



Public Comment Supporting American Prairie Reserve's Bison Change of Use,
DOI-BLM-L010-2018-0007-EA

Property and Environment Research Center (PERC)

Bozeman, Montana

September 28, 2021

Main Points:

- American Prairie Reserve (APR) seeks to establish a nature reserve using property rights and voluntary conservation, rather than the lobbying and litigation model that has made conservation unnecessarily contentious.
- APR's plan to convert its grazing leases to year-round bison will benefit native wildlife, improve public lands, and restore riparian areas.

The Property and Environment Research Center (PERC) respectfully submits this comment to the Bureau of Land Management (BLM) supporting the proposed environmental assessment (EA) and finding of no significant impact for American Prairie Reserve's plan to convert several grazing allotments from seasonal cattle grazing to year-round bison grazing. APR is implementing a property-rights based approach to conservation that, in the long-run, could reduce conflict and litigation. BLM should seek to encourage voluntary conservation efforts by ranchers, conservationists, and other landowners, including by ensuring that permittees have flexibility to implement and adjust grazing permits to achieve their goals.

The Property and Environment Research Center

PERC is a nonprofit research institute located in Bozeman, Montana, that explores market-based solutions to environmental problems. Founded in 1980, PERC's mission is to improve environmental quality through markets, entrepreneurship, and property rights. PERC conducts original research that applies free market principles to resolve environmental disputes in a cooperative manner. In particular, PERC fellows have generated substantial scholarship on the ways in which federal grazing regulations exacerbate conflict and how markets and secure property rights would promote better conservation outcomes.¹

¹ See, e.g., Bryan Leonard, et al., *Allow "non-use rights" to conserve natural resources*, 373 *Science* 958 (2021); Bryan Leonard & Shawn Regan, *Legal and Institutional Barriers to Establishing Non-Use Rights to Natural Resources*, 59 *Nat. Resources J.* 135 (2019); James L. Huffman, *American Prairie Reserve: Protecting Wildlife Habitat on a Grand Scale*, 59 *Nat. Resources J.* 35 (2019).

BLM Should Encourage Use of Property Rights and Markets to Resolve Conflict and Conserve Federal Lands

The American Prairie Reserve (APR) is a voluntary, nongovernmental conservation project that seeks to conserve and restore the prairie ecosystem across an area of public and private lands in eastern Montana. In contrast to many other U.S. environmental groups, which often seek to conserve lands through litigation or political means, APR achieves its conservation goals through voluntary actions, specifically by purchasing private lands from willing sellers, along with the associated public grazing permits, to create a large conservation area that includes, among other things, restoring bison to the landscape.

If replicated, APR's model could reduce tensions over federal lands and allow competing interests to resolve their differences amicably through voluntary exchange. For instance, PERC's research has shown that "non use rights"—allowing conservationists to freely bid against other would-be users—would empower conservation interests to pursue their goals directly through property rights and markets.² Unfortunately, federal law and regulation often restricts such options, especially through "use it or lose it" policies that leave conservation interests with no viable alternative but to litigate, to lobby, and to pursue other political options.³

Key to APR's plan is the ability to use its private land and associated grazing privileges to benefit rangeland health, native ecosystems, and wildlife. Fortunately, APR's conservation plan involves returning a livestock species (bison) to the landscape, which is fully consistent with existing federal law and policy. Approving APR's proposed changes would promote similar voluntary efforts aimed at conserving public rangelands through thoughtful use of livestock grazing. BLM should consider how its decision on APR's request will affect future voluntary efforts aimed at enhancing environmental and recreational values on public rangelands.

Unless the government irrationally puts a thumb on the scale, APR's approach will result in net benefits because APR can only obtain the rights it needs if it is willing to pay more for them than anyone else. Therefore, absent any harm to public land, BLM should leave the question whether cattle or bison graze land to the market.

APR's Plan Will Improve the Health of Federal Land

BLM's draft EA recognizes that APR's request to convert roughly 70,000 acres of its public grazing allotments from seasonal cattle to year-round bison grazing will not harm the public land, nor the public's interest in it. Instead, BLM's draft EA shows that APR's plan will likely improve the health of federal land and the wildlife that rely on it.

² See *Allow "non-use rights" to conserve natural resources*, *supra* n.1.

³ See *Legal and Institutional Barriers to Establishing Non-Use Rights to Natural Resources*, *supra* n.1. See also John Leshy, *A Trump Plan Breaks a Great Deal for Ranchers and Park Lovers*, N.Y. Times (Mar. 3, 2020), available at <https://www.nytimes.com/2020/03/03/opinion/environment-ranchers-trump.html>.

Consistent with its goal to establish a nature reserve, APR has focused on obtaining rights to ecologically significant land and working to improve it. As the draft EA observes, APR's grazing allotments contain approximately 3,000 acres of wetland and riparian areas.⁴ These allotments include valuable winter habitat and migratory corridors for numerous game species, including elk, mountain lions, mule deer, pronghorn antelopes, and white-tailed deer.⁵ This land also provides or could provide quality habitat for more than a dozen at-risk species, including black-footed ferret and greater sage grouse.⁶

Under APR's care, these allotments have either met land-health standards or, where damage was done by a prior permittee, are significantly improving.⁷ For example, the draft EA notes that riparian areas along Box Elder Creek were previously degraded due to severe grazing pressures prior to APR obtaining the lease. This area has shown sustained improvement as APR has managed its operation to reduce pressures on riparian areas and promote their recovery.⁸

APR's plan to convert its grazing allotments from cattle to bison is expected to build on this progress. According to the draft EA, bison tend to graze upland areas, rather than the lowland and riparian areas favored by cattle.⁹ This means that bison grazing is likely to put less stress on sensitive riparian areas, allowing them to regenerate, reducing erosion, and promoting aquatic habitat.¹⁰ Such improvements to riparian areas benefit fish and wildlife, by increasing canopy cover, expanding potential nesting sites, and reducing erosion that degrades water quality.¹¹

APR's plan is also expected to improve the richness and diversity of vegetation on the allotments, including promoting native forbs and sagebrush.¹² Bison tend to graze in patches, which promotes plant variety and successional habitat.¹³ Such variety increases the availability and quality of wildlife habitat.¹⁴

Finally, APR proposes to remove 30.4 miles of interior fences within the allotments and to reconstruct 79.6 miles of existing fences to be more wildlife friendly. This change "would improve big game migration and also improve habitat for special status species, such as Greater Sage-Grouse, that rely on large and contiguous areas of habitat to support home ranges and/or migration routes."¹⁵ It would reduce wildlife entanglements and the number of perches available for avian predators.

⁴ EA at 3-29.

⁵ EA at 3-4.

⁶ EA at 3-6.

⁷ See EA at 3-23-3-26, 3-29-3-32.

⁸ See EA at 3-24. See also EA at 3-23 (noting similar improvements along Dry Fork Creek).

⁹ EA at 3-32.

¹⁰ *Id.*

¹¹ EA at 3-11.

¹² EA at 3-26.

¹³ EA at 3-47.

¹⁴ EA at 3-10.

¹⁵ *Id.*

Conclusion

The National Climate Task Force's "America the Beautiful" report articulates, as one of eight principles that should guide agencies' conservation decisions, the principle: "Honor Private Property Rights and Support the Voluntary Stewardship Efforts of Private Landowners." Approval of APR's plan is an important opportunity to honor this principle and, in the process, to encourage voluntary conservation by other private landowners.