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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
DEPARTMENTAL CASES HEARINGS DIVISION

<p>WESTERN WATERSHEDS PROJECT,</p> <p>Appellant,</p> <p>v.</p> <p>BUREAU OF LAND MANAGEMENT,</p> <p>Respondent.</p>	<p>Docket No.</p> <p>Appeal of May 8, 2026, Final Decision for Bison Grazing on Telegraph Creek (05654), Box Elder (15634), Flat Creek (15439), White Rock Coulee (15417), East Dry Fork (05617), French Coulee (05616), and Garey Coulee Allotments (05447).</p> <p>DOI-BLM-MT-L0102018-0007-EA</p> <p>NOTICE OF APPEAL, STATEMENT OF REASONS, AND PETITION FOR STAY</p>
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I. Notice of Appeal, Statements of Timeliness and Standing.

Pursuant to 43 C.F.R. part 4, Western Watersheds Project (Western Watersheds), by and through its attorneys, timely appeals the May 8, 2026 final decision of the U.S. Bureau of Land Management (BLM) to cancel permits issued to American Prairie Reserve (American Prairie) to authorize bison grazing on seven grazing allotments in Phillips County, Montana. Exhibit A. This notice of appeal, statements of timeliness, facts, and reasons, and petition for stay, are timely filed on June 6, 2026, within 30 days of the final decision. 43 C.F.R. § 4.170(b); § 4.22(c).

Western Watersheds is a party to this proceeding and has standing to bring this appeal. On February 5, 2026, Western Watersheds timely filed a protest of the BLM’s proposed decision to cancel the permits as to bison.¹ 43 C.F.R. § 4.170(b). Western Watersheds is a non-profit conservation group based in the western United States, with staff and members who use and enjoy public lands in Montana and other western United States, including the designated livestock allotments and adjacent areas grazed by bison and at issue in this Decision. *See, e.g.*, Declaration of Patrick Kelly, Ph.D. (filed herewith). As a member of Western Watersheds and its Montana/Idaho States Director, Mr. Kelly declares the deep spiritual value he derives from spending time with bison on the federal public lands at issue in this appeal, witnessing their movement across the landscape, and noting the very improved conditions in prairie grasslands grazed by bison that BLM had anticipated would occur when issuing permits for bison grazing on these lands. Kelly Decl. ¶¶ 3-5. Mr. Kelly is deeply moved by the hopeful vision and chuffing of bison engaging to restore prairie ecosystems, with some fencing removed, healthy riparian

¹ Decision documents are found on the “BLM National NEPA Register” <https://eplanning.blm.gov/Documents/?id=23a49ba0-a7f2-f011-8407-001dd803d067&spid=d3045e6f-a8f2-f011-8407-001dd80bcf93> (last visited June 4, 2026).

areas, intact vegetation, and a grizzly bear in the area for the first time in a long time. Kelly Decl. ¶¶ 1, 3-6; *see* 43 C.F.R. § 4.401, § 4.402, § 4.170.

Additionally, for more than 30 years, Western Watersheds has worked to protect and conserve public lands, wildlife, and natural resources of the American West through education, public policy initiatives, engaging with agencies, and litigating. Declaration of Erik Molvar ¶ 1 (filed herewith). Western Watersheds' members enjoy witnessing the restoration of bison and their native landscape and are adversely affected by the decision. *Id.* ¶ 5. Bison grazing in historic intensity and patterns on these prairie grasslands can help restore native functions, which would further Western Watersheds' mission, this decision stops that restoration. *Id.* ¶¶ 2-4.

II. Statement of Reasons.

A. Facts.

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) in Phillips County in north-central Montana. American Prairie owns base properties to these allotments and enjoys grazing preference under the Taylor Grazing Act (TGA) and its implementing regulations.

In 2005, BLM authorized American Prairie to graze bison on Telegraph Creek. In 2008, BLM extended authorization to graze bison to Box Elder. Since then, American Prairie has grazed bison on the two allotments, respectively, without any federal or state grazing violations. In 2019, American Prairie applied to graze bison on the five other allotments. After a lengthy environmental review process under the National Environmental Policy Act (NEPA), BLM found no significant impact to the environment from American Prairie's proposal and authorized

bison grazing on the seven allotments, effective July 28, 2022. Over the last 20+ years, and in reliance on 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.²

