AUSTIN KNUDSEN

STATE OF MONTANA

September 28, 2021

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

Mr. Tom Darrington
Field Manager
Malta Field Office
Bureau of Land Management
501 South 2nd St. East
Malta, MT 59538

Mr. Mark Albers
District Manager
North Central District Office
Bureau of Land Management
920 Northeast Main
Lewistown, MT 59457

Re: American Prairie Reserve Bison Change of Use DOI-BLM-L010- 2018-0007-EA June 2021 and FINDING OF NO SIGNIFICANT IMPACT AMERICAN PRAIRIE RESERVE BISON CHANGE OF USE DOI-BLM-L010-2018-0007-EA

Via: Electronic Submission

Dear Mehlhoff, Darrington, and Albers:

As Montana's Attorney General, I write to express my concerns regarding American Prairie Reserve's ("APR") change of use application, and the utter insufficiency of the Bureau of Land Management's ("BLM") Draft Finding of No Significant Impact ("FONSI") and Draft Environmental Assessment ("EA").

Whatever motives APR may harbor, and whatever donors APR may serve, its interests in this change of use permit request run afoul of clear statutory and regulatory guidelines and BLM should scrap the Draft FONSI and EA and conduct a more thorough review for the benefit of Montanans and the affected communities. My concerns regarding APR's 'vision' to transform Northeast Montana into a wildlife viewing shed for out-of-staters at the expense of local communities, local families, and local agricultural producers only grew more pronounced after hearing from over 250 Montanans directly on September 15, 2021.

While not comprehensive, I have summarized my concerns regarding the (in)adequacy of BLM's environmental review.

## Bison Are Not Livestock

Under current law and regulation bison do not qualify as livestock. Livestock is a clearly defined term that includes only specifically listed domesticated animals. 'Bison' is absent from that list. The Draft FONSI and Draft EA substitute 'indigenous livestock' and 'indigenous animal' in place of livestock to describe bison. These terms, which are undefined, cannot be used to replace the longstanding definition of livestock. Even if these terms had some defined meaning that covers bison, APR's mission statement and marketing materials make clear that APR views the bison herd on its property as *wildlife*—not livestock—and thus outside the scope of the relevant laws and regulations.

The FONSI characterizes APR's request as a "10-year grazing permit for cattle and indigenous livestock (bison)" including changes in "class of livestock for Cattle and/or Indigenous animals (bison)" in the covered parcels. FONSI at 1. Grazing permit regulations found at 43 C.F.R. Part 4100 define livestock. *See* 43 C.F.R. § 4100.0-5 ("Livestock or kind of livestock means species of domestic livestock — cattle, sheep, horses, burros, and goats."). 'Indigenous livestock' is not a term used in statute or regulation and has no discernable meaning. 'Indigenous animal' is not defined in law or regulation, but is a term used in the rules allowing for special grazing permits *for non-livestock*. *See* 43 C.F.R. § 4130.6-4 ("Special grazing permits or leases authorizing grazing use by privately owned or controlled indigenous animals may be issued..."). Whether or not bison are "indigenous animals," they are clearly not cattle or any other livestock species. The regulatory structure clearly defines livestock to preclude bison and BLM cannot use ill-defined terms to insert bison into the definition of livestock.

This discussion over the definition of livestock matters because the purpose of the grazing lease structure is "to provide for the sustainability of the western livestock industry and communities that are dependent upon productive, healthy public rangelands." 43 C.F.R. § 4100.0-2. Livestock takes priority over non-livestock because that is the purpose upon which the leasing structure is built. APR's prior proposals sought to subvert this clear purpose by changing the type of animal from livestock (cattle) to non-livestock (bison) on its leases. *See* Overview of American Prairie Reserve's Proposed Action, Bureau of Land Management (April 2018). But now, APR's tactic has changed. No longer will they admit (in BLM proceedings) that bison are non-livestock, which is obviously correct. Now, they've conjured a new classification—indigenous livestock—and insist that bison fit inside. The law requires more than clever linguistic re-jiggering. APR doubtlessly paid a lot for the legal brain that suggested: "we only need to stop calling bison non-livestock and call them indigenous livestock instead," but unless the biological makeup of bison has change dramatically in the last three years, bison are still not livestock. So even if authorized under a

special grazing permit, special permits must still comply with the purpose of the Taylor Grazing Act ("TGA") and related statutes. That purpose is to provide for the *livestock* industry, not reintroduction of wildlife.

