

ASSOCIATION OF NATIONAL GRASSLANDS



January 9, 2020

Thunder Basin Plan Amendment Comments
Thunder Basin National Grassland Supervisor's Office
2468 Jackson Street
Laramie, WY 82070

Re: Thunder Basin National Grassland Plan Amendment DEIS Comment

Dear Supervisor:

Please accept these comments, submitted on behalf of the Association of National Grasslands, Inc. (ANG), in response to the 2020 Thunder Basin National Grassland Plan Amendment DEIS. The Association of National Grasslands is an organization consisting of Grazing Associations and direct grazing permittees working in cooperation with the United States Forest Service in the protection, improvement, development and administration of the National Grasslands in the western United States. We greatly appreciate the opportunity to comment on the 2020 Thunder Basin National Grassland Plan Amendment DEIS.

On December 28, 2018, the Association of National Grasslands, Inc. (ANG) made formal comment at the pre-scoping stage of this current NEPA process to address the long-standing lack of prairie dog management contained in the Thunder Basin National Grasslands Land Use Management Plan (LRMP). This is not the first time ANG submitted formal comment to address this persistent problem. At each stage of the narrowly tailored 2013 USFS planning process, ANG made substantive comment and proposed an alternative. Please see: November 19, 2013 Good Neighbor Alternative, which is attached hereto and incorporated herein by this reference.

The Notice of Intent that was published on April 18, 2019, was broader in scope than the last Notice of Intent that was published on September 13, 2013. ANG was appreciative that the current Scoping Document was more sufficiently defined to address prairie dog management on the Thunder Basin National Grassland (TBNG). That being said, the current Proposed Alternative 2 represents a step backwards from progress made on the Buffalo Gap National Grassland of South Dakota and the Oglala National Grassland of Nebraska. The fact that the TBNG DEIS provides less boundary protection for the Wyoming landowners is unacceptable to ANG.

ANG and the affected County Commissions were successful a decade ago in proposing an alternative that was studied during the Prairie Dog EIS processes for the Buffalo Gap and Oglala National Grasslands in South Dakota and Nebraska. After a modified version of the ANG proposed alternative

was adopted as an amendment to the Buffalo Gap National Grassland LRMP, conflicts between private landowners and the Forest Service have dramatically been reduced. Eventually, two LRMP amendments on the Buffalo Gap National Grasslands to reduce conflicts between the private landowners and the Forest Service were adopted.

I. Boundary Management

The first amendment to the Buffalo Gap National Grassland LRMP has been successful in allowing for a ½ mile boundary management zone for control of the prairie dog population and up to a mile onto the National Grasslands where private property has been repetitiously harmed by colonization.

“Landowners experiencing persistent encroachment or imminent encroachment after treatment may request consideration of a 1-mile boundary management zone.”
Black-tailed Prairie Dog Conservation and Management on the Nebraska National Forest Land and Resource Management Plan Amendment 1 Record of Decision, Page 10.

In contrast, the Proposed Alternative 2 of the TBNG DEIS provides for a maximum boundary management zone of ¾ of a mile and only a ¼ of a mile boundary management zone. ANG finds this limitation of the DEIS unacceptable, as the NEPA process requires that documents "shall provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of **reasonable alternatives** which would avoid or minimize adverse impacts or enhance the quality of the human environment." 40 C.F.R. Section 1502.1 (emphasis added). Further, the NEPA process "shall serve as the means of assessing environmental impact of proposed agency actions, rather than justifying decisions already made." 40 C.F.R. Section 1502.2(g). The TBNG DEIS did not put forth an alternative consistent with the Buffalo Gap and Oglala National Grasslands LRMP by sincerely analyzing what should have clearly been a **reasonable alternative** that NEPA demands.

ANG respectfully requests that a modified Alternative be adopted in the upcoming FEIS that incorporates the ½ mile boundary management zone and the one-mile buffer zone for problem areas and fully analyzes the Buffalo Gap and Oglala National Grasslands LRMP. ANG believes that the failure of the TBNG FEIS to adopt an Alternative consisting of less than the half-mile and one-mile boundary management components contained in the current Buffalo Gap National Grassland LRMP without fully analyzing the effects and successes of the NNF LRMP is a flagrant violation of NEPA that cannot be ignored. Buffalo Gap National Grassland units are less than fifteen (15) miles from the Thunder Basin National Grassland and are comprised of very similar, if not identical, habitat, species and climatic conditions. Failure to fully analyze the Buffalo Gap LRMP effects, including the decade of accumulated monitoring data, cannot stand.

