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Working to protect and restore Western Watersheds & Wildlife

February 5, 2026

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5001 Southgate Drive
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Via email: sgermann@blm.gov
Via hand delivery: [to physical address above]

Re: Protest of BLM Notice of Proposed Decision Dated January 16, 2026 to revoke bison grazing permits previously issued to American Prairie

Director Germann,

I am writing on behalf of Western Watersheds Project (WWP), a non-profit conservation organization based in the western United States. WWP works to protect and conserve the public lands, wildlife, and natural resources of the American West through education, public policy initiatives, and litigation. WWP staff and members use and enjoy the public lands in Montana, including the bison grazing allotments and adjacent areas at issue in this Proposed Decision. As in interested public with standing, WWP timely submits the below formal protest of the Proposed Decision to revoke American Prairie's bison grazing permits.

Introduction

BLM's Proposed Decision in this case represents a dramatic and unjustified reversal of the agency's prior position. After years of analysis, explanation, and vigorous defense of its authority to permit American Prairie's bison grazing, BLM now abruptly abandons that position without offering a clear or coherent explanation supporting this reversal. In place of analysis grounded in statute, regulation, and agency practice, the Proposed Decision relies on strained assumptions, newly invented requirements, and ad hoc interpretations that appear nowhere in applicable legal authorities. It also reads an absolute limitation into the Taylor Grazing Act that the statute itself does not contain. Adding to these errors, the Proposed Decision also attempts to alter a core term of the grazing permits—the authorized class of livestock—without demonstrating that the agency completed the environmental analysis its own regulations require before such a change may be made.

In its Proposed Decision, BLM introduces an entirely new "production" requirement for grazing permits—one that has never before appeared in the Taylor Grazing Act (TGA) or in the grazing

regulations at 43 C.F.R. Part 4100. The absence of any legal foundation for this requirement is made especially apparent by the authority BLM ultimately turns to in support of it: the dictionary. After discarding decades of agency practice, regulatory text, and its own prior reasoning, BLM sprinkles in a few unjustified logical leaps and inferences and arrives at the conclusion that there now exists a brand new binding, nationwide "production" requirement for the issuance of any grazing permit. This appears to be a regulatory requirement being fabricated out of whole cloth and fails to follow established rulemaking procedures and regulations.

Compounding the problem, a single BLM State Office has appointed itself the task of creating new, binding interpretations of the TGA and Part 4100 on behalf of the entire agency. This includes the newly minted production requirement and a revised definition of "livestock", both of which are declared without compliance with formal rulemaking requirements. The proposed action is especially striking given that the same office previously issued American Prairie's permits after determining bison meet all requirements and qualifications.

Accordingly, much of this protest necessarily consists of simply restating and applying the Bureau's own prior reasoning—reasoning that BLM articulated previously, including during the NEPA process—before abandoning it without explanation.

The protest that follows identifies several defects in the Proposed Decision and each independently requires its withdrawal, accompanied by a reinstatement of the prior decision approving American Prairie's bison permits.

I. BLM invents new eligibility requirements not found in statute or regulation

The Proposed Decision does not apply existing grazing law to new circumstances. Instead, it retroactively adds new eligibility requirements. Most notably, BLM fabricates an entirely new requirement that livestock be managed for "production" purposes and then treats American Prairie's failure to meet that newly announced standard as grounds for revocation.

The grazing regulations already specify what is required to hold a permit, and they do so clearly and exhaustively. Under 43 C.F.R. § 4110.1(a)–(c), a permittee must control qualifying base property; be a citizen of the United States; be a group, association, or corporation authorized to conduct business in the State; and have a satisfactory record of performance. That is the full list. There is no additional production test, no inquiry into business model, and no requirement that livestock be raised for sale, slaughter, or commercial profit.