APR's statements outside of its proposal makes clear that they view bison as wildlife. APR previously told BLM its bison herds qualify under the TGA as indigenous animals. *See e.g.* APR 2018 Comments at 31.[1] But APR's marketing materials tell a different tale.[2] APR's mission "is to create the largest nature reserve in the contiguous United States, a refuge for people and wildlife preserved forever as part of America's heritage."[3] Glaringly absent from this mission statement is any mention of livestock or ongoing livestock operations. That is because APR's goal is to 're-wild' Northeast Montana, including the reintroduction of bison herds as wildlife, not livestock.[4] APR's Bison Management Plan ("BMP")[5] submitted to BLM admits as much stating, "[r]eintroduction of wildlife species is generally a long-term process." BMP at 17. Any doubt that wildlife refers to bison is removed because a goal of the BMP is to "[e]stablish a population that contributes to removal of wild bison from the Montana list of species of concern." *Id.* at 20.

In sum, APR's mission, statements, and goals are at odds with the TGA's objective to promote the livestock industry. APR seeks bison as wildlife, not livestock. Re-categorizing them as indigenous livestock undermines the TGA, hurts local livestock interests, and defies logic.

## BLM Failed to Consider Important Interests

BLM, in analyzing the current proposal, puts on blinders that obscure the reality of what APR proposes. APR's current proposal derives entirely from an earlier, larger, proposal that APR has not disavowed. Because the current proposal is part and parcel of a larger scheme, BLM must analyze the consequences of APR's full plan to reasonably calculate impacts to local communities and to the state. BLM hasn't done so.

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[1] APR's 2018 Comments are available at https://www.americanprairie.org/sites/default/files/2018-06-11%20APR%20NEPA%20Comments.pdf. (accessed September 27, 2021).

[2] *See e.g.* www.americanprairie.org/wildlife-restoration ("American Prairie reintroduced bison in 2005 after a 120-year absence. Read about our bison goals, management, and progress over time.").

[3] www.americanprairie.org/mission-and-values.

[4] www.americanprairie.org/bison-faqs (APR would "be fine with" designating bison as wildlife for its operations).

[5] The BMP is available online at https://www.americanprairie.org/sites/default/files/APR_BisonMangPlan_5_29_18_sm.pdf. (accessed September 27, 2021).

NEPA requires federal agencies to consider the full scope of a proposed action to determine whether it will have a significant impact. Importantly, agencies cannot avoid this required cumulative impact analysis by looking only at the narrow proposal in front of it. *See* 40 C.F.R. 1508.27(b)(7) (For NEPA purposes, "significance cannot be avoided by terming an action temporary or by breaking it down into small component parts"); *see also* 40 CFR 1508.25(a)(1)(iii) "Actions are connected if they: Are interdependent parts of a larger action and depend on the larger action for their justification.").

APR's current proposal directly implicates 69,130 acres of BLM land; 32,710 acres of private land; and 5,830 acres of state trust land. Draft EA at 1-1. APR's 2017 proposal affected 260,893 acres of BLM land; 86,426 acres of private land; and 29,309 acres of state trust land. Revised APR Proposed Action at 1 (November 20, 2017).[6] APR makes clear that its scaled-down proposal is still part of the larger plan. *See* APR Proposal at 1 (September 24, 2019) (The current proposal "will give APR additional time to further demonstrate the sustainability of our preferred bison grazing system."). NEPA, in this context, does not contemplate such "we're-sure-this-will-work-out" projects because reviewing the proposal only in a temporary, geographically limited, or contingent context ignores the consequences of APR's comprehensive scheme.

