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Working to Protect and Restore Our Public Lands

Objection Reviewing Officer Christopher Carlton
Dell Creek and Forest Park Elk Feedlots Project
USFS Intermountain Regional Office
Room 4403, 324 25th Street
Ogden, UT 84401



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September 11, 2025

**OBJECTION OF THE DELL CREEK & FOREST PARK ELK FEEDLOTS ROD ON THE
BRIDGER TETON NATIONAL FOREST**

Dear Mr. Carlton,

I am sorry that it is your duty to have to step into this long-standing issue which, because of the failure to correct the problem over the last three to four decades, has now reached a crisis point.

Most Forest Service decisions have geographically and temporally relatively minor impacts of well-known extent, like clear cutting a few thousand acres, drilling some gas wells or the like. The issue at hand here is unlike any of the typical actions the Forest Service authorizes.

This authorization, along with its connected actions for the rest of the elk feedlot network in northwestern Wyoming is precipitating one of the worst wildlife catastrophes of the last century, that is rendering Greater Yellowstone ecosystem toxic in perpetuity.

Before you begin analyzing objections, you need carefully educate yourself on 1) the ethics and morality of wildlife feeding 2) the effect of artificial concentration on wildlife disease transmission 3) issues specific to prion diseases, modes of transmission and environmental contamination.

Unlike disease agents we are familiar with, bacterial, viral and fungal, prions are not living organisms, require only a few prions to infect a host, have a 100% mortality rate and are virtually indestructible, remaining infectious for decades in the environment and are not denatured through normal sterilization methods, and only being rendered sterile when incinerated at temperatures over 1,000 degrees.

Not a bad place to start is the review of the issues in Judge Freudenthal in her ruling against the Forest Service for their previous decision related to elk feedlots. I attach it to this objection for the ease of your review.

The scientist's amicus brief in that case, also attached, is an excellent review of the issues surrounding artificial feeding of wildlife and in particular this network of elk feedlots.

In 2016 the Forest Service commissioned a study by professors at the University of Montana to examine the Forest Service's responsibilities regarding the management of wildlife. When they were presented with the draft of the study, the Forest Service tried to suppress the release because the conclusions were opposite of what the Forest Service wanted for the results of the examination. The authors went ahead and published the examination in *Environmental Law*, Vol. 47, no. 4 (2017). We attach a copy for you given the direct and critical importance of this legal review to your review of this objection.

The title of the law review is Fish and Wildlife Management on Federal Lands: Debunking State Supremacy.

Aside from a few Wyoming Department of Game and Fish employees who are paid to support the elk feedlot network, some of the livestock industry organizations in the state (agriculture, in Wyoming, as a whole which includes more than just the livestock industry, makes up a tiny 1.5% (not 15%) of the state's economy) and the outfitter industry which is so tiny as to be unmeasurable, who are paid by people who want to shoot elk.

This tiny coalition has, for decades, shortsightedly dictated to the Forest Service that this network of elk feedlots continues despite all the ethical, moral, scientific and legal reasons for ending this action.

Unfortunately, Randy Griebel and Chad Hudson, in this current process have continued the long history of Forest Service deference to whatever the State of Wyoming wants to do.

Despite the many repeated cases against the Forest Service, and the repeated chastisements by courts, as we discuss later in this objection, the Forest Service failed, again, to demand from the State a complete and honest application for this Special Use Permit (SUP). The application has a wide range of fatal flaws, that, if the Forest Service was doing its job, would have resulted in summary rejection. But instead, it appears that the Forest Service failed to actually read the application because it, on its face, does not comply with the requirements for the issuance of an SUP. The failure to require a valid application from the state was a central issue in the last Forest Service loss in court.

Christopher, you are the responsible official who will make the decision whether to uphold the Forest Supervisor's and Randy Greibel's spinelessness and continue the status quo elk feedlot program which will result in a massive die-off of the region's elk and essentially permanent contamination of the Greater Yellowstone Ecosystem (GYE) with infectious prions, or finally, put the Forest Service in line with basic ethical, moral, scientific and legal principles.

It is up to you. Please do the right thing, even if it is not the easy thing.

Keep in mind the famous words of Aldo Leopold:

A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community.

It is wrong when it tends otherwise.

Let's start this objection with the DROD.

Many of the statements in the DROD are false, disingenuous, misleading or bald assertions with no support.

Many of these statements flow from the NEPA documents.

The operation of elk feedgrounds increases the risk of CWD transfer among elk and other ungulates but limits the risk of brucellosis transfer to cattle on nearby private lands. DROD at 1.

The elk feedlots dramatically increase the prevalence of brucellosis (a cattle disease transferred from cattle to elk). Brucellosis rates in feedlot populations are around 50% compared to 0% (in populations with no connection to feedlot populations) to 10% (in populations with some connection to the feedlot populations of the GYE. Secondly, as discussed in more detail later, neither of the two elk feedlots are in areas elk would winter without the artificial feeding that takes place on the elk feedlots.

Then for one of the two feedlots, Forest Park, has no private lands, let alone and cattle on those private lands within probably 10 miles as the crow flies or 50 miles as the cow walks. To say that there are "cattle on nearby private lands" in relation to one of the two feedlots is simply a lie.

For the other elk feedlot, Dell Creek, no elk would be wintering in the Bondurant Basin naturally. They only now winter there because of the feedlot itself.

It has created the very problem it purports to solve.

Brucellosis can be transferred from elk to cattle, and is a contagious, costly disease with animal health, public health, and international trade consequences. DROD at 1.

First, as mentioned above, brucellosis is an old-world cattle disease that infected native wildlife. Wyoming has lost its brucellosis free status on a number of occasions with little to no effect and the affected rancher was compensated (with tax dollars of course). So the statement is not a complete and outright lie but is purposefully misleading.

One of the BTNF Land and Resources Management Plan (Forest Plan) goals is to help communities continue or gain greater prosperity by helping to re-establish historic elk migration routes to provide increased viewing and hunting opportunities for outfitters and clients (page 140, goal 1.1(g), Forest Plan 1990, USFS 2015). I remain committed to this goal in the long term, but by design, feedgrounds modify migration patterns. DROD at 3.

Simply having Chad (or Randy) state they are “committed” to compliance with the Forest Plan is not conformance. Under this logic the entire Forest Plan could be ignored if someone baldly asserts they are “committed” to the Forest Plan. This is a farce.

Examples include: (1) BTNF is currently a federal cooperating agency partner for updating the Bison and Elk Management Plan and environmental impact statement (EIS) for the National Elk Refuge, (2) Forest Service participated in WGFD’s collaborative process to explore management options and seek consensus regarding strategies to reduce the prevalence of CWD in Wyoming’s ungulate populations, (3) BTNF actively participated as a team member for development of the WGFD’s Elk Feedgrounds Management Plan, which is intended to chart a long-range path for feedground management, and (4) Closing the Alkali Creek elk feedground and removing all supporting infrastructure in 2024. Re-establishing historical elk migration routes will take the combined effort and cooperation of state and local agencies, as well as private organizations and citizens. In some cases, this may not be possible with the development pressure that has occurred since our Forest Plan was signed.

- 1) Cooperating agency means nothing.
- 2) That process specifically removed closure of the feedlots from any discussion, let alone any action.
- 3) Again, that process specifically removed closure of the feedlots from any discussion, let alone any action.
- 4) That was only done in response to repeated litigation and the Game and Fish Department simply moving the fed elk from the Alkali Creek feedlot to other nearby feedlots, which achieved nothing in actuality.

So all the listed ‘achievements’ are not achievements.

Like much of the EIS and DROD, the Forest Service speech in meaningless generalizations instead of directly addressing the authorization at hand.

For the Forest Park elk feedlot, elk never wintered there prior to the feedlot. Restoring migratory behavior would be as simple as terminating the feedlot. The same is the case for Dell Creek.

the 3-year timeframe allows for continued use of the Dell Creek and Forest Park elk feedgrounds as the WGFD develops their Feedground Action Management Plans (FMAPs) for each individual elk herd and associated feedgrounds, as directed in the WGFD Wyoming Elk Feedgrounds Management Plan (WGFD 2024b). DROD at 3.

We already know what the outcome of the FMAP’s will be because Brian Nesvik refused to allow the process to even discuss feedlot closure. The Forest Supervisor hiding behind the skirt of the Game and Fish Department is, to be blunt, pathetic.

The WGFD has developed the Wyoming Elk Feedgrounds Management Plan (WGFD 2024b) to provide direction for the WGFD regarding elk management in herds that utilize the WGFD operated-feedgrounds. Due to unique circumstances at each feedground, a tailored management plan is necessary at each feedground. The FMAP explores the long-term and short-term opportunities to reduce elk reliance on feed and associated disease transmission risks and could result in changes to WGFD

elk management programs at feedgrounds. Each FMAP will use best available science, expertise, and local knowledge to uniquely implement the strategies identified in the management plan. Immediate and long-term obstacles, outstanding questions, and solutions will be considered. DROD at 3.

