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Working to protect and restore Western Watersheds and Wildlife

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Nora Rasure, Regional Forester and Objection Reviewing Officer
Intermountain Region USFS
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VIA EMAIL

Re: Alkali Feedground FSEIS and Draft ROD - Objections

Dear Ms. Rasure:

Please accept the following objections to the Bridger-Teton National Forest's ("BTNF") Final Supplement to the Environmental Impact Statement ("FSEIS") for the Long Term Special Use Authorization for Wyoming Game and Fish Commission to Use National Forest System Lands for their Winter Elk Management Activities at Alkali Creek Feedground.

These objections are submitted by Western Watersheds Project, Wilderness Watch, the Sierra Club Wyoming Chapter, and the Gallatin Wildlife Association, pursuant to 36 C.F.R. § 218 *et seq.* The lead objector is Western Watersheds Project ("WWP").

STANDING TO FILE OBJECTION

WWP submitted timely comments on the Draft SEIS for the Alkali Feedground on June 2, 2013, attaching and incorporating Greater Yellowstone Coalition's ("GYC") May 18, 2012 DSEIS scoping comments, among other documents. WWP also commented on the Draft EIS on May 6, 2008, and submitted scoping comments on September 7, 2007.

Wilderness Watch submitted timely comments on the Draft SEIS on June 3, 2013, as well as comments on the Draft EIS on May 5, 2008 (together with GYC, Jackson Hole Conservation Alliance, and Wyoming Outdoor Council).

The Sierra Club Wyoming Chapter submitted timely comments on the Draft SEIS on June 3, 2013.

Gallatin Wildlife Association submitted timely comments on the Draft SEIS on May 23, 2013.

REQUEST FOR RESOLUTION MEETING

Pursuant to 36 C.F.R. § 218.11(a), the objectors request to meet with the reviewing officer to discuss and resolve these objections.

INTRODUCTION

The Final SEIS and Draft Record of Decision (“Draft ROD” or “DROD”) represent another in a long line of decisions in which the BTNF has dismissed the best available science on elk feedgrounds to succumb to political pressure from the Wyoming Game and Fish Department (“WGFD”) and Commission (“WGFC”) (used interchangeably here).

The Final SEIS is replete with examples where the BTNF uses rationales that parrot the opinion or policy of the WGFD rather than heeding the overwhelming preponderance of expert opinion and science that counsels discontinuation of winter elk feedgrounds. Even while admitting that the “action of feeding results in artificially high concentrations of elk during winter and early spring which increases risk of disease transmission,” (DROD at 5), the BTNF retreats behind the shield of the WGFD and permits the very action that harms wildlife. Virtual unanimity exists among North American wildlife professionals and scientists that winter feeding of big game should not occur, especially in or near areas of endemic transmissible diseases, as is the case on and near the Bridger-Teton National Forest. The BTNF is a high risk area for Chronic Wasting Disease to appear and it is rapidly spreading toward the BTNF. *See* <http://wyomingwildlifeadvocates.org/dashboard/wp-content/uploads/2014/11/CWD-map-2-24-15.jpg>.

The science is clear that elk feedgrounds would amplify the prevalence of CWD in elk, causing concomitant effects in other cervids throughout the extensive geographic range of the Jackson Elk Herd and beyond. However, the BTNF in this FSEIS repeatedly invokes a canard that closing any one feedground (or even all feedgrounds on the BTNF) would be futile, if feeding continues elsewhere. This is inaccurate and an excuse for failing to take required action.

We have provided strong evidence of these facts in our comments and references and it is unfortunate that the BTNF has chosen to discard the best available science to rationalize permitting elk feedgrounds in the Gros Ventre Valley and elsewhere. The public and the wildlife of the Greater Yellowstone Ecosystem deserve better.