BLM previously acknowledged this without reservation. In its Combined Answer to the Statements of Reasons, the agency confirmed that § 4110.1 sets out the complete list of eligibility requirements and that American Prairie satisfied each one.[1] BLM expressly rejected arguments that further conditions could be imposed and reiterated that understanding in later briefing.[2] During the NEPA process, BLM likewise rejected public comments asserting that grazing permits must be tied to production or commercial use, explaining that neither statute nor regulation imposes such a requirement.[3]

1 Bureau of Land Management, Combined Answer to Statements of Reasons, Jan. 23, 2023, at 22.
2 Id. at 22; Brief in Support of Cross-Motion for Summary Judgment, Sept. 29, 2023, at 28–29.
3 Bureau of Land Management, American Prairie Reserve Bison Change of Use Environmental Assessment – Public Comment Response Report, March 2022, App. A, at A-1 to A-3.

The Proposed Decision does not adequately explain why this understanding of the regulations is now wrong. It does not identify any amendment to § 4110.1, any change in statutory authority, or any new agency-wide policy. Instead, it simply announces a new requirement and applies it retroactively. Creating new eligibility criteria out of whole cloth, especially after previously rejecting the same arguments during environmental review, is arbitrary and capricious, an abuse of discretion, and not in accordance with law..

II. The asserted "production" requirement has no basis in the Taylor Grazing Act or the grazing regulations

The Proposed Decision rests on a central premise: that grazing permits are available only where livestock are managed for "production" purposes. This requirement is nowhere to be found in the TGA, nor can it be located in the grazing regulations at 43 C.F.R. Part 4100.

Nothing in the TGA conditions grazing permits on production, commercial sale, or economic output. Section 315b of the Act authorizes the Secretary to issue permits "to graze livestock," but the statute does not define livestock, does not impose a production qualifier, and does not suggest that grazing authority is limited to animals raised for sale or profit.[4] The Proposed Decision's attempt to derive a production requirement from that language depends on inserting an absolute limitation into the statute that Congress did not include. The Proposed Decision asserts that "...the TGA authorizes the BLM to issue grazing permits *only* for grazing by "livestock,"..." (emphasis added).[5] By appending the word 'only' here, the BLM is attempting to insert an absolute that is found nowhere in the TGA.

The grazing regulations likewise contain no production requirement. Part 4100 does not require that livestock be raised for sale, slaughter, or commercial return, nor does it condition permit eligibility on a permittee's business model or economic objectives. When the regulations intend to impose eligibility requirements, they do so clearly and explicitly, most notably in 43 C.F.R. § 4110.1. Production is not among them.

BLM previously acknowledged, without reservation, that these requirements were exhaustive. In previous appeal proceedings, the agency repeatedly rejected arguments that grazing permits must be tied to production, explaining that neither the TGA nor the grazing regulations impose such a limitation and that attempts to read one into the law reflected policy preferences rather than legal requirements.[6] During the NEPA process, BLM reaffirmed that understanding in response to public comments, explaining that grazing permits may lawfully serve conservation, ecological, or land-management objectives independent of production.[7]

The Proposed Decision does not identify any amendment to the TGA, any revision to Part 4100, or any new agency-wide policy that would justify abandoning that position. Instead, it announces a production requirement for the first time and treats it as universal, binding policy. In doing so, the Proposed Decision fails to comply with rulemaking requirements to precede any new universal and binding policy and fails to comply with NEPA procedures required to precede any new and universal binding policy. Thus, this newly contrived policy requirement cannot be retroactively imposed through a Proposed Decision.

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4 43 U.S.C. § 315b

5 Bureau of Land Management, Proposed Decision, American Prairie Grazing Permits, Jan. 16, 2026, at 3.

6 Bureau of Land Management, Combined Answer, at 22–24; Brief in Support of Cross-MSJ Brief, at 23-24 & 28-29.

7 Bureau of Land Management, American Prairie Reserve Bison Change of Use Environmental Assessment – Public Comment Response Report, March 2022, App. A, at A-1 to A-3.

III. BLM's revised definition of livestock departs from regulation, state law, and settled agency practice

BLM's attempt to narrow the meaning of "livestock" illustrates the same fundamental error that runs throughout the Proposed Decision. The regulatory definition at 43 C.F.R. § 4100.0-5 does not define livestock by economic purpose or end use. It does not distinguish between animals managed for production and animals managed for conservation, land management, or other lawful objectives.

