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Russ Bacon, Forest Supervisor
Attention: Rob Robertson, Douglas District Ranger
Medicine Bow-Routt National Forest, Thunder Basin National Grassland
Douglas Ranger District
2250 East Richards Street
Douglas, WY. 82633

Dear Forest Supervisor and District Ranger,

The 4W Ranch along with RCOWS is providing the following Comments on the 2020 Draft Environmental Impact Statement to amend the Ferret Introduction Area, MA 3.63 of the 2001 Revised Thunder Basin National Grassland Land Resource Management Plan. The comments have been divided into individual papers relating to separate subjects covered or not covered in the 2020 Draft Environmental Statement. (2020 DEIS) This document is 2020 DEIS Comment #3.

After reviewing, studying and researching federal and state laws regarding the 2020 DEIS, The 4W Ranch along with RCOWS members have found numerous legal discrepancies that have been omitted in the draft. These discrepancies must be rectified before this plan can be considered valid.

In a 1936 report to Congress by the Secretary of Agriculture titled:

THE WESTERN RANGE LETTER

FROM

THE SECRETARY OF AGRICULTURE

IN RESPONSE TO SENATE RESOLUTION No. 289
A REPORT ON THE WESTERN RANGE A GREAT BUT
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page 53; **"The management of range and also of forest lands is agriculture pure and simple.** It deals with the soil, the interrelation of soil and plant cover, water and climate, with plants and animals, the diseases and insects affecting both, with the maintenance of ideological balances between plant and animal life, with the growing and harvesting or utilization of crops, in fact, with all of the "problems relating to the growth from the soil." **It deals with the economic and social as well as the biological problems of land use in all of their phases.** It must rest upon the biological and economic sciences

which have to do with soil, water, climate, plants, animals, and land. **The forage on public ranges is used by livestock from the farms and ranches**, which are fed increasingly on farm forage crops. Western crops are largely dependent on irrigation water from forest and range watersheds. **The use of the public range and forest land and private range and farm, land is interrelated in innumerable other ways.**

In this paragraph of the report, the then Secretary of Agriculture was very clear on the purpose of “Range Management”, it is to be for **“agriculture”**, i.e. “grassland agriculture”, pure and simple. Where in the term **“agriculture”** do we raise grassland destroying rodents for the benefit of the agricultural economy?

Then in 1937 Congress passed and enacted the Bankhead-Jones Farm Tenant Act. All of the federal lands within the now Thunder Basin National Grasslands are under the jurisdiction of this law, **Title 7 - Agriculture, Chapter 33 Farm Tenancy, Subchapter III, Land Conservation and Land Utilization.**

Specifically Section 1010a. - Soil, water, and related resource data: states

“In recognition of the **increasing need for soil, water**, and related source data for land conservation, use, and development, **for guidance of community development for a balanced rural-urban growth**, for identification of **prime agriculture producing areas that should be protected**, and for use in **protecting the quality of the environment**, the Secretary of Agriculture is directed to carry out a land inventory and monitoring program to include, but not be limited to, studies and surveys of erosion and sediment damages, flood plain identification and utilization, land use changes and trends, and **degradation of the environment resulting from improper use of soil, water, and related resources.**”

The construction of the language in Section 1010a is quite clear on the intent of Congress. **This is the law** that guides the utilization of the resources within the Thunder Basin, which are **the need for soil and water, a balanced rural-urban growth, protection of prime agricultural producing areas and the depredation¹ of the environment from improper use**. Raising PD's is certainly a **“improper use”** of the agricultural resource. The 2020 Plan DEIS certainly implies that the Forest Service desires to raise thousands of prairie dogs that depredate the environment on thousands of acres of federal lands that are required by law to raise forage for the lawful livestock producers that are holders of grazing allotments which are the property of their Ranch Units.

It is the view of the 4W Ranch and RCOWS that the DEIS preferred Alternative #2 as now written is chasing a “pipe dream” and is not protecting the **agricultural resource** within the Management Area 3.67 - Rangelands with Short-Stature Vegetation Emphasis. **Short-stature vegetation**, the first enumerated paragraph of the proposed action plan for the TBNG EIS states that the 2020 plan is to “emphasize short-stature

¹ depredation - to plunder: to lay waste: to ravage

vegetation.” Scoping Document at 8. 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.”

Even though the board of the Thunder Basin Grazing Association recently has endorsed Alternative #2, it is not speaking for many of its members, especially the 4W Ranch and RCOWS members, who once again will be **adversely impacted economically** by the entire 2020 Plan. The 4W Ranch, The Sunshine Valley Ranch and the Irwin Ranch, all RCOWS members, have all been negatively impacted economically by the inability of the Forest Service to effectively control the prairie dog population on federal lands since the inception of the 2001 Revised Thunder Basin Land and Resource Management Plan. We do not need 7,500 to 10,000 acres of prairie dog colonies within the 30,000 acres of the proposed MA 3.67, which borders our Ranch Units.

2020 Plan Amendment Economic Losses within MA 3.67

The Forest Service must address what will be the “**carrying capacity of the prairie dog in AUM’s**” in order to determine what the economic loss will be to **each holder of a grazing allotment within or adjacent to the MA 3.67**. We need to know what **the maximum number of prairie dogs in AUM’s** that may be allowed to occupy the MA 3.67 along with the already lawful allotted number of livestock AUM’s before prairie dog numbers start to adversely impact the economic viability of the Ranch Units by damaging the forage resource to the rangeland. **It is the actual number of PD’s that matters**, not acres of prairie dog colonies. Remember **prairie dogs** are present in any given allotment all year long consuming valuable forage and committing rangeland depredation every day of the year.

What is the Economic Value of the Loss of one AUM to the Rancher and the Community?

