

USDA Forest Service
Rocky Mountain Region
Attn: Objection Reviewing Officer
P.O. Box 18980
1617 Cole Boulevard, Building 17
Lakewood, CO 80402

July 12, 2020

Objection submitted through:

<https://cara.ecosystem-management.org/Public//CommentInput?Project=55479>

This correspondence is an Objection to the 2020 Thunder Basin National Grassland Plan Amendment #55479 (36 CFR 219.54(c)).

Name of the project being objected to, the name and title of the responsible official, and the name of the National Forest on which the project is located:

2020 Thunder Basin National Grassland Plan Amendment
Russell Bacon, Forest Supervisor
Medicine Bow-Routt National Forests
and Thunder Basin National Grassland
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The objector's name, address, and email:

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I would appreciate a meeting with the reviewing officer to discuss issues raised in this objection and potential resolution of those issues.

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Section I. Introduction

Administration Provisions

Bankhead Jones Farm Tenant Act (BJFTA) was the culmination of a series of New Deal lands acts in the 1930s that addressed severe agricultural problems across the country resulting from over-cultivation of unsuitable land, poor farming practices, and prolonged drought. The Bankhead Jones Farm Tenant Act as amended states in Title III that, *“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, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises....”*

True D. Morse, Acting Secretary of Agriculture, in 1960 designated approximately 3.8 million acres of Land Utilization Project land mostly in the Great Plains as national grasslands. 36 CFR § 213 states:

Designation, administration, and development of National Grasslands.

(a) The land utilization projects administered by Department of Agriculture designated in paragraph (e) of this section hereafter shall be named and referred to as “National Grasslands”.

(b) The National Grasslands shall be a part of the national-forest system and permanently held by the Department of Agriculture for administration under the provisions of Title III of the Bankhead-Jones Farm Tenant Act, subject to such exchanges of lands thereunder as will promote effective and economical administration or otherwise serve the public interest.

(c) The National Grasslands shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.

(d) The Chief of the Forest Service is hereby directed to develop and administer the renewable resources of the National Grasslands to the fullest extent practicable for multiple use and sustained yield of the several products and services obtained therefrom. In the administration of the National Grasslands, due consideration shall be given to the relative values of the various resources in particular areas. The resources shall be managed so as to maintain and improve soil and vegetative cover and to promote the development of grassland agriculture in the areas of which the National Grasslands are a part.

(e) The following land utilization projects henceforth shall be named and referred to as “National Grasslands....”

The Forest Service offers three types of grazing permits. The Term Grazing Permit and Livestock Use Permits:

- The Term Grazing Permits are issued for up to ten years and are the type of permit issued to livestock producers throughout the West, including the National Grasslands. These permits are also referred to as commercial grazing permits.
- Livestock Use Permits are issued for incidental use and are not intended to authorize commercial livestock production on National Forest lands.

Prairie Ecosystem

“The largest vegetative province in North America is the native prairie. Some states have had declines in tall grass prairie of 99.9 percent. It is estimated that less than 34 percent of true mixed grass prairie and less than 23 percent of true short grass prairie still exist in native vegetation. This loss of native vegetation is due primarily to conversion to non-native crops; damming of major river systems for flood control and irrigation; and draining of wetlands for crop production. Overgrazing by livestock, suppression of fire, invasion of exotic plants, and fragmentation of native grasslands continues to have negative impacts on the remaining native grassland ecosystems... There are currently 59 listed threatened or endangered species in the Plains, with another 728 candidates for listing. Of the 435 bird species that breed in the United States, 330 have been documented to breed in the Great Plains. Most of these species show

declines of 14-91 percent due to losses of habitat critical for nesting and wintering. Prairie dog populations currently exist in less than 5 percent of their historic range. Species associated with the prairie dog are declining, and many are listed as threatened, endangered, or sensitive species.” (Grasslands Review Team, page 4)

The National Grasslands provide aesthetic beauty in many forms by being home to a diversity of species including golden eagles, grouse, pronghorn antelope, elk, prairie dogs, and bison. The grasslands are rich in biodiversity. National Grassland units contain the largest representation of threatened and endangered species. In addition, our grasslands contain thousands of species of wildflowers, and stunning grass filled vistas that are available year-round for the viewing enjoyment of the public.

The National Grasslands contain large areas of intact prairie and other grassland types, and they provide the ecosystem service of carbon sequestration in grassland vegetation and soil organic matter. Grassland ecosystem services help sustain, support, and fulfill human life. These services can be tangible or intangible, but they are nevertheless critical for sustaining human well-being. The health and well-being of human populations depend on the services provided by ecosystems and their components: the organisms, soil, water, and nutrients. Additional ecosystem services provided by the Thunder Basin National Grassland include clean water, forage, habitat for wildlife, and pollination of native and agricultural plants.