I. VIOLATIONS OF NATIONAL ENVIRONMENTAL POLICY ACT AND ADMINISTRATIVE PROCEDURE ACT

An agency considering “major federal actions significantly affecting the quality of the human environment” has an obligation under NEPA to prepare an EIS that in “form, content and preparation foster[s] both informed decision-making and informed public participation.” *Native Ecosystems Council v. United States*, 418 F.3d 953, 958 n. 4, 960 (9th Cir.2005) (internal quotation marks omitted).

A. Overly Narrow Purpose and Need Statement; Predetermination

EISs shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made. 40 C.F.R. 1502.2 (g). Thus, NEPA requires that agencies specify the purpose and need for a proposed action and analyze the environmental consequences of the proposed action as well as a reasonable range of alternative actions. 40 C.F.R. §§ 1502.13, 1502.14. Because project alternatives derive from the stated purpose and need, the goal of a project necessarily dictates the range of reasonable alternatives. *Westlands Water Dist. v. U.S. Dep’t of Interior*, 376 F.3d 853, 865 (9th Cir. 2004); *League of Wilderness Defenders-Blue Mountain Biodiversity Project v. U.S. Forest Serv.*, 689 F.3d 1060, 1069 (9th Cir. 2012) (scope of alternatives analysis depends on underlying purpose and need specified by the agency).

When defining the purpose and need of a project, an agency cannot define its objectives in unreasonably narrow terms such that the outcome is preordained. *Nat’l Parks & Conservation Ass’n*, 606 F.3d at 1070; *Alaska Survival v. Surface Transp. Bd.*, 705 F.3d 1073, 1084 (9th Cir. 2013). Courts assess the reasonableness of a purpose and need statement by considering the statutory context of the federal action.

Here, the statutory context of the action is the Forest Service’s mandates under the National Forest Management Act. NFMA directs the Forest Service to “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.” 16 U.S.C. § 1604(g)(3)(B). Under this authority, the Forest Service’s regulations require it to provide ecosystem components including ecosystem integrity, ecosystem diversity, and maintain viable populations of species of conservation concern. 36 C.F.R. Part 219.9.

Considering this statutory context, it was essential that the Forest Service articulate the project’s purpose and need in light of its own mandates, and not simply adopt the objectives of the WGFC. However, it did not. The purpose and need for action statement in the FSEIS is as follows:

The Forest Service received a request from the WGFC to continue to use facilities on National Forest System lands to conduct their elk winter feeding and related management activities. . . . This action is needed, because (1) the WGFC wishes to prevent movement of Gros Ventre elk to

private lands in the Gros Ventre watershed, to private lands in Jackson Hole, and to the National Elk Refuge in order to achieve its population management objectives for elk; and (2) the BTNF Forest Plan directs the Forest Service to support the population objectives for game species identified by the WGFC (Fisheries and Wildlife Prescription for DFC 12; page 243 in the BTNF Forest Plan). The existing authorization for Alkali Creek Feedground will expire on 12/31/2015. . . .

FSEIS at 5.

This statement essentially states that because WGFC asked to use Forest Service land for the Alkali feedground, the Forest Service felt obliged to allow it to do so. It goes so far as to say that the requested permit “is needed.” But the reasons given ignore facts in the record. It claims the permit is needed to prevent elk movement down the valley to other locations, but fails to acknowledge that elk move up and down the Gros Ventre Valley regardless of Alkali Creek Feedground or any feedground. Nor does it evaluate whether continuing the existing feeding location will actually advance or achieve this goal. In fact, under the current feeding regime that this decision continues, numbers on the NER are *increasing* and are far *above* objective (8,296 elk on feed on the Elk Refuge February 2014; 8,390 elk on feed on the Elk Refuge in February 2015.)