Again, the sideboards for this process, that the Forest Service is trying to hide behind, specifically excluded feedlot closure. The Forest Service knows this yet pretends it does not. From a disease transmission and environmental contamination perspective there are no “unique circumstances” that a “tailored management plan” are necessary. The issue is not “reducing the reliance of feed”. No level of artificial feeding solves the problem. The “changes” the Forest Service hopes for are limited by the fact that the process completely eliminated the possibility of closure. The Forest Service knows this, but is purposefully misleading the reader.

Then how could the FMAP’s use “best available science” when the entire process has specifically rejected the best available science? The author’s claim is at best absurdly ignorant.

I decided it would be inappropriate to act unilaterally on this issue, for example, by selecting the NF alternative, there is potential to displace impacts, conflicts, and unintended consequences to other state, private, and federal jurisdictions. Even a small increase in brucellosis transmissions to nearby cattle operations could result in significant financial hardship or force an operator out of business. DROD at 4.

Keep in mind that this pathetic excuse must withstand scrutiny under the APA. We have a number of examples in the last 15 years or so where a rancher’s herd had a brucellosis infection and it neither caused significant financial hardship (they were reimbursed by the tax-payer) and none were forced out of business.

Keep in mind that for the Forest Park feedlot there are no cattle operations anywhere near the feedlot.

For the Dell Creek feedlot there are only 2 ranchers (likely only 1) that winter any cattle in the Bondurant Basin and both are billionaire hobby ranchers. The public deserves at least honesty from our public servants. Unfortunately, honesty is in short supply in the EIS and DROD.

This decision is also made in the context that only an estimated 20 and 12 percent of the elk in the Afton and Upper Green River herd units, respectively, are fed at the Forest Park and Dell Creek elk feedgrounds. DROD at 4.

Again, the author’s ignorance or lack of honesty is on full display here. Do they not interact with the rest of the population during the 8 months of the year when not on the feedlots? Do they not contaminate the environment with the shed prions? Of course.

When compared to the other alternatives, authorizing three additional years of feedground use will allow WGFD time to implement the FMAPs for each elk herd and associated feedgrounds and allow the Forest Service to administer all of the feedgrounds located on NFS lands simultaneously, which will improve management efficiency. DROD at 4.

But the Bridger Teton National Forest already knows what the outcome of the FMAP's will be because Brian Nesvik limited the scope of the process from the very initial stages of the process. We don't have 3 more years to waste. The Forest Service has already wasted decades. Unlike 2019, the crisis is already here. Elk are dropping dead of CWD and the ecosystem is already being permanently contaminated.

My decision is in compliance with the National Forest Management Act (Public Law 94-588). In particular, the decision contributes to the accomplishment of Forest Plan Goal 2.1 - Adequate habitat for wildlife, fish, and edible vegetation to help meet human food needs is preserved and Objective 2.1(a) to "[p]rovide suitable and adequate habitat to support the game and fish populations established by the Wyoming Game and Fish Department, as agreed to by the Forest Service" (Page 142, Forest Plan 1990, USFS 2015).

This can only be described as Orwellian. "Adequate habitat" is not habitat that has been rendered toxic with disease agents that result in 100% mortality rates.

My decision not to select the NF alternative was multifaceted. Because the NF resulted in the highest number of elk on private land, it would increase the risk of brucellosis transmission from elk to livestock. DROD at 9.

Again, keep in mind that this is the rationale that will be examined under the standard of review of the APA.

Remember, there is no private land with livestock anywhere near the Forest Park feedlot so the rationale in that case is simple false. In the case of the Dell Creek there are only 2 billionaire hobby ranchers who even have the potential to winter cattle in the Bondurant Basin. The nearest other private land with wintering cattle is about 30 miles away. And of course, that ignores other simple and cheap solutions to even the few cattle that may winter near the feedlots. And it ignores the fact that the only reason the elk winter in the Bondurant Basin is because of the feedlots. They would not winter there if there were not feedlots.

Objection: The DROD contains a wide range of false and misleading statements that render the decision arbitrary and capricious.

Remedy: Issue an honest ROD that fully complies with NFMA, NEPA and the APA.

Now moving on to the EIS. The following objections are in the exact same order as they appeared in our comments on the DEIS.

The EIS's segmentation of these two feedlots from the rest of the Forest Service permitted elk feedlots, whose permits expire shortly continues the tradition of trying to rely on the bogus logic that since the 'current decision' will not eliminate the impending crisis then we can continue with the status quo because closing the feedlots in question will not solve the problem. While the above excuse is not factually false, it ignores the much larger issue.

Objection: The process segments the issue in order to discount the impacts. The staggered expiration dates is a poor excuse to fail to deal with the entire problem all at once, which we have been asking for for at least 15 years now as the successive Forest Supervisors have dragged their feet.

Remedy: Conduct a combined Forest Service, BLM and FWS NEPA process on the entire feedlot network.

Over the nearly 20 years I have been working on this issue, I have watched as the Forest Service, the BLM, the Wyoming Game and Fish Department and the US Fish and Wildlife Service have dragged their feet, strenuously resisting to implement science, basic morality and ethics while we have all watched CWD expand towards the network of elk feedlots like a lit fuse burning towards the dynamite.

I remember when I was screaming to the agencies that we only had 10 years until it would be too late. Due to agency inaction 10 years became 5 years, and then 3 years, and then 2 years and now its here, now.

<https://wyofile.com/chronic-wasting-disease-advances-near-wyomings-elk-feedgrounds/>

Because of the more than two decades that have been wasted by all the agencies dragging their feet, the agencies have burned through the time that could have been used for a measured and orderly transition to have been completed prior to the arrival of CWD on the feedlots. Now an accelerated program must be implemented.

Since Randy Greibel and the Forest Supervisor have punted on this, the burden is now on you as the one who will either actively aid and abet what will likely be one of the worst North American wildlife crises in the last 100 years to placate a small fraction of the livestock industry and short-sighted outfitters or the one who will expeditiously douse the fuse before the dynamite explodes.

BASIC MORALITY AND ETHICS

The basic morality and ethics question can be well summarized by the famous quote of Aldo Leopold:

A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community.

It is wrong when it tends otherwise.

All wildlife biologists (except a few hired by the Wyoming G&F Department¹) and wildlife organizations and associations are unanimous in their condemnation of artificially feeding wildlife.

There is no debate or question that it is immoral and unethical to artificially feed wildlife.

The clear standard of modern wildlife management using sound scientific principals as expressed by virtually all wildlife scientists and professional organizations is to not feed wildlife, and to manage wildlife and habitat according to science-based evidence that informs best practices for the health of the species, other species affected, and their habitats.

¹ “It is difficult to get a man to understand something, when his salary depends on his not understanding it.” Upton Sinclair.

Just a few examples of this unanimous consensus among wildlife professionals (except again, for those few hired by the Wyoming G&F Department who are willing to publicly abandon basic morality and ethics), we provide here.

The Wildlife Management Institute has a pamphlet titled, “Feeding Wildlife . . . Just Say No!” <https://wildlifemanagement.institute/>

Association of Fish and Wildlife Agencies (AFWA) position states that agencies “should eliminate the baiting and feeding of all wild cervids using regulatory mechanisms such as jurisdictional bans.” (AFWA 2018:33)

AFWA Best Management Practices for Prevention, Surveillance, and Management of Chronic Wasting Disease publication states:

D. Unnatural Concentration of Cervids facilitates CWD transmission and establishment if the CWD agent is present.

1. Prohibit baiting and feeding of wild cervids; prohibit placement of minerals, granules, blocks, or other supplements for wild cervids; provide hay and other feed for domestic animals in a manner that does not congregate wild cervids; prohibit sales and use of other cervid attractants such as synthetic scent lures, foods, flavors, scents, pour-ons, sprays, etc.

AFWA Technical Report on CWD states:

There is currently no evidence that baiting and feeding of free-ranging cervids can be conducted to mitigate increases in the opportunity for disease transmission. There is also no evidence the practice is likely to increase harvest sufficiently to overcome the negative effects of those increases by disease transmission (Rudolph et al. 2006). Any benefits of increased public support or agency credibility that might theoretically accrue from allowing hunters to use bait remain speculative, and potentially unproven. Research has shown that CWD is both contagious and self-sustaining (Miller et al. 1998; Miller and Williams 2004; Miller and Wild 2004; Miller et al. 2000). Baiting and feeding deer artificially concentrates deer, facilitating both animal-to-animal contact and exposure to potentially disease-contaminated sites (Garner 2001; Thompson et al. 2008; Mejía-Salazar et al. 2018). A consequence of increased contacts from baiting and feeding is an increased risk of transmission of infectious disease among deer (Thompson et al. 2008; Becker and Hall 2014; Ramsey et al. 2014; Sorensen et al. 2014). An international panel reviewing CWD management in Colorado emphasized that, “Regulations preventing... feeding and baiting of cervids should be continued” (Peterson et al. 2002). In preventing, managing or controlling CWD, states should consider the socio-economic consequences of prohibitions on baiting and feeding.

We provide this reference in its entirety.

