coexistence of grazing and conservation uses in the same permit, where compatible. *See* 43 U.S.C. §§ 1701(a)(7), 1732(a), 1702(c). American Prairie does both.

3. BLM’s past practice does not support its new position.

BLM’s consistent past practice—including its 20-year history with American Prairie—has been to evaluate compliance with statutory and regulatory eligibility and grazing-use requirements, *not* a permittee’s purpose for grazing. BLM and Montana stretch a single administrative decision, *Hampton Sheep Co. v.*

BLM, Docket No. WY-01-74-01 (Sept. 26, 1975), to erroneously suggest otherwise. *BLM* Resp. 18–19; *Mont. Resp.* 15-16.

In *Hampton*, an Administrative Law Judge (ALJ) concluded that “animals normally classified as ‘wildlife’ may be ‘livestock’” for purposes of the TGA “when in substantial respects they are treated as livestock and have characteristics in common with livestock.” *Hampton Sheep Co.* at 13. The ALJ did *not* demand a production purpose or even evaluate production evidence in resolving the livestock-classification issue. Instead, he considered public safety, impacts on adjacent livestock operators and wildlife, and rangeland health. *Id.* at 13–30. The permittee’s intention to engage in production was “somewhat unclear,” *id.* at 5, and the permittee “desire[d] to maintain [the bison] there partly as a tourist attraction,” *id.* at 3. If a tourism purpose was not disqualifying, neither is a conservation purpose.

Because the TGA does not impose a production-purpose requirement, American Prairie is likely to succeed in its claim that BLM’s 2026 Final Decision was unlawful.

B. BLM and Montana Do Not Demonstrate that BLM’s Decision was Rational.

While BLM’s illegal TGA interpretation is sufficient to find that Plaintiffs are likely to succeed on the merits of their case, the arbitrariness of the 2026 Final Decision provides an independent basis for such a finding. 5 U.S.C. § 706(2)(A).

1. BLM arbitrarily disregarded evidence that American Prairie's bison are domestic livestock.

BLM's and Montana's dismissal of evidence that American Prairie's bison are "domestic livestock," under BLM's definition, largely repackages their claims that American Prairie's bison are disqualified by the organization's conservation mission. While Defendants devote dozens of paragraphs to proving that American Prairie seeks to conserve the shortgrass prairie in part by restoring a large herd of bison to their native habitat, Mont. Resp. 4–10, 16–18; BLM Resp. 20–22, it is uncontested.

There is also no question that American Prairie attempts to minimize handling of its bison, not only to minimize behavioral impacts, but also to save costs and avoid injury and stress to the animals, a practice "well established in veterinary medicine and animal husbandry ... for commercial and production herds." Heidebrink Decl., Attach. D, Zaluski Decl. ¶¶ 11–13 [hereinafter Zaluski Decl.]. Even so, "American Prairie's bison herd is actively and intentionally managed under a comprehensive herd health framework." *Id.* ¶ 8. The bison are handled for tagging, vaccination, and transfer. *Id.* ¶¶ 6–7; *see also* Heidebrink Decl. ¶ 40; ECF No. 5-3 Cochenour Decl., Attach. C at pdf pp. 16, 136–142 (bison-handling photos). While Defendants willfully overlook this evidence, it demonstrates that American Prairie's bison are livestock because "in substantial

respects they are treated as livestock and have characteristics in common with livestock.” *Hampton Sheep Co.* at 13.

Defendants’ insistence that American Prairie does not engage in livestock production does not dispute *whether* American Prairie’s bison are used for food and feedstock; indisputably, they are. Pls. Br. 16–17. Defendants instead object to *how* and *why* that production occurs. Montana takes issue with American Prairie’s donation of many of its animals for meat, rather than consistently collecting a fee, and its speculation that Tribes may use bison feedstock obtained from American Prairie “for ‘conservation’ versus harvest.” Mont. Resp. 17. BLM similarly emphasizes that American Prairie’s bison harvest is not designed to produce “marketable outputs.” BLM Resp. 21; *but see* Heidebrink Decl. ¶ 52 (noting that “[s]ince 2017, American Prairie has received more than \$79,000 in harvest-related revenue, and local organizations have raised more than \$125,000 through donated bison harvests.”). In substance, Defendants require not just production, but profit-motivated production—a requirement Defendants cannot justify and *Stewart* rejects. *See Stewart*, 554 F.3d at 1251 n.2.

BLM reveals its true concern: that production uses are merely “incidental to Plaintiff’s conservation-focused management.” BLM Resp. 21. Once again, it is American Prairie’s conservation mission, rather than its grazing practices, that BLM deems disqualifying. By fixating on American Prairie’s mission to the

exclusion of record evidence of statutory permit eligibility, BLM relied on a factor Congress did not intend it to consider and offered an explanation that runs counter to the record. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). American Prairie is therefore likely to succeed on its arbitrary-and-capricious claim.

2. BLM’s 2026 Final Decision constitutes an arbitrary reversal.

Defendants’ claim that the 2026 Final Decision did not “reverse” BLM’s prior position is not credible. Neither party denies that BLM rejected any production requirement when it issued the now-rescinded permits in 2022 and defended them for the next three years. BLM characterizes its reversal of that position as “a correction in an interlocutory permit decision,” BLM Resp. 19, but the 2022 permitting decision was final,¹ and the 2026 Final Decision followed remand of that decision. ECF No. 5-10 Cochenour Decl., Attach. J. The *Fox Television* case itself arose in the same procedural posture: a reversed agency decision on remand, *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009), and it applies equally to BLM’s decisionmaking.

BLM also reversed the policy it applied when issuing American Prairie grazing permits in 2005 and 2008, and renewing them in 2014, without imposing

¹ 43 C.F.R. § 4.21(b) (“A decision that is in effect, or goes into effect, pending completion of an appeal is final agency action for the Department.”).

any production requirement. BLM and Montana claim that BLM had no reason to know of American Prairie’s alleged “non-production status” then. Mont. Resp. 19; *see also* BLM Resp. 19–20. But BLM’s decision documents show that it expressly determined that American Prairie’s applications complied with the TGA without treating its mission as material. *See* Harbine Decl., Attach. Q, R, and S. That approach is consistent with BLM’s prior practice of inquiring only whether applicants satisfy statutory and regulatory eligibility and grazing-use requirements. *See supra* Section I.A.3 (discussing *Hampton Sheep Co.*).

BLM’s unacknowledged and unreasoned reversal provides another reason for finding American Prairie is likely to prevail on its claims.

II. DEFENDANTS DO NOT DEFEAT AMERICAN PRAIRIE’S DEMONSTRATION OF IRREPARABLE HARM.

BLM and Montana fail to rebut American Prairie’s irreparable financial, genetic, physical, and organizational harms, which warrant injunctive relief.

First, even with maximum mitigation and contingency planning, BLM’s removal order will force American Prairie to reduce its herds by 300 bison and relocate the remaining 640 by September 30, resulting in more than \$300,000 in unrecoverable costs before this case is fully adjudicated. Second Heidebrink Decl. ¶¶ 3–5, 20. Contrary to Montana’s uninformed assertion, these costs are not speculative or “self-inflicted wounds.” Mont. Resp. 20. The calculation is based on contracts, vendor estimates, and internal labor cost estimates. Second Heidebrink

Decl. ¶¶ 17–19. These costs cannot be reduced through rushed bison sales (which are unlikely to garner full value for the animals and their future offspring), harvest revenue (due to the impracticability of a last-minute harvest over a diminished land-area), or leasing the allotments to cattle ranchers (which would require fencing modifications). *Id.* ¶¶ 13–16, 25–28, 35–38.² American Prairie’s significant costs constitute irreparable harm because they cannot be recovered from the government. *E. Bay Sanctuary Covenant v. Garland*, 994 F.3d 962, 984 (9th Cir. 2020). BLM’s claim that economic harm must threaten the existence of an organization relies on cases involving plaintiffs with viable damages remedies. BLM Resp. 23–24 (citing cases). BLM admits that American Prairie lacks any path to recovering its costs, and the financial implications are irreparable. BLM Resp. 25 n.4.

Second, Defendants misunderstand the genetic consequences of a mandated herd reduction. American Prairie’s current herd population (almost 1,000 bison, or an effective population of around 100) is needed avoid short-term genetic harm, Heidebrink Decl., Attach. C, Putnam Decl. [hereinafter Putnam Decl.], ¶ 16. BLM’s observation that many more animals are required for long-term genetic

² American Prairie accounted for the seasonal grazing on Whiterock Coulee, including the loss of April-September forage on the federal allotment, in calculating the 300-animal reduction. Second Heidebrink Decl. ¶¶ 61–64.

viability says nothing about the immediate harm of reducing the herd below short-term viability levels. BLM Resp. 21–22. Further, American Prairie’s desired 400-animal minimum herd size describes interim management objectives, not genetic sufficiency, as it builds up to a larger herd. Second Heidebrink Decl. ¶¶ 46–48. The more American Prairie’s herd is reduced, the more irreparable genetic harm occurs. *Id.* ¶ 48; Putnam Decl. ¶¶ 14–16.

Contrary to Montana’s suggestion, importing bulls is insufficient mitigation, because it would not replace lost cows, calves, maternal lines or known genetics that have taken American Prairie years to build and cannot be replicated. Heidebrink Decl. ¶¶ 34–36; Second Heidebrink Decl. ¶¶ 41, 48. Moreover, without BLM land and forage, American Prairie lacks the carrying capacity to rebuild its herd, as Montana suggests. Second Heidebrink Decl. ¶¶ 50–51.³

Third, the physical harms to American Prairie’s bison resulting from their forced transfer are far from “conjectural.” BLM Resp. 26. Former State Veterinarian Martin Zaluski explained that this otherwise unnecessary handling would “expos[e] the animals to injury, production loss, and disease,” and similar

³ Montana references American Prairie’s previous contraceptive use to undermine population growth concerns. Mont. Resp., 23. However, the contraceptive use was an experimental herd management strategy with negative consequences and not indicative of any intention to eliminate herd growth. Second Heidebrink Decl. ¶¶ 53–55.

handling of a separate herd “preceded the losses of hundreds of bison” in 2010. Zaluski Decl. ¶ 15. Although Montana observes that fall handling is common, “[b]oth Sun Prairie leases authorize year-round continuous grazing,” so the bison there would not otherwise be moved. *Id.* ¶ 14; *see* Mont. Resp. 24. Forced handling for relocation will result in irreparable physical harm. Heidebrink Decl. ¶ 40.

Finally, because grazing bison is a central strategy for achieving American Prairie’s prairie-restoration mission, eliminating 300 bison and losing access to BLM allotments will cause irreparable organizational harm. *Flathead Warming Ctr. v. City of Kalispell*, 756 F.Supp.3d 985, 1005 (D. Mont. 2024); *Garland*, 994 F.3d at 984.

American Prairie’s financial, genetic, physical, and organizational harms warrant injunctive relief.

III. THE BALANCE OF HARMS AND THE PUBLIC INTEREST FAVOR GRANTING INJUNCTIVE RELIEF.

BLM and Montana fail to substantiate harm to themselves or the public from maintaining the status quo while this case is adjudicated. American Prairie has grazed bison on these allotments for over 20 years, during which Defendants continually renewed their permits without any findings of harm. There is no evidence to support such a finding now.

Montana’s allegation that bison will trespass on state trust lands is unfounded. Mont. Resp. 25–26. In over 20 years, American Prairie has never

received a formal violation notice or fine for trespass on state lands. Second Heidebrink Decl. ¶ 73. Any incidents of escape are immediately addressed with additional fencing, surveillance, and relocation. *Id.* ¶¶ 74–75. Across allotments, American Prairie effectively contains its bison through forage availability, pasture configuration, monitoring, livestock management, and staff response—even where “bison-grade fencing” is absent. *Id.* ¶¶ 70–71, 75. Temporary injunctive relief will not change these effective practices or increase incidents of escape.

Similarly, BLM offers no proof that injunctive relief will reduce public-land forage for production-oriented livestock. BLM Resp. 27–28. In fact, BLM suggests that American Prairie move its bison to deeded lands and shift cattle ranchers on those lands to BLM’s allotments. BLM Resp., 26. That swap would not increase cattle grazing; it would simply displace and harm the very cattle ranchers that BLM and Montana allegedly seek to protect. Young Decl. ¶¶ 5–8; Second Heidebrink Decl. ¶¶ 8–10.

Finally, BLM and Montana improperly subordinate the public interest to their political aims. They argue that TGA compliance serves the public interest, but this consideration favors injunctive relief, because the 2026 Final Decision violates the TGA. *See supra*, Section I.A. Moreover, “the public is served by requiring the Government to provide reasoned explanations and to consider reliance interests when changing a position.” *Wash. v. U.S. Dep’t of Educ.*, 807 F. Supp. 3d 1275,

1292 (W.D. Wash. 2025). Here, BLM’s new production requirement has already caused confusion and apprehension among longstanding grazing permittees. Birch Decl. ¶¶ 12–13. And Defendants’ offer no rebuttal to the public benefits of American Prairie’s bison program, including community economic benefits, public harvest opportunities, and bison transfer to Tribes and others.⁴ The public interest and balance of harms therefore favor maintaining the status quo.

CONCLUSION

To avoid significant irreparable harm, American Prairie respectfully requests that this Court maintain the status quo until ruling on the merits by staying or enjoining the enforcement of the 2026 Final Decision by September 15.

Respectfully submitted this 24th day of August, 2026.

/s/ Jenny K. Harbine

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⁴ Contrary to Montana’s speculation that tribal bison transfers may lessen the bison-reduction need, American Prairie’s contingency plan already accounts for its 2026 transfers, and American Prairie would have insufficient bison for planned transfers of 65 bison in 2027 and 2028. Second Heidebrink Decl. ¶¶ 5–6.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule Local Rule 7.1(d)(2), I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is 3,249 words, excluding the caption, table of contents and authorities, signature blocks, and certificates of compliance and service.

/s/ Jenny K. Harbine

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STEVEN PEARCE, in his official capacity as
Director of the United States Bureau of Land
Management,

Defendants.

Dkt. No. 4:26-cv-00282-BMM

**DECLARATION OF
WILLIAM BIRCH**

I, William Birch, hereby declare:

1. I am a citizen of the United States, and I am over 18 years of age.
2. Together with my family, I own and operate the Three Bar Ranch near Moore, Montana.
3. The ranch has been in my family continuously for about 100 years, and my sisters and I are the third generation to operate it. We own Black Angus and Angus-Hereford cattle, which graze on our property and on land leased from the Bureau of Land Management (BLM) and the State of Montana.
4. Our ranch lies on the west edge of the Big Snowy Mountains, and it abuts both BLM and U.S. Forest Service lands.
5. To ensure the continued health and productivity of our ranch and nearby lands, my family has undertaken numerous conservation projects. For example, we have worked to restore the health of Buffalo Creek, which flows through my property. Buffalo Creek is a tributary of Ross Fork, which flows into the Judith River. Historically, beavers on Buffalo Creek were trapped and eliminated, which had a negative effect on aquifer recharge from the creek and subirrigation of our hay land. My family worked with the Montana Conservation Corps to install low-tech structures and fence off parts of the creek. As a result of our efforts, beavers have returned to Buffalo Creek, improving water quality and flow in the creek. We have been sharing

our techniques and results with nearby ranchers interested in similar benefits for their land.

6. We also have participated in numerous USDA-sponsored and cost-shared conservation programs such as EQIP, RCPP, CSP, and a highly successful Great Plains program. These programs have supported our conservation efforts in native grazing land, water development, wildlife management, weed management, range forage conservation, erosion control, and stream management.
7. We have installed wildlife-friendly fencing to facilitate safe crossing by native ungulates, while providing better range management for our cattle. We also provide public hunting access, which is helpful to our ranch, the BLM, and the State of Montana in managing elk populations and reducing damage.
8. We worked with BLM to provide access through our land for a timber thinning project. The logging traffic was hard on our roads, but we felt it was important to support BLM's efforts to improve timberlands. We conducted similar thinning on our own timberlands.
9. Improving the resources of the land, including pasture, cropland, water, timber, and wildlife, helps us raise high-quality calves and maintain an excellent cattle herd.

10. Running a successful, sustainable, and financially viable cattle ranch absolutely requires a great deal of conservation effort and mindset. Our real product is our grass and forage. Cattle are one way to harvest that forage. Without conservation, the business will not long survive. My grandparents learned that lesson in the Dust Bowl days.
11. In my experience, most ranchers integrate conservation as an essential part of their livestock operations. Their techniques, specific goals, and motives may vary, but conservation is practiced widely.
12. When I learned that BLM revoked American Prairie's grazing permits because of its conservation mission, I became nervous about whether my family's conservation activities might someday become a basis to revoke our federal or state grazing permits. As I understand it, BLM's decision focused on the reason for American Prairie's activities rather than its actual grazing practices. I am uncertain how BLM would determine whether conservation, rather than production, had somehow become the primary reason for our operation.
13. I am also concerned that neighboring ranches may lessen their conservation activities to avoid a risk to their grazing permits. If that happens, the health and productivity of the rangeland across the region will suffer.

14. Further, I am uncertain how BLM will objectively and consistently judge the conservation activities and purposes of grazing permittees in the future. I fear that adopting an intent standard for lessees could be applied arbitrarily and make the permitting process slower, less predictable, and less fair.

I declare, under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

Executed on August 20, 2026.

William B. Birch

William Birch

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Defendants.

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**DECLARATION OF
JENNY K. HARBINE**

I, Jenny K. Harbine, hereby declare:

1. I am an attorney licensed to practice law in the state of Montana and am counsel of record for Plaintiff American Prairie in this action.

2. Attachments Q–S¹ are true and correct copies of documents that are official records of the U.S. Bureau of Land Management (BLM) and were before the agency when it made its final decision in this case.

Attachment Q: Documents pertaining to BLM’s 2005 issuance of grazing permits for the Telegraph Creek Allotment to American Prairie, including: 1) BLM, Malta Field Office, Notice of Final Decision (Aug. 26, 2005); 2) BLM, Malta Field Office, Environmental Assessment: Change in Class of Livestock (June 9, 2005); and 3) BLM, Malta Field Office, Documentation of NEPA Adequacy, APR-Telegraph Creek Allotment Transfers (Nov. 19, 2012).

Attachment R: Documents pertaining to BLM’s 2008 issuance of grazing permits for the Box Elder Allotment to American Prairie, including: 1) BLM, Malta Field Office, Notice of Proposed Decision/Final Decision (May 19, 2008); and 2) BLM, Malta Field Office, Environmental Assessment: Box Elder Change in Use and Finding of No Significant Impact (Jan. 15, 2013).

Attachment S: Document pertaining to BLM’s 2014 reissuance of grazing permits for the Telegraph Creek and Box Elder Allotments to American Prairie: BLM, Malta Field Office, Notice of Proposed Decision (Feb. 3, 2014).

¹ Exhibits are consecutively lettered following Exhibits A–P, attached to the Cochenour Declaration, ECF No. 5.

I declare, under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge pursuant to 28 U.S.C. § 1746.

Signed and executed on the 24th day of August, 2026.

/s/ Jenny K. Harbine

Jenny Harbine

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Attachment Q



In Reply To:
4000

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Malta Field Office
501 South 2nd Street East, HC 65, Box 5000
Malta, Montana 59538-0047
<http://www.mt.blm.gov/mafo>



August 26, 2005

NOTICE OF FINAL DECISION

CERTIFIED MAIL -RETURN RECEIPT REQUESTED # 7004 1350 0000 1181 9565

Sean Gerrity
c/o American Prairie Foundation
P.O. Box 908
Bozeman, MT 59771-0908

Dear Mr. Gerrity:

Background

The Bureau of Land Management (BLM), Malta Field Office has completed an evaluation on the application made by the American Prairie Foundation (APF) to change the grazing permit for Telegraph Creek Allotment, No. 05654. Telegraph Creek Allotment, No. 5654 contains 12,416 acres of BLM administered lands, 640 acres of Montana State lands, and 1700 US Fish and Wildlife Service acres. The APF purchased the ranch from Ross and Dan Wiederrick in January 2004. They leased the ranch back to Ross Wiederrick for three years. The present permit is for domestic livestock only. The APF applied to change the class of livestock, change the season of use and modify existing fences on May 21, 2004. On May 16, 2005, the final Change-in-Class of Livestock EA was mailed to interested publics. On July 11 the FONSI was signed and the Proposed Decision was mailed to interested publics.