The Thunder Basin National Grassland is critical to the recovery of endangered species and ameliorating the impacts of climate change. The most recent five-year status review (USFWS 2008) found that the black-footed ferret remains one of the most endangered mammals in the United States, and continues to warrant endangered status. The goal established in the 2013 Black-footed Ferret Recovery Plan for free-ranging ferrets is a total of at least 3,000 breeding adults, in 30 or more populations, with at least one population in each of at least 9 of the 12 States within the historical range of the species, with no fewer than 30 breeding adults in any population, and at least 10 populations with 100 or more breeding adults, and at least 5 populations within colonies of Gunnison’s and white-tailed prairie dogs. Despite more than two decades of reintroduction efforts, only about 400 breeding adults were living in the wild by that time (USFWS 2013). In announcing the availability of the revised black-footed ferret recovery plan (78 FR 77485-77486, Dec. 23, 2013), USFWS concluded that: *“Down-listing of the black-footed ferret could be accomplished in approximately 10 years if conservation actions continue at existing reintroduction sites and if additional reintroduction sites are established. Delisting will be possible if more intensive reintroduction efforts are conducted.”*

The proposed decision as described in the Draft ROD is an example of the problem. To date, extremely slow progress has been made towards recovery, and removing the contribution of the Thunder Basin National Grassland reintroduction site would be a huge and damaging step backwards. The purpose of the 10(j) Rule was to help facilitate reintroductions of the species

onto non-federal lands while providing regulatory assurances that will encourage greater private landowner participation in black-footed ferret recovery. Furthermore, it would allow for implementation of recovery efforts on non-federal lands to proceed more quickly.

Section II. Statement of Issues – FEIS

The following are statements of the issues to which the objection applies and concise statements explaining the objection and suggestions on how the proposed plan decision may be improved. Forest Service NEPA 36 CFR Part 220 regulations do not lessen the applicability of the CEQ 40 CFR 1500 regulations—see 36 CFR 220.1(b)).

A. Purpose and Need

Issue and Statement of Explanation: The statements of purpose and need for the Amendment must be revised to clarify the intent and to provide for the purposes for which the Bankhead Jones Tenant Act granted the authority to acquire lands that resulted in the establishment of the Thunder Basin National Grassland. The Bankhead-Jones Farm Tenant Act of 1937, as amended (7 U.S.C. § 1010) must be a fundamental legal basis for describing the purpose and need of the proposed action and the alternatives to be analyzed. The legislation states that, *“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, reforestation, preserving natural resources, protecting fish and wildlife, developing and protecting recreational facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and surface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises.”*

The responses to comments on page C-13 states, “The analysis process considered ecosystem integrity, unique ecosystem services, and drivers and processes; however, these did not constitute the purpose and need for the plan amendment.”

The purpose and need of the amendment may not merely dismiss the purposes for why lands were acquired that led to the creation of the National Grasslands designated area. Producing forage for commercial livestock in lieu of providing habitat for native wildlife species is not in compliance with purposes for which the National Grasslands were established as restricted by the purposes of BJFTA as described in Title III.

The purposes of the Endangered Species Act (ESA) of 1973 (16 U.S.C. § 1531 et seq.) are to *“provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.”* The ESA also established as a policy of Congress an affirmative responsibility that *“all federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of this Act.”* Conserve is defined under the ESA to mean *“the use of all methods and procedures*

which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary.” The proposed change in wording to *“Reintroduction of the black-footed ferret will not be precluded in the Management Area”* indicates that the Thunder Basin National Grassland is proposing to abdicate its responsibility to proactively work towards recovery of the species.

As currently addressed in the MA 3.63 direction, protecting black-footed ferret habitat is the primary consideration in defining the appropriate mix of uses in this small portion of the National Grasslands. The current direction is consistent with requirements of the Bankhead-Jones Farm Tenant Act, the Endangered Species Act, and the National Forest Management Act (NFMA). Prioritizing the commercial growing of domestic livestock over the recovery of a critically endangered species appears to be contrary to the mission and purpose of the National Grasslands. The grasslands management direction must continue to provide for the long-term conservation of black-tailed prairie dogs and other species associated with prairie dog colonies, and to provide for adequate acreages and distributions to support a future reintroduction of the black-footed ferret.

Proposed Solution to Improve the Decision: The purpose and need statements must clearly recognize the ecological purposes of the grasslands and requirements of the ESA, which should be addressed in a Supplemental DEIS by adding the following to the purpose and need statements:

- Preserving natural resources and protecting fish and wildlife populations and habitat;
- Ensuring that habitat requirements are met and necessary acreages are provided to support viable populations of prairie dogs and their associated species on the Thunder Basin National Grassland; and
- Maintaining sufficient acres of prairie dog habitat: (a) to support black-footed ferret reintroduction; (b) to support other dependent species; (c) to maintain Region 2 sensitive species, and (d) protect or improve habitat for potential species of conservation concern (SCC).

Violation of Law, Regulation or Policy: 7 U.S.C. § 1010, 16 U.S.C. § 1531 et seq, 36 CFR §§ 213.1, 219.10(b)(vi), 40 CFR § 1502.4(a)

Connection with Comments: Draft Amendment and DEIS comments on pages 8 and 9.

B. Alternatives

Issue and Statement of Explanation: Many of the concerns that are addressed in the FEIS are focused on conflicts between prairie dogs and commercial livestock grazing Animal Unit Months (AUMs) on the national grasslands. However, none of the alternatives decrease permitted livestock grazing to the benefit of watersheds and wildlife. A reasonable alternative that is within the scope of the EIS would be to modify the MA 3.67 plan components to benefit

grassland wildlife species, while only allowing for livestock grazing where such use is beneficial to preserving natural resources and protecting fish and wildlife. Multiple use range resource values for the grasslands should provide a clearer focus on providing for healthy ecosystems and providing habitat for native species of wildlife.

