



February 6, 2026  
Sonya Germann, State Director  
Montana/Dakotas BLM State Office  
5001 Southgate Drive  
Billings, Montana 59101

*Via hand delivery to the Director's office*

**RE: American Prairie's Protest of Notice of Proposed Decision Rescinding BLM's July 28, 2022, Final Decision Authorizing Indigenous Bison and/or Cattle Grazing on Six Federal Allotments in Phillips County, Montana.**

## INTRODUCTION

American Prairie files this Protest of the United State Bureau of Land Management's Notice of Proposed Decision, issued January 16, 2026. The Proposed Decision seeks to cancel grazing permits held by American Prairie, specifically Telegraph Creek (allotment #05654), Box Elder (allotment #15634), Flat Creek (allotment #15439), Whiterock Coulee (allotment #15417), East Dry Fork (allotment #05617), French Coulee (allotment #05616), and Garey Coulee (allotment #05447).

The BLM's Proposed Decision is unlawful, factually incorrect, and procedurally deficient. Relying on partial dictionary definitions, the BLM attempts to re-cast the Taylor Grazing Act, adding vague and undefined qualifications for applicants seeking grazing permits on BLM lands. If enacted, this Decision would not only cancel American Prairie's 20-year-old bison grazing permits, it would also compromise bison grazing on federal allotments across the western United States—a practice that has been ongoing for over forty years. Based on the widespread impacts, the agency should reconsider its newfound policy and withdraw its Proposed Decision so that it may incorporate correct factual finding and well-settled legal principles that have long supported bison grazing on its native range.

## INTERESTED PARTY STATUS

American Prairie, a nonprofit corporation based in Montana, holds BLM grazing permits for Telegraph Creek (allotment #05654), Box Elder (allotment #15634), Flat Creek (allotment #15439), Whiterock Coulee (allotment #15417), East Dry Fork (allotment #05617), French Coulee (allotment #05616), and Garey Coulee (allotment #05447). These allotments are located in Phillips County, in north-central Montana. American Prairie owns the base properties to these allotments and enjoys grazing preference under the Taylor Grazing Act and its implementing regulations.

PO Box 908  
Bozeman, MT 59771  
406-585-4600

[AmericanPrairie.org](http://AmericanPrairie.org)

In 2005, the BLM authorized American Prairie to graze bison on Telegraph Creek. In 2008, BLM extended that authorization to the Box Elder allotment. Since that time, American Prairie has grazed its bison on the two federal allotments, respectively, without a single grazing violation.

In 2019, American Prairie applied for authorization for bison grazing on the other federal leases listed in the Proposed Decision. After a lengthy environmental review process, BLM found no significant impact to the environment by American Prairie's proposal and authorized American Prairie to graze bison on Flat Creek, French Coulee, Garey Coulee, and Whiterock Coulee, in addition to Telegraph Creek and Box Elder allotments where bison were already lawfully grazing. BLM's Final Decision became effective immediately on July 28, 2022, and American Prairie began grazing bison on the Whiterock allotment shortly thereafter.

After allowing American Prairie to graze bison on federal lands for two decades, BLM now proposes to cancel American Prairie's grazing permits. Over the last 20 years, and in reliance of the BLM's authorizations for bison grazing, American Prairie has grown its two bison herds to more than 900 animals and invested more than \$350,000 in BLM-approved fencing improvements. If the BLM Proposed Decision is implemented, and American Prairie cannot graze bison on the approved leases, the organization will incur significant damages, including a disruption in its ability to fulfill commitments to supply bison to other operators, the cost of moving hundreds of bison to scattered private properties, and purchasing supplemental feed, among other expenses. As the permittee, and because its operations will be directly impacted if the decision is authorized, American Prairie maintains a right to file this timely protest of the BLM's Proposed Decision under 43 C.F.R. § 4260.2.

## **PROTEST**

### **I. THE GOVERNING STATUTES AUTHORIZE BLM TO ISSUE GRAZING PERMITS FOR AMERICAN PRAIRIE'S BISON.**

BLM's new position that American Prairie's bison do not qualify for livestock grazing permits under the Taylor Grazing Act (TGA), 43 U.S.C. §§ 315–315r, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701–1787, and the Public Rangelands Improvement Act of 1978 (PRIA), 43 U.S.C. § 1901–1908, is unsupported by the statutory language, implementing regulations, and purpose. The TGA authorizes BLM to issue grazing permits to "bona fide settlers, residents, and other stock owners" pursuant to BLM regulations. 43 U.S.C. § 315b. BLM regulations additionally require that an applicant must (1) own or control land or water base property, and (2) either meet United States citizenship requirements, or be an entity authorized to conduct business in the state in which grazing is intended. 43 C.F.R. § 4110.1(a). As BLM correctly found when it first issued the grazing permits at issue in the Proposed Decision, American Prairie satisfied the statutory and regulatory prerequisites for grazing permits and nothing more is required. *Id.*

The agency’s new position—which reads *disqualifications* into that regulatory scheme based on American Prairie’s conservation mission and the species of its livestock—is meritless and a complete reversal from BLM’s previous briefings and longstanding practice.<sup>1</sup> The TGA does not distinguish between “production” and “non-production” herds, American Prairie’s bison are “livestock” under the TGA, and the permits that BLM proposes to rescind are fully consistent with the statutory scheme under the TGA, FLPMA, and PRIA.

Because American Prairie meets all statutory and regulatory qualifications for issuance of grazing permits for their bison, 43 C.F.R. § 4110.1(a), and BLM’s newfound preference to exclude bison from the public range based on these practices finds no authoritative purchase, BLM should withdraw its proposal to rescind American Prairie’s bison grazing permits.

**A. Adding a “Production” Qualification Not Grounded in Statute or Rule Exceeds the Secretary’s Authority.**

At the heart of BLM’s proposed recission is its erroneous allegation that the agency may only grant grazing permits “where the animals to be grazed are domestic and will be used for production-oriented purposes.” Proposed Decision at 2. However, such a requirement has no foundation in the TGA statutory or regulatory authority, federal case law explicitly rejects such a requirement, and such a requirement is logically untenable. BLM may not impose additional requirements where none exist. *Stewart v. Kempthorne*, 554 F.3d 1245, 1253 (10th Cir. 2009); *see also Util. Air Regul. Grp. v. EPA*, 573 U.S. 302 (2014) (Agencies must give effect to the unambiguously express intent of Congress and cannot rewrite statutory terms to align with policy goals).