II. Similarity Index

The second Buffalo Gap National Grassland LRMP amendment also adopted a Similarity Index to ensure rangeland health. The TBNG Proposed Action #5 states: “**Where possible**, adopt use of the Natural Resource Conservation Service’s Ecological Site Descriptions in management area 3.67[.]” (emphasis added). Again, ANG respectfully requests that a Grassland-wide Similarity Index be evaluated in an Alternative for the TBNG FEIS. A Similarity Index has been implemented for the past decade on

both the Buffalo Gap and Oglala National Grasslands. Failure to fully analyze and evaluate an Alternative that is designed to fully protect the soil, range and vegetative cover clearly contradicts the National Grasslands' Organic Act (Bankhead-Jones Act (7 USC 1010 et seq.)) and the implementing regulations of the National Grasslands. **"In the administration of the National Grasslands the resources shall be managed so as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located."** 36 C.F.R. Section 213.1(d) (emphasis added). Again, a plethora of data has been documented in Nebraska and South Dakota to provide a roadmap for the development of an FEIS Alternative that studies the concept of fully protecting the range, even in the 3.67 designated zone. ANG asserts that anything less is a violation of NEPA, NFMA and the Bankhead-Jones Act. The following conclusory statement, without any analysis or data, as the basis for failing to analyze the Buffalo Gap and Oglala National Grasslands LRMP similarity index, is not the hard look required by NEPA, or it constitutes an admission against interest that the Buffalo Gap and Oglala National Grasslands LRMP requires an SEIS. **"Experience using similarity index as a management trigger for other purposes and in other locations has demonstrated that it would be inappropriate to apply it exclusively to guide prairie dog management."** TBNG 2020 Plan Amendment DEIS, at Page 48. Either conclusion, however, is not sufficiently described or analyzed consistent with NFMA, NEPA or the Bankhead-Jones Act. "NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 C.F.R. 1500.1(b).

III. Bare ground and short-stature vegetation

The first enumerated paragraph of the proposed action plan for the TBNG EIS states that the plan is to "emphasize short-stature vegetation." Scoping Document, at Page 8, and TBNG 2020 Plan Amendment DEIS, at Page 17. Quite frankly, short-stature vegetation appears to be a euphemism for what NRCS used to define as "poor range condition." The NRCS current Similarity Index values also appear to be in direct conflict with the term "short-stature vegetation." Again, this dichotomy must be analyzed by developing an Alternative that applies a Grassland-wide Similarity Index to satisfy NEPA and the Bankhead-Jones Act. The Alternative "section is the heart of the environmental impact statement." 40 C.F.R. 1502.14. "One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration (and even out of existence)." Simmons v. United States Army Corps of Eng'rs, 120 F.3d 664, 665 (7th Cir. 1997). The Forest Service "may not define the objectives of its action in terms so unreasonably narrow that only one alternative ... would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." Citizens Against Burlington v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991) cert. denied 502 U.S. 994 (1991). The failure to fully consider the Buffalo Gap and Oglala National Grassland LRMP similarity index implementation and monitoring over the past decade is clearly unreasonable when the Forest Service makes the broad and unsubstantiated conclusion that: "Experience using similarity index as a management trigger for other purposes and in other locations has demonstrated that it would be inappropriate to apply it exclusively to guide prairie dog management."

The NEPA process must "[r]igorously explore and objectively evaluate **all reasonable alternatives**, and for alternatives which were eliminated from detailed study briefly discuss the reasons for their having been eliminated." 40 C.F.R. 1502.14(a)(emphasis added). Clearly, the BGNG LRMP is a

reasonable alternative. “This court recognizes the broad scope of an agency’s duty to study all reasonable alternatives. Appearing twice in the text of NEPA, the duty is more pervasive than the duty to prepare an EIS.” Bob Marshall Alliance v. Watt, 685 F. Supp. 1514, 1521-22 (D. Mont. 1986). North Buckhead Civic Ass’n v. Skinner, 903 F.2d 1533, 1542 (11th Cir. 1990). “[A] discussion of alternatives that would only partly meet the goals of a project may allow the decisionmaker to conclude that meeting part of the goal with less environmental impact may be worth a tradeoff with a preferred alternative that has greater environmental impact.” Id. at 1542. The following goal is not discretionary: **"In the administration of the National Grasslands the resources shall be managed so as to maintain and improve soil and vegetative cover, and to demonstrate sound and practical principles of land use for the areas in which they are located."** 36 C.F.R. Section 213.1(d) (emphasis added). The Proposed Alternative secludes the alternative analysis necessary in order to prevent the tradeoff for a preferred alternative that has greater adverse environmental consequences to the range, plant and animal species.