After allowing American Prairie to graze bison on federal lands for two decades, on January 16, 2026, BLM proposed to terminate American Prairie's permits to the extent they authorize grazing by bison and issue, instead, permits authorizing American Prairie to graze cattle only. BLM asserted it has authority to issue grazing permits only where the animals to be grazed are used for "production-oriented" purposes. On May 8, 2026, BLM issued its final decision to cancel the permits authorizing bison grazing. BLM stated the issue before it "is not whether bison can, under certain circumstances, be considered livestock, but whether the specific animals at issue here are managed as domestic livestock within the meaning and purpose of BLM's governing statutes." BLM found "American Prairie's bison herd is managed as wildlife in a way that is not meant for production." Rather, "any production-oriented practices appear ancillary, and are themselves conducted chiefly to advance American Prairie's broader conservation and restoration mission." BLM stated that "[u]nder the TGA, FLPMA the Federal Lands Policy and Management Act], and PRIA [the Public Rangelands Improvement Act], such animals do not qualify as livestock for which the BLM may lawfully issue grazing permits."

BLM did not engage in formal rulemaking under the Administrative Procedure Act (APA) before issuing its new interpretation of the TGA, FLPMA, and PRIA. BLM did not prepare an analysis under NEPA to evaluate the environmental effects of its decision.

² The State of Montana Department of Livestock classifies American Prairie's bison as domestic "livestock." MCA §§ 81-1-101(4), (6).

B. Legal Authorities.

BLM has authority to manage livestock grazing on the federal public lands it administers under the TGA, 43 U.S.C. §§ 315-315r, the FLPMA, 43 U.S.C. §§ 1701-1787, and the PRIA. 43 U.S.C. §§ 1901-1908. BLM has promulgated regulations to implement its statutory authorities to issue grazing permits. 43 C.F.R. § 4130. A BLM decision about grazing permits must be set aside if it is arbitrary, capricious, an abuse of discretion, or is not in compliance with law. 5 U.S.C. § 706(2)(A). “The APA's arbitrary-and-capricious standard requires that agency action be reasonable and reasonably explained.” *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). The agency here failed to “examine the relevant data and articulate a satisfactory explanation for its action including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicles Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (citation omitted).³ Further, when an agency enacts a decision that “rests upon factual findings that contradict those which underlay its prior policy; or when its prior policy has engendered serious reliance interests,” it must offer a “more detailed justification” than usual. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515(2009). The 2026 decision failed each of these tests for reasonableness. A decision that is not “reasonable” or fails to substantially comply with the TGA, FLPMA, PRIA, or regulations is arbitrary and capricious.

C. BLM Unlawfully Created a New Qualification No Law Requires.

BLM asserts it must cancel the permits issued to American Prairie to graze bison because American Prairie is not operating bison in a “production” or “production-oriented” capacity.

³ Issues of transparency and bias are also raised by the process and timing of this decision, with Karen Budd-Falen acting as an attorney in earlier proceedings on the grazing permits (advocating for precisely this outcome) and then as an agency leader when the new 2026 decision was made. Molvar Decl. ¶ 5.

BLM asserts that is required under the TGA. BLM is incorrect. As the Supreme Court has noted, the “specific goals” of the TGA “are to ‘stop injury’ to the lands from ‘overgrazing and soil deterioration,’ to ‘provide for their use, improvement and development,’ and ‘to stabilize the livestock industry dependent on the public range.’” *Public Lands Council v. Babbitt*, 529 U.S. 728, 733 (2000) (quoting 48 Stat. 1269) (codified at 43 U.S.C. § 315). In turn, the TGA authorizes the Secretary to issue permits to “stock owners” generally: “The Secretary of the Interior is hereby authorized to issue or cause to be issued permits to graze livestock on such grazing districts to such bona fide settlers, residents, and other stock owners as under his rules and regulations are entitled to participate in the use of the range” 43 U.S.C. § 315b.

The Supreme Court has implicitly rejected BLM’s interpretation here of the TGA. In *Public Lands Council*, the Court rejected a challenge to BLM’s elimination of a regulatory requirement that grazing permittees must be “engaged in the livestock business,” and arguments that the TGA forecloses issuing grazing permits to those not “engaged in the livestock business.” *Id.* 745–46. The Court explained the TGA authorizes the Secretary “to issue [grazing] permits to ‘settlers, residents, and other stock owners,’” and contains a leasing preference to a narrower class of applicants: “landowners engaged in the livestock business.” *Id.* at 745-46 (quoting 43 U.S.C. § 315b.). The Court observed that limiting the term “other stock owners” to those engaged in the livestock business would impermissibly render meaningless the language giving preference to those engaged in the livestock business. *Id.* To give effect to both provisions, the Court ruled the plain language of the TGA does not prevent BLM from issuing grazing permits

to individuals not engaged in the livestock business. *Id.* at 746–47.⁴ The same analysis applies here and precludes BLM’s insertion of a new “production” requirement into the TGA.