ECONOMIC IMPACTS OF PRAIRIE DOG POPULATIONS ON LIVESTOCK GRAZING AND THE LOSS OF AUM’s ON THE TBNG by

**Major Robert L. Harshbarger, USAF Retired: Co-Owner, 4W Ranch, Newcastle,
Wyoming**

97.5 prairie dogs equals one AUM. How is this determined?

Data gathered from the University of Nebraska, Economics of Damage and Control by Stephen Vatassel, Wildlife Damage Project Coordinator. “Prairie dogs feed on many of the same grasses and forbs that livestock do. Annual dietary overlap has been estimated from 64% to 90%. One cow and calf ingest about 900 pounds (485 kg) of forage per month during the summer (1 AUM). **One prairie dog eats about 8 pounds**

(17.6 kg) of forage per month during the summer. “ (Author’s note: *In Nebraska compared to the TBNG there is more annual moisture, hence a greater amount of forage available for the cow / calf consumption. In the Thunder Basin National Grasslands (TBNG) the average annual precipitation is 12 inches per year which is considered an arid region with less available forage, thus the 780 lbs. of forage consumed per cow/calf from mid-May to mid-October will be used for a cow / calf AUM*)

Data gathered from The Economic Impact of Federal Grazing on the Economy of Park County, Wyoming. By David T. Taylor, et, al. UW Dept of AG and Applied Economics and updated for Converse County, May 2011:

1 cow and calf ingest 780 pounds of forage per month during the summer (1 AUM)
1 prairie dog eats about 8 pounds of forage per month during the summer. Thus
780lbs divided by 8lbs equals 97.5 PD’s, the equivalent of one cow /calf or one AUM

Using information from Economic Importance of Federal Livestock Grazing in Converse County By: David T. Taylor, May 2011: One AUM of Federal Grazing under the Ranch Viability Column shows that one AUM supports up to \$220.30 in Ranch Production, \$358.81 in Total Economic Impact and \$120.38 in Labor income.

In very simple terms, for every 100 PD’s a Rancher has in any given pasture or grazing allotment of his ranch unit, be it deeded land, State of Wyoming Lands or Federal Lands, **those 100 PD’s consume the same amount of forage that one cow with a calf at her side (one AUM) would consume during the summer grazing season.** Those 100 PD’s reduce the Ranches Production value by \$220.30

As the Forest Service in the 2020 Plan desires to have 7,500 to 10,000 of **infested acres** of Prairie Dog’s in the MA 3.67 of the Thunder Basin National Grasslands, the FS has not determine what a minimum or maximum number of PD’s (population) might be to preclude a negative impact to the resource or the local economy as required by law . The following table shows actual number of PD’s per acre, total PD’s on 10,000 acres, number of AUM’s replaced by the PD, the dollar losses to the Federal Grazing Allotment Holder, the Economic Impact loss to the affected Counties and the Labor Income loss.

ECONOMIC LOSS TO RANCH UNITS WITH PRAIRIE DOG’S

**IN THE
2020 PLAN AMENDMENT WITHIN MANAGEMENT AREA 3.67**

PD's per ACRE	PRAIRIE DOGS per 10,000 ACRES	TOTAL AUM's 97.5 PD's = 1 AUM	RANCH PRODUCTION DOLLAR LOSS \$220,30 / AUM	ECONOMIC IMPACT DOLLAR LOSS \$358.81 / AUM	LABOR INCOME DOLLAR LOSS \$120.38 / AUM
3	30,000	308	-\$67,852.40	-\$110,513.48	-\$37,077.04
5	50,000	513	-\$113,013.90	-\$184,069.53	-\$61,754.94
7.5	75,000	769	-\$169,410.70	-\$275,924.89	-\$92,572.22
10	100,000	1,026	-\$226,027.80	-\$368,139.06	- \$123,509.88
12.5	125,000	1,282	-\$282,424.60	-\$459,994.42	- \$154,327.16
15	150,000	1,538	-\$338,821.40	-\$551,849.78	- \$185,144.44
20	200,000	2,051	-\$451,835.30	-\$735,919.31	- \$246,899.38

Just having prairie dog's present starts having a negative impact on the **ranch production and economic viability** of any given ranch unit as the above chart shows. The more PD's the greater the dollar loss. Most ranchers cannot afford any losses to their annual ranch production through the loss of AUM's due the presence of the range destroying "Wyoming Declared Agricultural Pest", the prolific Black-tailed Prairie Dog. The 2020 DEIS does not address the economic impact done to the Ranch Units by populations of prairie dogs to the local ranchers whose **grazing allotments** are within or adjacent to the MA 3.67. There is a **requirement by NEPA** for the Forest Service to address these **economic impacts** in the Environmental Impact Statement. **That is the law.**

¹ Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) **Context.** This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, **in the case of a site-specific action**, significance would usually depend upon the

effects in the locale rather than in the world as a **whole**. **Both short- and long-term effects are relevant.**

(b) **Intensity.** This refers to the severity of impact.

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

4. The degree to which the **effects on the quality of the human environment** are likely to be highly controversial.

5. The degree to which the **possible effects on the human environment are highly uncertain or involve unique or unknown risks.**

Economic impacts are glossed over in the 2020 DEIS as they were in the 2001 LRMP. They are not specific to the Rochelle Community, **the local locale**, as required by Sec 1508.21 of the Environmental Quality Council Regulations. The **local locale in this case** is located in portions of Southeast Campbell, Northeast Converse and Southwest Weston Counties of Northeast Wyoming. The 30,000 plus acres MA 3.67 of the 2020 Plan falls under the **site-specific action**, of Sec. 1508.21(a). With out question, the MA 3.67 is “**site-specific**” within the 553,000 federal acres of the Thunder Basin National Grasslands. NEPA requires a site-specific economic impact statement be made for this area.

