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September 5, 2018

Via Federal Express

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Interim Chief, U.S. Forest Service
USDA Forest Service
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Attn: Brian Ferebee,
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Attn: Russ Bacon
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*Re: Petition for Rulemaking to Revise the Thunder Basin National Grassland
Land and Resource Management Plan and Amend the Thunder Basin
National Grassland Prairie Dog Management Strategy*

Dear Sir/Madam,

Attached please find a petition for rulemaking seeking the United States Forest Service to revise the Thunder Basin National Grassland Land and Resource Management Plan (Resource Management Plan) and amend the Thunder Basin National Grassland Prairie Dog Management Strategy (Prairie Dog Plan). As explained in the attached petition, the petitioners are ranchers whose private property and national grassland grazing allotments have been devastated under the current Prairie Dog Plan. The current Prairie Dog Plan adopted by the Douglas Ranger District, Medicine Bow National Forest in Wyoming is harmful to local landowners and grazing leaseholders in the Thunder Basin National Grasslands and is contrary to the purpose of the Bankhead-Jones Farm Tenant Act of 1937. Not only has the current management of the prairie dog in the Thunder Basin National Grasslands harmed landowners, but it has also threatened irreparable environmental damage to the lands within the Thunder Basin and has harmed many other important species in the area. Petitioners request

that new management plans be adopted to ensure that the Thunder Basin National Grassland be managed for the reason it was acquired; grassland agriculture and land conservation. The new management plans should greatly reduce the prairie dog acreage, authorize proven management strategies that are currently banned, and amend currently ineffective management strategies. Further this new management plan must acknowledge that the Thunder Basin National Grassland is not suitable area to introduce black-footed ferrets and move away from planning for eventual ferret introduction in the region. In order to allow range reclamation to begin, the Forest Service must immediately begin reducing prairie dog colonies in the area. In order to reclaim the damage created by the prairie dog invasion, the Forest Service should reduce the erosion, rejuvenate the forage base, and restore lost topsoil to the Basin. The federal agency must recognize all uses supported by the Thunder Basin National Grassland.

The Thunder Basin National Grassland is located in northeastern Wyoming and encompasses approximately 553,000-acres in Campbell, Converse, Crook, Niobrara, and Weston counties, Wyoming. It is dominated by mixed-grass prairie of the wheatgrass-needlegrass association. The land ownership pattern across the Thunder Basin National Grassland is characterized by intermingled private, state, and National Forest System lands.

Since the early days of the Homestead Act, the area has been used as grazing land. This traditional use has both supported the local economies, and protected the environment by preventing soil erosion. The benefits that grassland agriculture produced in the area did not go unnoticed and much of the land that became marginalized due to farming and tillage during the Dust Bowl was purchased and set aside by the federal government in the 1930s as a Land Utilization Project called Wyoming Land Utilization and Land Conservation Project WY-LU-1. The purpose of WY-LU-1 was “‘grassland agriculture’ which is for livestock grazing and the economic stability of the local ranches.” WY-LU-1 eventually transformed into the modern Thunder Basin National Grassland under the Bankhead Jones Farm Tenant Act (BJFTA). According to the Bankhead Jones Farm Tenant Act, the “program of land conservation and land utilization” established by the BJFTA was aimed at, among other things “correct[ing] maladjustments in land use, and thus assist[ing] in controlling soil erosion, reforestation, preserving natural resources . . . and protecting the public lands, health, safety, and welfare.”

However, despite the shown benefits of grazing in the Thunder Basin National Grassland, and the clear congressional intent that the Thunder Basin National Grassland should emphasize grassland grazing as the preferred use in the area, the Douglas Ranger District’s continued mismanagement and misprioritization of the black tailed prairie dog jeopardizes the continued existence of grazing. In 2017, with only a

partial mapping survey done, there were over 75,000 prairie dog infested acres across all land ownerships. Based on a study conducted by the University of Nebraska, for the Thunder Basin National Grassland, 5.2 acres of prairie dog acreage is equivalent to the loss of one grazing Animal Unit Month (AUM). Thus, as a rough estimate, there are 14,589 AUMs that were lost in 2017 alone, because of prairie dog infestation in the Thunder Basin National Grassland. Under a micro level analysis, the prairie dog infestation has cost \$515,616.87 worth of AUMs annually across four ranches in the basin. The continued expansion of the prairie dog infestation will likely force many of the established ranches in the area out of business.