APF will follow all state regulations regarding the transportation and management of livestock (43 CFR 4130.7 (b)). The public lands in this allotment will continue to be open to the same activities as other BLM lands in South Phillips County, including: hunting, hiking, horseback riding, bird watching, etc. The APF will monitor the bison herd's movements and assist the public in dealing with the bison. Signs would be posted to alert the public to the electric fences and bison's presence and the fact that they are using the allotment. As the bison are private animals, the APF will assume all liability issues relating to the bison.

One protest was received from Jack Atcheson. He states that our proposed fences violate the "Unlawful Inclosures Act". There are no proposed fence designs that would block access of the public to the public lands inside Telegraph Creek Allotment. A letter to Mr. Atcheson from the Montana BLM State office dated November 24, 2004 stated "The Bureau of Land Management uses fencing specifications as a general guide for fences built on BLM-administered lands. H-

1741-1 is a handbook that provides supplemental guidance related specifically to construction of fences on land managed by the BLM.” H-1741-1 is a guide book, it is not a Federal regulation or law. The fence design proposed in this analysis and decision has been shown in studies that it will contain bison and still allow big game to pass under or over the electrified fence. The proposed electrified fence will have three wires. The top and bottom wires would be hot and the middle wire would be ground. The top wire will be 42 inches off the ground and the bottom wire would be 22 inches off the ground. The public can cross the proposed fence at cattle guards, gates, wooden walk over stiles, or crawl under as they would any barb wire fence. Comments from the Department of Fish, Wildlife, and Parks were favorable on the fence design. “The FWP is pleased to see that the fence specifications will allow for wildlife movements under and over the electric fences necessary for bison containment. The ground clearance should allow for antelope to easily pass under the fence.”

Final Decision

After careful consideration of public comments and staff input, it is my decision to implement the proposed action as described in EA MT-090-04-026, to issue a term permit that changes the class of livestock, changes the season of use, and change permit conditions:

1. Change the class of livestock from cattle to bison and cattle on lands administered by the BLM in this allotment (43 CFR 4130.3-2(e) and 4130.6-4).
2. Change the season of use for the Telegraph Creek Allotment from 3/1-2/28 and 4/1-11/30 to 3/1-2/28.

The following will be conditions incorporated into the permit:

The 4-pasture rest rotation grazing system, with one alternating pasture, (pastures 1-4) completely rested every year and another deferred during the growing season will continue. This is consistent with the existing Allotment Management Plan.

Electrify all boundary and interior fences as needed within the design specification analyzed in the EA to control the movements of bison to keep the bison in the appropriate pasture (43 CFR 4120.3-2, 4120.3-3 (a and b), and 4120.3-4)).

APF will be required to ear-tag all bison to aid in identification of problem animals (43 CFR 4130.7 (c)).

APF will continue to keep actual use records and turn them in to the BLM for billing at the end of the grazing season as required by the Telegraph Creek Allotment Management Plan (AMP).

The original objectives of the AMP are being carried forward (Appendix 1). These objectives as well as the standards and guidelines will continue to be part of future management of this allotment.

The APF will comply with its herd health plan.

Rationale:

The grazing application is in compliance with 43 CFR 4130.6-4 which states: "Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorizing office. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years." This permit will expire on February 28, 2013; this is the date that other permits in the Telegraph/Fourchette Watershed Plan area expire. The fences being modified still allow for the passage of wildlife while containing bison in the pastures. The concern for disease transmission is addressed by the herd health plan outlined by APF.

Appeal Procedures

Any applicant, permittee, lessee or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470, 43 CFR 4160.3 and 4160 .4. The appeal must be filed within 30 days following receipt of the final decision, or within 30 days after the date the proposed decision becomes final.

The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 and 4.479, pending final determination on appeal. The appeal and petition for a stay must be filed in the office of the authorized officer, Mark Albers, Field Office Manager, Malta Field Office, HC 65 Box 5000, Malta, MT. 59538. The appellant must serve a copy of the appeal and petition for a stay by certified mail with the authorized officer and the Office of the Field Solicitor, P.O. Box 31394, Billings, Montana, 59107-1394.

The appeal shall clearly and concisely state the reasons why the appellant thinks the proposed or final decision is in error, and otherwise comply with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b). In accordance with 43 CFR 4.471(c), a petition for a stay must show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR 4.473.

If you wish to file a response to the petition for a stay, you may file with the Hearing Division a motion to intervene the appeal, together with the response, within 10 days after receiving the petition. Within 15 days of the filing the motion to intervene and response, you must serve copies on the appellant, the office of the solicitor and any other person named in the decision (43 CFR 4.472 (b)).

If you have any questions please contact Dennis Lingohr or Fritz Prellwitz at 406-654-5100.

Sincerely,

Mark Albers, Field Office Manager

cc (certified copies)

Jack Jones 7004 1350 0000 1181 9749

Jack Atcheson 7004 1350 0000 1181 9763

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Butch Matovich 7003 0500 0000 4756 4580

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Phillips County Commissioners 7004 1350 0000 1181 9930

Valley County Commissioners 7004 1350 0000 1182 0004

Gene Barnard 7004 1350 0000 1182 2510

Linda Poole TNC 7003 0500 0000 4756 4597

Don Woerner 7003 0500 0000 4756 4603

Appendix 1 - Allotment Management Plan Objectives

1. to reduce sheet and gully erosion in coulee bottoms and upland sites
2. increase the composition of western wheatgrass from 1.69 % to 25%
3. increase the live vegetative ground cover from 16.5% to 25 % on upland sites
4. increase the total ground cover from 29.12 % on upland sites
5. decrease peak discharges by retaining the precipitation on site
6. improve nesting conditions on uplands and adjacent shorelines of existing reservoirs for waterfowl habitat
7. improve sharp-tailed grouse habitat within this allotment
8. increase the height, density, and forage production of key browse species for mule deer (green rabbit brush, rubber rabbit brush and big sage).

**ENVIRONMENTAL ASSESSMENT
CHANGE IN CLASS OF LIVESTOCK**

MALTA FIELD OFFICE

EA # MT-090-04-026

6-9-05

Prepared by Dennis J. Lingohr & Dwain M. “Fritz” Prellwitz

Submitted To:

Malta Field Office
Bureau of Land Management
Malta, Montana

Montana Department of Natural Resources and Conservation
Glasgow Unit
PO Box 1007
Glasgow, MT 59230-1007

Montana Department of Fish, Wildlife, and Parks
Mark Sullivan, Biologist
Malta, MT 59538

Charles M. Russell National Wildlife Refuge
Lewistown, MT

Montana Department of Livestock
Dr. Tom Linfield

NEED FOR PROPOSED ACTION

The American Prairie Foundation (APF) has recently acquired the former Wiederrick Ranch in south Phillips County, Montana. The base property controls the Telegraph Creek Allotment (#5654) which is currently grazed by cattle. The APF desires to establish a production herd of bison to enhance the long-term survival of a genetically pure species of bison, and promote the awareness of prairie conservation.

PROPOSED ACTION

The APF has submitted an application to:

1. change the class of livestock from cattle to bison and cattle on lands administered by the Bureau of Land Management and the Montana Department of Natural Resources and Conservation (State School Trust Lands) in this allotment that are currently grazed by cattle, Pasture No. 5 will continue to be utilized by cattle at this time. Its distance from the other four pastures would make it difficult to rotate bison.
2. change the season of use for the Telegraph Creek Allotment from 4/1-11/30 to 3/1-2/28, which is currently managed under one deferred system in pasture 5 and the base and one 4-pasture rest rotation system (pastures 1-4), with one alternating pasture rested every year (see attached map for pasture locations). Leases include those for the BLM Telegraph Creek Allotment, No. 5654) and one Montana State lease currently within the boundaries of the existing pasture No. 3 of Telegraph Creek Allotment (Sec.36,T.23N.,R.30E), lease #4873. A year-long season does not mean cattle will be in any pasture for twelve months each year. The existing rest rotation grazing system would continue. Bison would still only be in any one pasture for less than three months per year. Pastures could be utilized during the dormant season deferring use during the growing season on two or three pastures each year allowing plants to set seed and replenish root reserves over a larger area of the allotment.
3. electrify all boundary and interior fences as needed to control the movements of bison.

CONFORMANCE WITH LAND USE PLAN

This proposal has been reviewed to determine if the proposed action conforms to the land use plan terms and conditions as required by 43 CFR 1610.5. Livestock grazing and construction or modification of range improvements are in conformance with the Missouri Breaks Grazing EIS (page 1-7) as modified by the Judith, Valley, Phillips Resource Management Plan EIS and the Standards for Rangeland Health and Guidelines for Livestock Grazing Management EIS. It is also consistent with the Allotment Management Plan (AMP) and the Telegraph Creek Watershed Plan.

RELATIONSHIPS TO STATUTES & REGULATIONS

Livestock grazing and construction of range improvements are in compliance with the Taylor Grazing Act of 1934, as amended, the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978 and Federal Grazing Regulations (43 CFR 4100).

The proposed action is also in compliance with 43 CFR 4130.6-4 which states that “Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorizing office. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed 10 years.”

NO ACTION

Under this alternative a change in class of livestock would not be allowed. Cattle grazing on BLM administered lands would continue at present levels (cows 3-01 to 2-28 and 4-1 to 11-30 for 1651 AUMs-BLM).

Husbandry and Disease Management

The state of Montana classifies bison as livestock. The APF would manage their bison according to the laws of the Montana Department of Livestock.

Conversion Rate

The generally accepted conversion rate from cattle to bison is 1:1 (US Department of Agriculture. 2003. National Range and Pasture Handbook. Natural Resources Conservation Service, Grazing Lands Technology Institute, Environmental Assessment for the Roe Allotment; Final Environmental Assessment Change in Kind of Livestock from Cattle to Bison on the Ladder Ranch Allotment Nos. 16040 and 16117; Renewal of Grazing Permit for the Elk Mountain Ranch).

Management Objectives

APF’s plan is to begin with a small release of up to 15 bison in the summer of 2005 on deeded lands, then expand as outlined below. The first move from deeded lands would be to Pasture No.3. Utilization of Pasture No.3 for the initial release on public lands will provide a buffer between adjacent landowners because this interior pasture is surrounded by leased or deeded land controlled by APF. Pasture No.3 is an internal pasture bounded on the west by Pasture No.s 1 & 4 of the Telegraph Creek Allotment, Pasture No. 2 and APF base property on the north, and CMR allotments on the east and south. Thus, a second exterior fence exists around the entire pasture should bison escape from the initial release site. This would provide an additional measure of security while bison become established to the area. During the initial use of Pasture No. 3, less than 15% of the total licensed use for this pasture would be utilized.

As the bison herd expands and new fences are completed it will follow the rest rotation grazing system already established in Pasture No.s 1 through 4 consistent with the AMP. Starting with 15 animals of even sex ratio 1-3 years of age in 2005 and supplemented with additional purchased animals in year 2 and 3 (2006 and 2007) the APF would reach their planned goal of 170 yearling/adult bison by 2007 and will not exceed the carrying capacity or permitted stocking rates (Table No. 1). At the anticipated rate of growth, stocking rates would be substantially below the prescribed use of 1,987 AUMs for the portion of the allotment used for the first 5 years of the project. Culling would occur after that time consistent with permitted stocking rates, and would be accomplished by either sale/gift of live animals and/or for slaughter.

Pasture No. 5 will continue to be utilized by cattle for the time being. The distance from the main ranch would make it difficult to rotate bison to and from the other pastures.

<i>Table No. 1 Telegraph Creek Allotment, No. 5654</i>										
<i>Past. No.</i>	<i>Ownership Acres</i>			<i>Total Acres</i>		<i>Ownership AUMs</i>				<i>Total AUMs</i>
	BLM	STATE	PRIVATE	CMR		BLM	STATE	PRIVATE	CMR	
1	2642				2642	393				393
2	3455				3455	472				472
3	836	640		1340	2816	129	75	111	111	315
4	3447				3447	353				353
5	870		1638	360	2868	170		313	47	530
W/BASE	1166				1166	134				134
Total	12416	640	1638	1700	16394	1651	75	424		2197

Fencing

The initial release in Pasture No. 3 will utilize approximately 2816 acres of BLM, CMR and Montana state administered lands, expanding to approximately 16,000 acres by year 3 in pastures 1-4, involving at a minimum, approximately 30 miles of fence modification.

Karhu and Anderson (2002) found that 3-wire (42 inches high, 22 inches from ground) electric fence was just as effective as 4-wire (52 inches high, 22 inches from ground) for containing bison and allow passage of wildlife. They concluded bison can cross just about any fence but that the key to containment relies more on keeping the animals content by providing adequate space, forage, and water. A 2-wire electric fence was crossed easily by deer and elk, but pronghorn had a high aversion rate until they became habituated to its presence. They recommended using 1-inch fiberglass posts a minimum of sixty feet apart without stays to ensure the high tensile wire fence was flexible enough to allow easier crossing by wildlife.

Because of significant concerns expressed by neighbors about bison escaping and trespassing and significant concerns about impacts of high fencing on wildlife movements, the APF would start conservatively with a design to ensure that bison have a low probability of escape while allowing for easy wildlife crossing. This would include compensating for drifting snow in the winter. The APF would follow an adaptive management approach modifying fence design based

on experience. Modification of existing fence with electric wires will begin on the interior management fence of Pasture No. 3. Future changes to fence designs not discussed herein will require further analysis. One proposed design for existing barb wire boundary fences would be to add two interior hot wires. Wires would be attached to stays that extend 12 inches internally from the barbed wire fence. The top electric wire would be between the top and second barbed wire approximately 39 inches above the ground. The lower electric wire would be approximately 22 inches above the ground. The existing bottom barbed wire would be replaced by smooth wire and moved up to 20 inches above the ground. This design would first be tested on interior fences located on deeded lands. If this design does not hold up to bison standards all fences will be reconstructed with the new electric fence design.

New electric fence construction would be the 3-wire type. The top and bottom wires would be hot and the middle wire would be ground. The top wire would be 42 inches high, the middle wire 32 inches high, and the bottom wire would be 22 inches off the ground. Posts would be 60 feet apart with a non-conducting wood stay in between. Similar to Karhu and Anderson (2002), remote cameras would be set up along the fences to monitor wildlife crossings. Where monitoring showed there were concentrated wildlife crossings, posts would be 90 feet apart to insure easy crossings by wildlife. Cattle guards 12 feet wide and 16 feet deep would be used at road crossings. All electric fences would be signed to alert hunters and several wooden ladder gates would be constructed for hunter access. Existing points of entry to public lands would continue unless new gate locations are approved by BLM.

APF would remove and dispose of existing interior fences where new fencing is installed, provide material and labor for new fences, and maintain the improvements necessary to facilitate bison management on this allotment.

Monitoring

The APF intends to monitor this project to maximize knowledge gained concerning bison grazing impacts. The APF would examine factors related to bison population growth including survival and reproduction (i.e. Kunkel et al. 2004). They would monitor bison use of the landscape to assess potential impact to biodiversity (i.e. Kunkel et al. 2003). Bison would be pit-tagged and ear tagged to identify group behavior and associations. Based on funding, attempts would also be made to GPS collar a subset of animals.

AFFECTED ENVIRONMENT:

The following table shows what elements of the human environment are affected by the proposal, items bolded are Critical Elements and must be discussed in every EA.

Element	Affected ²		Element	Affected ²		Element	Affected ²	
	Yes	No		Yes	No		Yes	No
Air Quality ¹		X	Invasive, Nonnative Species ¹	X		Wild & Scenic Rivers ¹		X
Areas of Critical Environmental Concerns ¹		X	Wastes (hazardous or solid) ¹		X	Geology & Minerals		X
Cultural/Resources ¹		X	Water Quality (drinking/surface/ground) ¹		X	Land Resources		X
Environmental Justice ¹		X	Wetlands/Riparian Zones ¹		X	Livestock	X	
Farmlands (prime & unique) ¹		X	Wilderness ¹		X	Recreation		X
Floodplains ¹		X	Migratory Birds ¹	X		Vegetation/Soils	X	
Native American Religious Concerns ¹		X	Threatened or Endangered plants and animals ¹		X	Wildlife	X	

¹ Critical Element

² Only affected elements marked yes in the table above will be analyzed further.

Wildlife

Phillips County, Montana, has a rich diversity of wildlife species due to the large amount of undisturbed native grassland and sagebrush grassland habitats, much of which is on Public Domain land managed by the Bureau of Land Management. Wildlife use of these areas is well-documented. Bayless (1969) discussed the importance of northern Montana to wintering herds of pronghorn antelope, and Martinka (1967) described mortality of pronghorns during a severe winter. Management of those wintering areas during the summer grazing season is critical if animals are to survive long winters with deep snow and cold temperatures. Some herds may even pass through Phillips County and cross the Missouri River while migrating to suitable winter habitat in the Yellow Water Triangle south of the river (Pyrah 1987). Pronghorns must be able to migrate across public lands during severe winters, and livestock fences must be built or modified to certain specifications to allow free movement of animals.

Southern Phillips County is drier than northern Phillips County due to a lack of glaciated potholes. Water is mostly restricted to ephemeral streams, and to a scattering of shallow wetlands that may be dry during most years. Water has been supplemented by the construction of stockponds for watering livestock. The addition of nesting islands to these ponds (McCarthy 1973) and the initiation of rest rotation grazing systems (Gjersing 1975; Mundinger 1976) have greatly improved the area for production of waterfowl, waterbirds, and many other wildlife species. Additional published studies document the importance of the area to wildlife, but none of these studies from the 1960s and 1970s discussed the impacts of bison grazing on wildlife and wildlife habitats in southern Phillips County grasslands.

Many of the wildlife species found in Phillips County can be found in the Telegraph Creek Allotment, with grassland species predominating. Big game animals include pronghorn antelope (*Antilocapra americana*), mule deer (*Odocoileus hemionus*), white-tailed deer (*Odocoileus virginianus*), and elk (*Cervus elaphus*). Moose (*Alces alces*) sightings are rare and usually are of Canadian animals dispersing to the south. Smaller mammals include coyote (*Canis latrans*),

badger (*Taxidea taxus*), beaver (*Castor canadensis*), porcupine (*Erethizon dorsatum*), black-tailed prairie dog (*Cynomys ludovicianus*), striped skunk (*Mephitis mephitis*), red foxes (*Vulpes vulpes*), white-tailed jackrabbit (*Lepus townsendii*), mountain cottontail (*Sylvilagus nuttallii*), muskrat (*Ondatra zibethicus*), mink (*Mustela vison*) and up to three species of weasels (*Mustela* spp.). A variety of shrews, rodents and other small mammals can also be found, including periodic high populations of Richardson's ground squirrels (*Spermophilus richardsonii*) and black-tailed prairie dogs (*Cynomys ludovicianus*). The cougar, or mountain lion (*Puma concolor*), has reestablished naturally in the area, but the population is quite small.

Upland game birds include the native sharp-tailed grouse (*Tympanuchus phasianellus*), greater sage-grouse (*Centrocercus urophasianus*), and mourning dove (*Zenaida macroura*), and the introduced ring-necked pheasant (*Phasianus colchicus*) and gray partridge (*Perdix perdix*). The greater sage-grouse is a BLM sensitive species that was petitioned for listing under The Endangered Species Act. The Fish and Wildlife Service found that listing was not warranted at this time, but populations remain tenuous and BLM management actions always need to address sage-grouse impacts. There is one greater sage-grouse strutting ground (lek) on the allotment on the western edge of Indian Lake, but another lek on the CMR NWR is close enough to the Telegraph Creek Allotment that some of the two-mile radius nesting habitat falls within the allotment. Much of the public land within the allotment contains Wyoming big sagebrush stands with canopy coverage and plant height adequate for greater sage-grouse breeding, nesting, brood-rearing and wintering habitat. Designated crucial sage-grouse winter habitat occurs in the northeast corner of Pasture 2 and extends onto adjoining BLM land and APF's base property.

Amphibians and reptiles include the Great Plains toad (*Bufo cognatus*), Woodhouse's toad (*Bufo woodhousii*), western chorus frog (*Pseudacris triseriata*), northern leopard frog (*Rana pipiens*), tiger salamander (*Ambystoma tigrinum*), short-horned lizard (*Phrynosoma douglasi*), painted turtle (*Chrysemys picta*), racer (*Coluber constrictor*), western hognose snake (*Heterodon nasicus*), plains garter snake (*Thamnophis radix*), gopher (bull) snake (*Pituophis catenifer*), and western rattlesnake (*Crotalus viridis*). The milk snake (*Lampropeltis triangulum*) is extremely rare in the area, but could be found on occasion. The frogs, the painted turtle, and the salamander are restricted to wetlands and stockponds during most of the year.