This newly claimed production requirement has no basis in the text of the TGA or in its implementing regulations.<sup>2</sup> In its Proposed Decision, BLM sourced this alleged requirement from a dictionary definition of the word “stock”, citing “a merchant’s goods that are kept for sale or trade.” Proposed Decision at 3. When interpreting a statutory provision, an isolated dictionary definition of part of a single term cannot outweigh the combined support of surrounding statutory language, the implementing regulations and internal documents, state laws, and the longstanding practice of the agency. When justifying this interpretation, BLM, in a footnote, also pointed to the “historical context of the TGA”, contending that the TGA was enacted amid the Great Depression and Dust Bowl in order to stabilize the livestock industry. *Id.* BLM offered no

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<sup>1</sup> BLM’s Proposed Decision adopts a position regarding TGA interpretation that the agency previously declared “completely misses the mark.” *State of Mont. v. Bureau of Land Mgmt.*, No. MT-01-22-01, BLM’s Brief in Support of Cross Motion for Summary Judgment at 13 (Sept. 29, 2023) (“BLM’s Brief in Support”) (attached as Exhibit 1).

<sup>2</sup> The word production is only mentioned twice in the entire Act and only in the context of homestead entries unrelated to the grazing questions at issue in this Proposed Decision. 43 U.S.C. §§ 315–315r.

evidence to show that bison do not stabilize the livestock industry, nor did the agency offer further justification for why this historical context supports the first-time addition—in 2026—of a production requirement.

Prior to its Proposed Decision, BLM expressly rejected the imposition of a production requirement for grazing permits in the previous briefings for this permitting decision:

Appellants' requirement of "production" would read words and requirements into the TGA and its implementing regulations that are notably absent. The TGA allows BLM to issue permits to any "stock owner." 43 U.S.C. § 315b. BLM's grazing regulations do not use the word "production" in relation to a qualification for holding a grazing permit. Nor do they require a system whereby BLM should evaluate what a livestock owner's subjective plans might be for the livestock grazing public lands. In other words, Appellants' interpretation is not required by the TGA or implementing regulations...

BLM's Brief in Support at 24. BLM's own words speak for themselves—the statutory scheme and implementing regulations provide no basis for requiring "production-oriented operations."

The federal courts have also rejected a production requirement in the context of the TGA. In *Stewart v. Kemphorne*, the Tenth Circuit addressed the question of whether courts should read additional intent requirements into the TGA and implementing regulations where none exist and deemed such interpretation to be "untenable". 554 F.3d at 1253. The Tenth Circuit went on to say that such requirements as the production requirement alleged here are "especially hard [] to make given that this court and the Supreme Court have rejected such an express and absolute requirement" previously. *Id.* at 1251 n.2 (citing *Pub. Lands Council v. Babbitt*, 167 F.3d 1287, 1305–07 (10th Cir.1999), *aff'd* 529 U.S. at 745–47, 120 S.Ct. 1815).

The United States Supreme Court has rejected an attempt to limit grazing applicants to stock owners "engaged in the livestock industry." In *Public Lands Council v. Babbitt*, the Supreme Court considered whether the agency's amendment of 43 C.F.R. § 4110.1(a) violated the TGA, because DOI removed the regulation's requirement that grazing permits be granted only to those "engaged in the livestock business." 529 U.S. 728, 745 (2000) (citing 1942 Range Code § 3(a)). Court held that removing the regulatory requirement that applicants be "engaged in the livestock industry" did not violate the TGA because the TGA's plain language sets forth the qualifications of a grazing applicant. The Court noted that "the statute continues to limit the Secretary's authorization to issue [grazing] permits to 'bona fide settlers, residents, and other stock owners'." *Id.* at 746 (citing 43 U.S.C. § 315b). In its analysis of the statute's plain meaning, the Court recognized that just two sentences after the TGA authorizes the Secretary to issue grazing permits to "other stock owners," the TGA grants preference to a narrower class of applicants: "landowners engaged in the livestock business." *Id.* The Court took those terms at face value, giving effect to both provisions and ruling that "Congress could reasonably have

written the statute to mandate a preference in granting of permits to those actively involved in the livestock business, while not absolutely excluding the possibility of granting permits to others.” *Id.* at 747. The Court ultimately confirmed that the Secretary’s authority under the TGA must be exercised within the bounds of the statute and cannot create new rights or obligations not contemplated by Congress. *Id.* BLM’s Proposed Decision directly conflicts with this clear case law.<sup>3</sup> BLM’s failure to address this case in its Proposed Decision is a fundamental flaw in the agency’s analysis.

In addition to the blatant lack of statutory and regulatory language to support such a requirement, as well as the contrary case law, this contention lacks logistical support. Nothing in the TGA and BLM regulations provide any framework under which BLM could determine whether livestock are used for business or production purposes, as opposed to other uses. *See* 43 C.F.R. § 4110.1(a)(3) (providing, “to qualify for grazing use on the public lands, an applicant must own or control land or water base property, and must be … a corporation authorized to conduct business in the State in which the grazing use is sought”). In an attempt to clarify the meaning of “production-oriented purposes” in its Proposed Decision, BLM stated that these animals include those “being used for their meat, milk, fiber, or other animal products,” but would also extend to “animals used in support of production-oriented operations, such as horses used to herd cattle managed for production.” *Id.* at 4. This vague two-sentence attempt at a definition generates as much confusion as it does clarity, if not more. Ultimately, contentions about why American Prairie seeks to graze bison on the public range would impermissibly insert an “intent” standard that has no basis in the statute or regulation. *See Lomax v. Ortiz-Marquez*, 590 U.S. --, 140 S. Ct. 1721, 1725 (2020) (affirming that adjudicators “may not narrow a provision’s reach by inserting words Congress chose to omit”). Indeed, “it would be untenable to have the BLM engage in a subjective inquiry of every permit applicant’s specific intent to graze, when the entire purpose of requesting an application is for the grazing of livestock.” *Stewart*, 554 F.3d at 1253. Accordingly, in addition to the blatant lack of statutory and regulatory authority for such a requirement, it is also logically insupportable and unsound and must be rejected.