The Wildlife Society’s Code of Ethics, in its Standards for Professional Conduct describes members’ “prime responsibility to the public interest, conservation of the wildlife resource, and the environment. They shall exercise professional judgement, and avoid actions or omissions that may compromise these broad responsibilities. They shall cooperate fully with other professionals in the best interest of the wildlife resource.”

The Wildlife Society's policy on Baiting and Supplemental Feeding of Game Wildlife Species explains that "public baiting and feeding of game is often detrimental to wildlife resources," The policy states, "Encourage fish and wildlife agencies, wherever possible, to phase-out supplemental feeding of wild ungulate populations, both in-house and by the general public, and to manage populations at levels that are compatible with the long-term carrying capacity of the habitat."

The Wildlife Society's Standing Policy on Wildlife Disease states, in part:

Preventing introduction of disease into susceptible populations is a paramount responsibility of wildlife professionals as stewards of the resource, and is the most effective method of disease management.

The right, moral and ethical path is obvious. The only question is whether you will cave to the political pressure of the livestock industry and a few outfitters, or if you will do what is right, moral and ethical.

I don't know if you have studied the Public Trust Doctrine but it also should support and inform your decision.

You, since the Forest Supervisor prioritized placating the few proponents of the feedlots, now play a major role in the discharge of the federal government's public trust responsibilities.

In order to better understand your role in the discharge of the federal government's public trust responsibilities, we provide the Forest Service funded research paper titled Fish and Wildlife Management on Federal Lands – Debunking State Supremacy.

Yes, I understand reading a 136 page law review may not be appealing, but you, as the final decision-maker must clearly understand your responsibilities. This is critical given the extremely high stakes of the decision sitting before you here.

I also provide Reclaiming the National Interest in Federal Public Lands & Wildlife Conservation published around the same time as the law review article.

Decker et al, 2016 published in the Journal of Wildlife Diseases speaks directly to you as the final decision maker sitting in front of a decision with massive implications regarding disease spread and contamination and the public trust responsibilities of you as the decision-maker on behalf of the federal government.

A Comprehensive Review of the Ecological and Human Social Effects of Artificial Feeding and Baiting of Wildlife by L. Dunkley and M.R.L. Cattet in 2003 summarized their finding:

Significant ecological effects of providing food to wildlife have been documented through observation and experimentation at the individual, population, and community levels. The increased potential for disease transmission and outbreak is perhaps of greatest and immediate concern; recent outbreaks of bovine tuberculosis and chronic wasting disease in Canada and the United States giving credence to this point. Nevertheless, even if disease is prevented, other significant ecological

concerns exist. Disruption of animal movement patterns and spatial distribution, alteration of community structure with reduced diversity and abundance, the introduction and invasion of exotic plant species, and general degradation of habitat are all major negative effects that have been documented at different locations in North America. Further, it would appear the costs of such effects are unlikely to be outweighed by any long-term benefits. For example, the record of success for artificial feeding programs has been generally low (Carhart, 1943; Doman and Rasmussen, 1944; Dahlberg and Guettinger, 1956; Keiss and Smith, 1966; Lewis and Rongstad, 1998). In many instances, large-scale feeding efforts have created feed-dependent populations existing in numbers that exceed the carrying capacity of their environment (Ozoga and Verme, 1982; Ontario Ministry of Natural Resources, 1997 – see www.mnr.gov.on.ca/mnr/pubs/deer2.pdf; Williamson, 2000). (emphasis added)

I provide the entire paper for your review as the entire paper is directly applicable to the proposal.

Now what does the Wyoming Game and Fish Department say about wildlife feeding when they are not lying?

Well, you can see in the attached article written by the Department, titled Feeding Wildlife: A Recipe for Disaster (attached)

data collected over the last 50 years indicates that feeding causes a great deal of harm and may actually decrease winter survival. Feeding increases disease transmission, causes habitat degradation, can upset the normal digestive process, interferes with wildlife social structure, and may attract predators and other problem wildlife.

When animals are fed, they tend to congregate in unnaturally high numbers. This high density allows diseases to be transmitted much more quickly.

It brings wild animals together that may be carrying different diseases and allows diseases to spread more easily.

Some of the diseases that occur when people feed wildlife include bovine tuberculosis, brucellosis, chronic wasting disease, tapeworms and other parasites and canine distemper.

Feeding and baiting has been banned in the area affected in an effort to control the outbreak, but once this disease is well established, it is very difficult to completely eradicate it from a wild population. Thus, it is very important not to allow TB to become established in Wyoming wildlife.

One of the best preventative steps in this effort is not to feed wildlife.

When wildlife are fed, transmission becomes very efficient.

Brucellosis has been documented in 19 feedgrounds and almost certainly exists in the untested feedgrounds. The disease is virtually nonexistent in elk herds that are not fed or closely associated with herds that are fed. There is no doubt that feeding

elk has allowed the disease to persist. Likewise, there is little doubt that if feeding were discontinued and the elk used native winter ranges, the disease would eventually disappear over time.

Biologically, it would be preferable to close existing feedgrounds.

Because there is no known way to control the disease [CWD] once it spreads, the feeding of deer and elk, especially in southeastern Wyoming, is discouraged.

Finally, it can be questioned whether feeding wildlife is even ethical. Wildlife have evolved and adapted over millions of years to exist on natural forage. A given amount of habitat can only support a given number of animals. Often, we destroy habitat, which then leads to wildlife dying of starvation. Feeding allows us to think we are compensating for habitat destruction when, in fact, it makes a bad situation worse. We need to face the fact that the only way to offset habitat destruction is via habitat improvement.

The evidence is undeniable. Wildlife are adapted to survive winter without supplemental feeding. Feeding causes many more problems to wildlife than it solves. Additionally, it can be harmful to humans and domestic animals.

Christopher, given the unanimous opposition to feeding wildlife among professionals (except those few hired by the Wyoming Game and Fish Department who are willing to lie for their boss) how could you possibly determine that authorizing these SUP's is "in the public interest"?

At certain points in one's life, one is faced with a dilemma between doing the easy, expedient, but unethical choice, or having a spine and doing what is right, moral and ethical. This is just such a point for you.

Objection: The DROD is immoral, unethical and fails to implement the best available science.

Remedy: Cancel the SUP's.

Just as a reminder, the Bridger-Teton Mission Statement is as follows:

The employees of the Bridger-Teton National Forest are dedicated to sound natural resource management. We care for the land by improving and maintaining healthy Forests and rangelands, clean air and water, and diverse habitat for fish and wildlife populations. We serve the people by encouraging responsible use of the resources our Forest provides.

We aim to be progressive leaders in natural resource management. We work effectively as a team, committed to timely completion of projects to meet resource and public needs. We value public comment, we foster partnerships and we are active in our communities.

Above all else, Bridger-Teton National Forest employees respect each other and the public we serve.

The Vision Statement is:

The Bridger-Teton National Forest is home to world-class headwaters, wildlife, wilderness and wildlands. Conserving these values, in concert with providing for sustainable uses, is our legacy. We are leaders committed to service, action and excellence.

Objection: The EIS and DROD fail to implement the mission and vision statements of the Bridger Teton.

Remedy: Cancel the SUP's

FOUNDATIONAL LAW AND POLICY

The National Forest Management Act (NFMA) at 16 USC 1607 mandates that:

The Secretary shall take such action as will assure that the development and administration of the renewable resources of the National Forest System are in full accord with the concepts for multiple use and sustained yield of products and services as set forth in the Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. 528–531].

Would the continued permitting of these elk feedlots on Forest Service lands and the obvious and predictable result of the widespread die off of elk along with the resultant essentially permanent contamination of much of the GYE be “in full accord with the concepts for multiple use and sustained yield of products and services”? Of course not.

NFMA, at Section 2 subsection 6 mandates that:

(6) the Forest Service, by virtue of its statutory authority for management of the National Forest System, research and cooperative programs, and its role as an agency in the Department of Agriculture, has both a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture that will meet the requirements of our people in perpetuity;

Would maintaining the status quo by continuing to permit this network of elk feedlots fulfil the Forest Service's “responsibility...to be a leader [in] conservation”? Of course not.

NFMA, at Section 5, demands that the Forest Service:

protect and where appropriate, improve the quality of soil, water, and air resources;

Would your authorizing an action on Forest Service lands that results in the widespread and essentially permanent contamination of soil and water comply with this mandate? Of course not.

Objection: The EIS and DROD fail to comply with NFMA.

Remedy: Cancel the SUP's

The Multiple Use Sustained Yield Act states:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (16 U.S.C. 528) it is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes.

Would your authorizing an action on Forest Service lands that results in the widespread and essentially permanent contamination of soil and water and disease spread across the region be “for watershed and wildlife...purposes”? Of course not.

Importantly, the act provides the following definitions:

(a) “Multiple use” means: The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output.

(b) “Sustained yield of the several products and services” means the achievement and maintenance in perpetuity of a high level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. (emphasis added)

Would issuing permits that the Forest Service itself admits will cause essentially permanent contamination of soils, plants and water with infectious prions result in “impairment of the productivity of the land”? Of course.