Migratory Birds

Natural wetlands and stock reservoirs provide habitat for over 20 species of migratory waterfowl. Common nesting species include gadwall (*Anas strepera*), northern shoveler (*Anas clypeata*), blue-winged teal (*Anas discors*), northern pintail (*Anas acuta*), mallard (*Anas platyrhynchos*), American wigeon (*Anas americana*), green-winged teal (*Anas crecca*), lesser scaup (*Aythya affinis*) and Canada goose (*Branta canadensis*). The nesting season for waterfowl usually extends from April 15 to July 15. Raptors found in the area include the bald (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*), peregrine (*Falco peregrinus*) and prairie falcons (*Falco mexicanus*), northern harrier (*Circus cyaneus*), Swainson's hawk (*Buteo swainsoni*), ferruginous hawk (*Buteo regalis*), red-tailed hawk (*Buteo jamaicensis*), American kestrel (*Falco sparverius*), merlin (*Falco columbarius*), turkey vulture (*Cathartes aura*), northern goshawk (*Accipiter gentilis*), rough-legged hawk (*Buteo lagopus*), and numerous species of owls. Many of the raptors are migratory. Important migratory grassland birds include the Baird's (*Ammodramus bairdii*) and grasshopper sparrows (*Ammodramus savannarum*), Sprague's pipit (*Anthus spragueii*), long-billed curlew (*Numenius americanus*), marbled godwit

(*Limosa fedoa*), and chestnut-collared longspur (*Calcarius ornatus*). Many of these species have experienced declines across much of their range in recent years, and large blocks of intact native grasslands remain important in maintaining healthy breeding populations of these birds. Wetlands also provide nesting areas for Wilson's phalaropes (*Phalaropus tricolor*) and spotted sandpipers (*Actitis macularia*). The nesting season for migratory birds other than waterfowl is May 01 to August 01.

Special Status Species

The threatened bald eagle may be present from October to early April, feeding on carrion from the big game seasons during fall, and on migratory waterfowl more than fish during the remainder of the period. The threatened piping plover (*Charadrius melodus*) nests on Nelson Reservoir approximately fifty miles north of the Telegraph Creek Allotment. The black-footed ferret (*Mustela nigripes*) is native to the area and has been reintroduced in southern Phillips County as an experimental, nonessential population.

BLM Listed Sensitive Species that could be on the allotment include the Great Plains toad (*Bufo cognatus*), Greater short-horned lizard (*Phrynosoma hernandesi*), Milksnake (*Lampropeltis triangulum*), Northern leopard frog (*Rana pipiens*), Western Hog-nosed snake (*Heterodon nasicus*), Black-tailed prairie dog (*Cynomys ludovicianus*), Burrowing owl (*Athene/Speotyto cunicularia*), Ferruginous hawk (*Buteo regalis*), Golden eagle (*Aquila chrysaetos*), Greater sage-grouse (*Centrocercus urophasianus*), Loggerhead shrike (*Lanius ludovicianus*), Long-billed curlew (*Numenius americanus*), Chestnut-collared Longspur (*Calcarius ornatus*), McCown's longspur (*Calcarius mccownii*), Marbled godwit (*Limosa fedoa*), Mountain plover (*Charadrius montanus*), Northern goshawk (*Accipiter gentiles*), Peregrine falcon (*Falco peregrinus*), Sage thrasher (*Oreoscoptes montanus*), Baird's sparrow (*Ammodramus bairdii*), Brewer's sparrow (*Spizella breweri*), Sprague's pipit (*Anthus spragueii*), Swainson's hawk (*Buteo swainsonii*), Willet (*Cataptrophorus semipalmatus*), and Wilson's phalarope (*Phalaropus tricolor*).

There are seven small black-tailed prairie dog towns in the allotment, although one occurs on APF's private (base) property and state land. The remaining six on public land have no records of black-footed ferret presence since reintroduction efforts began in 1994, but all are within the 7k Prairie Dog Town Complex Area of Critical Environmental Concern (ACEC). The allotment is within five miles of the 40 Complex, the primary ferret reintroduction site on public lands. Ferrets have been reintroduced on the Valentine Complex of prairie dog towns on the CMR NWR about one-half mile from the southeast corner of pasture 3. The Telegraph Creek Allotment is within 10 miles of approximately 20 dog towns where ferrets have been present at some time since reintroduction, but all of the larger dog towns with ferrets within 10 miles of the Allotment are on the CMR NWR.

Livestock

The APF is developing a memorandum of understanding in cooperation with the South Phillips County Ranchers Stewardship Alliance to address the issues of herd health management and dealing with escaped bison. This memorandum will be part of the EA administrative record.

Transportation and Signage

The BLM will ensure that appropriate signs are used to promote visitor awareness of electric fences and the presence of bison.

Visual Resource Management

The southern two thirds of Telegraph Creek Allotment from approximately Indian Lake south are within a visual resource class II area. The visual resource class II objective is: To retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color and texture found in the predominant natural features of the characteristic landscape.

The northern third of the Telegraph Creek Allotment from approximately Indian Lake north are within a visual resource class IV area. The visual resource class IV objective is: To provide for management activities which require major modifications of the existing character of the landscape. The level of change to the characteristic landscape can be high. These management activities may dominate the view and be the major focus of viewer attention. However, every attempt should be made to minimize the impact of these activities through careful location, minimal disturbance and repeating the basic elements.

ENVIRONMENTAL IMPACTS:

Impacts of the Proposed Action

Bison coevolved with the plant and animal communities of the Great Plains (Mack and Thompson 1982). As a highly interactive and foundation species, bison played a significant role in maintaining the historic abundance and diversity of plains biota. Bison grazed heavily in some areas and lightly in others, thereby creating a mosaic of vegetation (Harnett et al. 1996; Knapp et al. 1999), which influenced not only the plant community, but a diverse suite of animals (Cody 1985; Clark et al. 1989). Historical accounts and recent studies leave little doubt that bison co-existed with and benefited prairie dogs (Truett 2003). Prairie dogs in turn elevated biodiversity by serving as food or providing burrows for numerous other species (Miller et al. 1994, Kotliar et al. 1999, Truett et al. 2001). Birds known to selectively use black-tailed prairie dog colonies include mountain plovers (*Charadrius montanus*) (Knowles et al. 1982), ferruginous hawks (*Buteo regalis*) (Roth and Marzluff 1989), and burrowing owls (*Athene cunicularia*) (Desmond and Savidge 1996; Truett and Savage 1998). These three species have attracted recent attention as priority species for conservation; the mountain plover was at one time proposed for listing as threatened.

Disease

APF has prepared a Health Plan for importation of bison from another state, and for testing of all animals over 12 months of age. They plan to have a Brucellosis-free herd and will monitor sick

or dead animals to determine cause of illness or death. A disease-free herd should have no impact on wildlife species that might come in contact with individual bison in the herd.

Bison/Visitor Interaction

Public Lands in the Telegraph Creek Allotment are open to the public for a variety of uses and there is no reason to expect that public use would decline after bison are introduced. Hunting is used as a primary means of regulating big game populations in much of Montana. As Fortin and Andruskiw (2003) note it is when people try to get close to bison and bison become habituated to humans that negative interactions are most likely.

Negative hunter-bison interactions are not expected to be common events resulting from this proposed action. Bison are being treated as livestock in this proposal, and hunters are instructed in Montana Hunter Education courses not to hunt in proximity to privately-owned livestock.

Bison – Cattle Comparisons

A change in use from cattle to bison in the Telegraph Creek Allotment should be evaluated in terms of the degree of similarity between the grazing habits of cattle and bison. Wuerthner (1998) compared bison and domestic cattle as ecological analogues, but found that they are strikingly different in modes of resource exploitation. Bison wander more, are less apt to regaze a site during a single growing season, will use steeper terrain, select and consume drier, rougher forage, and spend less time in riparian areas and wetlands. Bison often were unable to colonize vast portions of the west due to a variety of factors, and these major rangeland areas evolved in the absence of large herding animals. Van Vuren (1982) found that bison exploit a wider range of habitats than cattle, especially those habitats with greater slope and distance from water. Livestock, in contrast, spent a disproportionate amount of time in riparian zones. Nocturnal grazing accounted for an average of 15% of the daily grazing pattern of bison on a ranch in Colorado in 1996 (Hein and Preston 1998). Bison used grasslands significantly more and wooded habitat significantly less than expected by chance.

Two obvious differences between bison and cattle are the daily radius of use and the annual home range. Free-ranging bison at Yellowstone National Park obviously have a much larger home range than confined domestic cattle would have, but the daily radius is actually larger in cattle. The average home range for female bison from the Northern Yellowstone herd was 34 square miles (54,126 ha) during a radio telemetry study during 1995-1997 (Aune et al. 1998). McHugh (1958) found that the summer home range of bison in the Hayden Valley portion of the Yellowstone herd was 12 square miles, while the winter home range was 36 square miles. The summer daily radius of bison in Saskatchewan was 1.24 miles (2 km) while the winter daily radius was 0.81 miles (1.3 km) (Fortin et al. 2003). The average daily radius from various other studies was approximately 2.0 miles (3.2 km) for bison (McHugh 1958). Hancock (1953) found the daily radius for cattle in a free-ranging herd to be 3.0 miles (4.8 km) per day. Bison in the Telegraph Creek Allotment might then take longer to graze all portions of the allotment than cattle would. This grazing strategy would benefit wildlife utilizing those portions being rested for a longer time with bison, but the opposite might be true in those areas with more recent

concentrated grazing by bison. Twice-over grazing, a technique being used for cattle more frequently in recent years, would be more difficult to accomplish with bison because they are more reluctant to move to new areas if forage is adequate where they are feeding.

Confinement of bison with fencing is a bigger issue than would be true for cattle, especially during winter. Bison sometimes traveled almost 20 miles (32 km) in one day during winter at Yellowstone National Park when a plowed road became the primary route for migration to better foraging areas with less snow depth at lower elevations (Meagher 1989b). This acquired knowledge of areas having less snow appears to have added impetus to bison movements when deep snow persisted in their summer range. Once learned, bison attempted to repeat seasonal movements to better winter range, and hazing tactics to restrict these seasonal movements failed (Meagher 1989b). Bison crossed cattleguards by walking on the bars or by taking advantage of snow accumulation in the cattleguards. Acquired knowledge in bison could only be eliminated by removal of the problem animals from the population. Bison could be moved only where they wanted to go. Bison stampeded when they scented human beings, even when the source of the scent was not visible (McHugh 1958). They reacted to scent carried for more than a mile. Bison may bluff charge when approached closely, but this behavior can not be depended upon. Bison prefer not to travel through deep snow, although they are able to negotiate deep snow. Bison with little contact with people retain wariness and may stampede for several miles when disturbed.

Open winters would present less of a problem in the Telegraph Creek Allotment, but winters with deep snow could present problems both for confinement and recapture of bison forced to move because of snow depths or encouraged to move because of snow covering fences. Reynolds et al. (1978) assumed that bison and cattle forage requirements were similar and each constituted an "animal unit".

Wildlife Habitat

Diets of bison and cattle should also be compared, especially as they relate to forage and cover in important wildlife habitats. Big game animals probably utilize the entire Telegraph Creek Allotment, but the better riparian areas are predominantly on APF's private land. Van Vuren and Bray (1983) evaluated bison and cattle diets on range in Utah seeded to crested (desert) wheatgrass (*Agropyron desertorum*) and alfalfa (*Medicago sativa*). Diets were 91% similar with both animals selecting grasses and sedges, indicating a high potential for competition between bison and cattle. Van Vuren (1984) also compared diets in a shrub-steppe plant community in Utah and found high grass and sedge use by both bison (99%) and cattle (95%), but significantly more forb use (5%) in cattle (1% in bison). Reynolds et al. (1978) found slough sedge (*Carex atherodes*) and reedgrasses (*Calamagrostis* spp.) were the most common foods in the diets of free-ranging bison in the Northwest Territories during all seasons. The major food plants were consumed by bison in similar proportions to their abundance as cover or biomass. There was a feeding preference for wet habitat (wet meadows) when available, but sedges and reedgrasses were selected whether meadows were wet or dry. Willows made up less than 10% of the diet.

The summer use of grassland resources within meadows by bison is closely related to energy maximization principles (Fortin et al. 2003). Fortin et al. (2002) explored classical foraging theory that assumes that animals maximize long-term rates of gain by selecting plants with an increased daily energy intake that would necessitate a longer daily foraging time, as in cattle. They found that bison in Canada differ in that the foraging decisions of bison reduce potential long-term gains by maximizing short-term gains in energy intake (selecting sedges over wheatgrasses in contrast to livestock). Bison apparently would select wheatgrasses when blue grama (*Bouteloua gracilis*) was more prevalent in Colorado for the same reasons (Peden 1976). Frank (1998) studied ungulate regulation of ecosystem processes by bison and elk in Yellowstone National Park and found that grazers play an ecologically important role in stimulating aboveground plant production by inducing an increase in nitrogen (N) availability in grazed and then rested plants responding to defoliation from grazing.

Bison can influence the plant diversity in an area. Bison have probably restricted the invasion of lodgepole pine (*Pinus contorta*) and aspen (*Populus tremuloides*) in some areas due to horning and debarking (McHugh 1958). Bison have also contributed to seed dissemination when seeds become caught in long hair on the head and legs. Spreading the seeds of invasive plants has caused degradation of wildlife habitats. Bison can also contribute to soil erosion by cutting trails deeply into the sod on steeper slopes, and by selecting wallowing sites on hillsides. Concentrations of bison on south-facing, wind-blown ridges during winter can produce almost complete denudation of vegetative cover. Infrequent browsing of woody vegetation by bison can protect those species in some locations. Bison prefer foraging in open grassland areas and avoid wooded sites, thus allowing woody biomass to accumulate (Shaw 1998). The greater fuel accumulation leads to higher woody plant mortality when wildfires do occur. Bison feed on bark from woody species on occasion, but are most likely to do so during severe winters when the grass base is depleted (McHugh 1958). DelGiudice et al. (2001) studied diets of elk and bison at Yellowstone National Park before and after the fires of 1988. Elk diets varied over the three winters of the study with the lowest consumption of grasses and highest consumption of conifers during the first winter post-fire. Bison, on the other hand, switched from grasses to sedges post-fire while conifer use remained low and stable throughout the study.

Waggoner and Hinkes (1986) found that the summer diet of bison in central Alaska was 94% willow (*Salix* spp) when grasses were unavailable. Stevens et al. (1998), through several personal communications, also found that bison are vegetative opportunists that primarily prefer grasses, but during drought years will select shrubs that can sustain them over extended periods of time. Weather data for Phillips County indicate that only three times since 1909 have there been periods of drought where annual precipitation was 25 percent below average for at least three years in a row (1917-19, 1934-36, and 1958-61). It could be anticipated that woody vegetation in the Telegraph Creek Allotment could be damaged by bison when another comparable drought period occurs. Gaps between the beginning of significant drought periods were 17 years (1917 - 1934), 24 years (1934 - 1958), and now has gone at least 47 years (1958 - 2005). Recovery of woody vegetation probably would occur during the extended periods with more favorable precipitation for producing grasses, the preferred food of bison.

Migratory Birds

Bison, due to their size and density, inevitably affect the lives of other wildlife species sharing the same habitat (McHugh 1958). Such an influence can work both ways. Various bird species (“buffalo birds”) gather around bison, including brown-headed cowbirds (*Molothrus ater*), Brewer’s blackbirds (*Euphagus cyanocephalus*), European starlings (*Sturnus vulgaris*), red-winged blackbirds (*Agelaius phoeniceus*) and black-billed magpies (*Pica hudsonia*). None of these birds are listed BLM Sensitive Species in Montana. The cowbird parasitizes nests of other bird species by laying its eggs in nests that are then tended by the host bird. Concentrations of cowbirds near bison would increase the rate of nest parasitism in proximity to bison herds, but it is not known whether this impact would be any greater than that which occurs due to the presence of cattle that also attract cowbirds. The relationship between bison and “buffalo birds” is a form of mutualism where both species benefit to some degree, but ravens (*Corvus corax*) following bison herds during the calving season is more of a one-sided relationship.

Other less obvious impacts of bison grazing include increased invertebrate populations due to piles of bison dung retaining moisture longer than dung from other large mammals (McHugh 1958). Increased Coleopterans and Dipterans provide food for insectivorous birds and small mammals. Dung piles as high as ten inches have been used as perches by western meadowlarks (*Sturnella neglecta*) and other prairie birds defending territories. Bison hair is probably used in nests of many bird species.

Hartnett et al. (1996) found that cover and frequency of cool-season graminoids and some forbs were consistently higher in sites grazed by bison than in ungrazed control areas, whereas the dominant warm-season grasses and other forbs decreased in response to bison. This would have implications on nesting migratory birds. Better cool-season grass cover early in spring would benefit early nesting species such as northern pintail, a waterfowl species with poor population recruitment in recent years, and the BLM Sensitive Species chestnut-collared longspur that nests in short grass as early as late April. A decrease in dominant warm-season grasses later in the nesting season would have the opposite effect on later nesting migratory birds, although populations of gadwall and other late nesting waterfowl species are in better shape than populations of the earlier nesting species.

Free-ranging bison under natural conditions do not graze the same areas every year, but instead are nomadic covering large areas to find adequate forage. Native migratory birds evolved with this grazing routine and adjusted accordingly. The proposed action for the initial confining of a small herd of bison in a small area on private land for 12 months of the year could have a negative effect on late nesting migratory birds in that pasture. This could be reversed over the long term after the APF continues to expand their operation into pastures 1 through 4. Bison would then be able to resume a more natural grazing scheme with migratory birds able to select ungrazed areas for nesting. Some species, such as the BLM Sensitive Species McCown’s longspur, prefer grazed areas with short grass for nesting and could select nesting sites in close proximity to grazing bison. Any pastures rested during the transition from livestock to bison would also provide additional nesting habitat that might not be available during a normal grazing sequence.

Big Game

Most wildlife concerns center around the impacts of the proposed electric fence needed to confine bison. Fence designs with a top wire more than 42 inches from the ground were eliminated from consideration because of wildlife crossing concerns, even though adjacent ranchers felt that the higher fences would more effectively control bison.

Fence design and modifications have taken into account the free passage of big game animals into and out of the Telegraph Creek Allotment. The proposed design of adding electric fence to existing barbed wire boundary fences with a bottom wire height of 20 inches, would allow for passage of pronghorns beneath the fence while allowing for deer and elk to pass over the fence. Electric fences are used at other locations in Phillips County and large mammals have become accustomed to those fences. Large mammals with hollow guard hairs would probably receive little or no shock when touching the hot wires.

Modification of existing exterior fences by adding two hot wires on brackets extending 12 inches into the allotment at heights of 22 and 39 inches would also allow for pronghorns to pass under and deer and elk to pass over the fence. The separation of existing wires and the two new hot wires by 12 inches does provide the possibility of large mammals stepping between the wires and becoming entangled. Replacement of portions of the boundary fence with a three-wire electric fence with similar top and bottom hot wires would also allow for movement of big game animals. Required monitoring with cameras as well as periodic inspection of the fence by APF would identify any problem areas and additional modifications could be made at that time. A proposal to install new electric fence inside of the boundary fences, rather than replacing the boundary fence, also needs careful design. The resulting double fence could reduce the probability of bison escape, but the distance between fences would need to be at least 20 feet to allow movement of animals (both bison and big game animals) caught between the fences.

Bison grazing would have minimal impact on other native wildlife species. Most evolved with bison grazing, and habitat succession is controlled by grazing animals, whether being bison or cattle. Bison have few natural predators and often show indifference when close to grizzly bears (*Ursus arctos*) and wolves (McHugh 1958). Bison grazing under controlled rotation conditions would differ very little from current livestock grazing other than they will be less in number (approximate 25% reduction in AUMs), and the population would not be allowed to increase beyond the approved grazing capacity. Carbyn et al. (1998) summarized a significant decline in bison in Wood Buffalo National Park (Canada) from 1971 to 1998. It was not clear what factors contributed to the decline, but parts of the bison range showed signs of degraded condition including the invasion of non-native plant species and compacted soils.

