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Title: Attorney at Law; Russell Law Office P.L.L.C.
Comments: Rocky Mountain Regional Office

Attn: Reviewing Officer c/o

Strategic Planning

P.O. Box 18980, Golden, CO 80402

Re: Objection to Nebraska National Forest Undesirable Plant Management Project Record of Decision and Environmental Impact Statement

Dear Sir/Madam:

Please find the following formal objection of the Association of National Grasslands (ANG) concerning the Nebraska National Forest Undesirable Plant Management Project ROD and FEIS. The objection protests the lack of coordination with the Grazing Districts, the South Dakota Office of School and Public Lands and Local Governments, including but not limited to Fall River County, South Dakota. This objection recommends that a full NEPA process be initiated to complete a new Land and Resource Management Plan (LRMP) Environmental Impact Statement (EIS).

I. Protest and Need for a New LRMP EIS

ANG protests the fact that the Forest Service has not coordinated with the Grazing Districts, local governments, nor the South Dakota School and Public Lands Office. The Grazing Districts are created by South Dakota Codified Laws Chapter 40-23 and have contractual rights according to the Grazing Agreements entered into with the United States Forest Service. The Commissioner of School and Public Lands was not informed nor coordinated with concerning the recent Undesirable Plant Management Project Record of Decision (ROD) and Environmental Impact Statement (EIS), in spite of the fact that the many state sections managed by that office are actually fenced into Forest Service Grazing Allotments impacted by the ROD and EIS.

Appendix F of the FEIS dismisses the fact that Grasslands Permittees are leasing South Dakota School and Public Lands in conjunction with their Forest Service Leases as a management unit.

"Although the South Dakota School and Public lands is a neighbor to the Nebraska, the proposed actions do not directly affect the management of the agency's lands and resources." Appendix F at 7. This statement belies the fact that South Dakota School Sections are fenced into Forest Service Grazing Allotments across the Buffalo Gap National Grasslands from Scenic to Ardmore. An example is Section 16 in Township 11 South, Range 1 East in Fall River County, South Dakota. South Dakota Administrative Rule 4:01:06:01 states that "The lessee shall identify and control noxious weeds and pests on the leased school land." Both the South Dakota School and Public Land Agency and the Forest Service Permittee/School Land Lessee of that said School Land section are both directly affected and the Forest Service must coordinate. However, "To fulfil this mandate, agencies must consider every significant aspect of the environmental impact of a proposed action in an EIS, including the

direct, indirect, and cumulative impact of the action." *California Resources Agency v. USDA*, 2009 WL 6006102, at 6.

Fall River County, South Dakota, was also not coordinated with by the Forest Service. The Fall River County Community Wildfire Protection Plan was enacted to implement the Healthy Forest Restoration Act of 2003. This is a fatal flaw in the Undesirable Plant Management Project Record of Decision and Environmental Impact Statement process.

"Congress plainly recognized and endorsed the respective states' interest in management of national forests by enacting the provision of the NFMA requiring the Forest Service to coordinate forest planning with state resource management processes. See 16 U.S.C. [sect] 1604(a)." *California Resources Agency v. USDA*, 2009 WL 6006102. The South Dakota Grazing Agreement defines the term Grazing Agreement as "authorizes the Grazing District, established under South Dakota State Codified law and recognized by the Forest Service, to administer the livestock grazing program on National Grasslands, acting as agents of the Forest Service under this agreement for ten years." The South Dakota Grazing Agreement further states that the Parties to the Grazing Agreement Jointly Agree that "[t]he Forest Service and the Grazing District will continue to work cooperatively on projects that relate to grassland management[.]"

The six Grazing Districts organized by South Dakota State Law and all having Grazing Agreements signed by the Forest Service, were not coordinated with by the Forest Service. ANG believes that this omission is a violation of NEPA, NFMA, a breach of contract, and therefore, a violation the Bankhead-Jones Farm Tenant Act.