Indeed, Montana law expressly recognizes and treats bison as livestock. Montana Code Annotated § 81-1-101 defines "bison" as "domestic bison or feral bison," and Montana Code Annotated § 81-2-702 and § 81-3-201 explicitly include "domestic bison" and "bison" within the definition of "livestock". Under this statutory framework, American Prairie's privately owned and controlled bison are regulated by the State of Montana as livestock, not as wildlife.[8] Consistent with that designation, American Prairie has paid livestock taxes to the State of Montana on its bison and has complied with the disease testing, health certification, and management protocols that state law requires for livestock. Those obligations arise precisely because the State has classified these animals as livestock for purposes of taxation, disease control, and regulatory oversight. This view of privately owned bison as domestic livestock is also reflected elsewhere, such as in regulations promulgated by the U.S. Department of Agriculture.[9]

Federal grazing practice has long aligned with the State's formal classification. As summarized by a recent report issued by the Congressional Research Service, the Department of the Interior's Office of Hearings and Appeals held in *Norman v. Bureau of Land Management* that bison may be treated as livestock under the TGA where they are managed in substantial respects as livestock.[10] BLM relied on that understanding during the NEPA process for issuing American Prairie's bison permits, rejecting public comments that sought to exclude bison from the regulatory meaning of livestock.[11]

The State of Montana's position here is inconsistent with its own laws and practices. Montana was an appellant in earlier proceedings and argued that American Prairie's bison could not qualify as livestock for purposes of federal grazing permits, even while the same State was taxing those animals as livestock and enforcing livestock-specific disease and health requirements. The Proposed Decision now adopts that position without acknowledging or attempting to reconcile this inconsistency.

Against that backdrop, the Proposed Decision's attempt to exclude bison from the meaning of "livestock" represents a sharp break from regulatory text, state law, and BLM's own prior interpretation.

IV. The grazing regulations explicitly contemplate and provide for non-production grazing[12]

8 It is important to note that under Montana Code Annotated § 81-1-101 the state distinguishes between wild and domestic bison by looking at whether or not they have been "reduced to captivity", "never been subject to per capita fee", and "never been owned by a person." American Prairie bison have been reduced to captivity, subject to state per capita livestock fees, and are clearly owned by a person.

9 See, e.g., 91 C.F.R. § 91.1 (specifying "bison" as livestock and including bison within the usage of the term "cattle")

10 Congressional Research Service, Livestock Grazing on Federal Lands: Frequently Asked Questions, R48806 (Jan. 22, 2026). Found online at: https://www.congress.gov/crs-product/R48806#fn34

11 Public Comment Response Report, App. A, at A-1 to A-3.

12 Note that it is also likely the 1976 enactment of FLPMA alters BLM's reading of the much older TGA to allow livestock grazing that is not necessarily production-oriented in nature.

The Proposed Decision's contention that the TGA requires a permittee be engaged in "production" in order to graze public lands also fails because it ignores the broader structure of Part 4100, which clearly contemplates and authorizes grazing that is not tied to production.

First, the regulations explicitly provide for grazing by indigenous animals. At 43 C.F.R. § 4130.6-4 the regulations authorize special grazing permits for indigenous animals and allows BLM to tailor permit terms to achieve multiple use objectives. Additionally, at 43 C.F.R. § 4130.3-2(e) the regulations allow for the authorized officer to specify the kinds of "indigenous animals" authorized to graze under specific terms and conditions. Nothing in either provision conditions grazing on production, sale, or commercial output. To the contrary, they imply that grazing may serve ecological and conservation purposes independent of production (i.e. multiple use objectives). BLM cited these provisions when previously defending their decision to issue American Prairie's bison permits and when reaffirming their applicability during the NEPA process.[13]

Second, the regulations authorize free-use grazing permits under 43 C.F.R. § 4130.5, allowing grazing without a permit or fee for scientific research, vegetation management, and control of noxious weeds. The existence of a free-use category that includes grazing for these specific purposes underscores that grazing need not be productive, commercial, or revenue-generating to be permissible under the regulations.