Greater sage-grouse

Bison grazing would have similar impacts to greater sage-grouse and sagebrush habitat as cattle grazing. Bison feed primarily on grasses and damage to sagebrush would be mainly from rubbing and trampling and not from browsing.

The height of the lower (for retrofitted existing fence) or lowest (for new fence construction) hot electric fence wire could have a negative impact on greater sage-grouse. The one known greater sage-grouse strutting ground (lek) on the extreme western tip of Indian Lake is approximately one-third mile from the east fence of Pasture 1 and approximately one-half mile from the north fence of Pasture 1. Greater sage-grouse leks, especially those with ten or more displaying males, often have outlying younger birds that strut, but lack the dominance and territory strengths to approach the center of lekking activity. Measurements on a mounted sage-grouse in strutting posture indicate that the tips of the tail rectrices are very close to 22 inches (55 cm) off the ground. Any male sage-grouse gaining any height advantage on normal undulations of the ground surface could hit the bottom hot wire when in strutting posture. The voltage needed to seriously injure or kill a bird the size of a greater sage-grouse from this style of fence, however, could not be found in the literature.

Black-tailed Prairie Dogs

Black-tailed prairie dogs and bison evolved together on the Northern Great Plains. Koford (1958) suggested that the relationship between bison and the black-tailed prairie dog has been one of mutualism. Bison frequent prairie dog towns more than the surrounding grassland, displacing prairie dogs only temporarily during periods of great activity (McHugh 1958). New growth vegetation appears to be the attractant. Wallowing causes the greatest impact to dog towns because bison often select bare ground surrounding burrows for wallowing.

Cid et al. (1991) found that bison and prairie dogs had similar and independent effects in maintaining plant community structure at Wind Cave National Park, South Dakota. Removal of both species resulted in decreases in forb abundance and increases in graminoid abundance, and increases in above-ground plant biomass, but with significantly lower mean graminoid leaf nitrogen after two years. Detling (1998) found bison grazing preferentially on prairie dog colonies during most of the growing season at Wind Cave National Park in South Dakota where colonies typically had lower levels of plant biomass, were forb rather than grass dominated, and had plants with higher leaf nitrogen (N) concentrations than plants growing outside of the colonies. Bison were selecting patches presumably because of higher forage quality. Prairie dogs, however, had a greater effect on plant community structure than did bison.

Krueger (1986) discussed the grazing association of bison, pronghorn and prairie dogs on the northern United States mixed-grass prairie. There were similarities in diet and spatial use between bison and prairie dogs on the prairie dog town edges, and between pronghorn and prairie dogs on the dog town centers. Whereas there was a mutually positive relationship between bison and prairie dogs on the town edges, the relationship between pronghorns and prairie dogs was more complex on the town centers where prairie dogs were unaffected, but pronghorns were somewhat affected negatively. Any expansion of prairie dog towns on the Telegraph Creek Allotment would have a greater impact on pronghorns than on bison.

Coppock and Detling (1986) suggested that prescribed burns could be effective in mitigating any bison impacts on prairie dog colonies. Use of prescribed fire adjacent to prairie dog colonies in

Wind Cave National Park found that on a daily basis bison cow-calf herds increased their use of burned grassland twelve times and decreased their use of the colony following the burn.

Black-footed Ferret

Reintroduced black-footed ferrets in the 40 Complex and on the CMR NWR would not be impacted by the proposed change in class of livestock on the Telegraph Creek Allotment. Ferrets have not been detected on any of the dog towns in the Allotment, but dog towns would remain available to ferrets should their population expand. As explained, prairie dogs and bison coexist in a form of mutualism, and the presence of prairie dog colonies would benefit ferrets that are dependent upon them for existence.

Other Wildlife Habitat Issues

A proposed change in class of livestock from cattle to bison, a change in season of use to year long, and a change in fence management to account for bison and bison habitat in the Telegraph Creek Allotment would have impacts on wildlife and wildlife habitats. Plumb and Dodd (1993) explored the considerable uncertainty whether differences between bison and cattle should be exploited in natural area stewardship. They found that as generalist foragers, bison and cattle exhibited seasonal differences in selection for or against graminoids, grasses, forbs, and browse, and cattle allocated more time to grazing than bison did during summer. Bison, in contrast to cattle, appear to balance nutrient and time demands during the rut by consuming almost exclusively graminoids. With bison and cattle achieving similar dietary quality through different foraging behavior, Plumb and Dodd (1993) suggested that specific scale-dependent programmatic conditions exist where either herbivore may be the most appropriate for natural area management. Bison are relatively better suited to a continuous year-round presence on a northern mixed prairie natural area than are cattle. Cattle may be more appropriate under conditions with a shorter grazing season.

Vegetation

Any time livestock are trucked in from other locations there is the potential for the introduction of noxious weed seeds located in the digestive systems or fur of the transported animals. The APF would insure that bison trucked in from other areas would be quarantined on deeded land for a period of at least 30 days prior to turn out on Federal or State lands. As with all livestock operations and recreational use of lands, vehicles may transport weed seeds into the area.

Rangeland Condition

The most current assessment of ecological condition of the allotment is that all Standards for Rangeland Health are being met.

A year-long season does not mean bison will be in any pasture for twelve months. Bison would still only be in any one pasture for less than three months per year. Pastures would be utilized during the dormant season deferring use during the growing season on two or three pastures each

year allowing plants to replenish root reserves over a larger area of the allotment. The proposed change would result in a net reduction in the number of AUMs consumed annually by large herbivores in pastures 1 through 4. Under the constraints of a 4 pasture rotation system bison would have similar grazing impacts made by cattle, but there are some important differences. Bison would travel greater distances from water during the hottest time of the grazing season, July and August. Bison can withstand colder temperatures much better than cattle and survive on lower quality forage more efficiently without supplemental feeding. Bison consume primarily grass species. In contrast, cattle, will more readily seek out forbs whenever available. The net reduction in AUMs utilized would likely result in higher retention of residual grass and grass height in lightly grazed areas, and it is likely that bison would graze less intensively than livestock in lentic riparian areas and thus riparian condition would be maintained or improved. Within the relatively small confines of the individual pastures, both bison and cattle would likely graze intensively in some areas and less intensively in others, resulting in a distribution or mosaic of grassland stand conditions, from intensively grazed to lightly grazed areas.

Transportation

The proposed action should have little affect on the off highway vehicle program as no roads are proposed to be closed and access to the public lands will remain the same. Construction of new electric fences may cause a slight negative affect to the motorized public by increasing the number of gates to open and the slight possibility of being shocked.

Recreation and Public Use

The proposed action could have both positive and negative affects to the recreating publics. Some recreating publics may find a positive experience in viewing bison on the prairie, while others may find it dangerous to be in the area of a possible charging bison. Additional electric fencing, even with walk over gates, may have a slightly negative impact on hunters, hikers, and horseback riders by creating additional barriers to them while they pursue their recreational experience on public lands. Additionally, those recreating publics may have the possibility of being shocked by contact with electric fences.

Visual Resource Management

The proposed action with its proposal for new electric fences to control the movement of the bison would have a slight to low change to the existing character of the landscape. Given there exists numerous fences in the proposed action area a few more less conspicuous electric fences should not attract the attention of the casual observer. Therefore, the proposed action will meet the objective of a visual resource management class II area.

Impacts of the No Action Alternative

Under the no action alternative livestock numbers would remain at 250 cow-calf pairs instead of the proposed total of 170 yearling/adult age class bison. The season of use would not change for pastures 1-4. Utilization would occur thru most of the growing season in the pastures not

scheduled for rest. Utilization levels of forbs, grasses, and shrubs would remain as they are. There would be no decrease in warm season grasses or increase in forbs or cool season grasses.

The positive affect on the recreating publics wishing to see native bison on the prairie would not be realized with this alternative.

Wildlife

Wildlife populations would remain unchanged, and would fluctuate in response to weather and climatic conditions, and in response to hunting seasons for those species that are hunted.

Greater sage-grouse would not be at risk from electric fencing near the strutting ground (lek) near Indian Lake.

There would be no impact to listed Threatened, Endangered or Sensitive Species.

Migratory Birds

Migratory Bird populations would remain unchanged, and would fluctuate in response to weather and climatic conditions, and in response to hunting seasons for those species that are hunted.

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UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Malta Field Office
501 S 2nd St E
Malta, Montana 59538

Documentation of NEPA Adequacy (DNA)

U.S. Department of the Interior
Bureau of Land Management (BLM)

BLM Office: Malta Field Office

NEPA Number: DOI-BLM-MT-M010-2013-001-DNA

Case File/Project No:

Proposed Action Title/Type: APR-Telegraph Creek Allotment Transfers

Location/Legal Description: South Phillips County, Montana

A: Description of the Proposed Action: The proposed action is to transfer grazing preference and reissue the grazing permits for the remainder of the existing ten year term or the length of the base lease for the 05654 Telegraph Creek Allotment. The base property lease has expired and the owner wishes to assume management of the allotment.

B. Land Use Plan (LUP) Conformance

LUP Name: Judith, Valley, Phillips, RMP
Date Approved: 1994

☒ The proposed action is in conformance with the applicable LUPs because it is specifically provided for in the LUP decision.

☐ The proposed action is in conformance with the LUP, even though it is not specifically provided for, because it is clearly consistent with the following LUP decisions (objectives, terms, and conditions).

C. Identify applicable National Environmental Policy Act (NEPA) document(s) and other related documents that cover the proposed action.

NEPA documents that cover the proposed action:

- Judith, Valley, Phillips, RMP, 1994
- Telegraph/Fourchette Watershed Plan, 2005
- Change in Class of Livestock, MT-090-04-026, June, 2005

D. NEPA Adequacy Criteria

1. Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?

Yes. The project is analyzed in the existing NEPA document(s).

2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, resource values?

Yes. The alternatives analyzed in the existing documents are appropriate with respect to the current proposed action, as no new circumstances or concerns have been identified.

3. Is the existing analysis valid in light of any new information or circumstances (such as rangeland health standard assessment, recent endangered species listings, updated lists of BLM-sensitive species)? Can you reasonably conclude that new information and new circumstance would not substantially change the analysis of the new proposed action?

Yes. At this time there is no new information that would indicate the conclusions reached regarding the proposed action are different from those made in the existing NEPA documents. The previous permit was initiated well after the signing of the JVP RMP. The Endangered Species list has actually decreased since then with the delisting of the peregrine falcon and the bald eagle. The remaining five listed species are unlikely to be found in the 05654 Telegraph Creek Allotment in Phillips County. Black-footed ferrets were not reintroduced on the Allotment. There are two fairly large black-tailed prairie dog towns on the east side of the Allotment as well as several smaller towns scattered in the area. It is not a large-enough complex, however, to support a ferret population. The closest reintroduction site was approximately five miles southwest of the 05654 Telegraph Creek Allotment in the Pea Ridge area. No ferrets have been observed there since 2005 or earlier, although ferrets do exist farther south on the Charles M. Russell NWR. There is no habitat for the pallid sturgeon on public lands in the 05654 Telegraph Creek Allotment. The remaining three bird species would not be found on small stockponds lacking mud flats and gravel habitat in the 05654 Telegraph Creek Allotment. The Montana/Dakotas BLM has updated its Sensitive Species list at least twice since the completion of the JVP RMP, with recent revisions in 2004 and 2009. The 2004 list added several grassland bird species that could occur in grassland habitat in the 05654 Telegraph Creek Allotment, although sagebrush predominates and provides habitat only for the Brewer's sparrow and sage thrasher. Proper grazing management, however, supports those species and there is no data available to say that the current grazing system is detrimental to sagebrush bird habitat. Quality shoreline habitat is lacking for the Sensitive Shorebird Species. The 2009 list update added one more bird species (black-crowned night-heron) that is not likely to be found on the 05654 Telegraph Creek Allotment. The BLM Sensitive Species Greater sage-grouse was petitioned for listing under the Endangered Species Act with a March 2010 finding that listing for the species was warranted, but precluded. This moved the greater sage-grouse into "candidate" status with an annual status review. MFWP records indicate that the historical strutting ground on Indian Lake has been abandoned and another ground about a mile west of the Allotment has not been active since 2005. There are, however, approximately ten strutting

grounds within five miles of the Allotment and sage-grouse nesting as well as winter use occurs on the Allotment. The Allotment is in PPH (Preliminary Priority Habitat) according to BLM Interim Guidance for Greater Sage-grouse Management and is part of a larger block of important breeding and nesting habitat (South Phillips Core Area). Although grazing could be of concern in some discussions, this DNA is about transferring an existing permit which has nothing to do with effects on Greater Sage-grouse PPH. Listing of the Sprague's pipit as a T&E Species was determined on 14 September 2010 to be warranted, but precluded due to the need to work on higher priority species. The Sprague's pipit thus became a candidate species with an annual status review to determine eligibility for listing. The Sprague's pipit generally doesn't occupy sage habitats. Transferring the current grazing permit, however, would not change any of the current conditions of grazing seasons or numbers of livestock AUMs. A listing decision for the Sprague's pipit was recently delayed for up to two years because of the FWS workload on other species.

4. Are the direct, indirect and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?

Yes. The approaches used in the existing documents are still appropriate to address any possible impacts from this proposed action.

5. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?

Yes. The public involvement and interagency review associated with the existing NEPA documents was adequate with regards to the complexity of the current proposed action.

E. Interdisciplinary Analysis: Identify those team members conducting or participating in the preparation of this worksheet.

<u>Name</u>	<u>Title</u>	<u>Resource Represented</u>	<u>Initials & Date</u>
Fritz Prellwitz	Wildlife Biologist	Wildlife, T&E, Migratory Birds	<i>FP 11/14/2012</i>
Josh Chase	Archaeologist	Cultural Resources	<i>JC 11/19/2012</i>

Project Initiator

Date

Environmental Coordinator

Date

F. Mitigation Measures: None identified.

CONCLUSION

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitute BLM's compliance with the requirements of NEPA.

Signature of the Responsible Official

Date

Note: The signed Conclusion on this Worksheet is part of an interim step in the BLM's internal decision process and does not constitute an appealable decision. However, the lease, permit, or other authorization based on the DNA is subject to protest or appeal under 43 CFR Part 4 and the program-specific regulations.

Attachment R

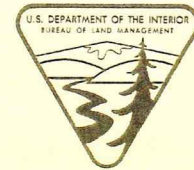


In Reply To:
Casefile

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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



May 19, 2008

NOTICE OF PROPOSED DECISION/FINAL DECISION

CERTIFIED MAIL – RETURN RECEIPT REQUESTED #7007 0220 0000 2180 7439

American Prairie Foundation
c/o Scott Laird
P.O. Box 908
Bozeman, MT 59771-0908

Dear Mr. Laird:

Background

The Bureau of Land Management (BLM), Malta Field Office, has completed an Environmental Assessment on an application made by the American Prairie Foundation (APF) to change the grazing lease for the Box Elder Allotment, #5634. APF purchased the ranch and leased the base property back to Mr. and Mrs. Becker in February of 2006. The lease was terminated in January of 2008. APF made an application to convert the class of livestock to bison¹ and cattle and graze year-round. The present lease is for domestic livestock with an April 15 to November 30 grazing season.

As part of APF's plan of operation, APF will follow all state regulations regarding the transportation and management of livestock (43 CFR 4130.7 (b)). Animals trucked from outside of Phillips County may contain seeds of noxious or invasive weeds in their digestive system. APF would insure that these bison will be quarantined on deeded land for a period of at least thirty (30) days prior to turn out on Federal or State lands.

The public lands in this Allotment will continue to be open to the same activities as other BLM lands in South Phillips County, including; hunting, hiking, horseback riding, bird watching, etc. APF will monitor the bison herd's movements and assist the public in dealing with the bison. Signs would be posted to alert the public to the electric fences and bison's presence and the fact

¹ In this Proposed Decision, the term "bison" means privately owned or controlled indigenous animals.

that they are using the Allotment. As the bison are private animals, the APF will assume all liability issues relating to the bison.

Proposed Decision

After careful consideration of staff input, it is my proposed decision to implement the Proposed Action as described in EA MT-090-08-019, which is as follows:

1. Change class of livestock from cattle to bison and cattle.
2. Issue a grazing lease for a five year period (2013), for both the Telegraph Creek and Box Elder Allotments incorporating the approved changes into the terms and conditions of the *Special Grazing* leases.
3. Integrate pasture #5 of the *Telegraph Creek* Allotment into the *Middle Box Elder* Allotment.
4. Change the name of the *Middle Box Elder* Allotment back to the original, *Box Elder* name.
5. Cancel the existing AMP and the actual use billing privileges authorized by it.
6. Authorize about 21 miles of 1 or 2 wires of a standard BLM fence design to be electrified either by direct replacement of the existing wire, or by use of an offset mechanism.
7. Authorize the removal of any or all interior fences within the *Box Elder* Allotment, up to about 10 miles.
8. Construct two new fences, about 5 miles.
9. The use of equipment to remove interior fences would require adherence to a nesting season timing limit of April 15 to July 15. A one-day notice prior to planned fence removal would allow the BLM Wildlife Biologist to nest-drag the disturbance area to determine the presence or absence of active nests. Active nests would be flagged and nests avoided during fence removal.
10. No fence construction or removal during the big game winter range timing limit of December 01 to May 15. An exception could be obtained if the winter season remains mild. Avoid using an electrified lower wire on the boundary fences.

Livestock numbers, season-of-use, and Allotments will go from:

Allotment	Livestock		Grazing Period		AUMS
	Number	Kind ¹	Begin	End	
Telegraph Creek ²	137	C&B	03/01	02/28	1651
Middle Box Elder	9	C	03/01	02/28	107
	101	C	04/15	11/30	764
Total					2522

¹ C – Cattle; C&B – Cattle and Bison

² Changes analyzed and approved in the *Bison-Cattle Change in Class of Livestock - EA* (EA# MT-090-04-075). Telegraph Creek is operated under an AMP and actual use billing is authorized.

To:

Allotment	Livestock		Grazing Period		AUMS
	Number	Kind ¹	Begin	End	
Telegraph Creek ²	123	C&B	03/01	02/28	1481
Box Elder	23 ³	C&B	03/01	02/28	277
	101	C&B	04/15	11/30	764
Total					2522

¹ C – Cattle; C&B – Cattle and Bison

² Telegraph Creek is operated under an AMP and actual use billing is authorized.

³ Reflects pasture number 5 of Telegraph Creek.

There will not be a defined grazing strategy for the Box Elder Allotment. Bison are expected to graze across the Allotment. The Allotment will be monitored to document the effects and if Rangeland Health Standards continue to be met.

The following will be conditions incorporated into the permit:

APF will be required to ear-tag all bison to aid in identification of problem animals (43 CFR 4130.7(c)).

For the Box Elder Allotment, APF will continue to keep actual use records and submit them to BLM within fifteen (15) days at the end of the grazing season. The actual use will describe the various areas the bison grazed during the season. It will not be used for billing purposes.

If noxious or invasive plants are found in or around the project area, the proper agency must be contacted. Once contacted, the agency will attempt eradication of all species of plants found to be noxious or invasive.

Deny:

APF made application to graze year-round in the Box Elder Allotment. I am denying year-round grazing for those public lands not associated with the base property.

Rationale:

The grazing application is in compliance with 43 CFR 4130.6-4 which states: "Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued at the discretion of the authorizing office. This use shall be consistent with multiple-use objectives. These permits or leases shall be issued for a term deemed appropriate by the authorized officer not to exceed ten (10) years". This permit will expire on February 28, 2013; this is the date that other permits in the Telegraph/Fourchette Watershed Plan area expire.

The fences being modified still allow for passage of wildlife while containing bison. The concern for disease transmission has been addressed by the herd health plan outlined by APF.

APF applied for yearlong grazing on parts of the Allotment where currently winter grazing is not authorized. Conflicts with designated big game winter range for elk, mule deer, and pronghorn antelope in those pastures and in neighboring areas was the basis for denying that portion of APF's application.

Protest Procedures

Any applicant, permittee, lessee, or other interested public may protest the proposed decision in accordance with 43 CFR 4160.1, in person or in writing to authorized officer within fifteen (15) days after receipt of the decision:

Field Manager
Malta Field Office
501 South 2nd Street East
Malta, MT 59538

The protest should state clearly and concisely the reason(s) why the decision is in error. In the absence of a protest, the proposed decision will become my final decision without further notice.