The tradeoff proposed is so that: “Short-statute vegetation and bare ground are emphasized in management area 3.67 or 3.63 due to the suitability of soils and existing plant communities and the historic occupation by prairie dogs.” TBNG DEIS at Page 61 (emphasis added).

An allotment with low structure, poor range condition, and now, even bare ground, is inconsistent with both the letter and spirit of the Organic Act of the National Grasslands. On June 29, 1937, during the debate on the Organic Act, Oklahoma Congressman Ferguson made the following statement in the Congressional Record, at Page 6574.

The provisions with reference to the submarginal land program are contained in title III. I hope the House realizes the importance of title III.

Unquestionably the Government policy of granting homesteads and establishing small units in the western plains area was the cause of economic distress to the homesteader and destruction of land. Many Members cannot yet distinguish between the dust storms of recent years and the sand storms we have always had in the West. Sand storms are caused by high winds. The dust storms are caused by fine silty soil that has been cultivated, then dried out by months of burning sun. This dust will rise miles in the air with even the slightest breeze, and when this soil is gone the bare subsoil in this country is worthless. Not only does it destroy the land that has been cultivated, but it is more unbearable than a flood or fire to the people for hundreds of miles around. The dust cannot be extinguished like a fire nor does it reach a peak and recede like a flood. It is a constant menace day after day and when the rain clears the atmosphere it is likely to return a few days after. So I have sought legislation from the Congress for 3 years to tackle this problem. A bill that would commit the Government to buy this land, restore it to its economic use of grazing and remove this land as a menace to surrounding land and the inhabitants of the country for a radius of several hundred miles. This area is a sore that has spread and is gradually increasing in spite of all private and Government efforts made so far to stop it. And within the course of our lifetime at its present rate of expansion we could see the area between the Rocky Mountains and the Mississippi change from the greatest agricultural area in the world to a desert.

...

In summary, this land must be purchased by the Government under the provisions of this section of the bill: First to save the eroded land itself; second, to save adjacent farm land that has been carefully farmed, that is now being carefully farmed, but will be ruined if these fields are not properly cared for; third, to save the people for a radius of several hundreds of miles from the discomfort and economic loss caused by repeated dust storms; fourth, to check the constant threat of turning a vast area between the Rocky Mountains and the Mississippi River into a desert.

Alternative 2's emphasis on allowing bare ground and deteriorating range condition is not only a violation of the letter of the Federal Regulation promulgated pursuant to the Organic Act, but it is also in violation of the spirit of the Organic Act and its Legislative History. On June 28, 1937, during the debate on the Organic Act, Nebraska Congressman Coffee, who owned a ranch between Edgemont, South Dakota and Harrison, Nebraska within the boundaries of the Oglala National Grassland, stated the objective of Title III of the Bankhead-Jones Act:

Under title III funds are authorized for the purchase by the Government of submarginal land. This would be a continuation of the present program and in many States additional purchases are necessary to block together the purchases already made. **The objective is to retire this submarginal land from unprofitable crop production and to turn it back to grass and into grazing and forest areas.** In purchasing this land the Government will have something to show for the money spent. It will help to relieve crop surpluses, especially in wheat, since in good years this submarginal land helps to swell the price-depression surplus. Twenty-five percent of the net **revenue received by the Secretary from the use of the land** will be paid to the respective counties for school and road purposes. This is quite essential inasmuch as a great deal of the taxable property in some counties has been or will be purchased by the Government under this program.

Congressional Record, June 28, 1937, at page 6471 (emphasis added).