The Forest Service also claims the permit is needed because the Forest Plan directs the BTNF to “support” the population objectives identified by the WGFC. This misconstrues the Forest Plan. The actual language in the Forest Plan is: “Habitat will be managed to help meet the game populations, harvest levels, success, and recreation-day objectives identified by the Wyoming Game and Fish Department and *agreed to* by the Forest Service.” Forest Plan at 243 (emphasis added). We are not aware of any analysis in which the BTNF has agreed to WGFD’s objectives; and if the BTNF has the ability to “agree” with objectives set by WGFD, it also has the ability to disagree. Any analysis must consider its legal directives and all resources including vegetation communities, not simply sign off on WGFD’s desired elk numbers. Thus, this component of the purpose & need statement is not persuasive, reasonable, or accurate.

Similarly, the assumption that feedgrounds are needed to achieve elk objectives is not discussed or explained, and ignores facts well known to the Forest Service. As documented by commenters in the record, there is plenty of natural winter range in the Jackson Elk Herd area to support thousands of wintering elk without feedgrounds. No other National Forest in Wyoming permits elk feedgrounds despite there being thousands of elk wintering near thousands of livestock throughout Wyoming. Feedgrounds are not the only means of managing big game and big game habitat. Even within its own jurisdiction in Wyoming, on the BTNF itself, there are big game herds including elk herds which are not managed using winter feedlots, test and slaughter facilities, or bales of hay. *See* GYC DEIS comments at 11-12, 19-20 (discussing at length how the assumption that feeding is needed is incorrect).

Nor does the BTNF discuss how any such perceived need for winter feeding has

changed and diminished in this era of climate change. Wyoming is experiencing significant climate change in the form of unusually warm years and milder winters since 1978. *See* GYC scoping comments at 28-29. But the BTNF does not discuss how milder winters affect the perceived need for elk feeding, or how this need will likely continue to further diminish into the future. This omission is significant and likewise renders the statement unreasonable.

The FSEIS and DROD also claim a “need” to permit the Alkali Creek feedground to prevent elk from overwintering on “adjoining private agricultural lands.” DROD at 1. This is also an inappropriate and inaccurate statement. Any “concern” about elk walking onto private land adjacent to public lands in the winter is part of life in the West, and easily remedied. It is in fact tolerated, ameliorated, or remedied everywhere throughout the Rocky Mountain states where wildlife and private agriculture exist in close proximity, and no other National Forest in Wyoming relies on elk feedgrounds to remedy the situation. *See* GYC DSEIS scoping comments at 3 (explaining that Colorado has 9 times the human population and 3 times the elk population as Wyoming, but does not feed elk in winter). Operating an elk feedground is not the only solution to prevent elk walking onto private land, depredating crops, or comingling with livestock. In fact, the FSEIS repeatedly admits that the elk feedgrounds *do not* prevent this from happening and is, in fact, the worst possible attempt at a solution. On behalf of the public, the BTNF must expect “the landowner to show diligence in using all other methods to protect the property, including working with state officials.” (Freyfogle & Goble, *Wildlife Law: A Primer*, 2009:70). Whether using elk proof fences or moving the livestock out of the area is the first choice of landowners should not be of concern to the BTNF or the public. The BTNF may not adopt the constraints, liabilities or biases of the WGFD, nor the preferences of agricultural landowners, as dispositive to the BTNF.

Sure enough, the BTNF uses this narrow purpose statement to unlawfully eliminate other reasonable alternatives. The FSEIS states the following when describing alternatives considered but eliminated from detailed study:

In addition to the alternatives analyzed in detail in this FSEIS, the Forest Service considered a larger range of alternatives, but *eliminated them from detailed analysis because they did not meet the purpose and need of responding to the Wyoming Game and Fish Commission’s request*

FSEIS at 17 (emphasis added). This is clear evidence of an overly narrow statement.