Third, the regulations expressly contemplate non-use, suspension, and temporary cessation of grazing. Provisions found at 43 C.F.R. § 4130.4 authorize suspension or reduction of grazing use for reasons including resource protection and drought without terminating permits or preferences. These provisions make clear that production is not absolutely central to lawful grazing; authorized grazing may be reduced or even absent while the permit remains valid.

BLM acknowledged many of these structural features during the NEPA process, explaining in response to public comments that the grazing regulations do not require livestock to be managed for production and that grazing may lawfully serve conservation or land-management objectives.[14] The Proposed Decision offers no reasonable explanation for why these long-standing regulatory provisions—and BLM's prior interpretation of them—no longer apply.

V. BLM cannot change the class of livestock without additional NEPA analysis

BLM's Proposed Decision to replace bison with cattle on these allotments—and to convert mixed authorizations to cattle-only—is not a minor administrative adjustment. Under 43 C.F.R. § 4130.3-1(a), the kind of livestock authorized is a required permit term. Changing that term alters the nature of the authorized use on the ground and the ecological effects of grazing.

For that reason, 43 C.F.R. § 4110.3(c) requires that, before changing grazing preference or authorized use, the authorized officer undertake the appropriate analysis under NEPA. With this Proposed Decision, BLM moves directly to the outcome—eliminating bison and substituting cattle—without demonstrating that it analyzed the environmental consequences of changing livestock class.

Significantly, the prior EA did not consider an alternative that specifically analyzed the impacts of an all-cattle grazing regime, which is what the proposed decision would implement. By altering a

13 Brief in Support of Cross-Motion for Summary Judgment, Sept. 29, 2023, at 13–16; Public Comment Response Report, App. A, at A-1 to A-3.

14 Public Comment Response Report, App. A, at A-1 to A-3

fundamental permit term without first conducting the appropriate analysis, the Proposed Decision fails to meet BLM's own regulatory requirements under 43 C.F.R. § 4110.3(c).

VI. The timing of the Proposed Decision heightens concerns around the appearance of impropriety and conflict of interest

The broader context in which BLM issued the Proposed Decision warrants attention. The Montana Stockgrowers Association—one of the principal opponents of American Prairie's bison permits—was represented during the administrative appeal by Karen Budd-Falen while she was engaged as an attorney in private practice. In that role, she advanced arguments aimed at redefining "livestock," imposing a production-based limitation on grazing authority, and denying BLM's discretion to authorize bison grazing on federal allotments. Those arguments were presented directly to BLM and were expressly rejected by the agency at the time.

Since at least March 2025, Ms. Budd-Falen has served in several senior leadership roles within the Department of the Interior, with significant oversight responsibility over bureau-level policy and decision-making. All of the major developments in this matter, including BLM's abrupt and radical reversal of position, have occurred during this same period.

The reasoning now adopted by BLM closely mirrors the arguments Ms. Budd-Falen previously advanced on behalf of the Montana Stockgrowers Association and stands in direct contrast to the agency's own earlier legal arguments and conclusions. When an agency reverses a settled position and adopts arguments it had previously rejected, especially during a period in which the attorney who advanced those arguments has since assumed senior leadership roles within the Department, the appearance of impropriety is unavoidable. At a minimum, this sequence of events creates a serious and unresolved concern regarding potential conflicts of interest and the institutional independence of the decision-making process.

Conclusion

American Prairie has met and continues to meet every requirement for the issuance of a grazing permit. BLM previously recognized this, explained it, and defended it—during the appeal process and during the NEPA process. The Proposed Decision abandons that position without explanation, and instead devises new requirements not found in statute or regulation, disregards state law, contradicts the text and rationale of the Taylor Grazing Act, and departs from settled administrative interpretation. For these reasons, the Proposed Decision should be withdrawn in its entirety and the existing, previously approved permits fully reinstated.

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