Congressman Fred Hildebrandt of South Dakota also articulated the Congressional Legislative intent of the Submarginal Land Program:

The objective of the land-buying program as illustrated by projects with which I am familiar in my State is to help these farmers change from crop farming to cattle grazing. Now most of the farmers do not have enough land on which to run cattle and because of this complicated ownership they cannot get land. Therefore the land-utilization program is buying up private land and throwing it in with the public land to make a big grazing range which the stockmen of the region can use. In working out this adjustment in land use some of the families will have to move to a place where they can raise winter feed for their stock, and perhaps some will decide to leave the area entirely for some better region. But the basic purpose of this land adjustment work is to make the land more capable of supporting a population and thereby serving as a greater benefit to the community dependent on it.

This purpose is also served by the development program whereby land is being put in better shape for future use. Out in the grazing region this means the development of a better range. Land is being seeded and protected against overgrazing. Thousands of little dams are being built to catch water and hold it on the ground both for the stock to drink and to improve the grass. Miles of ditches have been dug to spread water over the grasslands where it is most needed. All of this work is, of course, intimately associated with the problem of flood control because of the great floods of the West come from the rapid run-off of water on overgrazed and drought-stricken land where there is insufficient cover of grass to hold it back.

Appendix to the Congressional Record, June 29, 1937, at page 1621 (emphasis added).

Obviously, the legislative intent was to turn it back to grass and utilization as grazing land. The consideration of an alternative tradeoff proposed so that “[s]hort-statute vegetation and bare ground are emphasized in management area 3.67 or 3.63 due to the suitability of soils and existing plant communities and the historic occupation by prairie dogs” TBNG DEIS at Page 61 (emphasis added), for administrative units consisting of tens of thousands of acres, is a violation of the Act of Congress, the implementing Federal Regulation for the National Grasslands, and the stated intent of Congress. The Forest Service is not authorized to purposefully allow prairie dogs to overgraze the Bankhead-Jones lands.

Further, the February 26, 1931 Declaration of Takings Act, required the Federal Government to file a Declaration of Taking with a Federal Court in any condemnation action initiated by the Federal Government to take private property (46 Stat. 1421). The following is the pertinent excerpt of the statute:

Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which **and the public use for which said lands are taken.**

Such a Declaration of Taking was filed in the United States District Court of South Dakota by the United States Department of Agriculture *In the Matter of 7,992.62 acres of land, more or less, in Fall River County, South Dakota.* (831 W.D.) The Acting Secretary of Agriculture, M.L. Wilson, signed the Declaration of Taking for the 7,992.62 acres of land at Washington, D.C. on May 26, 1937. The signed Declaration of Taking stated in pertinent part:

That pursuant to and by virtue of said authority, the Secretary of Agriculture has duly selected for acquisition by the United States the lands hereinafter described, for use in connection with said project, in furtherance of the objects aforesaid, and that the said lands are necessary in his opinion: **To provide for the prevention and control of soil erosion; conservation and development of water resources; establishment of a demonstrational area for the public grazing of livestock; control of destructive animal life; and relief of unemployment by providing useful work in the reseeding, terracing and**

fencing of said land and the construction thereon of roads and structures necessary and appropriate to said project.

Id. (emphasis added).

Similar condemnations resulted in the taking of thousands of the acres in the western United States, including Wyoming. The lands were taken for the public use of livestock grazing and the improvement of the soil and range health. Therefore, even the consideration of Proposed Alternative 2's attempted justification of poor range condition and bare ground is in contravention of the Federal Government's stated purposes in the Congress, the Courts and the regulations. Although Proposed Alternative 2 has already been recommended, ANG believes the Oglala and Buffalo Gap National Grassland LRMP must be a Modified Alternative fully considered by the FEIS, including but not limited to the cumulative impacts of the implemented similarity index.

Cumulative impacts are defined under NEPA as "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions." 40 C.F.R. § 1508.7. Cumulative impacts may result "from individually minor but collectively significant actions taking place over a period of time." Id. The DEIS failed to consider, or adequately consider, the cumulative effects of activities that will take place.

The Forest Service statutory duties to be a steward of the soil resource and to abate depredations are specific and clear. As the United States Supreme Court recently found in determining that the Endangered Species Act did not trump the Clean Water Act's mandatory duties on the EPA: "a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum." National Association of Homebuilders v. Defenders of Wildlife, 551 U.S. 644 (2007). See also, Rounds v. United States Forest Service, 301 F.Supp2d 1287 (D. Wyo. 2004). "NEPA and NFMA are both supplemental to the Organic Act, which sets out the mandatory duty of the Secretary of Agriculture and the Forest Service to prevent destruction by fire or depredation by insects." Id. at 1292.