Responses to comments on page C-15 states that, *“Federal laws, regulations, and policies mandate the Forest Service manage national grasslands for multiple uses and values, including wildlife habitat and livestock grazing.”*

This statement is not factual. There is no mandate for livestock grazing across all of the Thunder Basin National Grasslands. Forest Service range management policy states that the objectives for the range management program as:

1. *“To manage range vegetation to protect basic soil and water resources, provide for ecological diversity, improve or maintain environmental quality, and meet public needs for interrelated resource uses.*
2. *To integrate management of range vegetation with other resource programs to achieve multiple use objectives contained in Forest land and resource management plans.*
3. *To provide for livestock forage, wildlife food and habitat, outdoor recreation, and other resource values dependent on range vegetation.*
4. *To contribute to the economic and social well-being of people by providing opportunities for economic diversity and by promoting stability for communities that depend on range resources for their livelihood.*
5. *To provide expertise on range ecology, botany, and management of grazing animals.*

It was never the intent of the Congress that all uses would occur on all areas. Individual forests determine what uses are feasible and appropriate for different areas through the development and revision of the Land and Resource Management Plans. Once a determination has been made that grazing is feasible and appropriate for an area, grazing is planned and managed taking into consideration all the other uses of the area.”

The Planning Rule requires the responsible official to include plan components that provide for the ecological conditions necessary to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern. A self-sustaining population of black-footed ferrets requires large, dense complexes of prairie dogs.

The purposes of the ESA are to *“provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved.”* As currently addressed in the MA 3.63 direction, protecting black-footed ferret habitat is the primary consideration in defining the appropriate mix of uses in this small portion of the National Grasslands. The current direction is consistent with requirements of the Bankhead-Jones Farm Tenant Act,

Endangered Species Act, and NFMA. Prioritizing the commercial growing of domestic livestock over the recovery of a critically endangered species appears to be contrary to the mission of the National Grasslands. The grasslands management direction must continue to provide for the long-term conservation of black-tailed prairie dogs and other species associated with prairie dog colonies, and to provide for adequate acreages and distributions to support a future reintroduction of the black-footed ferret, under all alternatives that are analyzed in detail.

Proposed Solution to Improve the Decision: Comments on the DEIS proposed a new alternative, which the Forest Service characterized in responses to comments as, *“Many of the concerns that are addressed in the DEIS are focused on conflicts between prairie dogs and commercial livestock grazing on the national grasslands.”* However, none of the alternatives considered decreasing permitted AUMs to the benefit of watersheds and wildlife. A reasonable alternative to be developed that is within the scope of the EIS is to modify the MA 3.67 plan components to benefit grassland wildlife species, while only allowing for livestock grazing where such use is beneficial to preserving natural resources, protecting fish and wildlife, and creating and maintaining desired habitat conditions.

This proposed alternative is consistent with the FEIS purpose and need statement, BJFTA, NFMA, and NEPA and should be rigorously explored and objectively evaluated in a Supplemental DEIS. This proposed alternative reduces resource conflicts related to prairie dog occupancy and livestock grazing. The alternative that I proposed in previous comments would provide for integrated resource management within MA 3.67—multiple use management that recognizes the interdependence of ecological resources and is based on the need for integrated consideration of ecological, social, and economic factors that address the purposes for acquiring lands that constitute the Thunder Basin National Grasslands. A designated area such as a National Grassland is an area or feature identified and managed to maintain its unique special character or purpose (36 CFR §§ 219.19, FSH 1909.12 Part 24 – Exhibit 01).

Proposed Alternative 5 (public) – Native Prairie Ecosystem Emphasis as proposed in DEIS comments:

The exterior boundary for proposed Alternative 5 MA 3.67 and embedded SIA boundary can be represented as that identified in the Draft ROD for selected alternative, which is displayed in Appendix A of this objection. This alternative retains much of the direction proposed for Alternative 4 as described in the Appendix A of the DEIS, but adds plan components to MA 3.67 that result in integrated resource management.

Alternative 5 MA 3.67 – The following description of proposed plan components include minor modifications to improve the alternative, while maintaining core elements of the alternative proposed in my DEIS comments:

Desired Conditions

1. The area preserves native grasslands and protects native fish and wildlife. Vegetation communities are managed to provide for a mosaic of native plant communities, with an emphasis on short-stature herbaceous communities. In greater sage-grouse priority habitat management areas where greater sage-grouse habitat exists, desired conditions for priority habitat management areas apply. Desired Condition
2. Large prairie dog colony complexes and associated wildlife species are established and maintained. The area promotes the establishment and maintenance of 18,000 acres of prairie dog colonies, excluding having colonies in the boundary management zone (BMZ).¹ Desired Condition
3. The BMZ promotes and maintains native grassland plant and wildlife species with the exception of prairie dogs. Desired Condition