Once again and **as a reminder**, all of the 553,000 federal acres of the Thunder Basin National Grasslands were acquired by purchase or withdrawn by Presidential Executive Orders to be part of the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1, whose primary purpose was and continues to be for “**grassland agriculture**”, **which is for livestock grazing and the economic stability of the local ranches.**

Livestock grazing on the federal lands within the Thunder Basin is essential to the economic viability of the 4W Ranch Unit, the Sunshine Valley Ranch Unit and the Irwin Ranch Unit [RCOWS Members] and who are recognized by the U.S. Supreme Court as a “Lawful Businesses.”²

The Forest Service is also required to “**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 213.1d.

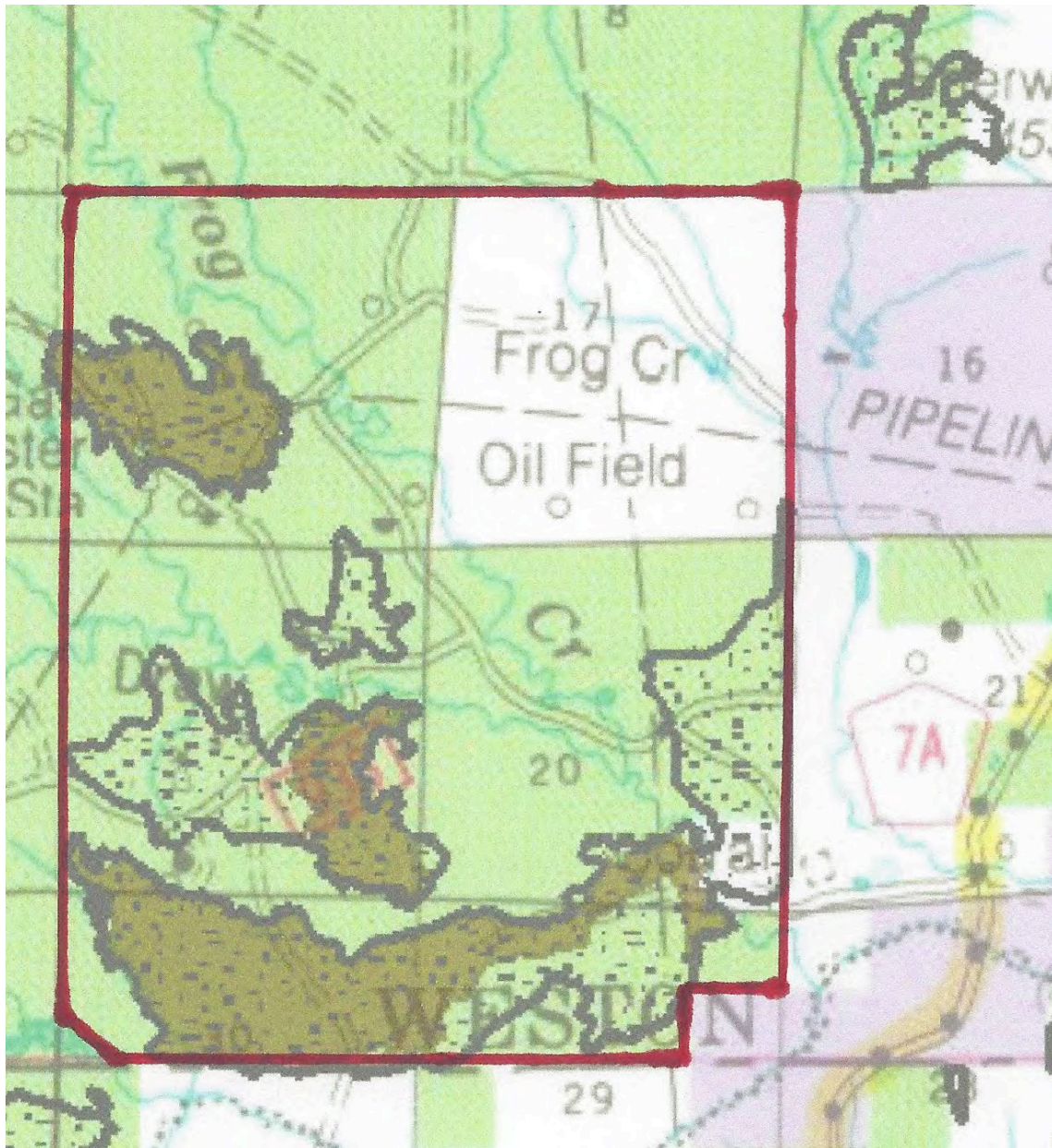
The statements made in Table 1 of the 2020 DEIS. Comparison of effects of alternatives ; Contributions to local economies -- “The Thunder Basin National Grassland would **continue to provide opportunities for livestock grazing** that would support employment and labor income in communities in the analysis area.” This statement and its meaning is very repugnant to the 4W Ranch. What the statement says

² **Red Canyon Sheep Company vs Ickes:** In Red Canyon Sheep Company v. Ickes the court held that the purpose of the Taylor Grazing Act was to provide for the most beneficial use possible of the public range in the interest of graziers and the public at large, and to define grazing rights and to protect those rights by regulation against interference. **The court further held that a lawful business was property and that grazing on the federal lands is a lawful business. [Emphasis Added]**

or implies is that the 4W Ranch Unit has no right to graze its livestock on all of the lands within its boundaries. This is a false statement and violates our valid pre-existing rights. [See paper 4W Comments #1 for details]

Another problem that crops up and is not covered in the 2020 DEIS is who is responsible and going to pay for the control of the PD populations that infest and graze on the federal lands adjacent to the boundary of MA 3.67 that are classified as MA 5.12 - Range Vegetation Emphasis? [reference the following Maps] The 4W Ranch Units Frog Creek Allotment #249 borders the east boundary of the MA 3.67 and the Lynch Ranch Unit borders the north boundary of the MA. 3.67. Historically there are significant PD colonies within these two allotments that will need to be controlled sooner or later as the PD populations recover from the 2016 and 2017 Plague Event. RCOWS Members Sunshine Valley and Irwin Ranch Units have grazing allotments within the MA 3.67

Lower Frog Creek Pasture Historic Prairie Dog Colonies



Lower Frog Creek Pasture outlined in red is roughly 5 sections or 3,200 acres. The present carrying capacity for this pasture from 1 June thru 15 September annually is 200 Animal Units or 700 AUM's. This is the summer pasture for our Frog Creek Herd.