In addition, Chad, you as the decision maker, are required to consider the “relative values of the various resources”. This “consideration” must be clearly documented in the administrative record along with the rationale to support your decision as to the relative values of the resources involved.

Objection: The EIS and DROD fail to comply with MUSYA.

Remedy: Cancel the SUP’s

Flowing from these statutes are Departmental and Agency directives that you must comply with.

Let's start this examination with Departmental Regulation 9500-4. Departmental Regulations are issued by the Secretary of Agriculture and apply to all entities within the Department of Agriculture.

DR 9500-4 lays out the Department's Fish and Wildlife Policy. The Purpose statement:

The purpose of this regulation is to state the policies of the U.S. Department of Agriculture with respect to management of fish and wildlife and their habitats and to prescribe specific actions to implement the policies.

Section 3 requires that:

the Department is to improve, where needed, fish and wildlife habitats, and to ensure the presence of diverse, native and desired nonnative populations of wildlife, fish, and plant species, while fully considering other Department missions, resources, and services.

Specific to Forest Service lands, Section 3 A-1:

Habitat goals for threatened or endangered plants and animals, species with special habitat needs, species in demand for hunting, fishing, and trapping, and for other species as appropriate, will be established and implemented. This will be accomplished through the Forest planning process in response to targets identified in the Forest and Rangeland Renewable Resources Planning Act (RPA) program and public issues and concerns brought up in the planning process, consistent with available resources. Habitat goals will be coordinated with State Comprehensive Plan developed cooperatively under Sikes Act authority and carried out in forest management plans with State cooperators. Monitoring activities will be conducted to determine results in meeting population and habitat goals.

Subsection E states that:

Programs of the Department will seek to alleviate damage by...animal pests to...wildlife and their habitats.

Would issuing permits that the Forest Service, itself, admits will cause essentially permanent contamination of soils, plants and water with infectious prions be in accordance with this requirement? Of course not.

DR 9500-7 lays out the Department's Non-point Source Water Quality Policy. Section 4 A requires that the Forest Service:

Promote the improvement, protection, restoration, and the maintenance of water quality to support beneficial uses.

Would issuing permits that the Forest Service itself admits will cause contamination of water with infectious prions be in accordance with this requirement? Of course not.

Objection: The EIS and DROD fail to comply with Departmental Regulations.

Remedy: Cancel the SUP's.

Next, let's move on to requirements that the Forest Service has issued for itself.

In the requirements for issuing Special Use Permits such as is being considered here, FSH 2709.11 Chapter 10 at 10.2 3 requires that the Forest Supervisor, as the decision-maker determine that issuing these permits with their attendant impacts such as disease spread, die offs and essentially permanent contamination of soil, plants and water across much of the GYE is "in the public interest". Of course, the rationale provided (or if none is provided) would be reviewable under the "arbitrary and capricious" standard of the Administrative Procedures Act.

The DEIS fails to contain such a determination. The DROD fails to contain such a determination.

10.41 requires that the Forest Supervisor, as the Authorized Officer:

3. Deny proposals and applications to use National Forest System lands that are not consistent with the management of the National Forests (FSM 2703.2).

Of course, to determine whether or not a use is "consistent with the management of the National Forests" (note that this goes far beyond the duty to determine consistency with the Forest Plan), the rationale must be documented and that rationale must include all the requirements for the management of National Forests, including NFMA, FLPMA etc.

The EIS and DROD fail to comply with this requirement.

At 15.2 of this FSM, the Forest Supervisor, as the decision-maker is required that:

When the holder is a State or local governmental entity that has statutory or constitutional authorities limiting its liability or obligation to indemnify, the Authorized Officer shall prepare a risk assessment to determine the potential for loss to the United States from personal injury, death, or property damage caused by the holder's use and occupancy. (emphasis added)

The EIS and DROD fail to contain such a risk assessment Given that the entire focus of this EIS is on issuing a Special Use Permit, that the Forest Service failed to review its own requirements specific to the issuance of Special Use Permits (or worse, and more likely chose to ignore them) is unacceptable malfeasance.

Simply having an agreement between the Forest Service and the state does not fulfil the clear mandate that the "Authorized Officer shall prepare a risk assessment".

FSH 2709.11 Chapter 20 requires that costs of permitting, such as this NEPA process and monitoring costs be paid for by the applicant. Nowhere in the DEIS is this requirement discussed, likely because the authors are unaware and failed to review the requirements directly applicable to the proposal, or worse, chose to simply ignore them.

Again, if the Forest Supervisor wanted to claim an exemption under 23.6 he would have needed to provide the public with complete rationale. Of course, the rationale provided (or if none is provided) would be reviewable under the "arbitrary and capricious" standard of the Administrative Procedures Act.

Forest Service Manual 2700 Chapter 2700 – Zero Code at 2703 requires that the Forest Supervisor:

2. Authorize use of National Forest System lands other than noncommercial group uses only if:
 - a. The proposed use is consistent with the mission of the Forest Service to manage National Forest System lands and resources in a manner that will best meet the present and future needs of the American people, taking into account the needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific, and historical values; and
 - b. The proposed use cannot reasonably be accommodated off National Forest System lands, provided that this requirement may not be applied in a way that conflicts with paragraph 1 of this section.
3. Do not authorize the use of National Forest System lands solely because it affords the applicant a lower cost or less restrictive location.

Again, for your decision to not be arbitrary and capricious you must provide a rational basis, in writing, as to how authorizing these SUP's complies with the above requirements and other aspects of your applicable directives.

Since the Forest Service failed to provide rationale in the DEIS, this would be new information for public comment prior to the decision.

In describing the purpose of the Forest Service Directive System, the agency states:

The Forest Service Directive System consists of the Forest Service Manual (FSM) and Handbooks (FSH), which codify the agency's policy, practice, and procedure. The system serves as the primary basis for the internal management and control of all programs and the primary source of administrative direction to Forest Service employees. New or revised continuing direction is issued by amendment; short-term direction is issued by interim directive; and direction supplementing that issued by an external or higher level is issued by supplement.

As such, Directives can not simply be ignored when inconvenient, as has been done in this case.

The Washington Office continues discussing whether Directives are binding on employees:

The words used to issue direction, not whether the direction is located in the Manual or Handbook component of the Directive System, determine how binding the direction is on Forest Service employees. The use of the helping verbs "must" and "shall" or imperative mood (where the subject "you" is understood) convey

mandatory compliance; "ought" and "should" convey required compliance, except for justifiable reasons; and "may" and "can" convey optional compliance.

In general, the Manual contains the more significant policy and standards governing Forest Service programs, and thus the consequence of not complying with Manual direction is generally more serious than noncompliance with Handbooks. However, procedural direction in a number of Handbooks is often equally important.
(emphasis added)

From an Administrative Procedures Act perspective:

Agencies must “follow their own regulations, procedures, and precedents, or provide a rational explanation for their departure.” *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 305 F.3d 1152, 1165 (10th Cir. 2002).

Other courts have stated the same principle, As discussed in *WWP v. Salazar* (4:08-CV-516-BLW, D Idaho):

They are both official BLM policies that on their face apply to the Craters EIS but were not discussed in that NEPA document. At the very least, NEPA requires the BLM to discuss its own official policies that on their face apply directly to the review at issue. See *ONDA*, 625 F.3d at 1115-16 (holding that court could examine agency official policies in determining adequacy of EIS)..... It does not matter whether the Policy and Strategy contain requirements or only guidelines – either way, the BLM violates FLPMA by completely disregarding its own policies on the drafting of RMPs without discussion or analysis in the RMPs at issue or the accompanying EISs. See *Atchinson v. Wichita Board of Trade*, 412 U.S. 800, 808 (1973) (where agency modifies or overrides its longstanding precedents or policies, it “has the duty to explain its departure from prior norms”)... BLM cannot make informed decisions if it does not consider all relevant information at its disposal. Nor can the public evaluate BLM’s decisionmaking without being fully informed.....NEPA, however, requires BLM to disclose its data and its analysis in its NEPA documents so BLM’s decisionmakers and the public can review it, critique it, and comment on it. *WWP v. BLM* 4:09-CV-298-EJL D of Idaho

USDA Departmental Regulation 4070-735-001 mandates that all USDA employees

4. POLICY

It is USDA’s policy that its employees:

- a. Maintain high standards of honesty, integrity, and impartiality;
- b. Adhere to the rules set forth in this directive, as well as all directives referenced in section 2 of this directive;

- c. Comply with lawful supervisory direction; and
- d. Comply with work-related laws, regulations, and policies.

As is obvious, each Forest Service employee must comply with law, regulation and policies.

It is not for the IDT and the line officer to discard policy that does not support their agenda or that they find inconvenient.

We provided directly applicable policy directives in our scoping comments, our DEIS comments and our DSEIS comments, but like all the rest of the material we provided, it was entirely ignored, because the directives we provided are inconvenient to the agency's supplication to these permittees wishes.

“courts must overturn agency actions which do not scrupulously follow the regulations and procedures promulgated by the agency itself.” *Sierra Club v. Martin*, 168 F.3d 1, 4 (11th Cir. 1999)

Objection: The EIS and DROD fail to comply with directly applicable Directives.