Fish and Wildlife Standards and Guidelines

1. Prairie dog density control may not be used within a prairie dog colony. Any use of lethal control of prairie dog colonies must include design criteria to minimize impacts to species that are associated with prairie dog colonies, including mountain plover, burrowing owl, and swift fox. Standard
2. Prior to the U.S. Fish and Wildlife Service authorizing a black-footed ferret release, the Forest Service must coordinate and consult with the U.S. Fish and Wildlife Service, the state wildlife agency and other agencies that conduct, authorize or fund predator control to help ensure that predator control activities on the national grassland do not pose significant risks to black-footed ferrets. Standard

Mineral and Energy Resources Standards and Guidelines

1. To minimize wildlife habitat impacts, new mineral leases are to include stipulations for no surface occupancy.² Guideline

Livestock Grazing Standards and Guidelines

1. Prior to the U.S. Fish and Wildlife Service authorizing a black-footed ferret release, the Forest Service will coordinate and consult with the U.S. Fish and Wildlife Service, the state wildlife agency and other agencies that conduct, authorize or fund predator control to help ensure that predator control activities on the national grassland to reduce livestock losses do not pose significant risks to black-footed ferrets. Standard
2. To promote native ecosystems, livestock grazing may only be allowed to help achieve desired wildlife conditions. Guideline

Recreation Standards and Guidelines

¹ Proposed addition to the DEIS proposal to clearly describe a range of prairie dog colonies acres, which could be further developed in a Supplemental DEIS.

² A MA 3.67 NSO stipulation plan component is clearly within the scope (40 CFR 1508.25) of this plan amendment EIS. An NSO stipulation would result in avoiding or mitigating (40 CFR 1508.20) resource development impacts to potential essential black-footed ferret habitat and protect other grasslands wildlife resources.

1. To help expand and maintain suitable black-footed ferret habitat, coordinate and consult with the state wildlife agency to prohibit prairie dog shooting. Standard
2. Recreational shooting of prairie dogs is prohibited February 1-August 15. Standard
3. To protect wildlife Primitive or Semi-Primitive Non-Motorized ROS settings are maintained or restored.³ Accepted Semi-Primitive Non-Motorized ROS class inconsistencies include motor vehicle use for administrative purposes, motor vehicle use that is allowed in existing oil and gas development permits, and motor vehicle use on existing Operational Maintenance Level 3 roads. Standard

Vegetation Management Standards and Guidelines

1. Vegetation should be managed to provide a mosaic of native plant communities, with an emphasis on short-stature herbaceous communities. While the entire management area is not intended to be in short-stature vegetation, short-stature vegetation would be emphasized more in this management area than in others for the purpose of providing for prairie dog habitat. Guideline

Management Strategy

Management strategies are found in the 2015 Prairie Dog Conservation Assessment and Management Strategy.

This Native Prairie Ecosystem Emphasis alternative has a lower acreage objective for prairie dog colonies than the current direction and includes a boundary management zone (BMZ). Livestock grazing in the core of the Management Area would only be allowed for wildlife resource benefits. This approach would vastly reduce conflicts between prairie dogs and livestock grazing on National Forest System lands. The BMZ would be managed for native grassland species other than prairie dogs and associated species. Vegetation in the BMZ, especially during times of drought, would be managed to provide for an effective barrier to prairie dog movement to non-federal lands.

Violation of Law, Regulation or Policy: 40 CFR §§ 1502.14, 1502.15, 1503(a)(2); 36 CFR §§ 219.10(b)(1)(i)), 219.13(b)((5); FSH 1909.12 Parts 21.3 and 23.23a.

Connection with Comments: Draft Amendment and DEIS comments on pages 10 through 15.

Section III. Statement of Issues – Plan Amendment

The following are statements of the issues to which the objection applies and concise statements explaining the objection and suggestions on how the FEIS may be improved.

³ This is consistent with amendment direction that, “Primitive conditions with minimal facility development will be emphasized.” However, it uses official 1986 ROS planning framework terminology to describe the plan component. This plan component is consistent with 36 CFR 219.10(b)(1)(i)) and FSH 1909.12 Part 23.23a as informed by the Planning Rule PEIS.

A. Land Management Plan Amendment

Issue and Statement of Explanation: A plan amendment must be done ‘under the requirements of’ the 2012 rule (36 CFR 219.17(b)(2)). An amendment cannot be tailored so that the amendment fails to meet directly related substantive requirements of the rule. Rather, the responsible official must determine which substantive requirements within §§ 219.8 through 219.11 of the 2012 rule are directly related to the plan direction and apply those requirements to the amendment. The determination of which requirements are directly related to an amendment must be based on the purpose and effects (beneficial or adverse) of the changes being proposed, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.

The Thunder Basin National Grassland 2020 plan amendment fails to address the requirement to provide for the appropriate management of other designated areas in the plan area (36 CFR § 219.10(b)(vi)). TBNG is an administratively designated area established in 1960 by the Secretary of Agriculture. Appropriate management of the area is subject to MUSYA as constrained by the Title III provisions of the Bankhead Jones Farm Tenant Act.

The 2001 Land and Resource Management Plan for the Thunder Basin National Grassland should have been revised by 2016 as envisioned by the National Forest Management Act (NFMA) provision to revise a Plan every 10 to 15 years. Revision is the appropriate place to address forest-wide changed conditions in the grasslands and to provide for integrated resource management. It is arbitrary and capricious to allocate human and financial resources to a narrow amendment instead of following the revision requirements of NFMA, especially with totality of the resources of effects brings integrated resource management within the scope of the proposed action.