BLM failed to conduct the necessary cumulative impact analysis of the current proposal and how it relates to the larger APR plan. Instead, the Draft EA includes only a cursory finding that no cumulative socioeconomic impacts exist. *See* Draft EA at 3-43. Respectfully, that is absurd. APR's mission is to displace Northeast Montana's livestock industry and replace it with a large outdoor zoo. That will obviously have negative impacts on Montana's agricultural economy—and acute impacts on local farmers and ranchers. *See* Draft EA at 3-37. BLM must do better. It should examine all the impacts of APR's current proposal in light of its broader scheme to eliminate the existing agricultural economy in Northeast Montana.

## BLM Failed to Adequately Allow Public Input

BLM must allow the public, and state and local governments, meaningful opportunity to comment on the proposal. BLM inexplicably relies on public meetings held for a different proposal to justify its state and local outreach on this proposal. Further, the format and timing of the public meetings for APR's current proposal were seemingly designed to favor non-local interests at the expense of directly

[6] Available online at https://eplanning.blm.gov/public_projects/nepa/103543/139909/172013/APR_Proposal.pdf. (accessed September 27, 2021).

affected local communities and cannot possibly satisfy the requirement to allow Montanans to meaningfully comment on this matter.

BLM failed to account for state and local interests. *See* Draft FONSI at 6. The Draft FONSI says, "[f]ederal, state, and local interests were given the opportunity to participate in the environmental analysis process. A complete description of public involvement is contained in Chapter 4 of the EA." *Id.* But Chapter 4, in turn, states that public meetings were held on April 9 and 12, 2018. *See* EA 4-1. APR's current proposal was not submitted until September 24, 2019. *See* Proposal at 1. There is simply no possibility that public meetings concerning a different proposal, pre-dating the current proposal, can sufficiently address the concerns surrounding this proposal. That should be common sense.

As Montana Attorney General, I initiated a public meeting concerning the current proposal because BLM's public outreach has been woefully lacking. If BLM had done its job, my forum would not have been necessary to hear the voices of over 250 local Montanans on this issue.[7] But BLM did not do its job. A single virtual meeting held between 1 p.m. and 4 p.m. on a Wednesday afternoon doesn't work for Northeastern Montana agriculturists. Those people work for a living. The scheduling and format of that meeting benefits out-of-state and lobbying interests, not the people in the affected communities who are working during those times. The comments and public participation at that "meeting" make this clear. BLM needs to genuinely engage state and local stakeholders in a serious, non-perfunctory, fashion to address concerns regarding APR's proposal and what it means for the local economy.

Finally, APR's conduct throughout this proceeding leaves much to be desired. While it requests special dispensation in the instant permit application, APR previously threatened other permit holders. *See* APR 2018 Comments at 3 ("Other permittees should be aware that any standard or precedent set for APR, whether in NEPA or grazing stipulations, could just as easily become the standard for all livestock permittees.").[8] APR's my-way-or-the-highway (nonmotorized access only!) approach is nothing more than a reflexive threat to subject other permits to burdensome administrative protests and is, to be polite, unneighborly. No wonder APR has generated intense local opposition to its efforts. As I said at our public forum, "there may be people here that won't agree but this is Eastern Montana. We don't get angry with each other and we are going to be respectful."

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[7] Pierre Bibbs, "Knudsen gives a voice to locals in BLM, APR, grazing proposal," Phillips County News (September 22, 2021). Available online at https://www.phillipscountynews.com/story/2021/09/22/news/knudsen-gives-a-voice-to-locals-in-blm-apr-grazing-proposal/12022.html.

[8] Because bison are not livestock, it is entirely unclear how APR's proposal would reflect on actual livestock producers.

That said, my office will vigorously protect the lawful interests of Montana families and agricultural producers.

Montana communities can only thrive when we are working together. It does not work for Montana to have BLM rubber-stamp a radical proposal aimed at fundamentally transforming Northeastern Montana. We deserve better than that.

Sincerely,

Austin Knudsen
Montana Attorney General