Appeal Procedures

Any applicant, permittee, lessee, or other person whose interest is adversely affected by the final decision may file an appeal in accordance with 43 CFR 4.470, 43 CFR 4160.3 and 4160.4. The appeal must be filed within thirty (30) days following receipt of the final decision, or within thirty (30) days after the date the proposed decision becomes final.

The appeal may be accompanied by a petition for a stay of the decision in accordance with 43 CFR 4.471 and 4.479, pending final determination on appeal. The appellant must serve a copy of the appeal and petition for a stay by Certified Mail with the authorized officer, as noted above and to the:

Office of the Field Solicitor
P.O. Box 31394
Billings, Montana 59107-1394

The appeal shall clearly and concisely state the reasons why the appellant thinks the proposed or final decision is in error, and otherwise complies with the provisions of 43 CFR 4.470.

Should you wish to file a petition for a stay, see 43 CFR 4.471 (a) and (b), in accordance with 43 CFR 4.471(c), must show sufficient justification based on the following standards:

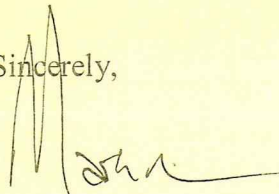
- (1) The relative harm to the parties if the stay is granted or denied.
- (2) The likelihood of the appellant's success on the merits.
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As noted above, the petition for stay must be filed in the office of the authorized officer and served in accordance with 43 CFR 4.473.

If you wish to file a response to the petition for a stay, you may file a motion to intervene the appeal with the Hearing Division, together with the response, within ten (10) days after receiving the petition. Within fifteen (15) days of filing the motion to intervene and response, you must serve copies on the appellant, the office of the solicitor and any other person named in the decision (43 CFR 4.472 (b)).

If you have any questions, please contact Rich Adams at 406.654.5131 or BJ Rhodes at 406.233.2866.

Sincerely,



Mark K. Albers
Field Manager

cc (Certified Copies):

Jack Jones *CERTIFIED MAIL #7007 0220 0000 2180 3059*
Jack Atcheson *CERTIFIED MAIL #7007 0220 0000 2180 3066*
Mark Sullivan *CERTIFIED MAIL #7007 0220 0000 2180 3073*
Hoyt Richards-Montana DNRC Glasgow *CERTIFIED MAIL #7007 0220 0000 2180 3080*
Montana Department of Fish, Wildlife, and Parks (Glasgow) *CERTIFIED MAIL #7007 0220 0000 2180 3097*
Dale Veseth *CERTIFIED MAIL #7007 0220 0000 2180 3103*
Butch Matovich *CERTIFIED MAIL #7007 0220 0000 2180 3110*
Phillips County Commissioners *CERTIFIED MAIL #7007 0220 0000 2180 3127*
Linda Poole, *CERTIFIED MAIL #7007 0220 0000 2180 3134*
Vicki Olson, *CERTIFIED MAIL #7007 0220 0000 2180 3158*
Dennis Jorgenson, *CERTIFIED MAIL #7007 0220 0000 2180 3165*
Eva Oxarart, *CERTIFIED MAIL #7007 0220 0000 2180 3141*

RAAdams/ [signature] 5/19/08

**U.S. Department of the Interior
Bureau of Land Management**

Environmental Assessment DOI-BLM MT-M010-2013-006-EA

Box Elder Change in Use

Location: Phillips County Montana

U.S. Department of the Interior
Bureau of Land Management
Malta Field Office
501 S 2nd St E
Malta, MT 59538
Phone: 406-654-5100
Fax: 406-654-5150

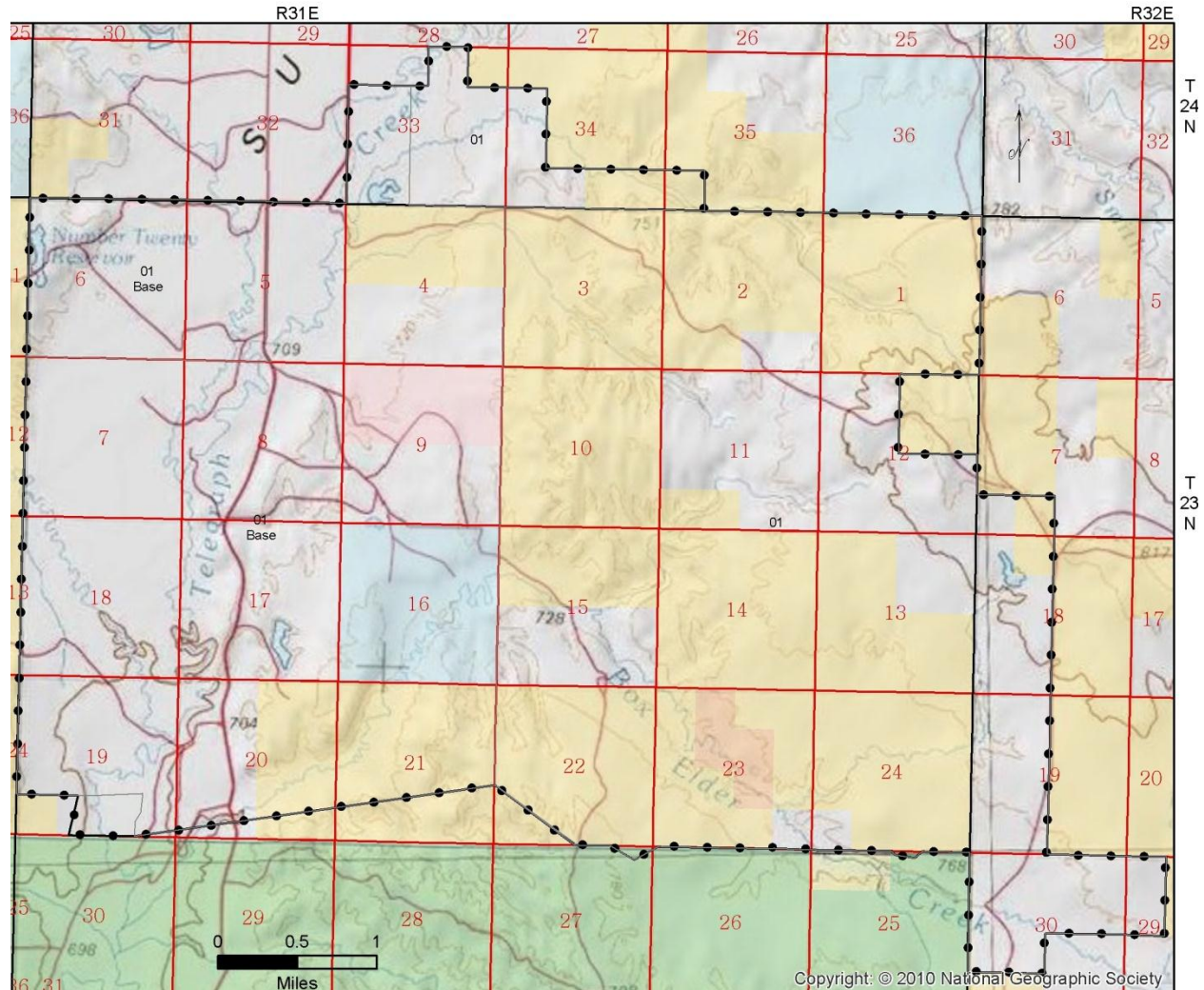


CHAPTER 1 – INTRODUCTION AND NEED

INTRODUCTION

The American Prairie Reserve (APR), a current Bureau of Land Management (BLM) Federal Grazing Permit holder, has applied for a change in their season of use on the Box Elder Allotment (15634). See Map 1.

Map 1. Box Elder Allotment Map.



PURPOSE AND NEED FOR THE PROPOSED ACTION

The purpose of this Environmental Assessment is to assess the effects to the environment that would occur by authorizing the applied for change in season of use.

The proposed action would be consistent with the established Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota, and South Dakota, BLM (1997) and the Fourchette-Telegraph Watershed Management Plan (2005).

CONFORMANCE WITH BLM LAND USE PLAN(S)

This plan has been reviewed to determine if the proposed action conforms to the land use plan terms and conditions as required by 43 CFR 1610.5. The proposed action would be in conformance with the Approved Phillips Resource Area Resource Management Plan, and the Missouri Breaks Grazing – EIS as modified by the Judith-Valley-Phillips Resource Management Plan – EIS.

RELATIONSHIPS TO STATUTES, REGULATIONS AND OTHER PLANS

As described in the Purpose and Need section, this proposal would be consistent with grazing regulations (43 CFR 4100); terms, conditions and definitions of Standards for Rangeland Health and Guidelines for Livestock Grazing Management for Montana, North Dakota, and South Dakota, BLM (1997); and the Fourchette-Telegraph Watershed Management Plan. Grazing and construction of range improvements would also be in compliance with the Taylor Grazing Act of June 28, 1934, as amended; the Federal Land Policy and Management Act of 1976 as amended by the Public Rangelands Improvement Act of 1978; and, the Public Rangelands Improvement Act of 1978.

CHAPTER 2 – DESCRIPTION OF ALTERNATIVES

INTRODUCTION

BLM is considering two alternatives, the No Action and the Proposed Action. In addition to being a viable alternative for consideration, analysis of the No Action Alternative can provide a baseline for understanding the impacts of the proposed action.

NO ACTION

Under the No Action Alternative, the season of use would not be changed. APR would be able to graze bison under the existing terms and conditions. Other current uses of the land, including recreation (hunting, hiking, etc.) would continue.

PROPOSED ACTION

The Proposed Action is to authorize a change in livestock use on the Box Elder 15634 Allotment from the current 4/15-11/30 use dates, to the applied for 3/1-2/28 use dates and issue a new 10 year grazing permit.

Additionally, some administrative changes would need to be made between the Telegraph Creek and Box Elder Grazing permits to reflect the changes in the Box Elder Allotment boundary. Currently the BLM land in T23N, R31E Sections 20, 21, & 22 is licensed with the base property in the Telegraph Creek Allotment. These lands would be licensed with the Box Elder Allotment and removed from the Telegraph Creek Allotment and a new ten year grazing permit would also be issued to reflect these changes. There would be no change to the overall allocation of AUMs on public lands in the two allotments.

Currently the Box Elder Allotment is permitted for use by bison with the following terms and conditions:

Mandatory Terms and Conditions

Allotment	Livestock		Grazing Period		AUMS
	Number	Kind	Begin	End	
Box Elder #15634	23	C	03/01	02/28	277
	101	I	04/15	11/30	764
Total					1041

Other Terms and Conditions

Authorized in conjunction with the terms and conditions as outlined in the May 2008 Decision.

American Prairie Foundation will be required to ear-tag all bison to aid in identification of problem animals (43 CFR 4130.7)).

For the Box Elder Allotment, the American Prairie Foundation will continue to keep actual use records and submit them to the BLM within fifteen (15) days at the end of the grazing season. The actual use describe the various areas the bison grazed during the season. It will not be used for billing purposes.

If noxious or invasive plants are found in or around the project area, the proper agency must be contacted. Once contacted, the agency will attempt eradication of all species of plants found to be noxious or invasive.

If authorized under the Proposed Action, the following terms and conditions would apply:

Mandatory Terms and Conditions

Allotment	Livestock		Grazing Period		% Public Land	Type Use	AUMS
	Number	Kind	Begin	End			
Box Elder #15634	235	I	03/01	02/28	41	Active	1156
Total							1156

Other Terms and Conditions

The terms and conditions of this permit may be modified if additional information indicates that revision is necessary to meet the Standards of Rangeland Health as described in 43 CFR 4180 (Code of Federal Regulations; Administration of Grazing on Public Lands).

Preference will remain 1158 AUMs.

Currently the Telegraph Creek Allotment is permitted for use by bison with the following terms and conditions:

Mandatory Terms and Conditions

Allotment	Livestock		Grazing Period		% Public Land	AUMS
	Number	Kind	Begin	End		
Telegraph Creek 05654	11	I	03/01	02/28	100	134
	129	I	03/01	02/28	87	1347
Total						1481

Other Terms and Conditions

Line 1 – Licensed for the surveyed AUMs on the public lands in Telegraph Creek Allotment. There are no restrictions on livestock numbers as long as the resource values on the public lands are not damaged.

Line 2 – Authorized in Conjunction with the Terms and Conditions in the Telegraph Creek Allotment Management Plan Implemented in 1970, as amended by DOI-BLM- MT-090-04-026-EA.

If authorized under the Proposed Action, the following terms and conditions would apply to the Telegraph Creek Allotment grazing permit.

Mandatory Terms and Conditions

Allotment	Livestock		Grazing Period		% Public Land	Type Use	AUMS
	Number	Kind	Begin	End			
Telegraph Creek 05654	2	I	03/01	02/28	100	Custodial	17
	112	I	03/01	02/28	100	Active	1344
Total							1361

Other Terms and Conditions

Line 1 – Licensed for the surveyed AUMs on the public lands in Telegraph Creek Allotment.

Line 2 – Authorized in Conjunction with the Terms and Conditions in the Telegraph Creek Allotment Management Plan Implemented in 1970, as amended by DOI-BLM- MT-090-04-026-EA.

The terms and conditions of this permit may be modified if additional information indicates that revision is necessary to meet the Standards of Rangeland Health as described in 43 CFR 4180 (Code of Federal Regulations; Administration of Grazing on Public Lands).

Preference will remain 1364 AUMs.

Other current uses of the land, including recreation (hunting, hiking, etc.) would continue.

ISSUES CONSIDERED BUT ELIMINATED FROM FURTHER ANALYSIS

NO GRAZING ALTERNATIVE

No grazing was previously considered in the JVP Resource Management Plan/EIS.

DEFERRED OR REST-ROTATION GRAZING SYSTEM

Instruction Memorandum No. 2012-043, Greater Sage-Grouse Interim Management Policies and Procedures, calls for a range of reasonable alternatives when renewing a grazing permit in PPH (Preliminary Priority Habitat). All of the Box Elder Allotment is in PPH. IM No. 2012-043 further states that the NEPA analysis should “Include at least one alternative that would implement a deferred or rest-rotation grazing system, if one is not already in place and the size of the allotment warrants it.”

All interior fences in the Box Elder Allotment were previously removed through an action proposed by the permittee and approved by BLM through an Environmental Assessment (EA-MT-090-08-019, 2008). The permittee wanted to graze domestic bison in a more natural setting with free-roaming of animals throughout the allotment not encumbered by fencing. The removal of interior fencing and the creation of a single pasture eliminated the possibility of developing a deferred or rest-rotation grazing system. That alternative will not be carried forward for discussion in this document.

CHAPTER 3 – AFFECTED ENVIRONMENT

INTRODUCTION AND GENERAL SETTING

The proposed project area is located in the Box Elder Allotment #15634, located in Township 23 North, Ranges 31, & 32 East, Montana Principle Meridian, in south Phillips County, Montana. This allotment includes 6488 acres of BLM-administered public land.

Critical Elements Review

Element	Affected ¹		Element	Affected ¹	
	Yes	No		Yes	No
Air Quality		NI	Invasive, Nonnative Species		NP
Areas of Critical Environmental Concern		NI	Wastes, Hazardous or Solid		NP
Cultural/Resources		NI	Water Quality (drinking/surface/ground)		NI
Environmental Justice		NP	Wetlands/Riparian Zones		NI
Farmlands (prime or unique)		NP	Wilderness		NP
Floodplains		NP	Threatened or Endangered Species		NI
Native American Religious Concerns		NP	Wild and Scenic Rivers		NP

¹ NP = not present in the area impacted by the proposed or alternative actions

NI = present, but not affected to a degree that detailed analysis is required

PI = present, and may be affected to some degree. This resource is analyzed in affected environment and environmental impacts sections of this EA.

A. BIOLOGICAL FACTORS

Vegetation: Major vegetation of the allotment consists of those species expected to be found on upland silty, shallow clay, and claypan Ecological Sites in the Eastern Montana Glaciated Plains: 10-14 inch Precipitation Zone.

Silty ecological sites are characterized by a fairly uniform mix of native increaser species including, western wheatgrass, needleandthread grass, blue grama, prairie junegrass, and sandburg bluegrass. Most decreaser species like green needlegrass and bluebunch wheatgrass are uncommon on silty sites, but can be found. The similarity index on these sites have been estimated to be 55.

Claypan ecological sites are characterized by a mix of native species dominated by western wheatgrass, with a fairly even mix of green needlegrass, needleandthread grass, blue grama, prairie junegrass, and sandburg bluegrass. Similarity indexes on these sites have been estimated at 70 and 75 in 1996 and 2006, respectively.

Wyoming big sagebrush is the dominant species of sage in the allotment. Density estimates range from around 5% to upwards of 35% or greater depending upon locality. Sagebrush communities are considered to be healthy and functioning, although evidence indicates they are likely more abundant and dense across the whole area than at any time in the last 100 plus years (Klement et. al., 2001). Especially on silty ecological sites, an abundance (>10%) of sagebrush indicates a lower ecological status than would likely persist under a natural fire regime.

Upland watershed assessments conducted in 1996, and repeated in 2006, indicate the allotment is in a Mid-Seral State Community, or “fair-good” range condition and in Proper Functioning Condition. Trend at that time was estimated to be upward.

Invasive\ Non-native Species:

There are no known infestations of noxious or invasive species on this allotment. Annual brome species including cheatgrass occur sporadically throughout the allotment.

Livestock Grazing

Currently these allotments are permitted for use by bison, which are considered to have similar impacts as cattle.

Wildlife: The wildlife resource is diverse and widely distributed in Phillips County with grassland species predominating. Big game animals include pronghorn antelope, mule deer, white-tailed deer, elk, and occasionally moose and bighorn sheep. Large blocks of native grasslands, sagebrush grasslands, and breaks topography are important habitats for big game species and designated big game winter range areas are spread across much of Phillips County. Moose are becoming more abundant as transient animals may stay in certain drainages throughout the summer. Bighorn sheep are more restricted to islands of habitat in the Little Rocky Mountains and the Larb Hills. Black bears can occur in the Little Rocky Mountains, but they are extremely uncommon, especially on the prairie.

Smaller mammals include cougar, coyote, bobcat, badger, beaver, porcupine, striped skunk, swift and red foxes, white-tailed jackrabbit, snowshoe hare, mountain cottontail, muskrat, mink and up to three species of weasels. There are a few records for wolverine in Phillips County. A variety of shrews, rodents and other small mammals can also be found, including periodic high populations of Richardson’s ground squirrels. Small mammals found in Phillips County include species such as deer mouse, meadow vole, sagebrush vole, montane vole, northern grasshopper mouse, olive-backed pocket mouse, western harvest mouse, and masked shrew. There are black-tailed prairie dog colonies in the southern two-thirds of the County, but they are reduced in area periodically by outbreaks of sylvatic plague.

Upland game birds include the native sharp-tailed grouse, greater sage-grouse, and mourning dove, and the introduced ring-necked pheasant, wild turkey, and gray partridge. There are active greater sage-grouse strutting grounds or leks in sagebrush habitat, with leks more abundant in Wyoming big sagebrush areas in the southern half of the County than in silver sagebrush areas in the northern part of the County. Sage-grouse nesting is probable in sagebrush grasslands within two or possibly more miles of active leks. Sharp-tailed grouse dancing grounds are more abundant, especially near Breaks habitats north of the Milk River. Woody draws are especially important for sharp-tailed grouse, and some shrub species appear to be declining in portions of Phillips County. Many areas provide nesting habitat for female sharptails coming from multiple leks due to the high lek abundance. Pheasant, gray partridge, and mourning doves are most abundant near crop fields and Conservation Reserve Program (CRP) lands in the area. Gray partridge are often observed near the boundary with the Charles M. Russell NWR. The dusky grouse occurs in the Little Rocky Mountains in small isolated populations.

Amphibians and reptiles of Phillips County include the Great Plains toad, Woodhouse's toad, Plains spadefoot, Boreal chorus frog, northern leopard frog, tiger salamander, greater short-horned lizard, common sagebrush lizard, painted turtle, snapping turtle, eastern racer, western hog-nosed snake, plains garter snake, gophersnake (bullsnake), milksnake, and western rattlesnake. The frogs, the painted turtle, and the salamander are restricted to wetlands and stockponds during most of the year. Many species are widespread throughout Phillips County, with the exception of the milksnake and common sagebrush lizard. There are over thirty stock ponds that are managed as either cold water or warm/cool water fisheries depending on water depths and drought cycles. Native minnow species can be found in many of the streams and drainages, especially during spring runoff periods and in isolated pools later in summer. Riparian vegetation can be important for fish habitat as it shades the water surface and lowers water temperatures.

