Data Submitted (UTC 11): 6/22/2021 6:00:00 AM
First name: Robert
Last name: Aland
Organization:
Title:
Comments: Dear District Ranger Sienkiewicz:

I object to the above-referenced draft Decision Notice ("DN," including by reference the supporting Environmental Assessment) published on May 12, 2021, in the Bozeman Daily Chronicle, for the following reasons:

1) "Blended Alternative." The DN, which correctly says "no" to 2 allotments (12,208 acres), both vacant, and incorrectly "yes to 4 allotments (9,860 acres, including 1,356 newly-added acres), one vacant, describes the decision as a "blended alternative," an anodyne bureaucratic term - comparable to "adaptive management" (see # 2 below) - typically used to describe a Solomonic "split the baby in half" approach in situations like this involving public lands and wildlife; it attempts to respond to political pressure and make "both sides happy." Despite the abundance of words, with regard to the "yes" allotments," the DN contains circular reasoning of the most general type; and the lack of supporting facts for critical conclusions is palpable. The "yes" conclusions in the DN are offensive to those who care about public lands and the wildlife on those lands.

2) "Adaptive" Management. As discussed in my December 2, 2020, comments and December 28, 2020, supplement below, "adaptive" management is meaningless or worse, because it completely lacks specificity and allows the "managers" to do anything or nothing without guidelines. The court in the Aqualliance case (see below) recognized these defects and gave the federal agency a resounding loss. The agency did not appeal. The DN, ignoring the rejection in Aqualliance and inviting a legal challenge, has decided to give this meaningless or worse concept another try. Have you and others responsible for the DN received approval from the USDA's legal branch in its Headquarters Office to proceed in this manner despite Aqualliance and the legal challenge that almost certainly will materialize?

* The DN discloses two "adaptive" management steps: (a) Expanding the "season of use for allotments" (pages 3, 17-18) and (b) re-activating currently vacant allotments (page 3). More "adaptive" steps adverse to public lands and wildlife surely will occur; "adaptive" steps in the other direction - protection and preservation - almost certainly will not occur due to a combination of lack of (a) outside pressure and (b) adequate monitoring resources.

3) Environmental Harm. The DN states (page 6): "My reasons for selecting [the blended alternative] are almost wholly related to management considerations and the need to balance uses in the project area, rather than any specific environmental harm caused by the proposal." (Emphasis added.) That admission - that environmental harm was largely ignored - is startling and gives rise to a major argument by plaintiffs in litigation challenging the final rule.

4) Grizzly Bears. A sister agency, the US Fish & Wildlife Service, twice tried to remove Greater Yellowstone Ecosystem grizzly bears from the list of protected species under the Endangered Species Act, but both of FWS's efforts were resoundingly rejected by the Montana District Court and the US Court of Appeals for the Ninth Circuit. (I was involved as a plaintiff pro bono and pro se in both litigations.) The GYE bears are protected under the ESA, and it is hoped that they will be protected indefinitely, since they will not have recovered for many years, perhaps decades. In this context the DN is egregious in rejecting the harm that the grazing allotments will have on the protected bears. The DN states (page 13) that "for grizzly bears, the biological assessment determined that the action alternatives May affect and are likely to adversely affect, grizzly bear" and that "the adverse effect determination for grizzly bear was reached in consultation with the [FWS]." Those admissions - in fact, the entire discussion in the DN with regard to grizzly bears - make it clear that the USDA and FWS, despite the results of the grizzly bear litigation, will effectively collaborate, perhaps largely due to outside pressure, to ""manage' this iconic species another way after failing with their first attempt. Violation of the ESA no doubt also will be raised in a challenge to the final rule.

5) Public Comments. Those involved in preparing the DN ignored public comments.

* The DN (page 2) states that "approximately 23,000 email messages" were received and that the "overwhelming majority of public comments were form letters that provided general remarks in support of wilderness and bison"; the DN further states (page 16) that "approximately 23,000 comment letters, the bulk of which were form emails" and "several dozen individual comment letters , containing substantive comments" were received. (Emphasis added.) Thus, the DN provides contradictory and confusing information with regard to the numbers and types of public comments. The key point, however, is that the DN does not provide numerical analyses of the numbers of the public comments that opposed or supported the various alternatives or fell somewhere in-between. There can be no doubt that (a) the overwhelming majority of the comments opposed the alternatives that permit grazing on any and all public lands and (b) the analyses either were not prepared or were prepared but not disclosed to the public as a strategy to keep the overwhelming opposition to grazing on public lands under the public's radar and out of evidence in any litigation that ensues with regard to the validity of the final rule.

*

* A similar situation occurred with regard to the FWS's first attempt to delist grizzly bears. The public filed about 200,000 comments with regard to the first delisting effort; and the FWS prepared and published a statistical table that showed that an overwhelming 99.3% of the comments opposed delisting, including 90.4% from residents of Idaho, Montana and Wyoming, where the bears were located. The public filed an astounding 665,000 comments with regard to the second attempt to delist the bears, but the FWS did not prepare and provide statistics, asserting that "it is no longer our practice" to prepare those statistics. Obviously this was a strategic decision by the FWS to keep the overwhelming opposition to delisting under the public's radar and out of evidence in the litigation that ensued.

* The DN contains the following self-serving language (page 7): "I thoroughly reviewed all public comments regarding the grazing proposal and took these interests and concerns into account when making my decisions. . . . I do provide below my response to several concerns directly relevant to my decision, including concerns related

to native wildlife species, water quality, utilization limits, the June 1 turn on date, and other issues (see Appendix A)." Similar self-serving language is found in Appendix A (page 16). Th self-serving statement is misleading at best: First, t is extremely unlikely that in the relatively few months since mid-November 2020 the public comments were "thoroughly reviewed," especially if there were 23,000 or more. (At an average rate of two per hour and assuming that no internal discussions took place, 46,000 hours, or over 1,900 full days, would have been required.) Second, Appendix A, only 4 pages in length, is superficial at best; it is devoid of meaningful scientific analysis of any of the specific comments, providing only bottom-line conclusions.

it is clear that the DN violates the Administrative Procedure Act, which requires the agency to take into account, and respond to, all public comments; and this violation no doubt also will be raised in litigation challenging the final rule. Wishful thinking included in the DN will not make the public comments disappear.

6) Costs to Public. Substantial costs will be paid by the American public (i.e., taxpayers) rather than the allotment owners, including, but not limited to, fences (some permanent), cattle guards, water systems and developments, water tanks, protection of riparian areas, seeding and/or planting grasses, eliminating noxious weeds and other infrastructure changes. The DN is deafeningly silent with regard to (a) how much all of this will cost the public and (b) why the allotment owners do not pay these costs. What right do these allotment owners have to offload their costs of doing business onto the public?

7) Other. I incorporate herein by reference my other objections set forth in the emails below, which have not been resolved in the DN. In addition, there are other objectionable matters in the DN, but I will not present them herein, having decided to focus on the major objections set forth above. I waive no objections.

Bottom Line: As stated below, Alternative 1 - no action and no grazing - clearly is the best alternative. The four "yes" allotments must be reversed so that the public lands and wildlife will be protected and preserved.

Sincerely,

Robert H. Aland