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<sup>3</sup> In its Proposed Decision, BLM attempted to differentiate the bison in an administrative case, *Hampton Sheep Co.*, from American Prairie’s bison on the basis that the bison in *Hampton Sheep Co.* were to be “utilized for the most part as cattle or other ‘livestock might be.’” Proposed Decision at 3 fn.1; *Hampton Sheep Co. v. Bureau of Land Management*, Wyo. 1-71-1 (Sept. 26, 1975). BLM then makes the substantial jump in logic to claim that this ruling then justifies a requirement that bison must be used for production to qualify as “livestock”. Proposed Decision at 3 fn.1. However, contrary to BLM’s contention that the bison in *Hampton Sheep Co.* were destined for production, the permittee conceded only a “chance” that the bison would be used for meat production, and the applicant’s “intention in this regard [was] somewhat unclear.” *Hampton Sheep Co.*, Wyo. 1-74-1 at 5. BLM does not offer a single other case in support of its newfound production requirement.

In sum, BLM’s interpretation of the TGA to prohibit grazing permits for bison managed according to American Prairie’s practices is a glaring 180-degree reversal from decades of longstanding agency practice without justification. BLM’s Proposed Decision inverts the authority of the TGA, FLPMA, and PRIA and their implementing regulations and instead inserts an intent requirement into the grazing permits that quite simply does not exist.

**B. Bison Qualify as “Livestock” Within the Context of General Grazing Permits Under the Taylor Grazing Act.**

1. The language of the TGA and its implementing regulations does not disqualify bison from livestock grazing permits.

Both the statutory language of the land management laws<sup>4</sup> along with BLM’s prior practice require the interpretation that bison qualify as livestock eligible for grazing permits. The TGA authorizes BLM to “issue or cause to be issued permits to graze livestock.” 43 U.S.C. § 315b. As the Proposed Decision notes, the TGA does not define the term “livestock,” Proposed Decision at 3; however, the TGA does authorize the Secretary to “issue[] permits to graze livestock . . . as under his rules and regulations are entitled to participate in the use of the range.” *Id.* FLPMA—enacted to provide a framework to manage public lands through resource management plans—and PRIA—enacted to guide the improvement of range conditions in concert with FLPMA—similarly do not define “livestock” despite utilizing the term. 43 U.S.C. §§ 1712, 1714, 1752(c); 43 U.S.C. § 1901(a). Notably, none of these three land management statutes explicitly exclude bison from the definition of “livestock.”

While the agency highlights 43 C.F.R. § 4100.0-5—defining “livestock” to mean “species of domestic livestock—cattle, sheep, horses, burros, and goats,”—there is no indication that BLM intended through this regulation to categorically restrict livestock grazing permits to only certain types of animals. On the contrary, for more than 40 years, BLM’s regulations have authorized the issuance of livestock grazing permits—general or special—for bison. Specifically, BLM-imposed conditions on “[l]ivestock grazing permits,” 43 C.F.R. § 4130.3, “may include . . . (e) [t]he kinds of indigenous animals authorized to graze under specific terms and conditions.” 43 C.F.R. § 4130.3-2. Interpreting “livestock” to exclude animals that may also be classified as “indigenous animals”, such as bison, would impermissibly read the references to “indigenous animals” out of several provisions of the regulations. For this reason, BLM noted in its previous briefing on this issue that parties reading 43 C.F.R. § 4100.0-5 to exclude bison would “impose blinders on their own readings of the regulations, solely focusing on one provision, while ignoring the others.” BLM’s Brief in Support at 16; *see Corley v. United States*, 556 U.S. 303,

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<sup>4</sup> BLM’s proposed rescission of the 2022 Final Decision and cancellation of the associated permits cites three land management laws as legal authority: the Taylor Grazing Act, 43 U.S.C. §§ 315–315r, the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. §§ 1701–1787, and the Public Rangelands Improvement Act of 1978 (PRIA), 43 U.S.C. § 1901–1908. Proposed Decision at 2.

314 (2009) (holding, in the context of statutory interpretation that “[a] statute should be construed so that effect is given to all of its provisions, so that no part will be inoperative or superfluous, void or insignificant.”) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101, 124 S.Ct. 2276, 159 L.Ed.2d 172 (2004)). Accordingly, the TGA along with its implementing regulations may not be interpreted to exclude bison from livestock grazing permits.

2. Case law further supports the interpretation of “livestock” to include bison under the TGA.

The administrative tribunal at BLM has already answered in the affirmative the question of whether bison are “livestock” under the TGA in case law dating back to the 1970s. As early as 1975, the Office of Hearings and Appeals (OHA) at BLM held that bison could be considered “livestock” under the TGA. *Hampton Sheep Co.*, Wyo. 1-71-1. The tribunal again visited the question in *Norman and Norman v. Bureau of Land Management*, CO-01-99-02 (Nov. 15, 2000) and held, again, that privately owned and controlled bison were “livestock” that could be granted grazing permits, so long as such permits were “consistent with multiple use objectives.” *Norman and Norman*, CO-01-99-02 \*7. In *Norman and Norman*, the Office rejected the argument “that the grazing permits and leases may be issued only for domestic livestock under the Taylor Grazing Act (TGA) and that bison are not domestic livestock.” *Id.* at 6. Upholding BLM’s decision, the Administrative Law Judge referenced the Office’s prior decision in *Hampton Sheep Co.*, affirming its key holding that “bison or other animals, which would ordinarily be categorized as wildlife, may be considered ‘livestock’ for purposes of issuing grazing permits under the TGA when they are treated in substantial respects as livestock and have characteristics

in common with livestock.” *Id.*<sup>5</sup> As such, the OHA caselaw affirms BLM’s authority to grant grazing permits to bison as “livestock” under the TGA.

### **C. Issuing Grazing Permits to Bison Operations is Consistent with FLPMA and PRIA Statutory Requirements and Purposes.**

BLM’s new claim that issuing grazing permits for bison would violate FLPMA and PRIA is not only meritless, but in fact the provisions and purposes of FLPMA and PRIA require doing just that. In adopting FLPMA in 1976, Congress directed the Department of Interior to manage public lands based on concepts of “multiple use” (use for various purposes, such as recreation, range, timber, minerals, watershed, wildlife and fish, and natural and scenic, scientific, and historical values), 43 U.S.C. § 1702(c), and “sustained yield” (regular renewable resource output maintained in perpetuity), 43 U.S.C. § 1702(h). To implement these management policies, FLPMA requires BLM to adopt district wide land use plans, called “Resource Management Plans” or RMPs to guide activities on public land according to these principals. *W. Watersheds Project v. Bureau of Land Mgmt.*, 721 F.3d 1264, 1268 (10th Cir. 2013) (affirming that RMP “guides BLM’s decisions concerning the land” with respect to issuance of grazing permits). As explained by the Supreme Court, “FLPMA strengthened the Department’s existing authority to remove or add land from grazing use, allowing such modification pursuant to a land use plan, [43 U.S.C.] §§ 1712, 1714, while specifying that existing grazing permit holders would retain a ‘first priority’ for renewal so long as the land use plan continued to make land ‘available for domestic livestock grazing,’ § 1752(c).” *Pub. Lands Council*, 529 U.S. at 738.