In 2015 it was estimated that there were 2,400 acres infested with PD's, which is 75% of the pasture. Monitoring data gathered in August 2015 estimated a PD population of 24,000 PD's. That equates or equals 246 PD AUM's and a dollar production loss to the 4W Ranch of a minus \$54,227.69. We had to move the 200 head Frog Creek Herd out of the pasture on the first of August 2015 due to lost of forage because of the prairie dog. That was a loss of 46 days of grazing that we had already paid grazing fees for.

In 2016, the pre plague year, the acres of PD colonies remained about the same, however random transects estimated that the PD population had increased to 44,000 PD's and the pasture was a waste land, with little forage available for grazing. The 44,000 PD's equaled 451 AUM's, which was an production loss to the 4W Ranch Units economy of a minus \$99,353.30. Again we were unable utilize the Lower Frog Pasture due to PD's consuming all available forage in 2017. The carrying capacity in AUM's to this pasture had been reduced to zero by the prairie dog. No forage, no grazing.

Figure 9 below shows the 4W Ranch Units Frog Creek Grazing Allotment #249 that borders the Northeast portion of MA 3.67. Without boundary control the the PD's will easily migrate from the MA 3.67 into the 4W Frog Creek Grazing Allotment and destroy the valuable grazing resource that should be protected according to the law. An answer is required in the 2020 Plan Environmental Impact Statement.

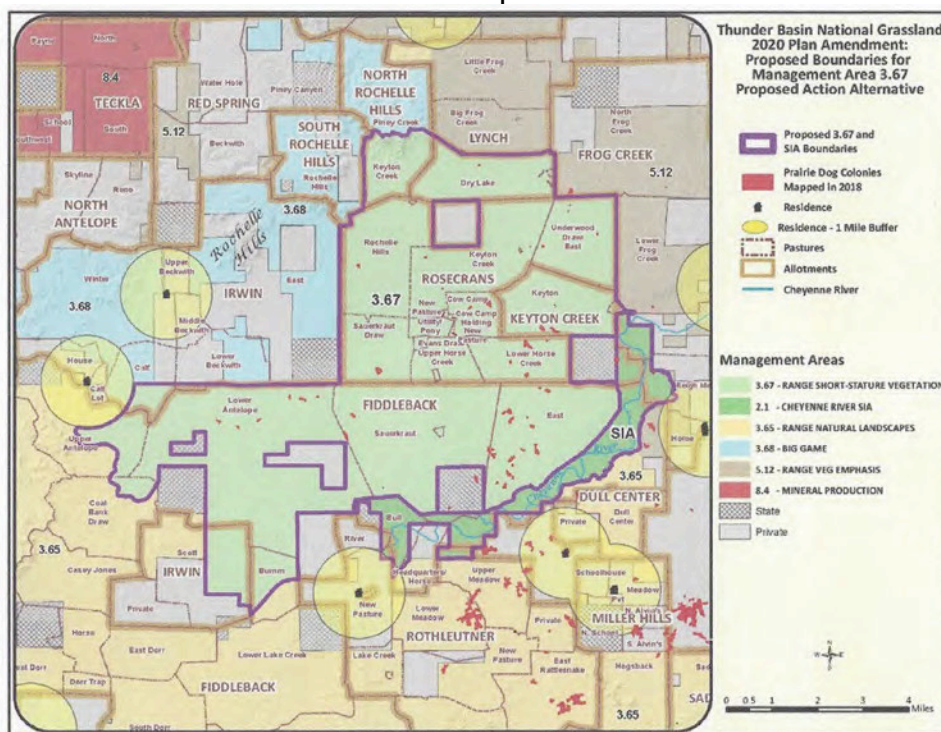


Figure 9. Delineation of management area 3.67 and the Cheyenne River Special Interest Area in the proposed action, with allotment and pasture boundaries

Wrapping up this set of comments let us review some of the requirements of the Laws.

The Forest Service must prepare an EIS in order to fulfill its statutory duties to protect the soil and vegetative cover of the grassland units, and fulfill the scope, purpose and need for action as published in the Federal Register on April 18, 2019, scoping letter because the unit's existing conditions are not meeting the LRMP direction for desired diversity of vegetation structure and vegetation composition.

The Forest Service Organic Act, 16 U.S.c. Section 551, requires that "[t]he Secretary of Agriculture shall make provisions for the protections against

destruction by fire and depredations upon the public forests and national forests[.]"

The Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010, is the original Organic Act of the National Grasslands and requires that "[t]he Secretary is authorized and directed to develop a program of land conservation and land utilization in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources,

The very next section of the Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010a directs that "[i]n recognition of the increasing need for soil, water, and related resource data for land conservation, use, and development for a balanced rural-urban growth,

The Forest Service's decision to avoid the study of the Alternatives proposed by Association of National Grasslands (ANG) and RCOWS during the scoping process deliberately avoids seminal issues regarding the environmental damage caused in the 2020 Plan DEIS and is a violation of the aforementioned statutory and regulatory authorities referred to throughout this document.