Migratory Birds: Stock ponds and wetlands throughout Phillips County, when wet, provide habitat for over 20 species of waterfowl. Common nesting species include the gadwall, northern shoveler, blue-winged teal, cinnamon teal, northern pintail, mallard, American wigeon, green-winged teal, lesser scaup and Canada goose. The nesting season for waterfowl usually extends from April 15 to July 15. Constructed as well as natural islands on stock ponds and reservoirs provide important nesting sites for Canada geese and most duck species. Wood ducks and some diving duck species utilize natural cavities and nest boxes in trees along the Milk River and various irrigation canals.

Raptors found in Phillips County include the bald and golden eagles, peregrine and prairie falcons, northern harrier, Swainson's hawk, ferruginous hawk, red-tailed hawk, American kestrel, merlin, turkey vulture, northern goshawk, sharp-shinned hawk, Cooper's hawk, rough-legged hawk, and numerous species of owls. Many raptor nests are found in lone cottonwood trees along County roads. Ferruginous hawks are especially abundant in northwestern Phillips County, a long ways from black-tailed prairie dog towns.

Important grassland birds occurring in native prairie habitat in Phillips County include the Baird's and grasshopper sparrows, Sprague's pipit, long-billed curlew, marbled godwit, willet, and McCown's and chestnut-collared longspurs. The Brewer's sparrow is locally abundant in sagebrush habitat. Many of these species have experienced declines across much of their range in recent years, and large blocks of intact native grasslands remain important in maintaining healthy breeding populations of these birds. Areas with reduced or no livestock grazing are especially important. Wetlands also provide nesting areas for Wilson's phalaropes, spotted sandpipers and many other shorebirds. The nesting season for migratory birds other than ducks generally is May 01 to August 01.

Special Status and T&E Species: There are five wildlife species that occur or may occur in Phillips County that are protected under section 7c of the Endangered Species Act (ESA) as amended in 1973, including the interior least tern, piping plover, whooping crane, pallid sturgeon, and black-footed ferret. The black-footed ferret has been reintroduced in south Phillips County as an experimental, nonessential population. Those introduced on BLM land are located near the Dry Fork Road and in the Pea Ridge area in the Beauchamp Creek reintroduction area, but none have been observed there since

September 2006. The only known remaining ferrets are on the Charles M. Russell National Wildlife Refuge (NWR) in the UL Bend Area. Ferrets, however, have also been introduced in Grasslands National Park in Saskatchewan just a few miles from the International Border and Phillips County. The piping plover and least tern have been observed on Whitewater Lake in northern Phillips County, but no nesting has occurred there. Piping plover nesting does occur on Nelson Reservoir and Bowdoin NWR in central Phillips County. The least tern has also been observed on Nelson Reservoir. The endangered pallid sturgeon occurs in the Missouri River and in the Milk River below Vandalia Dam in Valley County; the Milk River below Vandalia Dam also provides habitat for the BLM Sensitive Species blue sucker, as determined by spring fish surveys by MDFWP in 2010 and 2011. In 2011 five wild adult pallid sturgeons migrated up the Milk River and remained for an extended time. Through the use of radio telemetry biologists knew that one of these adults was a female that had a high probability of being in spawning condition. The remaining four adults were males. None are known from Phillips County. The whooping crane has been observed several times in spring since 1990 in the Whitewater area and to the southwest in northern Phillips County. Listing of the greater sage-grouse as a T&E Species was determined in March of 2010 to be warranted, but precluded due to the need to work on higher priority species. The sage-grouse thus became a candidate species with an annual status review to determine eligibility for listing. Listing of the Sprague's pipit as a T&E Species was determined on 14 September 2010 to be warranted, but precluded due to the need to work on higher priority species. The Sprague's pipit thus became a candidate species with an annual status review to determine eligibility for listing.

BLM Listed Sensitive Species that could be in Phillips County include the Great Plains toad, Plains spadefoot, greater short-horned lizard, milksnake, northern leopard frog, snapping turtle, western hog-nosed snake, black-tailed prairie dog, bald eagle, black-crowned night-heron, black tern, burrowing owl, common loon, dickcissel, ferruginous hawk, Franklin's gull, golden eagle, greater sage-grouse, Harlequin, loggerhead shrike, long-billed curlew, chestnut-collared longspur, McCown's longspur, marbled godwit, mountain plover, northern goshawk, peregrine falcon, sage thrasher, Baird's sparrow, Brewer's sparrow, Sprague's pipit, Swainson's hawk, white-faced ibis, red-headed woodpecker, and yellow rail. Many of these species are migratory birds that could be nesting during 15 April to 15 July. Bald eagles can be present from November to early April each year, and nesting occurs near Frenchman Reservoir in northeastern Phillips County. Nesting could also occur along the Milk River in the Wagner area west of Malta. The bald eagle was delisted on 29 June 2007, and now is treated as a Special Status (Sensitive) Species rather than as a threatened species. The long-legged myotis and the Townsend's big-eared bat have been found in Azure Cave in the Little Rocky Mountains, and the long-eared myotis has been found near ponds in the Little Rocky Mountains. Sensitive fish species include the sauger, pearl dace and northern redbelly X finescale dace hybrid. The dace occur in intermittent streams such as Whitewater Creek, Garland Coulee, Frenchman Creek, and Cottonwood Creek, while the sauger is found in the Milk River.

B. NON-BIOLOGICAL FACTORSAir Quality

Air quality in the area is generally considered good to excellent, meeting air quality standards set forth by the Clean Air Act. The project area is within a class II airshed. Spring and fall typically have atmospheric conditions that are favorable for smoke/particulate dispersal. The area is sparsely populated with few smoke receptors. Lightly travelled county roads can be found within the project area.

Climate

Ongoing scientific research has identified the potential impacts of anthropogenic “greenhouse gas” (GHG) emissions and their effects on global climatic conditions. These anthropogenic GHGs include carbon dioxide; methane; nitrous oxide; and several trace gases, as identified by the Intergovernmental Panel on Climate Change (IPCC). The general consensus is that as GHG emissions continue to rise, average global temperatures and sea levels will raise, precipitation patterns will change, and climatic trends will change and influence earth's natural resources in a variety of ways.

Montana's GHG emissions were recently updated and a forecast was made of expected emissions through 2020 (Montana DEQ 2007). The inventory indicates that Montana's electricity generation, heating needs, commerce, agriculture practices, and transportation needs accounted for 0.6% of the GHG emissions in the United States in 2005, or about 37 million metric tons of gross consumption-based carbon dioxide equivalents. The state's forests, cropland, and rangeland provide a vast terrestrial carbon sink that helps balance the state's emissions; however, a 14% increase in GHG emissions from 1990 to 2005 moved Montana from a net carbon sink to a net carbon emitter.

Visual Resources

The southern half of the Box Elder Allotment is within a visual resource class II area. The visual resource class II objective is: To retain the existing character of the landscape. The level of change to the characteristic landscape should be low. Management activities may be seen, but should not attract the attention of the casual observer. Any changes must repeat the basic elements of form, line, color and texture found in the predominant natural features of the characteristic landscape.

The northern half of the Box Elder Allotment is within a visual resource class IV area. The visual resource class IV objective is: To provide for management activities which require major modifications of the existing character of the landscape. The level of change to the characteristic landscape can be high. These management activities may dominate the view and be the major focus of viewer attention. However, every attempt should be made to minimize the impact of these activities through careful location, minimal disturbance and repeating the basic elements.

Recreation

The proposed action lies within the South Phillips Special Recreation Management Area. The public has access to all the allotments, and they provide for hunting, fishing, scenic and wildlife viewing and pleasure driving opportunities. There are no developed recreation facilities within the proposed action area. Primarily, the moderate visitor use occurs during the fall hunting season. Public motorized vehicle use is restricted to

existing roads and trails, however, people do typically leave their vehicles and access these lands on foot.

Special Designations

Two small parcels of the 7km Area of Critical Environmental Concern (ACEC) are located within the allotment. This ACEC was established to provide prairie dog habitat for black-footed ferret reintroduction and long-term ferret recovery, associated species (mountain plover, burrowing owl, and ferruginous hawk), recreational viewing, and prairie dog shooting. The prairie dog towns are still active but there are no black-footed ferrets in this area and no plans to continue the reintroduction program. Other prairie dog town associated species may be present.

Cultural

Cultural resources in this area are a part of the great plains geographical culture, both in terms of prehistoric and historic period peoples. Both historic and prehistoric resources are present here. Specifically for this allotment historic resources consist of a site associated with European farming expansion and the material remains left behind such as a homestead and its associated debris scatters. Prehistoric resources within the Box Elder allotment consist of those sites associated with indigenous cultures, such as stone circles, lithic scatters and a sparse distribution of fire cracked rock.

A literature search performed on the 30th of January 2013 indicated 13 Class III cultural resource inventories have been previously completed within the allotment area. These inventories range from the earliest occurring in the late 1970's (77-MT-065-999/MT-065-77-14) and continuing on until present day (12-MT-065-005). These inventories have produced the discovery of only three sites (24PH1159, 24PH1068, 24PH0654) which are located within the allotment area.

During previous tribal consultation for this area, no traditional cultural properties were identified.

Paleontology

The project area lies predominately on a geologic unit identified as Bearpaw Shale (Hanna 2007). According to Hanna (2007), 50 vertebrate localities have been documented within Bearpaw Shale. The Bearpaw Shale is a Class 3a geologic unit with moderate paleontological potential (Hanna 2007). The potential for the site to be located on or impact a significant fossil locality is low, but is high for common fossils (Hanna 2007).

CHAPTER 4 – ENVIRONMENTAL CONSEQUENCES

A. BIOLOGICAL FACTORS

Vegetation

No Action Alternative

Under the No Action Alternative native vegetation would likely continue to remain in a steady to upward trend in condition. Currently, evidence indicates vegetation conditions on uplands are in an upward trend and meeting all rangeland health standards.

Proposed Action

Under the Proposed Action Alternative native vegetation would likely continue to remain in a steady to upward trend in condition. Currently, evidence indicates vegetation conditions on uplands are in an upward trend and meeting all rangeland health standards.

Overall use by bison would remain within the established carrying capacity or allocation for grazing of the allotment.

Invasive\ Non-native Species

No Action Alternative

There is evidence that traditional grazing systems designed to favor native perennial grasses tend to favor cheatgrass just as much as or more than they favor perennial species (Young and Clements, 2007). Continuation of the current deferred rotation grazing system, may actually promote the spread of annual brome species.

Proposed Action

It is unknown how bison will interact with annual bromes or cheatgrass. Certainly, the disturbance areas (e.g. wallows) generally assumed to be associated with bison could provide an increased opportunity for establishment and spread of invasive species.

Livestock

No Action Alternative

There would be some effects under this alternative. Areas licensed for different terms and conditions are currently intermixed making use of grazing authorization challenging.

Proposed Action

There would be no effects to livestock grazing under this alternative.

Wildlife, Migratory Birds, and Special Status Species

No Action Alternative

No change in current management would have little effect on wildlife. Fences would not change either in placement or in design, and big game animals would continue to move as they have in the past. No listed Threatened or Endangered animals would be impacted by the No Action Alternative. Domestic bison would not be competing with elk, mule deer and pronghorn on designated winter ranges because there would be no winter grazing by domestic animals. Greater sage-grouse habitat would probably remain stable or improve slightly.

Proposed Action Alternative

The proposed change to year-round grazing of domestic bison in the Box Elder Creek Allotment would have an effect on wildlife, especially big game use of designated winter range. This would be most important during harsh winters when forage availability is limited by snow cover, and there would be direct competition for forage between domestic bison and wild ungulates.

Interior fences were removed from the Box Elder Creek Allotment previously and that affects how grazing would occur if the season of use is changed from 4/15-11/30 to 3/1 - 2/28 which includes winter grazing. Winter grazing has been restricted in many portions of southeast Phillips County primarily due to designated winter range for mule deer, pronghorn and elk. Bighorn sheep winter range is only a few miles away from the Allotment and sheep could occasionally travel across the Box Elder Creek Allotment. Mule deer winter range occurs on all but the northwest corner of the Allotment, while pronghorn winter range is found on all but the southwest corner. Elk winter range is similar in location to pronghorn winter range.

A comparison chart for grazing seasons on adjoining Allotments was prepared (Table 1) from grazing permittee files. Winter grazing is permitted on the Telegraph Creek Allotment to the west, the Lonetree Coulee Allotment to the north, and the private pastures of the South Fork Telegraph Allotment to the northeast. Winter grazing is not permitted in the Lower Third Creek Allotment to the northwest, the public lands portion of the South Fork Telegraph Allotment to the southeast, the North Fork Telegraph Allotment farther to the east, the Killed Woman Allotment to the southeast, and the Burnt Lodge Allotment also to the southeast. The Fourchette Creek Allotment west of the Telegraph Creek Allotment has no winter grazing, while the Larb Hills Allotment farthest to the east does have winter grazing. Permitted winter grazing does not mean that winter grazing occurs on BLM lands in every year. Severe winters may dictate that permittees feed livestock at private feedlot facilities rather than use the Federal range when forage is covered with snow. Some operators may graze a while into winter, but then move livestock to more protected areas as forage is used-up and weather gets more severe.

Winter grazing in an Allotment with a rest rotation grazing system between multiple fenced pastures does limit winter grazing to only one of the pastures each year, leaving the other pastures for big game use. Winter grazing in the Box Elder Creek Allotment with no internal pastures would result in grazing competition with mule deer, elk and pronghorn on designated winter range in all former pasture areas. Domestic bison are more tolerant of severe weather than livestock and most likely would remain in the Allotment all year, competing with big game animals for forage.

Table 1. Grazing seasons for Allotments in the Vicinity of the Box Elder Creek Number 5634 Grazing Allotment.

<u>Allot. Number</u>	<u>Name</u>	<u>Number of livestock</u>	<u>Season</u>	<u>Pastures</u>
5456	Lonetree Coulee	9	3/1-2/28	
5634	Box Elder Creek	101	4/15-11/30	
5653	Lower Third Creek	105	5/1-11/30	
5654	Telegraph Creek	123	3/1-2/28	
5656	Upper Lonetree Coulee	9	3/1-2/28	
5657	South Fork Telegraph	24	3/1-2/28	Private
		151	6/1-10/31	BLM
5658	North Fork Telegraph	202	4/15-12/14	
5660	Larb Hills	6	3/1-2/28	Pasture 1
		211	3/1-3/31	Pasture 2
		28	4/1-11/30	Pasture 3
		205	10/16-2/28	Pasture 2
5661	Killed Woman	123	5/1-10/31	Pastures 1&2
5662	Fourchette Creek	38	3/1-2/28	Pasture 2
		336	4/15-11/30	AMP Pastures
5667	Burnt Lodge	316	4/16-10/15	Pastures 1-3
		13	3/1-2/28	Pasture 4

Proposed winter grazing of domestic bison in the Box Elder Creek Allotment presents additional concerns. The Montana Fish, Wildlife and Parks (MFWP) is currently developing a Statewide Bison Management Programmatic Environmental Impact Statement (EIS). Public scoping has found public support for wild bison in some of Montana, but strong negative opinions in Phillips and adjoining Counties. An area identified by non-MFWP entities for a wild bison herd is on the Charles M. Russell (CMR) National Wildlife Refuge directly south of the Box Elder Creek Allotment. That could potentially put wild bison on the CMR adjacent to the Box Elder Creek Allotment. This could present problems with the effectiveness of boundary fences separating domestic bison on the BLM side of the fence from wild bison, with both herds having year-round grazing including winter grazing. The potential for mixing of the two herds would be high, but especially during severe winters where deep snow covers the fence and bison are likely to begin moving south toward the Missouri River. It is likely that the MFWP will make a decision on wild bison within the ten-year period of this proposed BLM grazing permit.

Other wildlife could be affected if the proposed grazing season results in no grazing season-long rest for any of the pastures. The closest historical sharp-tailed grouse dancing grounds (2) are located approximately four miles east of the Allotment. Some limited nesting could occur if sufficient residual cover remains in spring. The lack of a rest pasture would limit the amount of residual nesting cover available to nesting grouse and migratory birds. This would be true for many nesting migratory birds, but some species such as the McCown's longspur prefer more heavily-grazed sites. There are two Greater sage-grouse strutting grounds on the east side of the Allotment and another is

located about a mile southeast of the boundary fence. Breeding, nesting and winter use are expected on the Box Elder Creek Allotment. The peak known lek attendance on Greater sage-grouse strutting grounds SG11-35, SG11-36, and SG11-37 occurred in 2001 and averaged 73 males per lek. While recent counts show a slight increase over the past few years, the three leks averaged only 28 males per lek in 2012. The average since 1999 has been 38 males per lek.

The entire Allotment is Preliminary Priority Habitat (PPH) as defined in the Greater Sage-grouse Interim Management Policies and Procedures Instruction Memorandum No. 2012-0043 released on December 22, 2011. No sage survey transects have been conducted on the Box Elder Creek Allotment recently, but Line Intercept Transects – Modified Whittaker Plot transects were surveyed on the Fourchette Creek and First Coulee Allotments to the west during 2006 to 2008. Big sage canopy coverage was 17, 29 and 10 percent on random plots for the three years, and average sage height was 35, 54 and 18 cm for the same years. The three-year averages were 19 percent canopy coverage and 36-cm sage height, both of which would be within the acceptable ranges for “suitable” Greater sage-grouse habitat according to the Montana Sage-grouse Management Plan (2005). Big sage canopy coverage and height do vary considerably depending on soil types, however, and not all sage measurements were within the “suitable” range. A canopy coverage of 29 percent in 2007 was considered “marginal” (too high), while the 2008 readings of 10 percent canopy coverage was considered “marginal” and 18-cm height was considered “unsuitable”. Much of the sage habitat in Phillips and Valley Counties does not meet “suitable” criteria because the soils are not capable of producing better, but the large acreages of unfragmented habitat still attract and hold good numbers of greater sage-grouse.

There would be no effects of the proposed grazing system on listed Threatened or Endangered species. The three bird species (whooping crane, least tern and piping plover) occur in the Bowdoin NWR, Nelson Reservoir and/or Whitewater Lake areas of central and north Phillips County, but not in southern Phillips County. The pallid sturgeon occurs in the Missouri River south of the Allotment, and the reintroduced black-footed ferrets are only on the CMR NWR and none have been observed on BLM land since early September 2006. There are four black-tailed prairie dog towns on the west half of the Allotment, but three are quite small and none are part of a large enough complex to ever support a black-footed ferret population. The permittee does “dust” private dog towns to kill fleas and reduce the chance of plague outbreaks, but BLM has not dusted dog towns for many years due to possible effects on non-target species. Most of the BLM Sensitive Species are migratory birds and they were discussed previously. Bald eagles could be present from November to early April each year, often feeding on carrion left from the fall hunting season. There is no way of predicting, however, where this might occur.

The BLM Sensitive Species Greater sage-grouse was petitioned for listing under the Endangered Species Act with a March 2010 finding that listing for the species was warranted, but precluded. This moved the greater sage-grouse into “candidate” status with an annual status review until a decision is made in 2015. The Allotment is in PPH (Preliminary Priority Habitat) according to BLM Interim Guidance for Greater Sage-grouse Management and is part of a larger block of important breeding and nesting

habitat (South Phillips Core Area). Past sage surveys do not indicate any significant problems with sage canopy coverage or height, but periodic monitoring should continue in this large block of PPH.

Listing of the Sprague's pipit as a T&E Species was determined on 14 September 2010 to be warranted, but precluded due to the need to work on higher priority species. The Sprague's pipit thus became a candidate species with an annual status review to determine eligibility for listing. The Sprague's pipit generally doesn't occupy sage habitats, but probably are found in grasslands lacking sage in other parts of the Allotment.

B. NON-BIOLOGICAL IMPACTS

Air Quality

No Action Alternative

There would be no effects to Air Quality under this alternative.

Proposed Action

There would be no effects to Air Quality under this alternative.

Climate

No Action Alternative

There would be no effects to Climate under this alternative.

Proposed Action

There would be no effects to Climate under this alternative.