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<sup>5</sup> BLM’s Proposed Decision highlights the term “domestic” from FLPMA and PRIA in an attempt to exclude “wild bison” from grazing permit authority. Proposed Decision at 3. However, *Norman and Norman* emphasizes that bison qualify for grazing permits based on how the animals are managed, rather than any subjective classification. It’s also important to note that Montana state law explicitly classifies privately owned bison as “livestock”. MCA § 15-1-101(1)(m) (“The term ‘livestock’ means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.”) (emphasis added); MCA § 81-2-702(5) (same). As noted in more detail below, privately owned herds, such as American Prairie’s, are subject to Montana state livestock disease and sanitation laws and owners like American Prairie are required to comply with Montana livestock laws and rotate the bison through pastures like other livestock authorized on BLM allotments. Heidebrink Decl. at ¶¶ 10-12 (attached as Exhibit 2). Accordingly, regardless of whether American Prairie promotes its animals as “wild bison” in marketing materials, or in parallel, whether tribal buffalo herds “try to treat their animals as wild”, see Coalition of Large Tribes, *Protest of BLM Notice of Proposed Decision Dated January 16, 2026* at 6 (Jan. 30, 2026), available at <https://largeribes.org/2026/02/protest-of-blm-notice-of-proposed-decision-dated-january-16-2026-as-to-ibla/> (“COLT Protest”) (attached as Exhibit 3), the bison are managed “in substantial respects as livestock” and therefore can be considered “livestock” for TGA grazing permits. *Hampton Sheep Co.*, CO-01-99-02 at 6.

In enacting PRIA, two years after FLPMA, Congress underscored that if grazing uses are continued on tracts of public lands, the goal of managing them “shall be to improve the range conditions … so that they become as productive as feasible in accordance with the rangeland management objectives established through [FLPMA’s] land use planning process, and consistent with the values and objectives” Congress identified in PRIA. Those values and objectives include, besides livestock production, “wildlife habitat, recreation, forage, and water and soil conservation,” and “the value of such lands for recreational and esthetic purposes.” 43 U.S.C. § 1901(a)(1), (3); *see also Nat. Res. Def. Council, Inc. v. Hodel*, 618 F. Supp. 848, 861 (E.D. Cal. 1985) (noting PRIA’s direction that “the public lands be managed with more attention paid to range *improvement*”) (emphasis in original).

As required under both FLPMA and PRIA, issuing grazing permits for bison is consistent with the relevant land use plan, which is the 2015 HiLine RMP. That RMP identified priorities for renewing or modifying grazing permits that consider whether allotments are meeting land health standards and the adequacy of grazing practices to meet Greater Sage-Grouse habitat objectives. AR 2.11.01 (RMP, at 3-27). Among potential adjustments to grazing permits to improve Greater Sage-Grouse habitat, the RMP specifies potential changes to the “type of livestock” permitted, including “cattle, sheep, horses, bison, llamas, alpacas and goats.” *Id.* at 3-26 (emphasis added). Thus, the RMP both prioritizes rangeland health and expressly contemplates bison as a type of livestock authorized under a grazing permit. The final environmental impact statement (FEIS) that accompanied the HiLine RMP provides additional detail:

Bison in private ownership are considered livestock, and as such can be permitted by the BLM (43 CFR 4130.3-2(e)). The primary test in making this distinction is whether or not the owner of the animals qualifies as an applicant under the requirements of the grazing regulations. The grazing regulations define qualified applicants and apply equally to all qualified applicants, regardless of the class of livestock.

Privately owned bison may be authorized to graze under the regulations provided it is consistent with multiple use-sustained yield objectives. No scientifically and/or resource management-based reason has been identified for why bison should not be permitted to graze BLM land. At the present time, there are no conflicts identified with other resource objectives if bison were permitted to graze. Implementation of a no bison grazing alternative is not considered reasonable or necessary.

HiLine FEIS at 172. In addition to improving habitat for other prairie species, bison also increase productivity of federal grazing lands through increased drought resiliency, improved soil health,

and increased ecosystem diversity overall.<sup>6</sup> As such, the HiLine RMP developed pursuant to FLPMA and PRIA, as well as the language and purposes of both statutes require that grazing permits be authorized for bison as livestock.

**D. BLM’s New Interpretation of the TGA Would Have Widespread Consequences.**

BLM’s newfound preference for excluding bison from livestock grazing permits has far-reaching implications beyond American Prairie and the permits at issue. BLM has been issuing general ten-year livestock grazing permits for bison for more than 40 years. Reversing position on BLM’s longstanding interpretation of the word “livestock” to exclude bison managed in these ways would undermine 41 current grazing permits for bison ranchers across six western states. BLM’s Brief in Support at 1. Many of these 41 permits—encompassing 15,311 Animal Unit Months—have been renewed several times over, decade after decade. *Id.* Further, as the Coalition of Large Tribes noted in their own protest letter, American Prairie uses “techniques practiced by more than 50 tribal nations with buffalo herds.” COLT Protest at 10. Finalizing an interpretation that excludes bison from grazing permits based on these practices could impact these tribal herds along with any related bison co-stewardship or surplus programs. *Id.* at 11. In breaking from over half a century of agency precedent, BLM’s new interpretation risks widespread harm across the grazing framework to private owners, tribes, and organizations alike.

**II. ALTHOUGH “PRODUCTION” IS NOT REQUIRED TO QUALIFY FOR LIVESTOCK GRAZING PERMITS, AMERICAN PRAIRIE’S BISON OPERATION WOULD SATISFY SUCH A REQUIREMENT.**

BLM failed to consider the whole record in concluding that American Prairie’s bison are not “production oriented” animals and that American Prairie does not qualify as a “production-oriented” livestock operation. The agency’s findings are factually incorrect. The administrative record demonstrates that American Prairie’s bison are indeed used for “meat, milk, fiber or other animal products” or “used in support of production-oriented operations” as suddenly required in the BLM’s new Proposed Decision. Proposed Decision at 3–4. BLM overlooked the declarations of Scott Heidebrink, stating that American Prairie’s bison have supplied area food banks with thousands of pounds of meat, that its bison are harvested each year to provide meat to the public, and that its bison are supplied to other livestock entities for food source, commercial, and cultural value. BLM ignored these facts to reach its result-oriented conclusion that American Prairie’s substantial meat-producing activities failed to satisfy the agency’s novel “production” requirements. BLM’s factual determination is wrong, and BLM’s Proposed Decision should be withdrawn for these errors.