Proposed Solution to Improve the Decision: Withdraw the Draft ROD for the amendment and initiate revision processes.

Violation of Law, Regulation or Policy: 36 CFR 219.16, 16 U.S.C. 1604(f)(5)

Connection with Comments: Draft Amendment and DEIS comments on page 6.

B. Ecosystem Integrity and Diversity

Issue and Statement of Explanation: The amendment fails to include plan components that provide the ecological conditions necessary to contribute to the recovery of federally listed threatened and endangered species, conserve proposed and candidate species, and maintain a viable population of each species of conservation concern. Prairie dogs may be able to persist in smaller, more fragmented populations; however, these populations are often incapable of supporting black-footed ferrets. A self-sustaining population of black-footed ferrets requires large, dense complexes of prairie dogs. Based on observed data from Conata Basin, SD, the

2013 recovery plan suggests that 225 acres of black-tailed prairie dog habitat is required to support one female ferret. With a sex ratio of 1 male to 2 females, the acreage needed to support a self-sustaining population of 100 breeding adults would be about 14,850 acres. The proposed acreage goal for MA 3.67 (10,000 acres with control allowed down to 7,500 acres) is plainly insufficient to contribute to the recovery of black-footed ferrets anywhere on the Thunder Basin National Grassland.

As currently addressed in the MA 3.63 direction, protecting black-footed ferret habitat is the primary consideration in defining the appropriate mix of uses in this small portion of the National Grasslands. The current direction (No Action Alternative) is consistent with requirements of the Bankhead-Jones Farm Tenant Act, Endangered Species Act, and NFMA. Prioritizing the commercial growing of domestic livestock over the recovery of a critically endangered species is contrary to the mission and purpose of the National Grasslands. The grasslands management direction must continue to provide for the long-term conservation of black-tailed prairie dogs and other species associated with prairie dog colonies, and to provide for adequate acreages and distributions to support a future reintroduction of the black-footed ferret, under all alternatives that are analyzed in detail in the DEIS.

Proposed Solution to Improve the Decision: The Thunder Basin National Grasslands plan should be revised to address the role of the Grasslands in conserving and recovering black-footed ferrets and protecting associated habitat that is facilitated by the 10(j) rule that designated the state of Wyoming as a special area for ferret reintroductions on October 30, 2015. Revision should address such issues as:

- Recovery of the black-footed ferret, a species listed as endangered on March 11, 1967, more than 50 years ago, is proceeding at a vastly slower pace than was expected;
- Rapid and extensive fragmentation of prairie dog habitat continues to occur as a result of energy development across the state of Wyoming and across the range of the black-tailed prairie dog; and
- Ongoing and projected future impacts of climate change on the available acres and stability of black-tailed prairie dog populations.

Violation of Law, Regulation or Policy: 36 CFR §§ 219.8(a), 219.9(a)(1), 219.9(a)(2)

Connection with Comments: Draft Amendment and DEIS comments on pages 5 and 6.

C. Designated Area

Issue and Statement of Explanation: Response to comments on page C-85 states that, *“The Findings Required by Laws and Regulations section of the draft record of decision describes how the plan amendment meets the substantive requirement for multiple use (36 CFR 219.10). Within the scope and scale of the plan amendment, new and amended plan components address ecosystem services, wildlife species, forage, grazing and rangelands, habitat and*

habitat connectivity, recreation opportunities, riparian areas, soil, and vegetation. In addition, all plan components not addressed in appendix A of the final environmental impact statement remain unchanged from the 2002 grassland plan, as amended."

MA 3.67 fails to provide for integrated resource management to address changed conditions, including addressing the effects of climate change. The general response stating that, *"Within the scope and scale of the plan amendment..."* doesn't address the issue.

The Secretary of Agriculture designated the National Grasslands in 1960. A designated area is, *"An area or feature identified and managed to maintain its unique special character or purpose. Some categories of designated areas may be designated only by statute and some categories may be established administratively...."*

The NFMA does not modify constraints of Title III of the Bankhead Jones Tenant Act. Forest Service programs and actions must be consistent with the primary purposes for which the land was acquired. Actions must not violate the prohibition not to build industrial parks or establish private industrial or commercial enterprises.

The National Grasslands Primer on page 15 states that, *"National grasslands, by virtue of being expressly included within the ambit of the "National Forest System," became subject to the planning provisions of RPA and NFMA as well as to a panoply of other laws that applied generally to the Forest Service in the administration of lands under their jurisdiction... In addition to the aforementioned statutory authorities, there are several regulations which apply to the Forest Service's administration of national grasslands as well. Foremost among these are the general regulations pertaining to the national grasslands set forth at 36 C.F.R. § 213... The 213 regulations also specifically provide that other regulations applicable to national forests are incorporated and apply to regulate the protection, use, occupancy, and administration of the national grasslands to the extent that they are not inconsistent with the provisions of the BJFTA... To summarize, the Forest Service is charged with administering the national grasslands in conformance with all applicable federal laws and regulations. To be sure, one of the applicable laws is the BJFTA. However, there are many other laws and regulations that apply to the national grasslands as well. The Forest Service must take into account all of these laws in its decisionmaking process."*