Remedy: Cancel the SUP's.

THE FOREST PLAN

In reviewing Table 50 of the EIS, we found a disconnect between the relative honesty of the main body of the EIS and lack of honesty and lack of factual support (rational basis) for many of the determinations provided in this table. It is as if the person who wrote Table 50 either had not read the EIS or had chosen to ignore the massive weight of scientific evidence, in his rush to conclude that continuing the feedlots would comply with the Forest Plan. Since Forest Plan compliance is mandatory, he had to perform logical contortions since he had to determine, no matter what, that continuing the feedlots complies with the Forest Plan.

Christopher, as you review Table 50 carefully, examine the rationale, if you can even call it that, provided under the Proposed Action and see if it would pass judicial review under the “arbitrary and capricious” standard of the APA.

I would suggest you review this with Ken Paur because the statements made in the main body of the EIS do not support the conclusions in Table 50, which is the essence of arbitrary decision-making.

One Guideline not mentioed in the table is:

Epidemic Insect and Disease Treatment Guideline -Epidemic insect and disease populations should be controlled or prevented.

How does authorizing an action guaranteed to dramatically increase disease populations, control or prevent disease? Of course the proposed action does not comply with the Guideline.

Goal 1.3 – How does the contamination of surface waters with disease agents “retain or improve water quality”? How would such contamination “protect...water supplies? How would such contamination not “cause deterioration in water...quality”?

Note that no rationale is provided to support the author’s baseless assertion.

The Water Quality Standard – the author’s unsupported determination fails to consider prion contamination and Chapter 1, Section 15 and 16 of the state standards.

The author also ignores “at a minimum”.

Fisheries and Wildlife Prescription 2B – Here, the author focuses on competition between elk and other big game species, a completely natural process that has occurred for hundreds of thousands of years that these species have existed together in western North America, but he conveniently ignores the proverbial ‘elephant in the room’, how would the essentially permanent and widespread contamination of the GYE, with infectious prions and the resultant die offs ‘contribute to the attainment’ of 2B? Of course, the continued authorization of the feedlots would not support this. Randy is looking through a straw.

Even more stunning is the contorted farcicality provided under the Big Game Habitat Guideline. Feeding elk and the resultant die off “reduces competition for native winter habitat”.

The person who wrote Table 50 lacks either the professional expertise or professional ethics to be employed in public service.

Migration Corridors Guideline - Here again, the author of Table 50 displays his ignorance, purposeful or otherwise, of the contents of the EIS, the Cook report and the massive of scientific and professional literature as he places his head deeply in the sand by ignoring the clear letter and intent of the Guideline of reestablishing “historical” migration routes which have been destroyed by the feedlot network.

We remind you again of A Comprehensive Review of the Ecological and Human Social Effects of Artificial Feeding and Baiting of Wildlife by L. Dunkley and M.R.L. Cattet in 2003 summarized their finding:

Significant ecological effects of providing food to wildlife have been documented through observation and experimentation at the individual, population, and community levels. The increased potential for disease transmission and outbreak is perhaps of greatest and immediate concern; recent outbreaks of bovine tuberculosis and chronic wasting disease in Canada and the United States giving credence to this point. Nevertheless, even if disease is prevented, other significant ecological concerns exist. Disruption of animal movement patterns and spatial distribution, alteration of community structure with reduced diversity and abundance, the introduction and invasion of exotic plant species, and general degradation of habitat are all major negative effects that have been documented at different locations in North America. Further, it would appear the costs of such effects are unlikely to be

outweighed by any long-term benefits. For example, the record of success for artificial feeding programs has been generally low (Carhart, 1943; Doman and Rasmussen, 1944; Dahlberg and Guettinger, 1956; Keiss and Smith, 1966; Lewis and Rongstad, 1998). In many instances, large-scale feeding efforts have created feed-dependent populations existing in numbers that exceed the carrying capacity of their environment (Ozoga and Verme, 1982; Ontario Ministry of Natural Resources, 1997 – see www.mnr.gov.on.ca/mnr/pubs/deer2.pdf; Williamson, 2000). (emphasis added)

The author's purposeful blinders to the obvious letter and intent of the Guideline renders his assertion arbitrary and unsupportable.

Not mentioned in the table is the directly and obviously applicable Goal 1.1 Objective G:

Help re-establish historic elk migration routes to provide increased viewing and hunting opportunities for outfitters and clients.

As discussed in the EIS and a wide range of literature cited in the EIS or provided in comments, the feedlots destroy historic elk migration routes.

Not mentioned in the table is:

Fisheries and Wildlife Prescription -The Bridger-Teton National Forest provides habitat adequate to meet the needs of dependent fish and wildlife populations, including those of Threatened, Endangered, and Sensitive species.

Habitat includes not authorizing actions that renders the habitat toxic. It would be arbitrary and unsupportable for the Forest to concoct some rationale as to how authorizing an action that results in a significant die-off and rendering much of the GYE toxic, indefinitely would be fulfilling this Prescription.

Also missing from the table:

Soil, Water, and Air Prescription -Activities are planned to protect the quality of the basic watershed resources of soil, water, and air.

How would authorizing an action that will result in the contamination of soil, vegetation and water comply with this Prescription?

The Forest Park feedlot is within DFC 3A:

Management Emphasis - River segments outside of Wilderness that have been determined eligible for potential addition to the National Wild and Scenic River system are protected from activities that could diminish or change the free-flowing characteristic, water quality, or the scenic, recreational, fish and wildlife, and other values which make the river eligible for designation.

Authorizing the feedlot would not meet this as it would diminish water quality through runoff of the massive amount of feces and urine into the Greys River each year. Once CWD contaminated the feedlot and surrounding areas, soils and waters would be contaminated by infectious prions.

The feedlot diminishes recreation values through the facilities, year round and the closure during the winter season. The feedlot also diminishes wildlife values through unnatural concentration, unnatural disease spread as well as essentially permanent contamination of the area once CWD becomes fully established.

Wild and Scenic Rivers Management Standard: Resource development which would diminish the free-flowing characteristics, water quality, and scenic, recreational, fish and wildlife, or other values of eligible segments will be prohibited.

This Standard implements the Emphasis.

Development Location Guideline -Developments should be confined to launch and fishing access points, to allow a natural appearing setting for recreationists on the river.

The feedlot and its facilities is a development.

Fisheries and Wildlife Prescription - Habitat is managed to help meet fish and game populations, harvest levels, success, and recreation-day objectives and to fully achieve fish and game populations, harvest levels, success, and recreation day objectives identified by the Wyoming Game and Fish Department and agreed to by the Forest Service. Cumulative effects analysis is performed for all development proposals within grizzly bear habitat.

Big-Game Habitat Guideline - Sufficient habitat should be provided to maintain desired populations and distribution of big-game species.

The feedlot with its attendant disease issues and contamination do not comply with this Prescription and Guideline.

Diversity of Wildlife Habitat Guideline -Diverse wildlife habitat types should be maintained within each watershed. Sufficient habitat should be provided to maintain Wyoming Game and Fish Department population objectives and distribution of native wildlife including non-game, small game, big-game, fish, threatened, endangered, and sensitive species.

The feedlot with its attendant disease issues and contamination do not comply with this Guideline.

The Dell Creek feedlot is within DFC 12:

Theme: An area managed for high-quality wildlife habitat and escape cover, big-game hunting opportunities, and dispersed recreation activities.

How would authorizing an action that renders wildlife habitat toxic and that will reduce big-game hunting opportunities comply with this Theme?

Fisheries and Wildlife Prescription - Habitat will be managed to help meet the game populations, harvest levels, success, and recreation-day objectives, and to

fully achieve the fish populations, harvest levels, success, and recreation-day objectives identified by the Wyoming Game and Fish Department and agreed to by the Forest Service.

Management Activity Guideline -All management activities should be concentrated to within the shortest period of time and to the smallest possible area.

Big-Game Habitat Guideline - Sufficient habitat should be provided to maintain desired populations and distribution of big-game species.

The Forest Plan clearly lays out how it is supposed to be implemented.

“...some objectives conflict with others. Consequently, some objectives will not be met on all areas of the Bridger-Teton National Forest... The conflicts are resolved by application of the different Desired Future Conditions to different areas of the National Forest.” Forest Plan at 93.

“That the DFCs exist at all is recognition that not all the Goals and Objectives can be achieved at the same time from the same land areas.” Forest Plan at 145.

“Desired Future Conditions (DFCs) describe land management direction intended to accomplish the Goals and Objectives” Forest Plan at 145.

DFCs “ties the prescription to specific Land and Resource Management Objectives, individual resource Management Prescriptions, and resource management Standards and Guidelines to further define the Prescriptions” Forest Plan at 145.