Visual Resources

No Action Alternative

There would be no impact.

Proposed Action

Given that there are already numerous fences in the surrounding and proposed action areas; that wires would most likely simply be added to existing fences; and that interior pasture fences would be removed, adding a few electric fences would not attract the attention of the casual observer. The proposed action would continue to meet the objective of a visual resource management class II or IV area.

Recreation

No Action Alternative

There would be no impact.

Proposed Action

Is it unlikely that recreating publics would encounter bison outside of their vehicles. There is high potential, however, for encounters during hunting season. Some recreating publics may enjoy viewing bison on the prairie. However, additional electric fencing, even with walk over gates, may create additional barriers for hunters, hikers, and

horseback riders. Although the fences would be signed, they would still pose a risk of electric shock.

Special Designations

No Action Alternative

There would be no impact.

Proposed Action

It is not expected that a change in grazing season will impact the 7km ACEC or the resources for which it was designated.

Cultural Resources

No Action Alternative

No impacts are anticipated.

Proposed Action

Based on previous levels of Class III inventories and their results which have been completed in the allotment area, as well as the nature of the proposed project (i.e. change of season of use) a finding of “No Historic Properties Affected” is appropriate [36 CFR 800: No Historic Properties Affected; sites, etc. would not be affected directly or indirectly.].

Native American tribes have not expressed any concerns with this type of project.

Paleontological Resources

No Action Alternative

No impacts are anticipated.

Proposed Action

No impacts are anticipated.

C. CUMULATIVE IMPACTS

The cumulative effects of grazing and grazing management (i.e., an improvement in ecological status as a result of improved grazing management) were analyzed in the Missouri Breaks Grazing EIS, the Judith-Valley-Phillips RMP, and the Fourchette-Telegraph Watershed Management Plan. The proposed action would still result in the land being grazed, albeit under a different regime; however, the circumstances are not different enough that it would result in an appreciable difference in cumulative effects from those analyzed in the listed plans. That analysis is incorporated by reference here.

Historically BLM land was grazed in summer and private base property was used for grazing or feeding of livestock during winter. The remaining vegetative cover on BLM land was reserved for wildlife food and cover and watershed protection. Requests have come in to extend the grazing season on BLM lands while not exceeding the allocated

AUMs of forage. As more and more allotments have had a change in grazing season, more and more designated big game winter range has been effected, as has the availability of residual nesting cover for sharp-tailed grouse, Greater sage-grouse and migratory birds. At some point the addition of more winter grazing allotments will have to stop, or significant damages to wildlife habitat and watershed protection could be expected to occur. MFWP agrees with this viewpoint.

Allowing winter grazing in big game winter range in an allotment with only one pasture would set precedence for future proposed grazing season changes in allotments with multiple pastures where domestic livestock and big game animals could be separated. Selecting the proposed action in this controversial example would make future decisions in allotments with multiple pastures extremely easy. Virtually all of Phillips County could be converted to year-round grazing including winter grazing because of this one decision.

Past, Present and Reasonably Foreseeable Future

The conversion of family livestock ranches to a large prairie reserve with an expanding bison population would have an effect on the local economy and the production of greenhouse gases. Less red meat would be produced to feed the nation so there would be no compensatory benefits from the increased production of methane gas from an expanding bison herd where annual calf production remains with the herd. Year-round grazing, in theory, could lead to an ever-expanding bison herd that would become dependent upon winter grazing of BLM land.

CHAPTER 5 – CONSULTATION AND COORDINATION

A. LIST OF AGENCIES, ORGANIZATIONS, AND INDIVIDUALS CONSULTED

Montana Department of Fish, Wildlife and Parks – Scott Thompson, Wildlife Biologist

Comments on this Environmental Assessment were requested from MFWP on 01 March 2013. Wildlife Biologist Scott Thompson submitted a response on 15 March 2013. Those comments have been incorporated in this document.

B. LIST OF PREPARERS

USDI – BLM: Fritz Prellwitz, Wildlife, Migratory Birds, and T&E/Candidate Species; Josh Chase, Archaeology; Adrienne Lipka, Range; Jon Kautt, Invasive/Non-Native Species; Kathy Tribby, Recreation.

BJ Rhodes, RMS

Preparer(s)

January 15, 2013

Date

C. ENVIRONMENTAL COORDINATOR

Environmental Coordinator

Date

D. REFERENCES

Hanna, Rebecca R, 2007, Class I Overview of the BLM Malta Resource Management Plan Area: Including portions of Glacier, Chouteau, Liberty, Toole, Hill, Blaine, Phillips, and Valley Counties, Montana. Terra Paleo Research, Choteau, Montana.

Klement, K.D., R.K. Heitschmidt, and C.E. Kay. 2001. Eighty Years of Vegetation and Landscape Changes in the Northern Great Plains. USDA-ARS. Conservation Research Report No. 45.

Montana Sage Grouse Work Group. 2005. Management Plan and Conservation Strategies for Sage Grouse in Montana – Final. MFWP, Helena. 129 pages plus Appendices.

Young, J.A. and C.D. Clements. 2007. Cheatgrass and Grazing Rangelands. *Rangelands*. 29(6):15-20

FINDING OF NO SIGNIFICANT IMPACT

DOI-BLM-MT-M010-2013-006-EA

Context: While public lands livestock grazing is controversial to some, the environmental effects of this action, as documented in the attached EA, would be confined to the local project area.

Intensity:

1. The attached EA does predict both beneficial and adverse impacts. Even when only considering the adverse impacts, without any additional benefits presented by the proposed action, I have determined that effects are not significant.
2. There would be no impacts to public health or safety and, this action would not pose a significant threat.
3. There are known historic or cultural resources present within the project area, however; the nature of the project does not have the potential to adversely affect them. Furthermore there are no park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas in the project area.
4. The effects specific to the quality of the human environment do not pose a significant degree of controversy.
5. The effects on the human environment do not involve unique and unknown risk.
6. This action does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration.
7. There have been no impacts to the human environment identified.
8. This action would not adversely affect any districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause any loss or destruction of significant scientific, cultural, or historic places.
9. I have determined that the proposed action would not adversely affect any threatened or endangered species, or its habitat as determined to be critical under the Endangered Species Act of 1973.
10. Livestock grazing is provided for in the Federal Grazing Regulations (43 CFR 4100). This action does not violate any Federal, State, or local law, and as long as all Standards for Rangeland Health are maintained, all requirements imposed for the protection of the environment would be met.

I have determined that an EIS is not required.

Authorized Officer

Date

United States Bureau of Land Management
Checklist for Interdisciplinary Review of NEPA Documents

EA Title: Box Elder Change in UseEA Number: DOI-BLM MT-M010-2013-006-EAProject Number: N/AResource Area(s): Malta Field OfficeLead Preparer: BJ Rhodes, RMSDate: January 15, 2013

Potentially Affected Resource	Staff Specialist	Comments Provided		Surname	Date
		Yes	No		
ACECs	Kathy Tribby	x		/s/ Kathy Tribby	1/16/13
Air Quality	N/A				
Cultural Heritage	Josh Chase	X		/s/ Josh Chase	1/30/2013
Fire Management	N/A				
Forestry	N/A				
Hazardous Materials	N/A				
Lands & Rights-of-Way	N/A				
Minerals	N/A				
Invasive/Non-Native Species	Jon Kautt			/s/ Jon Kautt	2/8/13
Paleontology	Josh Chase	X		/s/ Josh Chase	1/30/2013
Range Specialist	Adrienne Lipka	x		/s/ Adrienne Lipka	2/28/2012
Recreation	Kathy Tribby	x		/s/ Kathy Tribby	1/16/13
Riparian & Wetlands	N/A				
Soils	Josh Sorlie		x	/s/ Josh Sorlie	1/22/2013
T & E species	Fritz Prellwitz	x		/s/ Fritz Prellwitz	3/18/2013
Visual Resources	Kathy Tribby	x		/s/ Kathy Tribby	1/16/13
Water Quality	N/A				
Wilderness, WSA & WSR	N/A				
Wildlife	Fritz Prellwitz	x		/s/ Fritz Prellwitz	4/30/2013

—>Review Recommended For (check✓):

State Clearinghouse	State Office	County Commissioners	Affected Public	Affected BLM	Affected Agencies

Environmental Coordinator Review Jonathan M. Kautt Date 3/25/13
 (Jonathan M. Kautt)

Authorized Officer Approval:
 Assistant Field Manager _____ Date _____
 (Vinita Shea)

Attachment S



In Reply To:
4100(4160.1)(P)
GR#2501506 &
2500017

United States Department of the Interior

BUREAU OF LAND MANAGEMENT

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



February 3, 2014

CERTIFIED MAIL – RETURN RECEIPT REQUESTED #7004 1350 0000 1183 6067

American Prairie Reserve
P.O. Box 908
Bozeman, MT 59771-0908

NOTICE OF PROPOSED DECISION

BACKGROUND

The 15634 Box Elder Allotment is an I (Improve) category allotment located in South Phillips County. It consists of 6488 acres of Federal land to which 1041 animal unit months (AUMs) of grazing preference are attached.

The 05654 Telegraph Creek Allotment is an I (Improve) category allotment located in South Phillips County. It consists of 11546 acres of Federal land to which 1481 animal unit months (AUMs) of grazing preference are attached and has been managed under an Allotment Management Plan since 1970.

The permittee has submitted an application and all necessary paperwork to change their season of use. This action is to rectify a situation that was created when the proposed action under EA-MT-090-08-019 was implemented, which authorized different seasons of use in adjacent unfenced areas, thus making compliance challenging to adhere to and enforce.

A Malta Field Office BLM interdisciplinary team completed an Environmental Analysis (DOI-BLM-MT-M010-2013-006-EA) to analyze the change in season of use and issuance of a grazing permit to authorize American Prairie Reserve to graze livestock on public lands in the Box Elder 15634 and Telegraph Creek 05654 allotments.

PROPOSED DECISION

It is my Proposed Decision, to issue grazing permits for the term 3/1/2014 – 02/28/2024 to authorize American Prairie Reserve to graze livestock on public lands in the Box Elder 15634 and Telegraph Creek 05654 allotments.

The following terms and conditions would apply to the grazing permits:

Mandatory Terms and Conditions for the Box Elder Allotment.

Allotment	Livestock		Grazing Period		% Public Land	Type Use	AUMS
	Number	Kind	Begin	End			
Box Elder #15634	235	I	03/01	02/28	41	Active	1156
Total							1156

Other Terms and Conditions:

The permittee will keep actual use records and submit them to the BLM within fifteen (15) days at the end of the grazing season, but will not be used for billing purposes. The terms and conditions of this permit may be modified if additional information indicates that revision is necessary to meet the Standards of Rangeland Health as described in 43 CFR 4180 (Code of Federal Regulations; Administration of Grazing on Public Lands).

Preference will remain 1158 AUMs.

Mandatory Terms and Conditions for the Telegraph Creek Allotment.

Allotment	Pasture	Livestock		Grazing Period		% Public Land	Type Use	AUMS
		Number	Kind	Begin	End			
Telegraph Creek 05654	Base	2	I	03/01	02/28	100	Custodial	17
	1-4	112	I	03/01	02/28	100	Active	1344
Total								1361

Other Terms and Conditions:

Licensed for the surveyed AUMs on the public lands in the Base Pasture.

Pastures 1-4 are authorized in Conjunction with the Terms and Conditions in the Telegraph Creek Allotment Management Plan Implemented in 1970, as amended by DOI-BLM- MT-090-04-026-EA.

The permittee will keep actual use records and submit them to the BLM within fifteen (15) days at the end of the grazing season, but will not be used for billing purposes.

The terms and conditions of this permit may be modified if additional information indicates that revision is necessary to meet the Standards of Rangeland Health as described in 43 CFR 4180 (Code of Federal Regulations; Administration of Grazing on Public Lands).

Preference will remain 1364 AUMs.

RATIONALE

Grazing is a well established and highly analyzed use of public lands.

Currently these allotments are permitted for use by bison, which are considered to have similar impacts as cattle, although there are presumed to be some distinctive behavioral differences.

Traditionally, these allotments were managed under a cow-calf ranching operation whereby livestock were put on predominantly public lands range pastures during the summer months so that hay and cropping could be carried out on the private lands. Then the livestock would be wintered on the private lands during the winter months so they could be better protected and cared for.

The proposed management model deviates from the traditional one. Rather than having designated winter and summer use areas, they would prefer to manage both public and private lands as one common unit with an emphasis toward native prairie wildlife habitat. No change in allocated BLM AUMs would occur, but rather than concentrating those AUMs into a shorter period of time on a smaller piece of land, they instead would be spread over the entire year and allotment in effect reducing the overall stocking density. Even when stocked to full capacity, it is unlikely that bison numbers will approach the cattle numbers historically stocked on the allotment because of the absence of supplemental winter feeding.

The private lands (as well as the public lands) in this allotment will be included in the yearlong management of the domestic bison herd. Public and private land will be used interchangeably by both wildlife and bison. It is expected that any potential negative effects to wildlife on the public lands will be offset by the availability of private lands for wildlife use in the winter.

The private lands are not being farmed as in the past. If the bison are on the public lands in the winter, the private lands will have forage available. Bison may remain on the private lands some winters and the effects would be similar to the no action alternative.

American Prairie Reserve will be expected to closely monitor bison use patterns and resource conditions. They will be required to submit an actual use report annually as part of the monitoring taking place on these allotments.

The determination was made in the Telegraph/Fourchette Watershed Plan (April 2005) that the 15634 Box Elder and 05654 Telegraph Creek Allotments are meeting all Standards for Rangeland Health and were found to be in Proper Functioning Condition.

The BLM determined the permittee meets the necessary qualifications to hold a Grazing Permit. The Transfer of Grazing Preference and issuance of a Grazing Permit complies with 43 CFR §4110.2-3, 4130.2, 4130.3, 4130.3-1 and 4130.3-2.

AUTHORITY

The following sections of the Code of Federal Regulations, Title 43, provide authority for the actions proposed in this decision.

§4110.1 Mandatory qualifications.

§4130.1 Applications.

§4130.2 Grazing permits or leases.

§4130.3 Terms and conditions.

§4130.3-1 Mandatory terms and conditions.

§4130.3-2 Other terms and conditions.

§4180 Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration.

§4160.1 Proposed decisions

§4160.2 Protests

§4160.3 Final decisions

§4160.4 Appeals

The language of the cited sections can be found at a library designated as a federal depository or at the following web address:

<http://www.gpoaccess.gov/cfr/index.html>

RIGHT OF PROTEST AND APPEAL

Protest:

Any applicant, permittee, lessee, or other affected interest may protest a Proposed Decision under Sec. 43 CFR§4160.1. Any protest shall be made in person or in writing within 15 days after receipt of this proposed decision to:

Vinita Shea, Field Manager
Bureau of Land Management, Malta Field Office
501 South 2nd Street East
Malta, MT 59538

The protest, if filed, should clearly and concisely state the reason(s) why this Proposed Decision is in error.

In the absence of a protest, this Proposed Decision will become my Final Decision without further notice.

Appeal:

Any applicant, permittee, lessee, or other person whose interest is adversely affected by the Final Decision may file an appeal in accordance with 43 CFR 4.470 and 43 CFR 4160.1-4. The appeal may be accompanied by a petition for stay of the Final Decision in accordance with CFR 4.21, pending final determination of an appeal. The appeal and petition for stay must be filed in the office of the authorized officer, as noted above, within 30 days following receipt of the Final Decision, or within 30 days after the date the Proposed Decision becomes final.

The appeal shall state the reasons, clearly and concisely, why the appellant thinks the Final Decision is in error and otherwise complies with the provisions of 43 CFR 4.470.

In accordance with 43 CFR§4.21(b)(1), a petition for stay, if filed, must show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied.
- 2) The likelihood of the appellant's success on the merits
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- 4) Whether the public interest favors granting the stay.

The appeal, or the appeal and petition for stay, must be in writing and delivered in person, via the United States Postal Service mail system, or other common carrier, to the Malta Field Office as noted above. The BLM does not accept appeals by facsimile or email.

Find enclosed your new grazing permits. Sign and date them, and return them to the Malta BLM Field Office for final processing. Once authorized, the Operator copies of the permits will be mailed to you.

If you have any questions please contact BJ Rhodes, Rangeland Management Specialist at 406-654-5120.

Sincerely,



Vinita Shea
Field Manager

cc: Western Watersheds Project #7011 2970 0000 3683 2353

Mary Cochenour
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7 West 6th Avenue, Suite 4I
P.O. Box 1914
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eshahabi@earthjustice.org

Counsel for Plaintiff American Prairie

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

AMERICAN PRAIRIE FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
INTERIOR; DOUG BURGUM, in his official
capacity as Secretary of the United States
Department of the Interior; UNITED STATES
BUREAU OF LAND MANAGEMENT; and
STEVEN PEARCE, in his official capacity as
Director of the United States Bureau of Land
Management,

Defendants.

Dkt. No. 4:26-cv-00282-BMM

**DECLARATION OF
CASEY YOUNG**

I, Casey Young, declare as follows:

1. My name is Casey Young. I am twenty-eight years old.
2. I live in Chinook, Montana, and own and operate a cattle ranching operation near Lloyd, Montana. My brother and I raise cattle together as part of our ranching operation. We lease grazing land from American Prairie ("AP") on its Anchor Ranch property.
3. Access to the grazing land we lease from AP is important to the continued sustainability of our operation. This land provides forage that helps us maintain our cattle herd and expand our family ranching business.
4. Dependable access to grazing land is essential to both our short- and long-term planning. The availability of forage affects decisions concerning herd size and the future of our ranching operation.
5. If AP were required to relocate its bison herd to Anchor Ranch and, as a result, could no longer provide grazing opportunities to my operation, I would need to locate replacement forage, reduce the number of cattle I run, or make other significant changes to my operation. Any of these outcomes would negatively affect my ranching business and my livelihood.
6. Moving my cattle operation to AP's White Rock or Sun Prairie properties would not be operationally possible for me. Those properties are approximately 90 miles from where my cattle currently graze, and much of the travel between the properties is over rough gravel roads. The distance and road conditions would make regularly transporting cattle, equipment, while properly managing and monitoring the herd impractical for my operation.

7. The two situations described above would negatively impact my life.
8. I hope that common ground will be found between the government and AP so that these negative impacts do not occur to the people that lease from AP.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct pursuant to 28 USC §1746(2).

Dated the 23rd day of August, 2026, at Chinook, Montana (Blaine County, Montana).


Casey Young

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Cochenour Law Office, PLLC
7 West 6th Avenue, Suite 4I
P.O. Box 1914
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mary@cochenourlawoffice.com

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eshahabi@earthjustice.org

Counsel for Plaintiff American Prairie

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

AMERICAN PRAIRIE FOUNDATION,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
INTERIOR; DOUG BURGUM, in his official
capacity as Secretary of the United States
Department of the Interior; UNITED STATES
BUREAU OF LAND MANAGEMENT; and
STEVAN PEARCE, in his official capacity as
Director of the United States Bureau of Land
Management,

Defendants.

Dkt. No. 4:26-cv-00282-BMM

**SECOND
DECLARATION OF
SCOTT HEIDEBRINK**

I, Scott Heidebrink, hereby declare:

1. I incorporate all the information in my declaration previously submitted in this action in support of American Prairie's Motion for Temporary Restraining Order and Preliminary Injunction and submit this declaration to provide additional information regarding the operational impacts of the Bureau of Land Management's May 8, 2026, Final Decision and to respond to several statements by BLM and Montana regarding American Prairie's ability to mitigate those impacts.

2. The facts in this declaration are based on my personal knowledge, my work with American Prairie's bison and cattle grazing operations, and records maintained in the ordinary course of those operations.

Loss of Grazing Capacity and the Need to Reduce the Herd

3. As described in my previous declaration, implementation of the BLM's Decision will reduce the grazing capacity available to American Prairie's bison by approximately 662 Animal Units. An Animal Unit is a standardized measure used to calculate forage needs and grazing capacity on public lands. Based on the remaining forage available to our bison program as a result of the 2026 Final Decision, American Prairie will need to reduce its total bison population by approximately 300 animals, at a minimum.

4. The approximately 300-animal reduction is not an assumption that American Prairie made for purposes of this litigation. It is based on the amount of forage being lost as a result of the BLM Final Decision, the carrying capacity of the remaining land, available water, existing grazing commitments, and the need to maintain responsible stocking rates.