The record contains numerous instances of bias towards the proponent, WGFD/WGFC. The SDEIS listed five members of the ID Team as being employees of the WGFD. In response to this issue being raised in comment, the FSEIS now claims it was an error and there was only one WGFD employee on the ID Team. FSEIS Resp. to Comm. at 34. In fact, Chapter 4 of the FSEIS lists three WGFD members as ID Team members. FSEIS at 171. How is it possible for additional WGFD employees to be “erroneously” listed? Why does the number continually change? Whatever the exact number, it is troubling that the BTNF installed on the ID Team several employees of

WGFD (an agency that is deeply, institutionally biased towards continuing the feeding), while including no members from any other agency, non-governmental organization, or academic who advocates for ecosystem integrity and/or a phase-out of elk feeding. There are not even any ID Team members from APHIS, the Forest Service's sister agency with expertise in diseases. This close relationship with WGFD contributed to the BTNF's rejection out of hand of any alternative that did not continue widespread feeding.

Record documents received through FOIA requests illustrate that for years, in addition to being on the ID Team, WGFD has *driven* the team. For example, memoranda in the record show that the BTNF removed disease risk as a "significant issue" in this EIS process as a direct result of WGFD ordering them to do so, not due to science. This astonishing omission was carried through to this FSEIS. FSEIS at 8.

GYC's comments in the record document numerous additional instances of bias that have occurred in this EIS process over the years. *E.g.*, GYC DSEIS comments at 4 (BTNF employees stating that the Alkali feedground permit would be issued years earlier). And throughout this process, BTNF has repeatedly stated that closing any one feedground—or even all of its feedgrounds—would be futile, a biased assertion that is simply not supported by the science as discussed in more detail below. Given how many times BTNF repeated this statement, there is no reason to believe that it ever seriously considered any other options or alternatives other than approving a Special Use Permit for feedgrounds for the WGFC. *See id.* at 9.

Given that the FSEIS and its entire supporting process has strongly favored elk feedgrounds and consistently deferred to the WGFD for information favoring elk feedgrounds, disregarding other available science and information, the ID Team and EIS process appears to have been unduly influenced by the WGFD.

In sum, the purpose and need statement in the FSEIS was unreasonably narrow, in light of the relevant legal context and the avalanche of science showing that elk feeding is extremely detrimental to a range of wildlife, wilderness, ecosystem integrity, and other values that the Forest Service must protect. Because the purpose and need was defined so narrowly here, and because of the other information highlighted above, the analysis was biased and the outcome of issuing the requested permit to WGFC was preordained.

Connection to Prior Comments. These issues were discussed in GYC's DSEIS scoping comments at 3-4, 6-9, 20-21, 23-24 (attached to WWP's DSEIS comments). This issue is also "new information that arose after the opportunities for comment," pursuant to 36 C.F.R. § 218.8(c), because the purpose and need statement in the FSEIS changed from the DSEIS.

Suggested remedy. The project should be re-scoped with a legally defensible purpose and need statement, such as: "Ensure healthy wildlife populations and habitat in the Gros Ventre Valley." The proponent, WGFD/WGFC, should not have members on the ID Team. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

B. Failure to Consider Reasonable Range of Alternatives

NEPA mandates that federal agencies “[s]tudy, develop, and describe alternatives to recommended courses of action in any proposal which involves conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332(2)(E). One of the primary purposes of an EIS is to “inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. § 1502.1. The alternatives analysis is “the heart of the environmental impact statement,” *id.* § 1502.14. The purpose of analyzing alternatives is to “present the environmental impacts of the proposal and the alternatives” and to “thus sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14. To that end, the agency must “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.* If an alternative is eliminated from detailed study, the agency must “briefly discuss [its] reasons” for doing so. 40 C.F.R. § 1502.14(a). Courts will overturn NEPA documents that fail to consider a reasonable range of alternatives. *WWP v. Abbey*, 719 F.3d 1035, 1050-53 (9th Cir. 2013).

Importantly, agencies “shall” “[i]nclude reasonable alternatives not within the jurisdiction of the lead agency.” 40 C.F.R. § 1502.14(c). *See Muckleshoot Indian Tribe v. U.S. Forest Service*, 177 F.3d 800, 814 (9th Cir. 1999) (Forest Service was required to consider purchasing lands as alternative to land exchange, even though “it was not clear that the funds would be available for such a purpose,” and the agency had not requested the funds).