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<sup>6</sup> COLT Protest at 7–8; *State of Mont. v. Bureau of Land Mgmt.*, No. MT-01-22-01, American Prairie’s Response to Petition for Stay, Exhibit 2: Aune Decl. at ¶¶ 25–27 (Sept. 12, 2022) (attached as Exhibit 4).

To date, American Prairie’s bison herd, which now includes more than 900 bison, has produced 645 animals used for meat consumption, commercial purposes, breeding stock for existing bison operations, or other purposes of commercial and/or cultural value. Heidebrink Decl. at ¶ 17. American Prairie has shipped bison by truck to entities in Montana, Colorado, Nebraska, Arizona, South Dakota, Washington, Washington D.C., Pennsylvania, and Oklahoma. *Id.* at ¶ 13. The following provide examples of American Prairie’s meat-producing activities:

**A. American Prairie Supplies Production Animals to Tribes for Food Sovereignty Programs and Commercial Use.**

BLM disregarded American Prairie’s “production” value related to its contribution of hundreds of bison in support of tribal food sovereignty programs. The agency brushed off this significant food production purpose, determining that the evidence in the record explaining the food-sovereignty aspect of American Prairie’s operation did not meet the agency’s threshold for “production-oriented” operation. BLM should reconsider its position based on the evidence provided in the administrative record and attached to this protest. *See generally*, Heidebrink Decl., Colombe Decl. (attached as Exhibit 5), Magnan Decl. (attached as Exhibit 6), and Oats Decl. (attached as Exhibit 7).

In 2021 and 2022, American Prairie supplied the Lakota Tribe in South Dakota with 68 bison for the Wolakota Buffalo Range. On the Range, the Lakota manage these buffalo as a working herd, harvesting the animals for meat for community members. Colombe Decl. at ¶ 11. In 2025, alone, 126 buffalo were harvested from the Wolakota Buffalo Range to provide food to tribal members, yielding 46,000 pounds of meat for tribal members. *Id.* at ¶ 13. During the government shutdown in the fall of 2025, the tribe had enough meat to supply community members with a weekly distribution. Many of the harvested animals originated from American Prairie’s herd that are now proposed to be evicted from BLM’s federal allotments under the BLM’s new Proposed Decision. *Id.*

Buffalo is a primary food source for the Lakota people living on the Rosebud Sioux Reservation—an area described as a “food desert” with limited access to affordable healthy food and with higher food prices compared to the surrounding area. *Id.* at ¶ 8. American Prairie’s buffalo directly contribute a significant amount of food to the Lakota community. *Id.* With American Prairie’s contributions, the Sicangu Lakota Tribe has been able to grow its bison herd to a level that the Tribe is able to commit to providing a monthly bison meat supply to its community members through November 2026. When the herd grows in number, the Tribe is planning to offer buffalo meat for sale on a nationwide basis to earn revenue that will support tribal programs. *Id.* at ¶ 20. This alone qualifies American Prairie’s bison as “production-oriented” animals, rendering the BLM’s factual findings in error.

American Prairie has also supplied the Chippewa-Cree Tribe on the Rocky Boy Reservation in Box Elder, Montana with bison to start its business and cultural herds and has committed to helping grow the Tribe’s business herd over the next three years with 150 animals.

The Tribe's business herd exists solely to provide food for the community. Oats Decl. at ¶ 16. Buffalo are critically important to the Chippewa-Cree people not only for cultural purposes but also for current-day food programs and commercial enterprises in modern times. In October 2022, the first Buffalo were released on Rocky Boy Reservation land. Five Buffalo came from the Confederated Salish and Kootenai Tribes and six Buffalo came from American Prairie's herd. The herd started with these eleven animals. *Id.* at ¶ 7.

Since then, Rocky Boy's herd has grown to sixty-two buffalo, with a large percentage of the herd supplied by American Prairie. Since 2022, the buffalo have been harvested for their meat and the meat distributed to community members through tribal programs, schools, the tribal health board, and in the community market. *Id.* at ¶ 20. The meat was also processed and sold to patrons in the restaurant in the Tribe's casino, bringing in revenue for the Tribe.

The Chippewa-Cree Tribe's goal is to work with American Prairie over the next three years to build a sustainable business herd, growing the number of animals so that the Tribe can consistently harvest animals for food. American Prairie has committed to providing the Tribe with fifty animals each year, over the next three years. *Id.* at ¶ 16. These animals will be supplied from the herd currently grazing on BLM allotments under the 2022 BLM Final Decision. These animals produce meat for the Tribes and contribute significantly to the Tribe's food sovereignty programs. BLM's findings that America Prairie's bison are not "production-oriented" animals, or part of a "production-oriented" operation is erroneous and fails to consider the significant evidence in the record demonstrating American Prairie's production-oriented livestock operation.

Similarly, the Assiniboine and Sioux Tribes of the Fort Peck Reservation in Wolf Point, Montana also maintain cultural and business herds on tribal lands. Magnan Decl. at ¶¶ 9–10. The buffalo is also an important component to the Native American economy, providing the tribes with food sovereignty, security, and shelter. *Id.* at ¶ 5. The Tribes have bolstered their herds to provide the community with meat through tribal food sovereignty and health programs. The Tribes have worked with American Prairie over the years to grow its herds, including its business herd that supplies food to the community. For example, in 2019, American Prairie supplied the Fort Peck Tribes with 10 bulls to supplement their business herd. Every Buffalo supplied to Fort Peck benefited tribal members in the way of meat, money, or both. *Id.* at ¶¶ 10–11. Fort Peck generated revenue for its Tribe by selling off two of American Prairie's bison at the rate of \$19,000 per bull. *Id.* at ¶ 11. The American Prairie bulls were also offered up in a hunt on the reservation, drawing upwards of \$3,500 per bull harvested. The evidence clearly demonstrates that American Prairie's bison are production-oriented, providing meat and revenue to tribal communities.