The National Grasslands Primer on page 34 states that, *"The first myth is that the only law which the Forest Service should consider in its administration of national grasslands is the BJFTA. This is plainly incorrect. The Forest Service must consider the BJFTA but it must equally consider other laws applicable to units of the National Forest System. Until there is a conflict between the requirements of the BJFTA and one or more of these other laws, the Forest Service is obliged to manage the national grasslands in conformance with all of the applicable laws. To date, no such conflict has manifested itself."*

The second myth is that the BJFTA established livestock grazing as the preferred or dominant use of the national grasslands. This too is plainly incorrect. There is simply nothing in the BJFTA, its preamble or legislative history to corroborate such an assertion. Grazing has been and will continue to be an important use of the national grasslands. But it is just one of many recognized uses and it is within the discretion of the Forest Service to determine through the planning process how those uses should be managed and where they should occur.”

The establishment of the National Grasslands constitutes an overlay on the management regime otherwise applicable to lands managed by the agency under the MUSYA. By eliminating activities more restrictive and uses incompatible with the purposes for which an area is designated, the National Grasslands designation limits the management discretion that the agency might otherwise have. There is now a clear conflict between the requirements of the BJFTA and the MUSYA. Commercial livestock grazing is competing with native wildlife for scarce habitat. In this case, the primary purposes for which the lands were acquire and designated as National Grasslands should control.

Proposed Solution to Improve the Decision: Recognize that Thunder Basin National Grassland is a designated area. The plan must include plan components including standards or guidelines for management of other designated areas and areas recommended for designation integrated with other plan components to maintain its unique special character and purpose. The alternative proposed in comments is consistent with the BJFTA, NFMA, and MUSYA. This proposed alternative should be developed and analyzed in detail.

Violation of Law, Regulation or Policy: 36 CFR § 219.10(b)(1)(vi), 36 CFR § 213.1, FSH 1909.12 Part 24.2.

Connection with Comments: Draft Amendment and DEIS comments on pages 7 and 10.

Section IV. Statement of Issues Draft ROD

The following are statements of the issues to which the objection applies and concise statements explaining the objection and suggestions on how the proposed decision may be improved.

A. Proposed Decision

Issue and Statement of Explanation: The Draft ROD on page 2 states, “*Management Area 3.63, “Black-Footed Ferret Reintroduction Habitat,” will be re-designated as Management Area 3.67, “Short-Stature Vegetation Emphasis,” and boundaries will be redrawn to be more conducive to prairie dog management (figure 1). Within the approximately 42,000-acre management area, total prairie dog colony acreage will be managed toward an objective of 10,000 acres. Control of prairie dogs may be allowed down to 7,500 acres, while still managing toward the 10,000-acre objective, or after extended drought conditions. The 10,000 acres of colonies will provide*

for the long-term persistence of at-risk species and would contribute to recovery of the black-footed ferret, should future reintroduction be proposed. There will not be an objective for prairie dog colony acreage outside of management area 3.67.”

The characterization that MA 3.63 simply will be re-designated as MA 3.67 does not accurately describe the change to the management of this area of the grasslands. Most significant is that MA 3.67 will no longer protect lands for black-footed ferret reintroduction regardless of the presence of the species.

Proposed Solution to Improve the Decision: The selection of Alternative 5 should clarify that MA 3.63 is eliminated and replaced with MA 3.67. The Draft ROD and FEIS does not justify the reasons to control prairie dogs down to 7,500 acres. What resource would benefit? The draft decision should have only stated that, *“Total prairie dog colony acreage will be managed toward an objective of 10,000 acres. The 10,000 acres of colonies may provide for the long-term persistence of at-risk species and may contribute to recovery of the black-footed ferret.”*

The ROD must recognize as described in the FEIS that, *“Climate in the Northern Great Plains is expected to become gradually and consistently warmer in the next 20 to 30 years, with average temperatures increasing by 2 to 4 degrees Fahrenheit by 2050... Even with increases in precipitation, warmer temperatures and a longer growing season are expected to increase evaporative demand, leading to more frequent and severe droughts.”*

The FEIS states that, *“The proposed action alternative would have reduced impacts to grazing management and authorized use, when compared to the impacts in the no-action alternative.”*

The ROD should also recognize that climate change, which is due in part to energy developments on NFS lands, is a reason why the Forest Service is selecting to reduce prairie dog habitat in favor of providing for more livestock forage opportunities on the grasslands.

The proposed decision should be withdrawn. The proposed action and alternatives need to be modified to be consistent with the purposes for which the National Grasslands were designated as constrained by Title III of the BJFTA and ESA.