IV. Species of Conservation Concern

The Sage Grouse population continues to decline in Wyoming. Casper Star Tribune, January 6, 2020. Although the USFWS has determined that a listing of the species is not warranted under the Endangered Species Act at this time, (16 U.S.C. § 1533), a listing decision could be made if the species continues to decline. The black-tailed prairie dog, although once listed as a warranted but precluded species, is no longer considered to be a candidate for such listings. As a result, any environmental effects on the Special Sage Grouse Core Area Habitat on the Thunder Basin National Grassland should be properly evaluated.

Again, the concern stems from the Sage Grouse habitat requirements. Sage grouse are dependent upon live sagebrush for all life process across their entire range. The leaves of sagebrush are eaten by sage grouse throughout the entire year and comprise 99 percent of their winter diets. *Seasonal Habitat Requirements for Sage-Grouse: Spring, Summer, Fall, and Winter (USDA Forest Service Proceedings RMRS-P_38. 2005)*. ANG believes that the management prescriptions in the DEIS for sage grouse habitat and the prairie dog habitat are in direct conflict. Further, we believe that this conflict has not been adequately described or evaluated in the DEIS.

The affidavits of Robert Harshbarger, Wayne Childers and Mark Tubbs, which are incorporated herein by this reference, describe and depict the destructive environmental impact of prairie dogs on the sage brush. The photographs attached to the affidavits show sage brush surrounding prairie dog towns that have been denuded of leaves and are dead or dying. Prairie dog habitat expansion into Sage Grouse habitat is causing the destruction of the sage grouse habitat and this habitat destruction of a potential ESA candidate species must be properly evaluated. Thunder Basin Allottee Robert Harshbarger's affidavit outlines how the Forest Service policy of not managing the prairie dog population on the TBNG has resulted in the destruction of the Treasure Mountain Lek. The Biological Evaluation of Animal Species and Potential Species of Conservation Concern Report, does not adequately address the cumulative effects on these Leeks by allowing thousands of acres to contain little vegetation or bare ground and soil. (See: TBNG Animals Biological Evaluation at Page 106-108).

We believe this omission is a direct violation of the Council of Environmental Quality Regulation and the National Environmental Policy Act. "The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 C.F.R. § 1500.1(c).

"Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air water and other natural systems, including ecosystems." 40 C.F.R. § 1508.89(a). We believe the successful prairie dog habitat expansion and encroachment, which apparently includes low structure and potentially unhealthy rangeland in the Special Sage Grouse Habitat Management Area, is an environmental impact that the Forest Service is required to properly evaluate in the NEPA process, as the resulting harm to the range and a potential candidate species, or constitutes a violation of the Bankhead-Jones Act and a violation of the Endangered Species Act.

"NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 C.F.R. 1500.1(b).

As stated before, the TBNG DEIS is largely devoid of any meaningful scientific and environmental information evaluating the direct conflict between the prairie dog habitat expansion and allowing bare ground and soil in the sage grouse special habitat area.

"[S]pecies that depend on large amounts of herbaceous cover, especially those associated with a sagebrush habitat such as sage grouse or mule deer, may not be as successful in large landscape areas dominated by prairie dogs." Black-Tailed Prairie Dog Effects on Montana's Mixed Grass Prairie, *Journal of Range Management*, Vol. 57, Pages 641-648, November, 2004.

We believe NEPA requires a full evaluation of these environmental impacts in the DEIS process and documents. Therefore, we respectfully request that the Forest Service prepare a Modified Proposed Alternative 2A to the FEIS in order to conduct proper analysis.

“Preparation of an EIS is mandated where uncertainty may be resolved by further collection of data or where the collection of such data may prevent speculation on potential . . . effects. The purpose of an EIS is to obviate the need for speculation” *Ocean Advocates v. U.S. Army Corp of Engineers*, 402 F.3d 856, 870 (9th Cir. 2005).