The unfettered expansion of prairie dogs across the Thunder Basin National Grassland has also had negative impacts to the environment and key species in the area. Studies have indicated that the pesticide the Douglas Ranger District uses to kill fleas on prairie dogs colonies to prevent the spread of the plague has a negative effect on the plover. Further, prairie dog habitat has expanded into sage grouse core areas within the Thunder Basin National Grassland. This expansion in turn led the Douglas Ranger District to request a removal of 6,904 acres from the middle of the sage grouse core area because there is not much suitable sage grouse habitat left.

Additionally, the Thunder Basin National Grassland is unsuitable for black-footed ferret introduction. The US Fish and Wildlife Service and the Wyoming Game and Fish have all agreed the Black-Footed Ferret will not be introduced within the TBNG at this time. There are several studies that show the plague organism can survive within soil and water amoeba protecting itself from adverse environmental conditions, such as extreme temperatures and drought. This allows the Yersinia Pestis, which causes plague, to lie dormant for many years before it is released back into the environment. The Black-footed ferret is highly susceptible to the plague organism and therefore the ferret would not survive within the TBNG when the plague re-establishes itself. Further, many of the locals in the area oppose ferret introduction in the area, viewing ferret introduction as another form of restriction against agriculture and other land use values in the region. Therefore promoting unwanted ferret introductions would be an unpopular move for an already beleaguered Forest Service Office in the area. Because of the frequent episodes of the plague, as well local hostility to ferret introduction, the Thunder Basin National Grassland is not a suitable place for black-footed ferret introduction.

The National Forest Management Act (NFMA) provides that a resource management plan may be revised when the Secretary finds conditions in a unit have “significantly changed, but at least every fifteen years.” The current Resource Management Plan for the Thunder Basin was adopted in 2001. Further, the range conditions in the Thunder Basin National Grassland have significantly changed due to

the devastating effect of the prairie dog infestation in the area. Therefore, the Resource Management Plan is due for a revision.

Further, federal law requires the Forest Service to administer the national grasslands for the purposes for which they were acquired. When the federal government acquires land for a particular public purpose, only Congress has the power to change that purpose or dispose of the acquired land. Thus, federal agencies must manage and administer acquired lands according to the purpose for which the federal government acquired them, unless Congress has authorized otherwise. Additionally, federal agencies such as the Forest Service lack the authority to compel additional uses of the acquired national grasslands other than those for which the federal government acquired the lands. Since the primary purpose of the Thunder Basin National Grassland was to restore deteriorated range conditions and help restore and improve the community's agricultural industry, the United States Forest Service is legally obligated to revise the Resource Management Plan and amend the Prairie Dog Plan in order to serve the purpose for which the Thunder Basin National Grassland was acquired.

The Thunder Basin National Grassland has been on a long road of deterioration due to the mismanagement of the black tailed prairie dog and due to the Forest Service's goal of expanding the short grass prairie ecosystem to the detriment of the naturally occurring mixed-grass prairie ecosystem. Continued mismanagement of the prairie dog could prove irreversibly devastating to not only the local landowners but also the local environment and sensitive species in the area. As a matter of law and as a matter of sound policy, the Secretary of Agriculture should revise the Thunder Basin National Grassland Land and Resource Management Plan and amend the Thunder Basin National Grassland Prairie Dog Management Strategy expeditiously due to the prairie dogs' ability to expand quickly and cause further damage to the Thunder Basin.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Karen Budd-Falen', with a stylized flourish at the end.

Karen Budd-Falen
Conner G. Nicklas
BUDD-FALEN LAW OFFICES, LLC

Xc:

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