“The resource Management Prescriptions are stated in the present tense because they apply to forest activities beginning immediately after the plan is approved. Standards are intended to be adhered to closely during plan implementation so they are stated in the future tense as “will be” requirements. Guidelines are intended to be more flexible, setting parameters rather than tight requirements. So, Guidelines are stated in the future tense as “should be” or “may be” directions. A “should be” Guideline calls for close adherence, requiring frequent application with few and documented exceptions. A “may be” Guideline anticipates that field conditions may warrant either frequent or occasional use but requires that use be evaluated and documented before another course of action is chosen.” Forest Plan at 152

“Although all of the Goals are attainable, some objectives conflict with others. Consequently, some objectives will not be met on all areas of the Bridger-Teton National Forest. For example, lands used for timber production may not help reestablish historic elk migration routes as stated in Objectives 1.1(a) and 1.1(g). The conflicts are resolved by application of the different Desired Future Conditions to different areas of the National Forest.” Forest Plan at 115

The Forest Plan ROD states:

“the first and most important part of the Plan is establishment of Land and Resource Management Goals and Objectives... Although important, the other three parts of the Plan are subordinate to the Goals and Objectives”

16 USC 1604(i) requires:

- (i) Consistency of resource plans, permits, contracts, and other instruments with land management plans; revision

Resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands shall be consistent with the land management plans. (emphasis added)

Flowing from statute are the regulations implementing statute. 36 CFR 219.15(b) requires:

(b) *Application to projects or activities authorized after plan decision.* Projects and activities authorized after approval of a plan, plan amendment, or plan revision must be consistent with the plan as provided in paragraph (d) of this section.

(d) *Determining consistency.* Every project and activity must be consistent with the applicable plan components. A project or activity approval document must describe how the project or activity is consistent with applicable plan components developed or revised in conformance with this part by meeting the following criteria:

(1) *Goals, desired conditions, and objectives.*

The project or activity contributes to the maintenance or attainment of one or more goals, desired conditions, or objectives, or does not foreclose the opportunity to maintain or achieve any goals, desired conditions, or objectives, over the long term.

(2) *Standards.* The project or activity complies with applicable standards.

(3) *Guidelines.* The project or activity:

- (i) Complies with applicable guidelines as set out in the plan; or
- (ii) Is designed in a way that is as effective in achieving the purpose of the applicable guidelines (§ 219.7(e)(1)(iv)). (emphasis added)

36 CFR 219.7 describes the purpose and parts of a Forest Plan and their interrelationships:

(d) *Management areas or geographic areas.* Every plan must have management areas or geographic areas or both. The plan may identify designated or recommended designated areas as management areas or geographic areas.

(e) *Plan components.* Plan components guide future project and activity decisionmaking.

The plan must indicate whether specific plan components apply to the entire plan area, to specific management areas or geographic areas, or to other areas as identified in the plan.

(1) *Required plan components.* Every plan must include the following plan components:

(i) *Desired conditions*. A desired condition is a description of specific social, economic, and/or ecological characteristics of the plan area, or a portion of the plan area, toward which management of the land and resources should be directed. Desired conditions must be described in terms that are specific enough to allow progress toward their achievement to be determined, but do not include completion dates.

(ii) *Objectives*. An objective is a concise, measurable, and time-specific statement of a desired rate of progress toward a desired condition or conditions. Objectives should be based on reasonably foreseeable budgets.

(iii) *Standards*. A standard is a mandatory constraint on project and activity decisionmaking, established to help achieve or maintain the desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

(iv) *Guidelines*. A guideline is a constraint on project and activity decisionmaking that allows for departure from its terms, so long as the purpose of the guideline is met. (§ 219.15(d)(3)). Guidelines are established to help achieve or maintain a desired condition or conditions, to avoid or mitigate undesirable effects, or to meet applicable legal requirements.

Compliance with Plan components is mandatory and these Plan components are both Forest-wide as well as Management Area specific, in order to achieve the emphasis of the Management Area.

Objection: The EIS and DROD fail to comply with the Forest Plan.

Remedy: Cancel the SUP's.

THE EXPERTS

We provide for you, a copy of the amicus brief provided by some of the top experts on prions and CWD. These well-known, independent experts were available to the Forest Supervisor during the development of the EIS yet he and Randy chose mostly Wyoming Game and Fish employees or others with obvious, direct conflicts of interest. Further, the people chosen generally have significantly less expertise than those in the amicus brief.

Here, below, we provide a few excerpts to refresh your understanding:

The best available scientific information indicates that the unnatural concentration and supplemental feeding of the Jackson elk herd at Alkali Creek creates a significant risk of a widespread epidemic of CWD—an epidemic that could seriously harm other elk herds and the Greater Yellowstone Ecosystem.

The practice [of elk feedlots] contributes to “[t]runcated migrations, habitat degradation, loss of biodiversity, the de-wilding of wildlife, and the perception that hay can be substituted for habitat.” *Id.*

CWD is prone to significant outbreaks, which have proved virtually impossible to eradicate for three principal reasons: (1) CWD is highly transmissible, both directly and indirectly; (2) infectious prions that cause CWD can persist in the environment for several years; and (3) CWD has a relatively long incubation period, allowing infected animals to spread the disease for months before they show any noticeable symptoms.

In captive elk herds, where population densities more closely resemble those of a supplemental feedground, disease prevalence rates have reached 90%. AR 018429.

Because supplemental feedgrounds promote disease transmission, they pose a significant risk of exacerbating diseases that reach them. Endemic brucellosis in elk is a case in point, with deeply concerning implications for CWD.

the Committee [Yellowstone Interagency Brucellosis Committee] issued a position statement confirming the role of supplemental feedgrounds in spreading disease:

The evidence is overwhelming that winter feeding of elk has proven to perpetuate and enhance the spread of diseases, especially brucellosis. Once certain contagious diseases become endemic within a population of elk, bison, or other wildlife, they become very difficult, if not impossible, to eradicate. (Greater Yellowstone Brucellosis Committee, General Position Statement on Winter Feeding of Elk and Other Wild Ungulates, 1994, cited at AR 022147).

The Forest Service has not been able to come up with a single expert, who does not have a gross and obvious conflict of interest, who says that these feedlots should be continued?

Objection: The EIS and DROD fail to implement the best available science.

Remedy: Cancel the SUP's.

THE COOK REPORT

Setting aside that the assumptions and modeling settings used for the report combine to significantly underestimate the negative impacts of continued feedlots and significantly overestimates the negative impacts of closing the feedlot network, of which we will discuss some of these shortcomings shortly, the report is very clear.... Feeding must stop across all jurisdictions and it must stop now.

Each one of the false or incorrect assumptions multiplies with the other false or incorrect assumptions.

Data from Wyoming Game and Fish Department (WGFD) supported the assumption that supplemental elk feeding allows for larger elk populations in a region. We documented that herd units (HU) without feedgrounds had 23 percent

lower densities of elk per area of winter range when compared against HUs with feedgrounds, after accounting for differences in sightability of elk during counts on and off feedgrounds. Thus, throughout our analyses, we assumed feedground closures would reduce elk carrying capacity resulting in an average decline of previously fed elk population segments by 23 percent (5th and 95th percentiles = [11 percent, 35 percent]) by year 20.

Firstly, despite the purported transparency² the report provides nothing to support this assumption, and this assumption has a massive impact on the modelling results.

We have viewed Game and Fish Department's elk winter range GIS data and it contains maybe 1/50th of available winter range. The Department's data is vitiated by the fact of the existence of a network of 22 feedlots that have both destroyed as well as dramatically truncated migratory behavior and migration routes. Prior to the fencing of I-80, elk summering in the Wind River and Wyoming Ranges would migrate down into northwest Colorado. North of I-80 there are vast areas of available winter range in the areas south of Boulder, south of South Pass and north of Rock Springs. None of this is categorized as winter range because of the impacts of the network of feedlots. So to say that the areas used by fed populations as winter range today is all the available winter range is false and unsupportable.

We used a panel of CWD experts to help estimate CWD transmission in fed and unfed elk population segments. In aggregate, the expert panel estimated that median values of direct and indirect transmission of CWD are expected to be 1.9 and 4 times higher, respectively, in fed elk populations compared to unfed elk.

This assumption significantly underestimates the impacts of CWD on feedlot elk. We remind you of the amicus brief citing the administrative record in the Alkali Creek feedlot case:

In captive elk herds, where population densities more closely resemble those of a supplemental feedground, disease prevalence rates have reached 90%. AR 018429.

The "panel of CWD experts" 2 to 4 times unfed elk ignores the many order of magnitude differences in densities between fed and unfed elk.

Johnson, 2014 reviewed elk density from 10 studies. Unfed Wyoming elk densities are around 0.25 elk/km², while feedlot elk are around 2,000 elk/km², 8,000 times natural density. No research or experience with CWD and CWD contaminated areas such as Sybille could rationally support a conclusion that the intense concentrations on feedlots and the resultant contamination would only double or quadruple unfed infection rates.

The EIS itself, at 38, comes to the same conclusion:

² These models required simplifying assumptions, which we attempted to make clear. The transparency of assumptions behind the models and use of decision analysis techniques are valuable because the alternative is a mental model of how the complex ecosystem interacts with unstated assumptions, biases, and weights. Cook et al, at 7

The high prevalence of CWD in captive populations may be a function of those higher densities and limited movement, which might mimic feedground conditions (Williams et al. 2014)

Nothing provided in the Cook report with its purported emphasis on disclosure of the basis of assumptions, nor the EIS provides any illumination for the factual basis for the assertion.