The Biological Evaluation of Plant Species and Potential Plant Species of Conservation Concern Report for the TBNG 2020 Plan Amendment Appendix A: Potential Plant Species of Conservation Concern Evaluations states in the portion concerning Barr’s milkvetch that “Approximately 75 percent of the known *A. barri* occurrences are located in the Power River Basin of Wyoming and Montana.” *Id.* at 18. The previous page of the afore-mentioned Appendix A of the TBGN 2020 Plan Amendment states: “The intent of the amendment is to modify management direction for conservation of short-statute grasslands[.]” *Id.* at 17. This statement is antithetical to the Organic Act of the Grasslands and may trigger a petition for listing pursuant to the ESA.

In the Biological Evaluation and Appendix thereto, the Forest Service engages in circular reasoning: “No prairie dogs or burrows have been found locally coincident with *A. barri* populations.” *Id.* at Page 24. “Since Barr’s milkvetch is thought to co-occur with prairie dogs in mutually exclusive habitat patches and remain relatively unaffected by prairie dog activities, none of the management alternatives are expected to have any direct, indirect, or cumulative impacts on this species.” TBNG 2020 Plan Amendment DEIS, at Page 64.

Apparently, it escapes the Forest Service that during late Spring and Summer months when control of prairie dogs is largely prohibited on the National Grasslands, Barr’s milkvetch is in its growth and flowering stages, making the vegetation potentially enticing. As alluded to in the Affidavit of Mark Tubbs, prairie dog stripping of all vegetation, sometimes to bare ground, eliminates many of the Species of Management Concern mentioned in the afore-mentioned report from prairie dog colonies. Ignoring the fact that prairie dogs may strip nearly all vegetation, including the numerous Species of Conservation Concern in the Biological Evaluation and Appendix thereto, appears to be nothing more than wishful thinking, and certainly not the hard look required by NEPA.

The affirmative duties of preventing the environmental damages that have occurred to other species may not be segmented because the Forest Service did not take affirmative steps to address these issues in the years leading to this continually delayed and segmented decision-making process. For the Forest Service to now act as if this is not reasonably foreseeable and remedied, is a violation of the Forest Service’s responsibility of “reasonable forecasting” to predict the environmental effects of proposed actions before they are fully known. That duty is implicit in NEPA. Scientists’ Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079 (D.C. Cir. 1973).

The United States Supreme Court has found that an “omission of a reasonably complete discussion of possible mitigation measures would undermine the ‘action-forcing’ function of NEPA. Without such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.” Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 352, 371 (1989). See also, Northwest Indian Cemetery Prot. Assn. v. Peterson, 565 F. Supp. 586 (N.D. Cal. 1983) (holding that an impact statement for a road through a national forest was inadequate because it did not discuss mitigation measures for water quality and fish habitat). Neighbors of Cuddy Mountain v. United States Forest Service, 137 F.3d 1372 (9th Cir.1998) (holding that the Forest Service provided only perfunctory mitigation measures to offset the damage to stream habitat that would be done by

sedimentation for a timber sale). In the Thunder Basin process, there appear to be no mitigation measures to deal with the degradation of the habitat of the many listed species of conservation concern.

CONCLUSION

ANG believes the template for reduction of many conflicts has already been written and has largely been successfully implemented. We believe that the landowners and the environment in Wyoming deserve no less protection than the environment and landowners in South Dakota and Nebraska. Therefore, ANG again respectfully requests that the Oglala and Buffalo Gap National Grasslands LRMP be fully evaluated and analyzed as Modified Proposed Alternative 2A, including the similarity index implementation.

The monitoring and data have already been completed on the Buffalo Gap and Oglala National Grasslands to fully understand the effects on the vegetation, range condition, ecology, fisheries and water quality, and that data has been ignored or not evaluated publicly during this DEIS process. An alternative must be analyzed to evaluate the carrying capacity of the prairie dog population. Ignoring the Buffalo Gap LRMP amendments, data and monitoring only allows the USFS to further ignore the agency's statutory responsibilities. Creating public nuisances and allowing the destruction of the range and soil resource is repugnant to the Bankhead-Jones Farm Tenant Act and the Organic Act of the Forest Service to prevent against depredations. Rounds v. US Forest Service, 301 F. Supp. 2d 1287 (D. Wyo. 2004). The unwillingness to allow an alternative as outlined above in the DEIS is a dereliction of duty and flies in the face of the reality of the situation.

Thank you for your sincere evaluation of our comment and for your efforts on behalf of our great Nation.