BLM blatantly erred when it concluded that American Prairie's bison were not used for "meat" or "used in support of production-oriented operations." The evidence overwhelmingly demonstrates that American Prairie's animals meet BLM's new "production" qualification;

therefore, the agency's Proposed Decision should be withdrawn and the Final Decision issued in July of 2022 should be allowed to stand.

**B. American Prairie Supplies Breeding Stock to Production-Oriented Herds.**

BLM also failed to consider that a large portion of American Prairie's operation is for the supply of animals to start and grow buffalo herds for meat production and other economic benefits. As an example, the Lakota Tribe harvested 126 bison in 2025, many of which originated from American Prairie herds. Colombe Decl. at ¶ 13. However, other bison that were not harvested by the Tribe's Farm Company in 2025 were retained for breeding to increase herd size and long-term sustainability. *Id.* The retained animals include bison supplied by American Prairie. This practice is no different than standard livestock practices in cattle operations, where animals meeting maternal standards are used by other operators to build viable herds. *Id.* at ¶ 11. BLM refuses to acknowledge the factual similarities between cattle operations and American Prairie's bison operation in its newfound "production" analysis, wrongfully concluding that American Prairie's bison and operation is not "production oriented."

**C. American Prairie Produces Meat for the General Public through its Annual Harvest.**

Since 2016, American Prairie has allowed an annual field harvest of its bison, putting thousands of pounds of meat on tables every year. This, too, directly qualifies as "production" by BLM's terms as the animals are used for "meat." BLM has willfully ignored this evidence in the record demonstrating the production value of American Prairie's annual harvest.

American Prairie's harvest is conducted by lottery, allowing a specific number of people to participate in a controlled harvest each year. In 2025, more than 5,000 people applied for the opportunity to harvest an American Prairie bison. Applicants pay only \$300 if the harvest is successful. Each successful harvest yields hundreds of pounds of meat on average. Heidebrink Decl. at Attachment 9.

The annual harvest program contributes a significant amount of meat each year to the food supply, and much more than the threshold "production" demonstrated in *Hampton Sheep Co.* where the grazing applicant admitted that there was only a "chance" that the bison would be used for meat production. *Hampton Sheep Co.*, Wyo. 1-74-1 at 5. Unlike the bison producer in *Hampton Sheep Co.*, American Prairie harvests bison every year for consumption by the general public. The production value of these annual harvested is supported by the evidence in the administrative record. Since the annual harvest program started in 2016, more than 370 bison have been harvested, providing more than 75,000 pounds of high-quality, naturally produced bison meat to the public. Heidebrink Decl. at ¶ 15. Each member of the public who harvests an American Prairie bison brings home hundreds of pounds of meat. *Id.* at Attachment 9.

Contrary to its alleged purpose, the Proposed Decision will actually decrease production-oriented activity, taking away this important food source from the public and harming American Prairie financially. The annual harvest, if cancelled due to the Proposed Decision, is also a source of significant revenue for American Prairie, which has collected more than \$79,000 from its annual field harvests. Additionally, more than \$125,000 has been raised by local organization through bison field harvests that have been donated by American Prairie. *Id.* at ¶ 15.

American Prairie's harvests have produced thousands of pounds of meat for consumption each year since 2016 and remain a revenue source for the organization and other local organizations that benefit from American Prairie's generosity. BLM has not offered a reasoned explanation as to why these bison field harvests do not meet its new requirement for "production-oriented" animals.

#### **D. American Prairie Produces Meat for Local Food Banks and Other Local Organizations.**

In addition to the annual harvest, American Prairie regularly contributes bison meat to area food banks and for fundraising opportunities for local organizations. *Id.* at ¶ 16. In total, more than 70 bison have been processed for local food banks, local organizations, and the Montana Food Bank Network, producing over 22,000 pounds of bison meat for community members. *Id.* This meat production contributes significantly to the local economy with over \$50,000 being spent at local processors in Phillips and Fergus counties to process the meat. *Id.* These facts, too, were contained in the administrative record and ignored by BLM in its proposal to revoke American Prairie's bison grazing permits.

In sum, since acquiring bison in 2005, American Prairie has raised more than 2,100 bison. As of October 2025, the current two herds total 942 bison. Over the years, approximately 370 bison have been field-harvested and 645 bison have been shipped to other producers to grow their herds in size and for the production of meat. Over 48 percent of the bison raised at American Prairie have been field harvested, shipped to supplement herds, grow existing herds or found new herds. *Id.* at ¶ 17. This practice is not unlike a cattle production operation. The BLM erred when it concluded that American Prairie's animals and operation do not meet its newly crafted "production" requirement. The Proposed Decision should be withdrawn for this error and reconsidered in light of the undisputed evidence.

### **III. BLM ERRONEOUSLY CONCLUDED THAT AMERICAN PRAIRIE'S BISON ARE NOT DOMESTIC LIVESTOCK.**

As discussed above, the Taylor Grazing Act does not require that animals be "domestic" to qualify for grazing authorization on federal land. But even if such requirement existed—and American Prairie does not concede that it does—American Prairie's bison would qualify as "domestic" animals under the newly crafted grazing requirements outlined in BLM's Proposed Decision.

BLM claims that the organization’s “own admissions” make it “clear that these bison are not managed for production-oriented purposes. And so do not fall within the meaning of the terms *livestock* and *domestic* as those terms are used in the applicable statutory authorities.” Proposed Decision at 4. But BLM fails to cite any record evidence to support its conclusion. Instead, BLM hinges its rationale on four stale pieces of evidence: (1) a 2017 letter from American Prairie to then Montana Governor Steve Bullock describing the organization’s conservation goals, (2) a 2018 bison management plan that is no longer relevant to the management of American Prairie’s bison, (3) a 2017 email from American Prairie to BLM stating its intent to stitch together public lands, and (4) a 2014 Google video of the organization’s former director. Proposed Decision at 4.<sup>7</sup>

BLM’s factual conclusions on page 4 of the Proposed Decision only considered statements made by representatives of the organization. BLM never considered American Prairie’s actual livestock management practices or state law mandates requiring American Prairie’s bison to be classified and managed as “domestic bison”—both of which directly contradict such a conclusion.

The evidence that BLM chose to ignore demonstrates that American Prairie’s bison are, in fact, used for production-oriented purposes, as discussed above, and do qualify as “domestic” bison because they are objectively managed as livestock.