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. II 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. II *Id.* at 1292. The same applies to the Bankhead-Jones Farm Tenant Act 7 U.S.C. 1010, which is the original Organic Act of the National Grasslands and requires that "[t]he Secretary is authorized and directed to develop a program of land conservation and land utilization in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion,

The LRMP "low structure" prescription on prairie dog towns is inconsistent with the Organic Acts affirmative duties stated above. "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.) "The Secretary is authorized and directed to develop a program of land conservation and land utilization in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion ... protecting fish and wildlife ... mitigating floods, preventing impairment of dams and reservoirs ... protecting the watersheds of navigable streams, and protecting public lands, health, safety and welfare[.]" (7 U.S.C. 1010a.)

Low structure is a euphemism for what NRCS defines as "poor range condition." The only rational explanation for how two agencies of the same department can come to such conclusions is one is driven by actual science and one is driven by political science.

The duty to study and evaluate all of the contributing factors that caused the degradation of the MA 3.63 Ferret Introduction Area, now the proposed MA 3.67 Low Structure Vegetation Area cannot be ignored. The time for a comprehensive evaluation has long since passed. That environmental damage has driven all of the administrative record to this point.

NEPA imposes an "affirmative obligation" on the Forest Service to acquire information concerning the consequences of their actions. State of Alaska v. Andrus, 580 F.2d 465,473-74 (D.C. Cir. 1978). The Forest Service must provide "some information on and analysis of the subject rather than postpone the matter for consideration." Fund for Animals v. Norton, 365 F. Supp. 394, 433 (D.N.Y. 2005).

The affirmative duties of preventing the environmental damages that have occurred 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 was 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 NEP A. Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079 (D.C. Cir. 1973).

Further, the Forest Service is well aware that in September, 2004, APHIS issued a Categorical Exclusion Record of Operational Activities, approving the use of rodenticides to manage the prairie dog population. This Categorical Exclusion found that the zinc phosphide poison breaks down so rapidly in the digestive system of poisoned animals (prairie dogs) that predators (blackfooted ferrets) eating poisoned prey have shown no negative physiological symptoms or effects.

Therefore, any poisoning done to control density of prairie dogs for the environmental and range health of the entire area will not have any direct effect on the black-footed ferret population if they are to be introduced into the Thunder Basin.

The Forest Service has the analysis, science and ability to remedy the environmental destruction it has created, but instead the Forest Service further attempts to shirk its mandatory duties under statutory and administrative law by failing to take a hard look at the significant cumulative effects and impacts of its past actions and inactions.

The Forest Service in preparing the 2020 Plan EIS in order to fulfill its statutory and administrative duties to protect the soil and vegetative cover of the entire area must discuss and specify what mitigation measures will be taken to move towards desired vegetative cover, topsoil protection, and undesirable plant reduction.

STATUTORY DUTIES REQUIRED

The National Environmental Policy Act, 42 U.S.C. 4332(2)C, requires that the Forest Service, in preparation of environmental documents, shall contain a "reasonably complete discussion" of mitigation measures for "any adverse environmental effects" which cannot be avoided.

ADMINISTRATIVE DUTIES REQUIRED

Council on Environmental Quality Regulation 40 C.F.R. 1508.20 defines the mitigation required by the National Environmental Act and includes avoiding or minimizing environmental impacts, rectifying the impact by repairing, restoring or rehabilitating the affected environment, reducing or eliminating the impact over time through preservation, and compensating for the impact by providing substitute resources.

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).

The 2020 DEIS improperly sets aside the decision of whether to or not manage the prairie dog population early in its population growth within the area. This segmented approach provides no mitigation from the environmental damage that has already been caused. The DEIS does not devote a section to mitigation for the environmental damage to the range caused by the prairie dog population, nor does it give more than perfunctory mitigation measures to offset the damage caused to the range. The 4W Ranch and RCOWS request that these effects be properly evaluated; however, the Forest Service has continued to violate 40 C.F.R. 1502.22(a), which requires that where "information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

The inability of the Forest Service to seriously consider the causal nature of the environmental damages caused by the prairie dog proliferation cycles is a violation of its affirmative duties to monitor and study the erosion damages and the degradation of the environment from the improper use of soil resources. 7 U.S.C. 1010 and 1010a during high population cycles of the prairie dog. The Forest Service continues to avoid the critical density issue in the 2020 DEIS.

This 2020 DEIS has done nothing to mitigate the impacts created by providing for rectifying, repairing, restoring or rehabilitating the affected environment as required by 40 C.F.R. 1508.20. The DEIS has no discussion on what is the prairie dog population carrying capacity in AUM's within the MA 3.67 Short Structured Vegetation Area which is already classified as poor rangeland by the NRCS.

The 4W Ranch, along with other RCOWS Members, are greatly concerned by the deliberate efforts of the agency to mask, ignore and obfuscate the cause and effect analysis required by all of the above federal statutes, regulations and authorities. The Bankhead-Jones Act places affirmative obligations that are over and above the Forest Service's normal obligations for management of the National Forests. The Bankhead-Jones Act obligations cannot be overlooked.

Respectfully submitted for your consideration.



Date submitted (Hawaiian Standard Time): 1/8/2020 12:00:00 AM

First name: Robert

Last name: Harshbarger

Organization: 4 W Ranch

Title:

Comments:

Dear Forest Supervisor and District Ranger,

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and utilization, land use changes and trends, and degradation of the environment resulting from improper use of soil, water, and related resources.[rdquo]

The construction of the language in Section 1010a is quite clear on the intent of Congress. This is the law that guides the utilization of the resources within the Thunder Basin, which are the need for soil and water, a balanced rural-urban growth, protection of prime agricultural producing areas and the depredation[1] of the environment from improper use. Raising PD[rsquo]s is certainly a [ldquo]improper use[rdquo] of the agricultural resource. The 2020 Plan DEIS certainly implies that the Forest Service desires to raise thousands of prairie dogs that depredate the environment on thousands of acres of federal lands that are required by law to raise forage for the lawful livestock producers that are holders of grazing allotments which are the property of their Ranch Units.