Violation of Law, Regulation or Policy: 40 CFR §§ 1502.14, 1502.16, 1505.2

B. Decision Rationale

Issue and Statement of Explanation: The Draft ROD on page 5 states that, *“Reduction in the overall objective for prairie dog colony acres from 33,000 to 10,000 acres on the national grassland is intended to reduce resource conflicts related to prairie dog occupancy and livestock grazing. Each of the alternatives presented a different configuration of the newly designated management area 3.67 and revisions to the Cheyenne River Zoological SIA. The management area 3.67 delineation in the preferred alternative spans approximately 42,000 acres and includes several grazing allotments.”*

The decision clearly prioritizes commercial livestock grazing over protecting the values for which the Thunder Basin National Grasslands were created through an Act of Congress. The administrative decision to manage livestock-prairie dog conflict by only considering reducing prairie dogs and not considering other alternatives such as the one presented in comments may lead to a decision that is arbitrary and capricious and not in compliance with law.

Proposed Solution to Improve the Decision: Manage the Thunder Basin National Grassland for the purposes for which the designated area was created as constrained by Title III of the BJFTA and ESA. Supplement the DEIS to address the alternative presented in comments.

Violation of Law, Regulation or Policy: 40 CFR §§ 1502.14, 1502.16, 1505.2

Connection with Comments: Draft Amendment and DEIS comments on page 7.

C. Issues Considered and Addressed

Issue and Statement of Explanation: The Draft ROD on pages 7 and 8 states that, *“Commenters are concerned that management actions that increase or decrease prairie dog colony size, distribution, or density could change forage availability for livestock production on National Forest System land and that encroachment of prairie dogs onto private and State lands could impact forage availability for livestock production on private and State land... The plan amendment addresses these concerns by decreasing the acreage objective for prairie dog colonies on National Forest System lands from 33,000 to 10,000 acres. In addition, designation of boundary management zones and allowance for lethal control outside of management area 3.67 is intended to minimize encroachment and impacts to forage on State and private lands.”*

Alternatives only address reducing prairie dog numbers to reduce conflicts. A reasonable alternative that was presented in comments would reduce conflicts by reducing prairie dog numbers from that allowed in the current plan while also managing for a wildlife emphasis that would allow livestock grazing only for wildlife resource benefits. Favoring commercial livestock grazing over wildlife purposes is inconsistent with the purposes for which the National Grasslands were created as informed by Title III of BJFTA.

Proposed Solution to Improve the Decision: Supplement the DEIS to develop and analyze the alternative presented in comments. See Section II Part B of this objection.

Violation of Law, Regulation or Policy: 40 CFR § 1502.14

Connection with Comments: Draft Amendment and DEIS comments on page 14.

D. Alternatives Considered but Not Analyzed in Detail

Issue and Statement of Explanation: The Draft ROD on page 12 states that, *“Public comments received in response to the proposed action and draft environmental impact statement provided suggestions for alternative methods for achieving the purpose and need for this plan*

amendment. In some cases, the public provided complete alternatives that included many or most of the elements described in the previous section. In some cases, only one or a few management suggestions that could be considered as elements of alternatives were provided. Suggestions were either integrated into one of the action alternatives, were analyzed as part of the no-action alternative, or were briefly described and analyzed in the final environmental impact statement."

The FEIS' narrow vision for controlling conflict through reducing the number of prairie dogs resulted in a limited range of alternatives. The proposed action and alternatives failed to include plan components including standards or guidelines for management of National Grasslands integrated with other plan components to managed and maintain its unique special character or purpose. The Draft ROD, FEIS, and amendment should be withdrawn.

Proposed Solution to Improve the Decision: Supplement the DEIS to develop and analyze the alternative presented in comments.

Violation of Law, Regulation or Policy: 40 CFR § 1502.14

Connection with Comments: Draft Amendment and DEIS comments on pages 14 through 16.

E. Bankhead Jones Farm Tenant Act

Issue and Statement of Explanation: The Draft ROD on page 21 when discussing the Bankhead-Jones Farm Tenant Act states that, *"The Secretary [of Agriculture] 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, protecting fish and wildlife, developing and protecting recreation facilities, mitigating floods, preventing impairment of dams and reservoirs, developing energy resources, conserving surface and subsurface moisture, protecting the watershed of navigable streams, and protecting the public lands, health, safety, and welfare, but not to build industrial parks or establish private industrial or commercial enterprises."*

Thunder Basin National Grasslands were created by an Act of Congress for a unique special character or purpose. The NFMA does not modify those purposes. The establishment of the National Grasslands constitutes an overlay on the management regime otherwise applicable to lands managed by the agency. By eliminating activities and uses incompatible with the purposes for which an area is designated, the designated area limits the management discretion that the agency might otherwise have under NFMA.

The National Grasslands Primer on page 34 explains that, *"The first myth is that the only law which the Forest Service should consider in its administration of national grasslands is the BJFTA. This is plainly incorrect. The Forest Service must consider the BJFTA but it must equally consider other laws applicable to units of the National Forest System. Until there is a conflict*

between the requirements of the BJFTA and one or more of these other laws, the Forest Service is obliged to manage the national grasslands in conformance with all of the applicable laws. To date, no such conflict has manifested itself.

The second myth is that the BJFTA established livestock grazing as the preferred or dominant use of the national grasslands. This too is plainly incorrect. There is simply nothing in the BJFTA, its preamble or legislative history to corroborate such an assertion. Grazing has been and will continue to be an important use of the national grasslands. But it is just one of many recognized uses and it is within the discretion of the Forest Service to determine through the planning process how those uses should be managed and where they should occur.”