ANG asserts that the NEPA process should be initiated, and that a new LRMP EIS is necessary for the Forest Service to fulfill its statutory duties. "[T]he Secretary of Agriculture shall develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System, coordinated with the land and resource management planning processes of State and local governments and other Federal agencies." 16 USC 1604(a). "Plans developed in accordance with this section shall[mdash] (5) be revised (A) from time to time when the Secretary finds conditions in a unit have significantly changed, but at least every fifteen years[.]" 16 USC 1604(f).

The Nebraska National Forest has labored under the current LRMP for 22 years. The deficiencies are legion. Evidence of the deficiencies cannot be understated. Evidence of some of the deficiencies of the LRMP were outlined in three separate and distinct Plan Amendments. Many deficiencies persist. For example, the low structure requirement of the LRMP has caused great ecological damages, including but not limited to: the bubonic plague's arrival on the NNF that was facilitated by the density and interconnectedness of the NNF's prairie dog population; the documented wind and soil erosion on the NNF; and the deterioration of range health and ecology throughout the NNF.

The previous Stony Butte Assessment and the Prairie Restoration Research Project and this DEIS document all make it clear that the current LRMP should be redone. Table 11 of the Stony Butte Assessment demonstrated one of the most glaring failures of the LRMP. Since 1990, exotic grasses dramatically pushed out native grasses on the Fort Pierre National Grasslands. Although that Table was incomplete and did not provide the numbers for all the pastures, it demonstrated that the most infiltrated pastures with exotic grasses were those that had been significantly rested during this LRMP's implementation.

The Stony Butte Assessment then recommended the following: "Use combination of rest and prescribed fire, grazing, haying, and mowing to better achieve LRMP objectives regarding vegetative composition diversity, specifically by reducing invasive grasses and forbs." Stony Butte Assessment at 47. These solutions appear to be driven by the LRMP directives that Table 11 demonstrated are not improving the range conditions. "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 Stoney Butte Assessment further prognosticated that "This will require carrying forward for detailed NEPA analysis proposals for prescribed fire, haying, and mowing." Id. The scant information available from Table 11 in 2016 demonstrated that grazing prevents the spread of the exotic grasses.

In ANG's 2016 formal comment, the following statement was written: "A fair conclusion would be that the scope of NEPA process should be broadened beyond the fire, haying and mowing to include grazing, and greater use of chemicals consistent with long-past practices. Clearly, the LRMP dictates are constricting the NEPA analysis to double-down on what may very well be the causes of the invasions of exotics. An EIS is necessary, Forest wide."

The Undesirable Plant Management Project DEIS outlined the problem to be solved in the following manner: "The Nebraska's current management of undesirable plant species is based on outdated management direction and did not analyze the effects of aerial application of herbicides, prescribed fire, or treatment of aquatic invasive species (such as, saltcedar, purple loosestrife, narrowleaf cattail)."

ANG is consistently told by the Nebraska that lack of funding precludes any monitoring necessary to assess the LRMP's Direction to assess the Similarity Index to allow the implementation of the Natural Resource Conservation Service similarity index of at least 25% in order set forth mitigation measures that should be taken to repair, restore and rehabilitate the entire management area. ANG is further told by the Nebraska that Grazing Districts' Conservation Practices monies will have to be used for prairie dog control, archeological studies and a myriad of other excuses why the Forest Service cannot currently perform the most basic functions of the LRMP, as amended.

ANG believes the Nebraska Undesirable Plant Management Project FEIS is exclusively designed to burn. Aerial application of chemicals is expensive[mdash]more expensive than the ground-based equipment the Forest Service is currently authorized to use, but completely and grossly under-utilizes. Prescribed fire monies are dedicated from a reliable funding source. On the contrary, aerial spraying monies will be reliant on the whims of Forest Service funding priorities that are unreliable at best. The Nebraska consistently excuses its noncompliance with prairie dog control on lack of monitoring and funding. The monitoring, "early detection" and "rapid response" discussed on Page iv of the FEIS, appears to be pie-in-the-sky type of hyperbole. Burning up to 50,000 acres per year with streamlined NEPA evaluation appears to be the expected result of the ROD and FEIS.