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Even though the board of the Thunder Basin Grazing Association recently has endorsed Alternative #2, it is not speaking for many of its members, especially the 4W Ranch and RCOWS members, who once again will be adversely impacted economically by the entire 2020 Plan. The 4W Ranch, The Sunshine Valley Ranch and the Irwin Ranch, all RCOWS members, have all been negatively impacted economically by the inability of the Forest Service to effectively control the prairie dog population on federal lands since the inception of the 2001 Revised Thunder Basin Land and Resource Management Plan. We do not need 7,500 to 10,000 acres of prairie dog colonies within the 30,000 acres of the proposed MA 3.67, which borders our Ranch Units.

2020 Plan Amendment Economic Losses within MA 3.67

The Forest Service must address what will be the [ldquo]carrying capacity of the prairie dog in AUM[rsquo]s[rdquo] in order to determine what the economic loss will be to each holder of a grazing allotment within or adjacent to the MA 3.67. We need to know what the maximum number of prairie dogs in AUM[rsquo]s that may be allowed to occupy the MA 3.67 along with the already lawful allotted number of livestock AUM[rsquo]s before prairie dog numbers start to adversely impact the economic viability of the Ranch Units by damaging the forage resource to the rangeland. It is the actual number of PD[rsquo]s that matters, not acres of prairie dog colonies. Remember prairie dogs are present in any given allotment all year long consuming valuable forage and committing rangeland depredation every day of the year.

What is the Economic Value of the Loss of one AUM to the Rancher and the Community?

ECONOMIC IMPACTS OF PRAIRIE DOG POPULATIONS

ON LIVESTOCK GRAZING AND THE LOSS OF AUM's ON THE TBNG

By Major Robert L. Harshbarger, USAF Retired: Co-Owner, 4W Ranch, Newcastle, Wyoming 97.5 prairie dogs equals one AUM. How is this determined?

Data gathered from the University of Nebraska, Economics of Damage and Control by Stephen Vataassel, Wildlife Damage Project Coordinator. [ldquo]Prairie dogs feed on many of the same grasses and forbs that livestock do. Annual dietary overlap has been estimated from 64% to 90%. One cow and calf ingest about 900 pounds (485 kg) of forage per month during the summer (1 AUM). One prairie dog eats about 8 pounds (17.6 kg) of forage per month during the summer. [ldquo] (Author's note: In Nebraska compared to the TBNG there is more annual moisture, hence a greater amount of forage available for the cow / calf consumption. In the Thunder Basin National Grasslands (TBNG) the average annual precipitation is 12 inches per year which is considered an arid region with less available forage, thus the 780 lbs. of forage consumed per cow/calf from mid-May to mid-October will be used for a cow / calf AUM)

Data gathered from The Economic Impact of Federal Grazing on the Economy of Park County, Wyoming. By David T. Taylor, et, al. UW Dept of AG and Applied Economics and updated for Converse County, May 2011:

1 cow and calf ingest 780 pounds of forage per month during the summer (1 AUM)

1 prairie dog eats about 8 pounds of forage per month during the summer. Thus

780lbs divided by 8lbs equals 97.5 PD's, the equivalent of one cow /calf or one AUM

Using information from Economic Importance of Federal Livestock Grazing in Converse County By: David T. Taylor, May 2011: One AUM of Federal Grazing under the Ranch Viability Column shows that one AUM supports up to \$220.30 in Ranch Production, \$358.81 in Total Economic Impact and \$120.38 in Labor income.

In very simple terms, for every 100 PD's a Rancher has in any given pasture or grazing allotment of his ranch unit, be it deeded land, State of Wyoming Lands or Federal Lands, those 100 PD's consume the same amount of forage that one cow with a calf at her side (one AUM) would consume during the summer grazing season. Those 100 PD's reduce the Ranches Production value by \$220.30

As the Forest Service in the 2020 Plan desires to have 7,500 to 10,000 of infested acres of Prairie Dog's in the MA 3.67 of the Thunder Basin National Grasslands, the FS has not determine what a minimum or maximum number of PD's (population) might be to preclude a negative impact to the resource or the local economy as required by law . The following table shows actual number of PD's per acre, total PD's on 10,000 acres, number of AUM's replaced by the PD, the dollar losses to the Federal Grazing Allotment Holder, the Economic Impact loss to the affected Counties and the Labor Income loss.

TABLE IN ATTACHMENT: ECONOMIC LOSS TO RANCH UNITS WITH PRAIRIE DOG'S

IN THE 2020 PLAN AMENDMENT WITHIN MANAGEMENT AREA 3.67

Just having prairie dog's present starts having a negative impact on the ranch production and economic viability of any given ranch unit as the above chart shows. The more PD's the greater the dollar loss. Most ranchers cannot afford any losses to their annual ranch production through the loss of AUM's due the presence of the range destroying [Wyoming Declared Agricultural Pest], the prolific Black-tailed Prairie Dog. The 2020 DEIS does not address the economic impact done to the Ranch Units by populations of prairie dogs to the local ranchers whose grazing allotments are within or adjacent to the MA 3.67. There is a requirement by NEPA for the Forest Service to address these economic impacts in the Environmental Impact Statement. That is the law.

1Sec. 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of section 2 and Title I of NEPA.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact.

1. Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

4. The degree to which the effects on the quality of the human environment are likely to be highly controversial.

5. The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

Economic impacts are glossed over in the 2020 DEIS as they were in the 2001 LRMP. They are not specific to the Rochelle Community, the local locale, as required by Sec 1508.21 of the Environmental Quality Council Regulations. The local locale in this case is located in portions of Southeast Campbell, Northeast Converse and Southwest Weston Counties of Northeast Wyoming. The 30,000 plus acres MA 3.67 of the 2020 Plan falls under the site-specific action, of Sec. 1508.21(a). Without question, the MA 3.67 is [ldquo]site-specific[rdquo] within the 553,000 federal acres of the Thunder Basin National Grasslands. NEPA requires a site-specific economic impact statement be made for this area.

Once again and as a reminder, all of the 553,000 federal acres of the Thunder Basin National Grasslands were acquired by purchase or withdrawn by Presidential Executive Orders to be part of the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 1, whose primary purpose was and continues to be for [ldquo]grassland agriculture[rdquo], which is for livestock grazing and the economic stability of the local ranches.

Livestock grazing on the federal lands within the Thunder Basin is essential to the economic viability of the 4W Ranch Unit, the Sunshine Valley Ranch Unit and the Irwin Ranch Unit [RCOWS Members] and who are recognized by the U.S. Supreme Court as a [ldquo]Lawful Businesses.[rdquo] [1]

The Forest Service is also required to "[i]n 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 213.1d.

The statements made in Table 1 of the 2020 DEIS. Comparison of effects of alternatives ; Contributions to local economies -- [ldquo]The Thunder Basin National Grassland would continue to provide opportunities for livestock grazing that would support employment and labor income in communities in the analysis area.[rdquo] This statement and its meaning is very repugnant to the 4W Ranch. What the statement says or implies is that the 4W Ranch Unit has no right to graze its livestock on all of the lands within its boundaries. This is a false statement and violates our valid pre-existing rights. [See paper 4W Comments #1 for details]

Another problem that crops up and is not covered in the 2020 DEIS is who is responsible and going to pay for the control of the PD populations that infest and graze on the federal lands adjacent to the boundary of MA 3.67 that are classified as MA 5.12 - Range Vegetation Emphasis? [reference the following Maps] The 4W Ranch Units Frog Creek Allotment #249 borders the east boundary of the MA 3.67 and the Lynch Ranch Unit borders the north boundary of the MA. 3.67. Historically there are significant PD colonies within these two allotments that will need to be controlled sooner or later as the PD populations recover from the 2016 and 2017 Plague Event. RCOWS Members Sunshine Valley and Irwin Ranch Units have grazing allotments within the MA 3.67

Lower Frog Creek Pasture Historic Prairie Dog Colonies

MAP IN ATTACHMENT

Lower Frog Creek Pasture outlined in red is roughly 5 sections or 3,200 acres.

The present carrying capacity for this pasture from 1 June thru 15 September annually is 200 Animal Units or 700 AUM[rsquo]s. This is the summer pasture for our Frog Creek Herd.

In 2015 it was estimated that there were 2,400 acres infested with PD[rsquo]s, which is 75% of the pasture. Monitoring data gathered in August 2015 estimated a PD population of 24,000 PD[rsquo]s. That equates or equals 246 PD AUM[rsquo]s and a dollar production loss to the 4W Ranch of a minus \$54,227.69. We had to move the 200 head Frog Creek Herd out of the pasture on the first of August 2015 due to loss of forage because of the prairie dog. That was a loss of 46 days of grazing that we had already paid grazing fees for.

In 2016, the pre plague year, the acres of PD colonies remained about the same, however random transects estimated that the PD population had increased to 44,000 PD[rsquo]s and the pasture was a waste land, with little forage available for grazing. The 44,000 PD[rsquo]s equaled 451 AUM[rsquo]s, which was an production

loss to the 4W Ranch Units economy of a minus \$99,353.30. Again we were unable utilize the Lower Frog Pasture due to PD[rsquo]s consuming all available forage in 2017. The carrying capacity in AUM[rsquo]s to this pasture had been reduced to zero by the prairie dog. No forage, no grazing.

Figure 9 below shows the 4W Ranch Units Frog Creek Grazing Allotment #249 that borders the Northeast portion of MA 3.67. Without boundary control the the PD[rsquo]s will easily migrate from the MA 3.67 into the 4W Frog Creek Grazing Allotment and destroy the valuable grazing resource that should be protected according to the law. An answer is required in the 2020 Plan Environmental Impact Statement.

Map/Figure in Attachment: Delineation of management area 3.67 and the Cheyenne River Special Interest Area in the proposed action, with allotment and pasture boundaries

Wrapping up this set of comments let us review some of the requirements of the Laws.

The Forest Service must prepare an EIS in order to fulfill its statutory duties to protect the soil and vegetative cover of the grassland units, and fulfill the scope, purpose and need for action as published in the Federal Register on April 18, 2019, scoping letter because the unit's existing conditions are not meeting the LRMP direction for desired diversity of vegetation structure and vegetation composition.

The Forest Service Organic Act, 16 U.S.c. Section 551, requires that "[t]he Secretary of Agriculture shall make provisions for the protections against destruction by fire and depredations upon the public forests and national forests[.]"

The Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010, is the original Organic Act of the National Grasslands and requires that "[t]he Secretary is authorized and directed to develop a program of land conservation and land utilization in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources,

The very next section of the Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010a directs that "[i]n recognition of the increasing need for soil, water, and related resource data for land conservation, use, and development for a balanced rural-urban growth,

The Forest Service's decision to avoid the study of the Alternatives proposed by Association of National Grasslands (ANG) and RCOWS during the scoping process deliberately avoids seminal issues regarding the environmental damage caused in the 2020 Plan DEIS and is a violation of the aforementioned statutory and regulatory authorities referred to though out this document.