In turn, FLPMA does not require a “production” or “production-oriented” livestock operation as a basis for issuing grazing permits either. FLPMA creates the structure for the Department of Interior’s management of public lands. Congress required that management of public lands “will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use...” 43 U.S.C. § 1701(a)(8). FLPMA clarifies that the concept of “multiple use” focuses on long-term management that balances productivity with environmental quality and “not necessarily [] the combination of uses that will give greatest economic return or greatest unit output.” 43 U.S.C. § 1702(c). American Prairie’s focus on conservation and improving the health of the public lands designated as allotments is in harmony with the FLPMA’s language and intent, and is not a disqualifier, as BLM may suggest.

In turn, in PRIA, Congress declared that “vast segments of the public rangelands are producing less than their potential for livestock, wildlife habitat, recreation, forage, and water and soil conservation benefits, and for that reason are in an unsatisfactory condition[.]” 43 U.S.C. § 1901(a)(1). Congress recognized the degraded condition of the public range lands presented a risk for soil loss, desertification, and underproductivity for large swaths of public land. 43 U.S.C. § 1901(a)(3). To address this problem and increasing risk, Congress provided

⁴ American Prairie owns adjacent base ranches and livestock, owns water rights, and is in the livestock business (although not a requirement under the TGA). American Prairie qualifies under the TGA to receive a preference to receive grazing permits.

that public rangelands be managed, maintained and improved to “become as productive as feasible for all rangeland values . . .” 43 U.S.C. § 1901(b)(2). As in TGA and FLPMA, PRIA reflects Congressional intent for public lands to be managed for the health of rangelands -- for wildlife, livestock, water and soil health and benefits -- which American Prairie’s bison operations accomplish. PRIA does not include a “production” or “production-oriented” requirement for livestock operations on BLM lands.

Finally, BLM’s grazing regulations do not specify a “production” or “production-oriented” requirement for animals BLM authorizes to graze on the public lands the agency administers. To approve a grazing permit, BLM regulations provide the agency may specify terms and conditions--including class of livestock, and the “kinds of indigenous animals authorized to graze under specific terms and conditions.” 43 C.F.R. §§ 4130.3-2(a)&(e), 4130.3-6-4⁵. Bison are certainly indigenous to Montana. Further, in 2026, the Congressional Research Service (CRS) interpreted BLM’s regulations to require entities or individuals seeking BLM grazing permits to be “authorized to conduct business” in the relevant state, but they “do not require those entities to be engaged in the livestock *business*.” https://www.congress.gov/crs-product/R48806#_Ref2170354202022 (visited June 3, 2026) (emphasis added).

D. BLM’s Decision Required a NEPA Analysis.

BLM’s decision constitutes a “major Federal action[] significantly affecting the quality of the human environment” under NEPA. 42 U.S.C. § 4332(C). Accordingly, BLM was required to prepare a detailed statement evaluating (i) reasonably foreseeable environmental effects of the

⁵ A federal court enjoined implementation of BLM’s 2006 grazing regulations. *W. Watersheds Project v. Kraayenbrink*, 538 F. Supp. 2d 1302 (D. Idaho 2008), *aff’d*, 632 F.3d 472 (9th Cir. 2011). This Appeal cites BLM’s prior regulations, 43 C.F.R. part 4100. Regardless, differences between BLM’s prior regulations and enjoined regulations cited here are minor.

proposed agency action; (ii) any reasonably foreseeable adverse environmental effects which cannot be avoided should the proposal be implemented; (iii) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitments of Federal resources which would be involved in the proposed agency action should it be implemented. 42 U.S.C. § 4332(C)(i)-(v). BLM unlawfully did not prepare a required statement.

E. BLM's New Legal Interpretation is a Rule Requiring APA Process.

The APA defines "rule" to include "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." 5 U.S.C. § 551(4). BLM's decision is a statement of general and particular applicability and future effect and is designed to interpret and prescribe law. Even if BLM's new "production" criteria were consistent with statutory authority (they are not, as discussed *infra*), BLM unlawfully failed to perform formal rulemaking under the APA. A rulemaking to even consider the creation of a new regulatory requirement would require answering questions like: Is this consistent with the statutory authority? Is there a certain percentage of livestock a permittee must "produce" each year? Does a permittee need to sell or kill animals for them to be "production?" Does a permittee need to make a profit to be a "production-oriented" entity? Does donating meat and/or animals qualify for "production"? American Prairie's practices and business model, which include disease testing, vaccinating, some fencing, herding, tagging, and donating bison to the community support entities) highlight the need for rulemaking. Even if a new requirement for

“production” were consistent with the relevant statutory authority, BLM’s ad hoc introduction of the new undefined term “production-oriented” violates the APA.