Given that this is, by far, the most critical input in the modeling exercise, the agency can't simply keep it in a black box.

Once CWD becomes established on a feedlot, these animals will be radiating out from the feedlots and contaminating vast areas. The modeling appears to only calculate disease rates based on % of an HU that is fed and discounts the widespread contamination issue.

Another flawed assumption is winter range competition. Elk, deer and pronghorn have shared winter range for millennia. The idea that this is a negative is unsupportable.

Another mindboggling assumption is that all private lands have cattle.

We assumed all private properties are areas of potential cattle exposure over the next 20 years.

Both the Game and Fish Department as well as APHIS knows exactly where livestock are during the winter and early spring months. Having lived in the area for decades I would estimate at least 25-30% of the private lands within the modeling area never have cattle on them. During the winter and early spring I would estimate maybe 10-15% of the 70-75% of private lands with any livestock ever has livestock. The assumption that all private lands have cattle dramatically inflates overlap between elk and cattle.

Although feedgrounds serve as the primary management approach to limit brucellosis transmission from elk to cattle, this may have led to a cycle of increased aggregations and brucellosis transmission in fed elk.

Many wildlife diseases are best managed in the early stages of an outbreak by implementing proactive measures that prevent introduction or limit the spread and growth (Langwig and others, 2015).

Our work suggested the removal of feedgrounds or a high chronic wasting disease (CWD) prevalence is likely to cause large reductions in the western Wyoming elk populations. We predict, however, population declines associated with feedground closures will be more than offset by the benefits of reducing the negative consequences of CWD such that the no feeding alternative tends to result in higher elk populations by year 20. The high concentrations of elk on feedgrounds led our expert panel to estimate high levels of environmental contamination of prions that result in persistent hotspots of disease with the potential to infect elk and mule deer for many years to come.

If the assumption that not feeding would cause a 23% decline was corrected for the vast areas of winter range that are currently not used (and not mapped as such because of the lack of use) because of the impacts of the network of feedlots the comparison of fed to unfed would be even more stark.

The report even admits as much:

Our estimate of elk population declines due to feedground closures depended on current estimates of elk winter range. In the absence of feedgrounds, elk may utilize areas that are not currently considered elk winter range. If so, we may be overestimating the population declines that would be associated with feedground closures.

There is a wide range of information and data available regarding former winter range that the authors could have availed themselves of, but chose not to.

But the problem with the 23% goes far beyond that failure because the EIS, itself, states:

The analysis documents that herd units with feedground closures had 23 percent lower elk densities on winter range than herd units with feedgrounds. Therefore, it was assumed that feedground closures would result in declines of 23 percent in those elk that were previously fed. The declines associated with feedground closures were assumed to occur rapidly (within approximately 3 years). The mechanisms behind these rapid population reductions are not explicitly stated, as they would be under the discretion of the WGFC but would likely include a combination of liberalized hunting season and management takes.

It conflates “densities” with populations, which are two entirely different parameters. Adding to the lack of validity of the assumption of a 23% population decline, is the admission that the 23% decline is not the result of the population coming into balance with available resources as the elk are relearning their former winter ranges but purely the result of management slaughter.

So the EIS admits the 23% has nothing to do with available resources.

The Piney feedlot was closed some years ago and there were no population reductions as a result.

Objection: The EIS and DROD fail to implement best available science.

Remedy: Cancel the SUP's.

THE EIS

Much of the EIS has the Cook report as its foundation, so the flaws in the report, discussed above directly impact and vitiate the accuracy of the EIS.

The purpose and need section states:

The purpose of the WGFC's proposal is to (1) reduce conflicts with nearby livestock operations, (2) reduce the risk of brucellosis transmission to livestock, (3) maintain elk population objectives pursuant to the interests of their constituents without excessive winter elk mortality, and (4) prevent vehicle collisions with elk on US Highway 191.

For the Forest Park feedlot 1) there are no nearby livestock operations 2) there is no risk of brucellosis transmission 3) 191 is approximately 50 miles away. So only a single purpose, artificially inflating elk populations to sell tags is the only purpose that applies to the Forest Park feedlot.

Looking at the application for the Dell Creek feedlot permit, Question 13a was not answered.

Since 13a was not properly answered, the response to 13b can not be valid and informed on fact.

The response to 13c states the department's preference or wishes, not why it is necessary to use Forest Service lands. As such the response is not valid.

Meriam-Webster Dictionary defines necessary as:

1 : absolutely needed : REQUIRED

Food is *necessary* for life.

2 a : of an inevitable nature : INESCAPABLE

Death is a necessary feature of the human condition.

b (1) : logically unavoidable

a necessary conclusion

(2) : that cannot be denied without contradiction

c : determined or produced by the previous condition of things

the necessary outcome of the affair

d : compulsory

Taking the oath of obedience is necessary.

Noun : an indispensable item : essential

Question 15 is also unsupported by fact. If there were no feedlots in the Bondurant Basin there would be few, if any, overwintering elk as snow depths in the basin and surrounding mountains are not conducive to winter range. The feedlots cause the very the problem the department purport to solve.

Because of the feedlots in the Basin, far more elk winter in the Basin than would naturally occur. Again, the feedlots create the purported problem the department claims to solve. Also if you look at Figure 22 of the Cook report you see elk wintering right next to 191. No data is provided to support the contention that elk on 191 is a significant problem. I have regularly driven 191 in the winter for nearly a half a century and never once seen an elk on or near the highway or any collisions.

Questions 16, 17 and 18 are also not answered honestly. The answer provided to 17 has no connection to the question asked in 17.

The response to 19 ignores the essentially permanent contamination of the area with infectious prions (read the definition).

The Forest Park feedlot application from 7 years ago is not even filled out. Questions 13 through 20 were left blank. As such its not even a valid application. It also shows the lack of basic due diligence on the part of the Bridger Teton.

Under 36 CFR 251.54 and related FSM and FSH requirements applications are required to have initial and second-level screening. It is obvious that this mandatory screening process never occurred since the applications are not filled out and not filled out properly.

At every turn, we see that the Forest Service failed to implement the specific directives such as the 2700 series that apply directly to the action under consideration.

Objection: The applications provided are not valid.

Remedy: Cancel the SUP's.

Under the Emergency Feeding Only alternative, the EIS states:

The two following criteria would be evaluated to determine the need for emergency feeding: (1) Elk/cattle comingling occurring during the period of risk for brucellosis transmission, and/or (2) natural winter mortality rates of the estimated juvenile population exceed 5 percent in hunt areas 87 (includes Dell Creek feedground) or 90 (includes Forest Park feedground). The period of risk for brucellosis transmission is February 1 through June 15. Moving the early trigger date up to January 15 would allow a 2-week period for the WGFD to relocate any elk comingling with livestock on private land to the feedground prior to the period of greater risk for brucellosis transmission. April 30 is the end of the current, permitted feedground feeding period. Elk feeding at the respective feedgrounds would occur immediately after one or both of the above mentioned criteria were met and could continue up to April 30 of each year. If the two criteria used to trigger emergency feeding, described above, are determined to be ineffective or insufficient, the Forest Service and WGFD would agree upon new criteria to trigger emergency feeding.

So a massive loophole is built into the alternative because the two criteria can be altered or dispensed with at will with no public oversight.

But even the criteria provided (and/or) are designed to have feeding nearly every year. The 5% winter calf mortality is well below natural rates as the EIS itself admits.

In fact, the cited reference, Singer et al, found natural calf mortality averaging 30% over the study period.

In Kohl, M. T., Cleveland, S. M., Ellis, C. C., Halseth, A. N., Merkle, J. A., Proffitt, K. M., Rowland, M. M., & Wisdom, M. J. (2023). Elk and Rangelands. In Rangeland Wildlife Ecology and Conservation (pp. 703-733)

A review of 37 studies reported annual calf survival estimates ranged from 6 to 72% suggesting that calf survival is a prominent driver of elk population growth rate

So the 5% trigger has no basis in reality.

At S-4, the EIS states:

This is because the NF and PO are predicted to have immediate population reductions due to reduced carrying capacity and lack of suitable winter forage near the feedgrounds, whereas the PA is predicted to be more affected by CWD mortality as disease prevalence continues to increase over time.

The operative words are “near the feedgrounds”. The two feedlots are both located in areas with little to no natural elk winter range, so of course there is little elk winter range “near” the feedlots. The feedlots have eliminated the natural migration patterns for the fed elk. Most of the elk on these 2 feedlots would normally migrate to southern Sublette county and into Sweetwater county, north of I-80. Again, the modeling in the Cook report is inaccurate due to false and unsupportable assumptions.

Throughout the EIS, the Forest Service strenuously avoids the fact that elk populations are significantly higher, as are human populations virtually everywhere elk exist and those populations are not addicted to feedlots and there are none of the problems that the feedlots are supposed to solve. See our attached comments to the department for their feedlot management plan development process that goes through state by state.