5. American Prairie currently has a pending transfer of live bison involving three tribal governments in Montana and Wyoming. American Prairie intends to honor those commitments. Those transfers were already part of our herd-management planning and not part of American Prairie's calculation of the herd reduction required to comply with BLM's 2026 Final Decision. Three hundred (300) **additional** animals must be removed because of BLM's Decision.

6. Reducing the breeding herd by approximately 300 animals will affect American Prairie's ability to provide bison to tribal governments and other herds in future years. American Prairie has two agreements in place for the future transfer of live bison, one agreement is for the transfer of 50 bison to Rocky Boy Buffalo Project/Buffalo Child Ranch in 2027 and another agreement is for the transfer of 15 bison to the Arizona Game and Fish Commission by 2028. If American Prairie must reduce our herd by 300 animals, we will not be able to meet these agreements while the remaining herd rebuilds its genetic and reproductive capacity and even

with time to rebuild there is no guarantee that the herd's current genetic value can be replicated.

Moving Cattle Does Not Replace the Lost Bison Grazing

7. BLM suggests that American Prairie could move cattle currently grazing its deeded lands onto the affected BLM allotments and then move bison onto the deeded lands vacated by those cattle. That does not create additional grazing capacity. It simply moves existing livestock from one location to another. This would create a cascade of injuries not only to American Prairie but for the cattle ranchers leasing American Prairie's deeded pastures.

8. More than 80 percent of American Prairie's deeded lands are already committed to local cattle and bison lessees. American Prairie currently has 31 leases involving 37 individuals. Currently, approximately 8,000 head of cattle graze across American Prairie's deeded and leased properties. Those livestock operations depend on the forage available on American Prairie's deeded lands. To utilize these lands American Prairie would have to break those leases. This could result in extraordinary unforeseen expenses to lessees as they transport animals to BLM allotments, which in some cases are nearly a hundred miles away.

9. Moving those cattle onto the BLM allotments would reduce or eliminate the forage currently available to those lessees on American Prairie's

deeded land and disrupt existing grazing plans and lease arrangements. Also, it would not increase the total amount of forage available to livestock in the region.

10. Many of American Prairie's lessees are cattle ranchers whose operations would be significantly harmed if they were forced to move their cattle off American Prairie's deeded lands. The lessee of Anchor Ranch, American Prairie's largest parcel of deeded acres, has stated it would not be possible to move his operation to the Sun Prairie or White Rock allotments, and he would need to find other replacement forage or reduce his operation. In addition to requiring fencing infrastructure improvements, utilizing Anchor Ranch to relocate bison would displace this young rancher.

11. Montana attributes the need to convert the BLM allotments to cattle grazing in part to the declining national cattle herd and the need to stabilize Montana's livestock industry. However, cattle numbers in Phillips County do not provide evidence to connect this decline to American Prairie's bison grazing.

12. The United States Department of Agriculture provides a census of agriculture every 5 years, <https://www.nass.usda.gov/AgCensus>, with the latest completed in 2022. It provides a detailed picture of U.S farms and ranches and is the leading source of uniform, comprehensive agricultural data for states and counties. As someone who oversees bison and cattle operations at American Prairie this report can provide important context into how American Prairie land

management decisions fit into the larger picture of agriculture in the region.

American Prairie was formed in 2001 and purchased its first land and bison in 2005. Through 2022 American Prairie increased its bison herd size to 701. During that same time period the cattle-calf inventory in Phillips County fluctuated from 71,835 in 2002 to a high of 85,086 in 2012, and then back down to 70,562 in 2022. Cattle-calf inventory fluctuated more than 14,000, high to low, during that time period while American Prairie's bison herd did not exceed 1,000 bison.

13. The affected BLM allotments also cannot simply be substituted for the deeded pastures currently used by cattle. BLM previously approved fencing changes on these allotments specifically for bison grazing, including removal or reconfiguration of interior fences. Additional fencing and management changes would be required before portions of these allotments could function in the same manner as existing cattle pastures. Cattle and bison differ in their grazing patterns, density of grazing, and the amount of time they spend in riparian areas. Significant investments in time, fencing or grazing management would need to be invested to adequately manage cattle on allotments that have been managed for bison grazing.

14. Likewise, deeded acreage cannot be treated as interchangeable simply because American Prairie owns it. Whether land can accommodate additional bison depends on contiguous acreage, forage, water, fencing, existing livestock

use, season of use, handling facilities, and its location in relation to the existing bison operation.

15. Subleasing the BLM allotments for cattle would not replace what American Prairie is losing. The resource being lost is an established and connected bison grazing system on the Boxelder, Telegraph and Whiterock Coulee allotments and associated deeded lands—not simply potential lease income. Leasing the allotments for cattle would not preserve the size or genetics of American Prairie's bison herd, future calf production, harvest opportunities, or transfers to other herds, and it would not avoid the costs of feeding, moving, handling, and reducing the bison herd.

16. In addition, because BLM approved fencing changes specifically for management of bison on these allotments, portions of the allotments would require additional fencing changes before they could be efficiently managed for cattle. Any potential cattle-lease revenue therefore should not be viewed as a readily available substitute for the lost bison grazing capacity.

Financial Harm

17. The additional costs identified in my previous declaration are not hypothetical. They are based on actual contracts, vendor estimates, and the work American Prairie is undertaking to prepare for implementation of the BLM's Decision.

18. For example, American Prairie has already entered into a contract and purchased \$36,960 in hay because of the anticipated loss of grazing capacity. American Prairie has also been obtaining estimates and making arrangements for additional feed, fencing, transportation, veterinary services, handling, and other work required to implement its contingency plan.

19. American Prairie has entered into an agreement with a neighbor for hay and hay hauling for over 300 tons of hay. This agreement will exceed \$70,000 once fulfilled. Additionally, American Prairie will be entering into agreements in the coming weeks for an additional 500 tons of hay. This hay will be used to supplementally feed bison while the herd is reduced. American Prairie's grazing plans and population growth are planned 3-5 years in advance and a sudden reduction in available forage requires supplemental feed to address this sudden, severe reduction resulting from BLM's Final Decision.

20. American Prairie estimates that implementation of its contingency plan will cause approximately \$300,000 in immediate or near-term additional operating costs. That represents approximately a 30-percent increase in the operating expenses of American Prairie's bison program.

21. American Prairie is a nonprofit organization. Organization-wide assets and cash balances do not mean that all of those assets are available to the bison program to use for unexpected expenditures. Much of American Prairie's property

and funding is committed to land, restricted purposes, approved projects, staff salaries, property taxes, grazing lease fees, other programs, and ongoing operational expenses not related to its bison program.

22. An unplanned increase of approximately 30 percent in the operating expenses of a livestock program is significant regardless of the size of the organization that operates the program. The additional costs must be paid from resources that otherwise would be used for American Prairie's existing programs and obligations.

Sale of Bison Does Not Eliminate the Harm

23. Since my previous declaration, I have reviewed updated July 2026 bison values used in our planning. The current average value is approximately \$2,546 per bison. The average value of a bison calf is approximately \$1,607.

24. My previous declaration used an average market value of approximately \$2,466 per animal. The updated figures do not change my conclusion regarding the harm caused by removing approximately 300 animals from the herd.

25. A forced quick sale, such as this would be unlikely to receive full value of the bison. Traditional sales of genetically valuable bison are marketed months in advance of a sale, have venues set up to showcase the animals, and have had time to plan and select specific animals.

26. Selling a bison does not recoup the loss of that animal. American Prairie receives money only because it permanently gives up the animal and its value.

27. The value of American Prairie's bison to the herd is also not limited to their sale price. The animals have known genetics, age and reproductive characteristics, family relationships, adaptation to the landscape, learned behavior, and potential future reproductive contributions.

28. The animals that would have to be removed are also part of the breeding population that produces future calves. Removing reproductive animals therefore affects not only the number of animals presently in the herd, but the future size and composition of the herd.

29. Once those animals and their genetic contributions are removed from the herd, a later favorable judgment cannot recreate the herd that otherwise would have existed.

Bison Harvest

30. American Prairie's field harvest program is an important part of our population management. American Prairie uses both field harvest and transfers of live bison to manage herd size, demographics, and genetics.

31. Bison selected for field harvest are not selected randomly. We consider the animal's age, sex, genetics, reproductive role, and whether the animal would be useful for transfer to another breeding herd.

32. For example, an older breeding bull may be desirable for field harvest because it may be unlikely to successfully integrate into another breeding herd. That same animal can provide a desirable harvest opportunity. Other animals may be more important to retain because of their reproductive or genetic value.

33. American Prairie's field harvest program is intentionally conducted over approximately four months. Participants generally receive a three-day period in which to harvest an animal, and we schedule rest days when no harvesting occurs.

34. This schedule is important because repeated harvest activity creates stress on the herd. When bison experience repeated disturbance, they tend to break into smaller groups and move into more remote areas of the property.

35. American Prairie cannot simply add approximately 300 bison to the field harvest program over a short period on a smaller area of land. That level of harvest pressure would make the herd more difficult to manage, increase stress, and could increase pressure by the animals to move away from the disturbance.

36. The harvest program is designed to balance population reduction with herd genetics, demographics, animal behavior, participant experience, and our

responsibility to avoid impacts to neighboring ranchers. Dramatically increasing harvest to address the BLM's Decision would undermine that management system.

37. American Prairie canceled the 2026-2027 public harvest season because the BLM's Decision created uncertainty regarding where the bison will be located during the harvest season and because a forced herd reduction prior to the harvest season eliminates the surplus animals on which a responsible harvest program depends.

38. A public harvest cannot be planned without knowing what pasture the herd will occupy, whether that pasture can safely accommodate participants, and which animals can responsibly be removed. Those decisions are made well in advance and coordinated with our overall grazing and population-management plans.

39. American Prairie also expects that after a reduction of approximately 300 animals, the remaining reproductive animals will need to be retained to protect the herd's genetic and reproductive capacity. Under those circumstances, there will not be a responsible harvestable surplus simply because animals remain in the herd.

40. American Prairie expects to lose approximately \$25,000 in public and auction harvest revenue from cancellation of the 2026-2027 season. The cancellation also eliminates meat provided through the program and harvest

opportunities donated to Montana nonprofit organizations for fundraising, including food banks and fire departments.

Genetic Harm

41. American Prairie has spent more than 20 years developing the genetic diversity and integrity of its bison herds. That work has included careful selection of source animals, genetic testing, population management, and transfers among herds.

42. Removing approximately 300 animals immediately changes the genetic composition, age distribution, sex ratio, family lines, breeding population, and future reproductive output of the herd.

43. American Prairie has retained a population biologist and geneticist at a cost of \$5,500, to help determine which animals should be retained and which ages and sexes should be selected for removal if the herd reduction becomes necessary.

44. The purpose of that work is to minimize the genetic damage caused by a forced herd reduction. It cannot eliminate that damage. The number of animals that must leave is being determined by the loss of carrying capacity rather than by what would otherwise be the preferred genetic-management decision.

45. Once an animal is harvested or permanently transferred from American Prairie, the genetics and future reproductive contributions of that animal are no longer available to American Prairie's herd.

46. BLM has focused on American Prairie's use of approximately 400 animals as a minimum herd size. The 400-animal figure should not be understood as a population size at which no genetic harm occurs.

47. American Prairie uses approximately 400 bison as a minimum management threshold intended to reduce the risk of inbreeding and loss of diversity. Research used in bison management recognizes that substantially larger populations provide a better opportunity to retain genetic diversity over the long term.

48. American Prairie spent years building its population toward approximately 1,000 bison. A forced reduction of 300 bison therefore moves the herd away from, rather than toward, the population size we have worked to achieve.

49. Herd size alone also does not describe the full genetic impact. Which males breed, the age and sex of the animals removed, family lines, and the number of reproductive animals remaining all affect the rate at which genetic diversity is retained or lost.

50. Most importantly, American Prairie cannot simply allow the herd to grow by approximately 300 animals again over the next several years. The reason the herd must be reduced is that the BLM's Decision eliminates the grazing capacity needed to support those animals.

51. Until additional suitable land and forage become available, American Prairie will not have the carrying capacity necessary to rebuild the herd to its current size.

Contraception Is Not a Viable Alternative

52. American Prairie previously experimented with the contraceptive PZP, or porcine zona pellucida, as one method of limiting population growth. Approximately 192 bison cows were treated.

53. The drug was experimental in bison. It was expected that its contraceptive effects would generally wear off within approximately three to five years and that the treated animals would return to normal reproductive cycles.

54. That has not occurred. Approximately eight years later, the drug remains approximately 88 percent effective in preventing births among the treated cows. The use of the contraceptive was not originally intended to eliminate herd growth entirely or reduce it to this significant degree.

55. We have also observed behavioral changes in treated animals. Some treated cows segregate themselves from the rest of the herd and become agitated

more quickly during stressful situations. In my experience, this makes them less predictable and increases risks to staff during handling and field work.

56. Because of the prolonged contraceptive effect, behavioral changes, and management and staff-safety concerns, I made the decision years ago that American Prairie would not administer PZP to its bison in the future.

57. PZP therefore is not a reasonable alternative for addressing the loss of grazing capacity caused by the BLM's Decision.

Whiterock Coulee Grazing Schedule

58. BLM states that American Prairie was already required to remove its bison from the Whiterock Coulee Allotment by September 30 under the existing grazing schedule.

59. American Prairie normally begins moving the White Rock herd from the Whiterock Coulee Allotment onto deeded lands during September. That is part of our normal annual grazing rotation.

60. Under that grazing plan, the herd spends approximately six months on deeded lands during the fall and winter and then returns to the Whiterock Coulee Allotment beginning approximately April 1.

61. The fact that the herd normally moves off the BLM allotment in September does not mean that the BLM forage is unnecessary. The deeded lands are expected to support the herd for approximately six months, not twelve months.

62. If the BLM's Decision remains in effect, the significant loss of forage for the White Rock herd will occur beginning approximately April 1, 2027, when the herd would ordinarily return to the Whiterock Coulee Allotment but will no longer be authorized to do so.

63. At that time, the deeded lands will not have an additional six months of forage available simply because the bison are already present. American Prairie will have to reduce animal numbers, increase grazing pressure on remaining lands, and provide supplemental feed.

64. A normal seasonal movement off the allotment is therefore different from permanently eliminating that allotment from the annual grazing rotation.

Bison Containment and Trespass

65. American Prairie takes seriously its responsibility to contain its bison and to avoid impacts to neighboring landowners and lands where bison grazing is not authorized.

66. The Sun Prairie and White Rock Units contain a combination of American Prairie deeded land, BLM land, and in some locations State trust land. Those ownerships are often managed together within larger grazing units.

67. The boundary of an individual BLM parcel is not necessarily the exterior boundary of the pasture or larger grazing unit containing the bison. For that reason, the fact that every individual BLM parcel is not separately enclosed by

what BLM describes as bison-grade fencing does not mean the herd itself is not contained.

68. Since approximately 2009 through 2015, American Prairie invested approximately \$208,000 in 28 miles of BLM- and State-approved fencing associated with the Sun Prairie Unit. From approximately 2022 through 2023, American Prairie invested approximately \$142,000 in 19 miles of BLM-approved fencing associated with the White Rock Unit.

69. Those fences were reviewed and approved by BLM as part of American Prairie's bison grazing operations and have been used as part of those operations for years. BLM's own approvals contemplated that the fences would contain bison while also addressing other public-land management objectives, such as allowing wildlife to pass through the fence and recreation to continue uninhibited.

70. American Prairie also relies on regular monitoring, livestock management, pasture configuration, and staff response in addition to fencing to contain bison within approved pastures. Bison containment, like cattle containment, is an ongoing livestock-management responsibility.

71. American Prairie's management goal is to prevent our bison from affecting neighboring ranching operations or using lands where they are not authorized. Our harvest schedule, pasture management, fencing, and monitoring

practices performed by dedicated bison management staff are all designed in part around that responsibility.

72. Increasing harvest pressure dramatically or placing more animals on smaller available properties would make containment more difficult rather than easier. One reason American Prairie does not simply increase harvest or crowd displaced animals onto remaining acreage is to avoid creating additional pressure on fences and conflicts with neighboring ranchers.

73. In 2025, the organization received notice of a complaint that American Prairie had trailed bison on Montana DNRC State Lease #9361, which is held by American Prairie, authorized for cattle grazing, and located in the middle of the White Rock Unit. American Prairie had been notified that bison grazing was prohibited on this lease but had not been informed that trailing—a common livestock practice—was also barred. At no point was American Prairie given a formal violation or fine for lease #9361 or any other lease. American Prairie cooperated fully with DNRC staff regarding the incident and after it was brought to the organization's attention, American Prairie agreed to not trail bison across its lease without consent from DNRC.

74. To ensure that no future trespass occurs on State Lease #9361, American Prairie has invested in extra fences, extra monitoring and has forgone grazing on approved BLM lands and American Prairie deeded lands in White Rock

Coulee. Approximately 3.5 miles of fence has been constructed on deeded lands at a cost of over \$30,000 to prevent bison grazing on this State Trust Lease #9361. American Prairie staff spend extra time monitoring these fences to ensure no trespass grazing is occurring. Additionally, due to the scattered nature of DNRC lands within the pasture American Prairie has forgone bison grazing on over 5,000 acres of BLM lands and over 800 acres of deeded lands to avoid trespass grazing on this state lease.

75. Bison occasionally escaping from pastures is a normal livestock management challenge—not evidence of failure. Like other livestock challenges, damaged fences, pressure from other animals, and animal behavior can cause escape events to occur. The keys to minimizing escapes and resulting damage are prevention, and how an operation responds and corrects the situation when it occurs. American Prairie checks its perimeter fences approximately every 10 days. In the event of an escape the adjacent landowner is immediately informed and 2-3 staff respond immediately. If the bison cannot be returned in a timely manner, euthanizing is an option. Landowners are also offered compensation for any damage, forage eaten, and for fence repairs to be made.

Handling and Moving Bison

76. Gathering and moving bison is part of livestock management, but that does not mean additional large-scale movements are without risk.

77. Moving large numbers of bison requires gathering, sorting, confinement, veterinary work when necessary, loading, transportation, unloading, and introduction into the receiving pasture.

78. American Prairie follows low-stress livestock-handling practices and tries to minimize unnecessary handling. Each additional handling event creates additional opportunities for animal stress, injury, escape, disease, or injury to staff.

79. Under normal operations, American Prairie conducts a planned fall handling event for herd-health surveillance, which includes rounding up of bison in corrals for a short period. That is different from the additional gathering, sorting, prolonged confinement, loading, shipping, and dispersal that would be required to implement the BLM's Decision.

80. To disperse the Sun Prairie herd, the animals would need to be gathered and individually processed and sorted by age and sex. Based on our expected processing capacity, sorting can occur at approximately 300 head per week, with shipping occurring afterward.

81. As a result, some animals may need to remain confined for approximately seven to ten days while sorting and shipping are completed. That is substantially different from our normal surveillance handling, after which animals can be released back onto the landscape shortly after handling.

82. The additional sorting can also separate established social groups and place unfamiliar animals together. Calves may be separated from their mothers earlier than they otherwise would be under our normal management schedule.

83. Dr. Martin Zaluski, who has participated directly in American Prairie's bison handling and provides veterinary oversight to the herd, has separately explained that this additional handling, confinement, commingling, and early separation increases the risks of injury, disease, and production loss.

84. Based on my experience managing these animals, I disagree with the suggestion that the harm is eliminated simply because moving livestock in the fall is not unusual in the livestock industry. The issue is not the calendar date alone. The issue is the amount and type of handling that the BLM's Decision requires compared with what these particular herds would otherwise experience.

85. The BLM's Decision requires American Prairie to undertake movements and herd reductions that would not otherwise occur and limits our ability to make those decisions solely according to what is best for the animals and the bison program.

86. For the above reasons, the operational impacts of the BLM's Decision cannot be solved simply by moving cattle, moving bison, selling animals, increasing harvest, or looking at the total number of acres owned by American

Prairie. Each of those options affects another part of an interconnected grazing system.

I declare, under penalty of perjury under the laws of the United States that the foregoing is true and correct pursuant to 28 U.S.C. § 1746(2).

Dated: August 23, 2026.

A handwritten signature in black ink, appearing to read "Scott Heidebrink", with a stylized, cursive script.

Scott Heidebrink
American Prairie
Director of Landscape Stewardship