III. Petition for Stay.

Western Watersheds hereby respectfully petitions for a stay of BLM’s decision pending resolution of the appeal. 43 C.F.R. § 4.171.

A. A Stay Will Not Harm Any Party.

Given that American Prairie has grazed bison on some of these allotments since 2005, and has done so on all affected by the decision for years, a stay to maintain the status quo will not harm the parties. The fact that BLM delayed the effective date of terminating the bison authorizations until September 30, 2026, to allow bison to be removed, does not change the fact its decision should be stayed until OHA and/or the IBLA considers and rules on Western Watersheds’ appeal. American Prairie should not be required to alter its business model and plans pending the outcome of this appeal. Moreover, BLM asserts no rationale for removal of bison beforehand; it does not contest that American Prairie has been and remains in compliance with all federal, state, county, and any other legal conditions to graze bison on the allotments.

B. Western Watersheds is Likely to Succeed on the Merits.

The likelihood to succeed standard is relaxed in a petition to stay; Western Watersheds need only raise questions that are “serious, substantial, difficult and doubtful” as to the merits to make them fair game for litigation. *Wyo. Outdoor Council, et al.*, 153 IBLA 379, 388 (2000). Here, it is likely to succeed on the merits. As set forth *supra* in the statement of reasons, BLM has created a new interpretation of TGA, FLPMA, and PRIA that is unsupported by the statutes, absent from BLM’s regulations, and contradicts court cases and BLM’s previous decisions.

C. Western Watersheds Will Suffer Immediate, Irreparable Harm if Stay is Denied.

As noted *supra*, Western Watersheds has worked for decades to protect the health and biodiversity of public lands, with a particular focus on grazing and the impacts of cattle on public lands, and here supports bison grazing. Molvar Decl. ¶¶ 3-6. Independently, Mr. Kelly's professional and personal interests will be harmed if bison are moved off the land after this summer, with the lands losing the benefits that bison bring, and his inability to experience, among other things, an emergingly restored prairie ecosystem. Kelly Decl. ¶ 8. In fact, he intends to return to these lands this fall to experience bison, as he has on prior visits. *Id.* ¶ 7.

D. The Public Interest Favors a Stay.

"The public has an interest in preserving the status quo until the merits of a serious controversy can be decided." *Western Watersheds Project*, 195 IBLA at 137 n. 136. Here, a serious controversy exists, as evidenced by BLM's flipflopping on whether bison grazing can be authorized under federal laws. Public interests include protecting the range from overgrazing, economic stability, effects of the herds, and more. *Valdez v. Applegate*, 616 F.2d 570, 572-73 (10th Cir. 1980). Here, preserving the status quo (allowing bison grazing pending resolution) protects the local and State economy (keeping staff employed at American Prairie, and maintains production of bison meat and animals), as well as protecting rangeland health and public wildlife. Bison have been permitted to graze on some of these lands for more than two decades, they are carefully managed by American Prairie, monitored by the State and, as BLM previously found, their presence on the land does more to maintain range health and productivity, water quality and riparian area health, and biodiversity than cattle. See e.g. 2022 EA at pp. 3-10, 11, 26, 28, 32, 33, 49 (citing multiple scientific studies). The public's interest in healthy public lands will be served if the stay is not granted.

Finally, the public interest is served when agencies comply with laws. *Jung Park d/b/a Inland R V Rental LLC*, 2012 WL 1184347, at *6 (IBLA 2012-64). As noted in the statement of reasons, here, BLM has done an about-face as to its prior legal interpretation, and no change in the underlying facts, to create for the first time a requirement for granting grazing permits that is inconsistent with governing laws. The public would be served by reversing this decision.

IV. Conclusion.

The petition for a stay should be granted. Ultimately BLM's decision should be reversed.

Date: June 6, 2026.

Respectfully submitted,

/s/ Peter M. K. Frost

Peter M. K. Frost

Sarah McMillan

Attorneys for Western Watersheds Project

Certificate of Service.

I hereby certify that pursuant to 43 C.F.R. §§ 4.170; 4.102(b)(b) and the OHA Standing Order on Electronic Transmission, I served this document and accompanying documents on the Office of the Solicitor and BLM Director by electronically filing via Bison File & Serve, on June 6, 2026. I also certify I caused a copy to be served on the attached list of interested parties via first-class U.S. mail, postage prepaid, on June 6, 2026.

Date: June 6, 2026.

/s/ Peter M. K. Frost

Peter M. K. Frost