At Section 1.2, the EIS states:

Feedgrounds continue to be an effective tool in reducing damage to haystack yards and winter pastures on private lands (WGFD 2007a)

This is only true if you don't compare feedlots to fencing. Fencing is a far more effective tool, costs a tiny fraction of the feedlot network and creates none of the massive negatives of the feedlot network. This statement indicates the bias of the authors.

Section 1.2.1 states:

The Dell Creek feedground is located in an area with severe winter conditions (deep snow and extreme cold for extended periods of time). This feedground was established to address reduced native winter range availability and to prevent elk comingling with cattle in and around haystack yards in the surrounding private lands (WGFD 2022a)

What this is saying is there is essentially no winter range, but we have created a feedlot to attract elk and cut their normal migration right next to cattle to solve the problem we created. Without the 2 feedlots in the Bondurant Basin there would be little to no wintering elk. These 2 feedlots destroyed the normal migration of these fed elk. Again, there are vast areas of native winter range for these elk if they were not stopped by the feedlots.

Section 1.2.2 states:

The location of this feedground [Forest Park] is likewise in an area with severe winter conditions. This feedground was established to maintain elk population numbers in an area with limited native winter range availability.

The same as above applies. The department created the problem it pretends to solve.

Elk feeding at the Forest Park feedground began in 1980.

One could easily see that this excuse is bogus. What did the elk do from the end of the last ice age to 1979?

The department spins BS and the Forest Service dutifully repeats their BS.

Section 1.7.1 states:

Indicator: Existing data will be used to determine where suitable native winter range is located in the areas surrounding the Dell Creek and Forest Park feedgrounds. A spatio-temporal model of elk distribution and movement will be used to determine the number of elk days on private property and native winter range.

But as we have discussed repeatedly, the focus on “near” or “surrounding” is myopic. Before these feedlots killed the normal migration routes these elk would have wintered down to I-80 and down to southwestern Colorado before I-80 was constructed.

The indicator is designed to be self-defeating.

In the disease section, the Forest Service ignores a wide range of diseases like hoof rot that only occur on feedlots.

1.7.1.2, likewise ignores the issue of environmental contamination, which is downplayed throughout the EIS but is one of the most serious impacts of the feedlot network

1.7.1.3 is a repeat of 1.7.1.2.

2.2.1.1.2 – A channel runs right down the middle of the Dell Creek feedlot dumping huge amounts of feces and urine, along with any prions into Dell Creek and the Hoback River. The Forest Park feedlot is directly adjacent to the Greys River.

Even though feces, urine and disease agents are the primary effect of these feedlots on water quality, no monitoring of these parameters are required.

No “desired conditions” are defined.

2.2.1.1.3 fails to implement a requirement that hay not come from areas with CWD.

2.3.2 states:

It is not timely to consider these other feedgrounds at this time because the Forest Service currently permits the WGFC’s use of these feedgrounds into 2028. For these reasons, this alternative was considered but eliminated from detailed analysis.

One has to wonder about the intelligence and basic moral and ethical compass of the authors of this EIS.

For at least a quarter of a century scientists and the public have been warning the Forest Service regarding the serious implications of its permitting of these feedlots. The agency

has been sued repeatedly. The agency is fully aware of the crisis and ecosystem contamination that will result from continuing these feedlots. The window of opportunity to change course has narrowed from 25 years to 10 years to 5 year to now. And despite everything we know and the decades of agency foot dragging, the agency trots out the excuse that the permits don't expire until 2028. This is absurd, idiotic and irresponsible.

Finally, the results of the PO alternative relative to no feeding alternative suggest that delays may have significant consequences for CWD prevalence. EIS at 49.

The recent detections of CWD in mule deer and elk in Grand Teton National Park has left little time to learn about how supplemental feeding affects CWD spread before deciding whether and how to permit elk feeding on Forest Park and Dell Creek.... Thus, reduction of artificially induced aggregations of elk would be an important management approach to consider as suggested by the Western Association of Fish and Wildlife Agencies (Almberg et al. 2017). EIS at 51.

The PO, which delays closure of feedgrounds for 3 years, can nearly double the CWD prevalence compared to the NF in some herd units when applying that management action to all feedgrounds. EIS at 77.

This reinforces the importance of making decisions in consideration of the larger picture when considering CWD prevalence. While actions at a single feedground may not drive large differences long-term, when considered together, single decisions can have substantive impacts across herd units. EIS at 80.

Each permit, under VII A can be revoked. Term I E allows the permit to be amended for any reason.

IV A also states that the permit is fully revocable at the discretion of the agency.

VII B states:

The authorized officer may immediately suspend this permit in whole or in part when necessary to protect public health or safety or the environment.

The requirements under FSH 2709.11 at 10.2 requiring that all SUP "are in the public interest" implementing 36 CFR 251 Subpart B do not end upon the issuance of the SUP. The Forest Services' duties are continuing.

In Table 11, we see the Forest Service arguing that livestock grazing is not a cumulative impact. This purposefully ignorant assertion fails on two accounts. Firstly, livestock remove between 40 and 60% of the annual above ground biomass, thus all this is then unavailable to support wildlife. Secondly, the impacts of the long term use by livestock have resulted in dramatic degradation of the plant community, from high productivity, tall bunchgrasses such as bluebunch wheatgrass which grows 2 feet tall, to low stature increaser species such as Idaho fescue and Sandbergs bluegrass which only grow a few inches tall and are unavailable to wildlife during the winter.

We provide as an attachment a report of data collected within the Upper Green and Elk Ridge area which found a complete loss of what should be the dominant grass species,

bluebunch wheatgrass. The Elk Ridge area was only 20% of potential while the Upper Green was only 40% of potential.

This degradation has a massive impact on elk habitat.

Wildlife depredation represents a cost for agricultural producers and depredation payments are a substantial budget item for the WGFD. EIS at 83

But these costs are tiny compared to the feedlot program, or simply, the cost of fencing.

Section 3.2.3.1 fails to incorporate the well-known fact that brucellosis rates in unfed elk are a fraction of those of fed elk. If the authors were being honest they would have looked at brucellosis transmission rates from elk to cattle in unfed populations such as those from Cody south to Dubois or in all of Colorado, Idaho, Montana, Washington, Oregon or Nevada. So instead of the unsupportable assertion that brucellosis outbreaks would increase with feedlot closure, it would be reduced to zero.

Just answer the simple question – How many brucellosis outbreaks have there been, caused by elk, from elk populations that have no connection with feedlot elk populations? The answer is NONE!

3.1.2.2.1 Chronic wasting disease is an infectious disease that can spread directly through contact from individual to individual or indirectly through the environment via ingestion of contaminated vegetation or soil (Denkers et al. 2013; Escobar et al. 2020; Mathiason et al. 2009). Prions can persist in the environment and continue to be infectious for years by binding to soil elements or plants, making it difficult to manage the disease once it is established in a population. Thus far, prions have shown to be resistant to heat (fire), disinfectant chemicals, ultraviolet light, and ionizing radiation (Escobar et al. 2020; Georgsson et al. 2006; Smith et al. 2011; Quayle 2009).

Chronic wasting disease can be detected in feces, urine, and saliva as soon as 6 months after infection, which is before symptoms of infection appear

Section 3.11.2 fails to contain the unavoidable impact of essentially permanent contamination of much of the GYE with infectious prion in soils, water and plants.

Section 3.11.3 also fails. It is not a question of “if” CWD becomes established in western Wyoming. It’s no longer even a question of “when” because of agency foot dragging over the last 25 year. CWD is established in western Wyoming now.

As the experience in Sybille and other places contaminated by prions shows, the contamination is essentially permanent. There has been no area of prion contamination, no matter how old, that no longer carries infectious prions. This is the definition of “irreversible”

Objection: The EIS and DROD fail to comply with NEPA.

Remedy: Cancel the SUP’s.

THE BOTTOM LINE

What is abundantly obvious from these objections, those over the last 15+ years along with the mass of scientific, ethical and moral support for ending the network of elk feedlots combined with the fact that, because of agency foot-dragging and spinelessness over the last quarter of a century, time has run out.

The 'middle of the road' alternative of phasing out feedlots is no longer a viable option. The agencies have burned through the cushion which would have allowed for a slower approach.

All elk feedlots need to be closed now.

Beginning with what would be normal feeding operations in the early winter of 2025, all permits should be modified to only allow for baiting of elk that may gather on the former feedlots and trailing them back to their normal, pre-feedlot migration routes.

"When elk have been trailed in the past, it was not necessary to bait them in subsequent years (Scurlock 2022a)." (DEIS:55)

We incorporate here, by reference, the comments and attachments submitted during this NEPA process by Lloyd Dorsey, Wyoming Wildlife Advocates, Yellowstone to Uintas Connection, the Sierra Club, Gallatin Wildlife Association and Western Watersheds Project.

Christopher, once you have had a chance to review our supporting materials and this objection, we would like to set up a meeting with you at the RO to discuss them with you. Please let me know your schedule.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan B Ratner". The signature is fluid and cursive, with the first name "Jonathan" written in a larger, more prominent script than the last name "Ratner".

Jonathan B Ratner
Director