Though it was a significant point raised repeatedly in the administrative appeals, BLM turned a blind eye to the fact that the State of Montana classifies American Prairie’s bison as “domestic” animals. Under Montana law a “domestic bison” is a bison that has been:

- (a) reduced to captivity,
- (b) is subject to the per capita fees under 15-24-921, MCA,
- (c) is owned by a person, and
- (d) is the offspring of a bison that has been subject to the per capita under 15-24-921, MCA.

MCA §§ 81-1-101(4), (6).

American Prairie has met Montana’s statutory requirements to be classified as “domestic bison.” Not only are American Prairie’s bison kept in captivity, owned as personal property of the organization, and subject to the per capita livestock fees within the state of Montana, the bison are also handled and managed as livestock. The bison are subject to a “Herd Health Plan”

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<sup>7</sup> To the extent that DOI or BLM attempts a targeted attack on American Prairie’s permits, which it appears to be doing here by failing to consider the highly probative, relevant evidence of the organization’s livestock management, American Prairie preserves its legal claims for Constitutional Due Process and Equal Protection violations.

that was developed to establish formal objectives, roles, protocols, and decision-making processes governing herd health, disease prevention, monitoring, handling, euthanasia, and emergency response. Zaluski Decl. at ¶ 6 (submitted as Exhibit 8); Heidebrink Decl. at Attachment 4.

American Prairie's active and intentional management of its bison herd—reviewing diagnostic results, adjusting surveillance priorities, making herd health decisions using veterinary judgment, documenting and investigating unexpected mortalities, ordering necropsies in consultation with veterinarians and diagnostic laboratories, using animals to establish or supplement other production-oriented bison herds (analogous to seedstock operations within the cattle industry), field harvesting as a management practice—is what “is done in livestock operations”; “is consistent with responsible domestic livestock management and disease risk mitigation”; “reflects intentional production and herd management decisions typical of domestic livestock enterprises”, and “is consistent with livestock production systems, particularly in extensive rangeland operations.” Zaluski Decl. at ¶¶ 8–11.

American Prairie's bison herd is actively managed as livestock. They are regularly handled, herded, ear tagged, PIT tagged, and have been branded when required. These bison are corralled and put into a squeeze chute to undergo vaccinations as per regulations, screened for disease, and the results are processed by the State Veterinary Lab in Bozeman and shared with interested parties. Heidebrink Decl. at ¶ 9.

All bison imported to American Prairie or exported to other owners from American Prairie have met or exceeded all import or export requirements and have had import or transport permits filed with the Montana Department of Livestock and the USDA's Animal Plant Health Inspection Service. *Id.* at ¶ 10. Bison owners are required to pay the State of Montana a per capita livestock fee on bison of \$4.66 per year. Since 2015, American Prairie has paid per capita livestock fees totaling more than \$49,000. American Prairie pays the same DNRC and BLM Animal Unit Month fees on its bison as any other lessee pays on their livestock, cattle or otherwise. *Id.* at ¶ 11. American Prairie's bison meet or exceed all Montana Department of Livestock testing, vaccination, and quarantine requirements for every animal before it arrives on American Prairie property. *Id.* at ¶ 12.

Deciding whether to cancel American Prairie's longstanding grazing permits by examining statements that were made by the organization many years ago constitutes arbitrary and capricious agency action. BLM should have followed its decades-old practice in *Norman and Norman* and considered how these animals were managed on the rangeland. However, BLM did not even attempt to examine or consider American Prairie's management practices, leaving its factual conclusions based on nothing more than speculation, assumptions, and pure conjecture. As such, the Proposed Decision should be withdrawn.

#### IV. THE PROPOSED DECISION IS VAGUE AND VIOLATES DUE PROCESS

The Proposed Decision is unconstitutionally vague because it introduces a new requirement for applicants to obtain a grazing permit yet, at the same time, fails to adequately define the new qualifying term: “production.” Under the Proposed Decision, only applicants who intend to graze animals “used for production-oriented purposes” would be eligible for grazing permits. Proposed Decision at 4. However, as noted above, there is no statute or regulation defining this standard. BLM attempts to create a standard for “production” that contradicts itself by both requiring the applicant to be “production-oriented” animals to be used for “meat, milk, fiber, or other animal products” while also explicitly carving out a class for horses and other animals not intended for food consumption but used to support “production-oriented operations.” *Id.*

Without a clear definition of the term “production,” the Proposed Decision cannot pass Constitutional scrutiny. *Boutilier v. INS*, 387 U.S. 118, 123, 87 S. Ct. 1563, 18 L. Ed. 2d 661 (1967) (void for vagueness doctrine applies in civil context where the statute is so vague and indefinite as really to be no rule or standard at all). An agency violates due process under the Fifth Amendment of the United States Constitution when it fails to give ordinary people fair notice of the conduct required or when its regulatory requirements are so standardless that they invite arbitrary enforcement by the agency. Both constitutional violations exist here. The Proposed Decision violates due process guarantees because its language is so vague that a person of common intelligence would have to guess its meaning and enforcing the novel requirement for “production-oriented” animals is without a clear standard allowing the agency to differ in its application of its new requirement. *Brennan v. OSHRC*, 505 F.2d 869, 872 (10th Cir. 1974).

BLM’s Proposed Decision, if approved, is unconstitutionally vague because applicants cannot reasonably determine what specific activities or outcomes satisfy the regulatory requirements. American Prairie specifically submitted to BLM evidence of “production,” through meat processing for area residents in need, annual field harvesting, and animals traded as stock to other organizations. However, the agency does not accept those activities as “production-oriented.” BLM must offer a reasoned explanation why American Prairie’s production activities, which puts thousands of pounds of protein on the public’s tables every year, do not meet the agency’s new “production-oriented” qualification. The agency failed to do so in its Proposed Decision.

Further, the Proposed Decision’s lack of specificity as to what constitutes “production” invites unbounded agency discretion, permitting the agency to determine compliance on an *ad hoc* basis and in violation of due process protections. BLM should withdraw its Proposed Decision and continue with its July 28, 2022, final decision—the principles of which BLM has supported since 2005, when it first authorized American Prairie to graze bison on the Telegraph Creek allotment.

However, if BLM is determined to move forward with the Proposed Decision, American Prairie demands that the agency provide clear definitions for the terms “production,” “production-oriented,” and “managed for production-oriented purposes” as stated in the Proposed Decision. These terms should be defined in specific detail to give applicants proper notice of the agency’s threshold requirements for meeting its new class of grazing qualifications.