Again, the 2016 Stony Butte vegetative structure section concluded with the recommendation that "This will require carrying forward for detailed NEPA analysis proposals for prescribed fire, haying, and mowing." ANG asserts that NEPA analysis must include evaluation of the true value of prescribed fire, haying and mowing compared to grazing, chemical treatments and establishing a carrying capacity for the prairie dog population to keep the prairie dog population healthy and plague free and the range ecology healthy. The Forest Service, the current LRMP and the FEIS have failed to protect the native species, the vegetation and the letter and the spirit of the Organic Act. A new LRMP EIS is the only remedy.

II. Proposed Alternative:

ANG proposes for consideration as an alternative the following:

Develop additional water sources throughout the allotments that will enable better distribution of livestock within the allotments in order to provide additional options for proper management consistent with the Bankhead-Jones

Act (Organic Act) and the implementing regulations, thereby improving range health and ecology. Expressly allow the implementation of the Natural Resource Conservation Service similarity index of at least 25% or the equivalent Ecological Site Descriptions throughout the NNF and set forth actual triggers mandating monitoring and mitigation measures that are required to be taken to repair, restore and rehabilitate the entire management area. Fully engage in a NEPA EIS evaluation in order to additionally establish optimal numerical goals for the control and management of the prairie dog population to increase soil and vegetation cover and reduce invasive species. Establish a prairie dog carrying capacity for the units and manage the population to achieve the desired range conditions consistent with the Organic Act.

III. Coordination with State and Local Governments and permittees

The South Dakota Commissioner of School and Public Lands manages state lands within and adjacent to the allotments in question. ANG respectfully requests that the Forest Service fully comply with 36 C.F.R. 219.7 by engaging in full coordination with the South Dakota Commissioner of School and Public Lands, its lessees and Fall River County consistent with *California Resources Agency v. USDA*, 2009 WL 6006102. Please see the attached letter from Brock Greenfield, SD Commissioner of School and Public Lands.

IV. Meaningful Analysis and Comment

The Stony Butte Landscape Assessment stated in 2016 that the management issues include "shortages of desired low and high structure vegetation as well as vegetative diversity." Assessment Page 4. ANG would like to have specific information in Tables and Figures about each of the pastures to determine what prescriptions are not being met, demonstrating the trend of each pasture since development of the LRMP, years grazing was permitted, years the pasture was rested, and the occupancy of each pasture by prairie dogs and the density, in order to make meaningful comment and proposals for alternatives to be included in the NEPA process; however, the above-outlined alternative, if properly analyzed during anew LRMP EIS process, will allow for meaningful evaluation and future decision making that remedies any potential range condition, vegetation and ecology problems. "[P]ublic scrutiny [is] essential." 40 C.F.R. 1500.1(b). "The Service is tasked to 'encourage and facilitate public involvement in decisions,' Id. at 1500.1(d), so that 'environmental information is available to public officials and citizens before decisions are made.' Id. at 1500.1(b)." *Klamath-SiskiyouWildlands Center v. Bureau of Land Management*, 387 F.3d 989, 996.

The NEPA process must "[r]igorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study briefly discuss the reasons for their having been eliminated." 40 C.F.R. 1502.14(a). "This court recognizes the broad scope of an agency's duty to study all reasonable alternatives. Appearing twice in the text of NEPA, the duty is more pervasive than the duty to prepare an EIS." *Bob Marshall Alliance v. Watt*, 685 F. Supp. 1514, 1521-22 (D. Mont. 1986).

ANG respectfully requests that the Undesirable Plant Management Project ROD and FEIS set aside and that the Alternative outlined and suggested above be included and incorporated into a new LRMP EIS NEPA analysis.

CONCLUSION

Thank you for the opportunity to object, protest, comment and suggest alternatives. ANG would very much appreciate any additional opportunities to participate in the objection process and a new NEPA LRMP EIS

planning process. ANG demands the statutory and contractual rights to coordinate and work cooperatively on the proposed projects that relate to grassland management. If you desire any additional information, please do not hesitate to contact us at your convenience. We look forward to your response to this objection and to further participation and discussion in the objections process.

Sincerely,

Ty Checketts, President

Enclosure

cc: US Senator John Thune

US Senator Mike Rounds

South Dakota Secretary of Agriculture Hunter Roberts

South Dakota Commissioner of School and Public Lands Brock Greenfield

Public Lands Council