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. *Il National Association of Homebuilders v. Defenders of Wildlife*, 5S1 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. *Il Id.* at 1292. The same applies to the Bankhead-Jones Farm Tenant Act 7 U.S.C. 1010, which is the original Organic Act of the National Grasslands and requires that "[t]he Secretary is authorized and directed to develop a program of land conservation and land utilization in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion,

The LRMP "low structure" prescription on prairie dog towns is inconsistent with the Organic Acts affirmative duties stated above. "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.) "The Secretary is authorized and directed to develop a program of land conservation and land utilization in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion ... protecting fish and wildlife ... mitigating floods, preventing impairment of dams and reservoirs ... protecting the watersheds of navigable streams, and protecting public lands, health, safety and welfare[.]" (7 U.S.C. 1010a.)

Low structure is a euphemism for what NRCS defines as "poor range condition." The only rational explanation for how two agencies of the same department can come to such conclusions is one is driven by actual science and one is driven by political science.

The duty to study and evaluate all of the contributing factors that caused the degradation of the MA 3.63 Ferret Introduction Area, now the proposed MA 3.67 Low Structure Vegetation Area cannot be ignored. The time for a comprehensive evaluation has long since passed. That environmental damage has driven all of the administrative record to this point.

NEPA imposes an "affirmative obligation" on the Forest Service to acquire information concerning the consequences of their actions. *State of Alaska v. Andrus*, 580 F.2d 465,473-74 (D.C. Cir. 1978). The Forest Service must provide "some information on and analysis of the subject rather than postpone the matter for consideration." *Fund for Animals v. Norton*, 365 F. Supp. 394, 433 (D.N.Y. 2005).

The affirmative duties of preventing the environmental damages that have occurred 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 was 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 *NEP A. Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission*, 481 F.2d 1079 (D.C. Cir. 1973).

Further, the Forest Service is well aware that in September, 2004, APHIS issued a Categorical Exclusion Record of Operational Activities, approving the use of rodenticides to manage the prairie dog population. This Categorical Exclusion found that the zinc phosphide poison breaks down so rapidly in the digestive system of poisoned animals (prairie dogs) that predators (blackfooted ferrets) eating poisoned prey have shown no negative physiological symptoms or effects.

Therefore, any poisoning done to control density of prairie dogs for the environmental and range health of the entire area will not have any direct effect on the black-footed ferret population if they are to be introduced into the Thunder Basin.

The Forest Service has the analysis, science and ability to remedy the environmental destruction it has created, but instead the Forest Service further attempts to shirk its mandatory duties under statutory and administrative law by failing to take a hard look at the significant cumulative effects and impacts of its past actions and inactions.

The Forest Service in preparing the 2020 Plan EIS in order to fulfill its statutory and administrative duties to protect the soil and vegetative cover of the entire area must discuss and specify what mitigation measures will be taken to move towards desired vegetative cover, topsoil protection, and undesirable plant reduction.

STATUTORY DUTIES REQUIRED

The National Environmental Policy Act, 42 U.S.C. 4332(2)C, requires that the Forest Service, in preparation of environmental documents, shall contain a "reasonably complete discussion" of mitigation measures for "any adverse environmental effects[rdquo] which cannot be avoided.

ADMINISTRATIVE DUTIES REQUIRED

Council on Environmental Quality Regulation 40 C.F.R. 1508.20 defines the mitigation required by the National Environmental Act and includes avoiding or minimizing environmental impacts, rectifying the impact by repairing, restoring or rehabilitating the affected environment, reducing or eliminating the impact over time through preservation, and compensating for the impact by providing substitute resources.

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).

The 2020 DEIS improperly sets aside the decision of whether to or not manage the prairie dog population early in its population growth within the area. This segmented approach provides no mitigation from the environmental damage that has already been caused. The DEIS does not devote a section to mitigation for the environmental damage to the range caused by the prairie dog population, nor does it give more than perfunctory mitigation measures to offset the damage caused to the range. The 4W Ranch and RCOWS request that these effects be properly evaluated; however, the Forest Service has continued to violate 40 C.F.R. 1502.22(a), which requires that where "information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

The inability of the Forest Service to seriously consider the causal nature of the environmental damages caused by the prairie dog proliferation cycles is a violation of its affirmative duties to monitor and study the erosion damages and the degradation of the environment from the improper use of soil resources. 7 U.S.C. 1010 and 1010a during high population cycles of the prairie dog. The Forest Service continues to avoid the critical density issue in the 2020 DEIS.

This 2020 DEIS has done nothing to mitigate the impacts created by providing for rectifying, repairing, restoring or rehabilitating the affected environment as required by 40 C.F.R. 1508.20. The DEIS has no discussion on what is the prairie dog population carrying capacity in AUM[s] within the MA 3.67 Short Structured Vegetation Area which is already classified as poor rangeland by the NRCS.

The 4W Ranch, along with other RCOWS Members, are greatly concerned by the deliberate efforts of the agency to mask, ignore and obfuscate the cause and effect analysis required by all of the above federal statutes, regulations and authorities. The Bankhead-Jones Act places affirmative obligations that are over and above the Forest Service's normal obligations for management of the National Forests. The Bankhead-Jones Act obligations cannot be overlooked.

Respectfully submitted for your consideration,

Footnotes:

[1] depredation - to plunder: to lay waste: to ravage

2Red Canyon Sheep Company vs Ickes: In *Red Canyon Sheep Company v. Ickes* the court held that the purpose of the Taylor Grazing Act was to provide for the most beneficial use possible of the public range in the interest of graziers and the public at large, and to define grazing rights and to protect those rights by regulation against interference. The court further held that a lawful business was property and that grazing on the federal lands is a lawful business. [Emphasis Added]