## **V. THE PROPOSED DECISION VIOLATES APA’S RULEMAKING REQUIREMENTS**

The Proposed Decision, if finalized, would also constitute an unlawful rulemaking. As discussed above, neither the TGA, FLPMA, PRIA, nor DOI’s regulatory framework require grazing permit applicants to own “livestock used for production-oriented purposes” as BLM’s Proposed Decision suddenly requires. With BLM approval, American Prairie has been grazing bison on the Telegraph Creek allotment since 2005. Until January 16, 2026, BLM did not recognize a “production” requirement in its interpretation of the TGA or the agency’s grazing regulations that set forth the requirements for a qualified applicant. BLM’s Brief in Support at 23 (“The TGA does not limit grazing to production grazers.”). To insert a “production” requirement now through the Proposed Decision would substantially alter the legal requirements of the TGA, FLPMA, PRIA, and DOI’s regulations, not just for American Prairie, but for other existing permit holders and all future applicants. Because the actions in the Proposed Decision will have future effects on grazing permit decisions, the agency’s Proposed Decision constitutes a rulemaking under the Administrative Procedure Act. 5 U.S.C. § 551(4) (defining “rule” as “an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency”). Such a rulemaking is unlawful where, as here, it was not promulgated with the notice-and-comment procedures required by 5 U.S.C. § 553.

The Proposed Decision is subject to APA’s rulemaking requirements because it significantly amends DOI’s legal requirements to become a qualified applicant under 43 U.S.C. § 315b and 43 CFR § 4110.1, *et seq.* Under the APA, an agency is prohibited from promulgating new rules or amending existing rules without complying with the notice-and-commenting requirements set forth in 5 U.S.C. § 553. However, BLM has not complied with any of the rulemaking requirements in 5 U.S.C. § 553.

BLM also cannot circumvent APA rulemaking procedures by disguising its Proposed Decision as an “adjudication” of a single grazing permit or license. It is not. See *Safari Club Int’l v. Zinke*, 878 F.3d 316, 334 (D.C. Cir. 2017). The Proposed Decision re-interprets the TGA, reversing the agency’s longstanding interpretation of the Act and inserts additional application requirements. These new requirements, which are not based in statutory or regulatory text, create new legal obligations on applicants moving forward and are likely to have a “future effect” on all grazing applicants for BLM lands. See COLT Protest at 10. Further, agencies are prohibited from bypassing APA rulemaking procedures by simply labeling substantive changes as mere

interpretations or guidance of its own rules or laws, *Zinke*, 878 F.3d at 332, which is exactly what BLM is doing here. The Proposed Decision would constitute an unlawful rulemaking and should be withdrawn immediately.

## **VI. THE PROPOSED DECISION WOULD UNLAWFULLY CANCEL AMERICAN PRAIRIE'S EXISTING, 20-YEAR-OLD PERMITS.**

Since 2005 BLM has authorized American Prairie to graze bison on the BLM's Telegraph Creek allotment in Phillips County, Montana. BLM also approved American Prairie's request to graze bison on the nearby Box Elder allotment in 2008. On July 28, 2022, BLM approved bison grazing to continue on these two allotments and permitted American Prairie's bison to graze on four additional allotments: Whiterock Coulee, French Coulee, Garey Coulee, and Flat Creek. Bison are currently grazing, with BLM authorization, on Telegraph Creek, Box Elder, and Whiterock allotments. The Proposed Decision, if finalized, would "cancel" these permits. Proposed Decision at 5. But cancelling these permits would violate the agency's own regulatory framework and procedural due process protections.

Under 43 CFR § 4171.1(a)–(b), an authorized officer may only cancel a grazing permit for violations of the grazing regulations and repeated willful violations by a permittee. When a violation of unauthorized use is determined to be nonwillful and incidental, the authorized officer must notify the permittee of the violation or unauthorized use, provide the permittee with instructions on how the violation can be corrected, and outline the process for settlement. 43 CFR § 4150.2 This provision ensures the permittee is given notice and an opportunity to address the issue before further regulatory actions are taken.

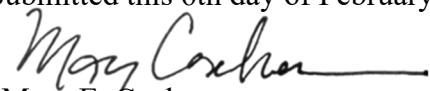
No such notice has been given to American Prairie of any alleged violation or unauthorized use that would warrant cancellation of its longstanding bison grazing permits. American Prairie's "unauthorized use" is the result of BLM changing its terms and conditions and not from any violation committed by the permittee. The only notification American Prairie received that its livestock practices were out of compliance with the BLM's new standards was through the Proposed Decision, issued January 16, 2026. The agency does not state how American Prairie could correct the violation or deficiency, nor does the agency give American Prairie the opportunity to cure any violation before cancellation of the permits.

The Proposed Decision must be withdrawn so that the agency can comply with the procedures outlined in 43 CFR § 4150.2. BLM must first notify American Prairie of the specific violation. BLM must notify American Prairie how the violation can be corrected. BLM must explain how the violation can be settled with the agency. American Prairie must be given an opportunity to comply with BLM's new standards, however arbitrary and capricious they may be. BLM spontaneously proposes cancelling the permits without the agency complying with these regulatory provisions. Doing so would exceed the agency's authority, violate regulations and procedural due process protections.

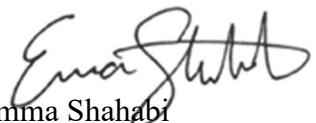
## CONCLUSION

For the foregoing reasons, BLM's Proposed Decision, if imposed, constitutes an arbitrary and capricious agency action in violation of the APA that would not withstand judicial scrutiny. The Proposed Decision should be immediately withdrawn, and the agency should leave in place its 2022 Final Agency Decision, authorizing American Prairie to continue to graze bison on Telegraph Creek, Box Elder, Flat Creek, French Coulee, Garey Coulee, and Whiterock Coulee.

Submitted this 6th day of February, 2026.



Mary E. Cochenour  
Cochenour Law Office, PLLC  
7 West 6th Avenue, Suite 4I  
PO Box 1914  
Helena, MT 59624  
(406) 422- 8716  
mary@cochenourlawoffice.com



Emma Shahabi  
Jenny Harbine  
Earthjustice  
1716 W. Babcock St.  
P.O. Box 4743  
Bozeman, MT 59772-4743  
(406) 586-9699  
eshahabi@earthjustice.org  
jharbine@earthjustice.org

*Attorneys for American Prairie*