Conflict between commercial livestock grazing and native wildlife now exists with this National Grasslands amendment.

Proposed Solution to Improve the Decision: Supplement the DEIS to develop and analyze the alternative presented in comments. All alternatives must not favor livestock grazing over the wildlife purposes for which the grasslands were created as constrained by BJFTA.

Violation of Law, Regulation or Policy: Public Law 75-210, 40 CFR § 1502.14

Connection with Comments: Draft Amendment and DEIS comments on pages 14 through 16.

F. National Environmental Policy Act

Issue and Statement of Explanation: The Draft ROD on page 22 states that, *“The National Environmental Policy Act requires public involvement and consideration of potential environmental effects of new projects and programs. My review of the final environmental impact statement finds it meets the requirements of the act....*

Adverse effects to prairie dogs and species that depend on prairie dog colonies for habitat are expected while implementing the preferred alternative. However, these effects are not expected to lead to loss of viability for any species in the plan area or range-wide. To the extent possible, while meeting the purpose and need for the project, these effects are avoided or offset through implementation of ecosystem and species-specific plan components. Adverse effects may also be expected to uses such as livestock grazing in areas identified for colony conservation and managed to provide short-stature vegetation for prairie dogs and colony-dependent species. Due to the variable nature of colonies, the ability to control prairie dogs in all action alternatives, and the presence of plague in the system, long-term impacts to livestock grazing are not expected....”

The FEIS did not rigorously explore and objectively evaluate all reasonable alternatives, including the alternative presented in comments. The alternative presented in comments on the Draft Amendment and DEIS is clearly not within the range of alternatives presented and analyzed in the FEIS, since it includes a broad wildlife emphasis not addressed by no action and

the action alternatives. Failing to consider the suggested alternative prevents the responsible official from making a reasoned choice among reasonable alternatives.

Proposed Solution to Improve the Decision: Supplement the DEIS to develop and analyze the alternative presented in comments and summarized in Section II Part B of this objection.

Violation of Law, Regulation or Policy: 40 CFR § 1502.14

Connection with Comments: Comments on pages 14 through 16.

G. Endangered Species Act

Issue and Statement of Explanation: The Draft ROD on page 23 states that, *“The Endangered Species Act requires Forest Service personnel to manage for the recovery of threatened and endangered species and the ecosystems upon which they depend... To contribute to the recovery of black-footed ferret, I have decided to set an objective of 10,000 acres of prairie dog colonies in management area 3.67.”*

Management approaches on page 80 states that, *“Density control work can be expanded to be allowed in management area 3.67 when total colony acreages are less than 7,500 acres if the best available scientific information indicates that density control achieves objectives and maintains habitat requirements for associated species. If density control is used in management area 3.67, colonies in which density control has been implemented would continue to contribute to the 10,000-acre objective for prairie dog colonies... Because of the effects of drought on forage availability and prairie dog movement, drought can heighten conflicts related to prairie dog occupancy and livestock grazing. Drought can also affect the risk of colony encroachment onto non-Federal lands. To address these issues, plan components allow for managing toward the minimum colony acreage thresholds (i.e., 7,500 acres within management area 3.67) for rodenticide use during drought conditions.”*

The decision actually only establishes an objective of 7,500 acres, not the described 10,000 acres, which is smaller than the minimum size necessary to support a self-sustaining population of black-footed ferrets as defined in the recovery plan. It appears that density control is intended to provide forage commercial livestock grazing to the detriment of wildlife species that are native to the grasslands. Livestock grazing in the grassland should only be allowed when livestock grazing contributes to the purposes for which the National Grasslands were created. Commercial livestock grazing should not be allowed, especially during times of drought when wildlife species are stressed. In addition, livestock grazing in MA 3.67 buffer areas should not be allowed during droughts so that effective buffers between managed prairie dog habitat and private lands can be promoted. This practice would reduce encroachment onto non-Federal land by maintaining vegetation barriers within the buffer areas.

Proposed Solution to Improve the Decision: The ROD should select No Action or the Draft ROD be withdrawn and the proposed native ecosystem alternative be developed through Supplemental DEIS processes.

Violation of Law, Regulation or Policy: 16 U.S.C. § 1531 et seq.

Connection with Comments: Draft Amendment and DEIS comments on pages 9, 21, and 22.

H. National Forest Management Act

Issue and Statement of Explanation: The Draft ROD on page 23 states that, *“Because this amendment was analyzed in an environmental impact statement, it is considered a significant change in the plan for the purposes of the National Forest Management Act...”*

I strongly agree that this decision would be a significant change to the Thunder Basin National Grassland plan.

Proposed Solution to Improve the Decision: Revise the Thunder Basin Land and Resource Management Plan to address significantly changed conditions, including addressing climate change effects.

Violation of Law, Regulation or Policy: 16 U.S.C. § 1604(f)(5) - the Secretary shall assure that such plans—be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years, and (B) in accordance with the provisions of subsections (e) and (f) of this section and public involvement comparable to that required by subsection (d) of this section.

Connection with Comments : Draft Amendment and DEIS comments on pages 6 through 8.

Thank you for considering this objection.

Greg Warren⁴

Greg Warren

⁴ Signature provided upon request

Appendix A. Map of Management Area 3.67 as referenced in this objection.