Here, only two alternatives were considered in detail: no action and the proposed action. FSEIS at 13. The no action alternative consists of not issuing a permit for the Alkali Creek feedground, meaning feeding ceases on that feedground. *Id.* at 14. Under the proposed action, “the existing Special Use Authorization issued to the Wyoming Game and Fish Commission for use of National Forest System land for elk management activities at Dog Creek, Fall Creek, Fish Creek, Muddy Creek and Upper Green River feedgrounds would be amended to include continuation of use of 91 acres at Alkali Creek Feedground.” *Id.*

However, commenters suggested numerous reasonable alternatives that the Forest Service failed to consider. They included: transitioning to complete use of natural forage on big game winter ranges to survive the winters (similar to what the USFWS has agreed to do on the National Elk Refuge), phasing out feeding of elk at all BTNF feeding sites and/or all sites in western Wyoming, adjusting or removing livestock grazing, and fencing out hay and livestock feeding areas. *E.g.*, GYC SDEIS scoping comments at 3-6, 8-10; GYC SDEIS comments at 7-10. The FSEIS also should have considered an alternative to restore impacts to the Gros Ventre Wilderness.

Commenters explained that these alternatives are eminently reasonable and achievable. For example, commenters explained in detail why existing winter elk range

is sufficient for maintaining healthy elk populations, how feeding is not needed, and how fires and global warming have reduced any perceived need even further. *See* GYC DSEIS comments at 11-12, 19-20. They explained how adjusting or removing the livestock that present the risk of a commingling conflict is achievable, as there are only 80 or so cows and 150 or so horses on only 2-3 private properties in the Gros Ventre Valley. GYC SDEIS scoping comments at 9. GYC even suggested a variety of potential funding sources.

But the FSEIS rejected all of these alternatives. With respect to phasing out elk feeding, the FSEIS rejected this alternative out of hand, claiming:

the Forest Service does not have the authority to direct the [WGFC] to stop all elk feeding outright. The [WGFC] has informed the Forest Service they intend to continue to feed elk on private, state, or other federal lands, even if permits are not issued for feedgrounds on National Forest System lands. Because this activity would continue, Forest Service decisions cannot affect several of the impacts associated with [WGFC]’s winter elk management activities, including prevalence of disease or disruption of elk migration and other movements.

FSEIS at 17.

This oversimplistic explanation fails for several reasons and is not supported by the record. While the Forest Service cannot “direct” WGFC to halt feeding on state or private land; the Forest Service *can* directly achieve a phase-out of feeding on Forest Service land, which would have a major impact on the feeding program. And because of the requirement to consider alternatives outside of its jurisdiction, it should have considered the possibility that such an action would cause WGFD to rethink—and phase out—its own feeding program.

The Forest Service erred in blindly accepting as fact WGFD’s statement that it would continue its feeding program unchanged, regardless of the BTNF’s decision. It did not independently analyze whether the statement was factually possible for Alkali Creek feedground or others, or provide any information received from WGFD, despite repeated requests by commenters to do so. For example, many feedgrounds on Forest Service land do not contain adjacent state land where WGFD could feed, including the Alkali Creek feedground. And related to this, as mentioned above, the BTNF’s repeated, inaccurate statements that closing any particular feedground(s) is futile illustrates that there is no reason to believe that it ever seriously considered any other alternatives to approving a Special Use Permit for feedgrounds.

The Forest Service also relies on an assumption that the FWS’s National Elk Refuge would continue feeding. FSEIS App. 8 at 79. This is also unsupported and inaccurate, as it ignores the fact that the NER’s management plan requires it to rely less on alfalfa pellets and more on naturally grown forage.

The explanation also errs because it fails to recognize the overwhelming public support for a phase-out of feeding on Forest Service land and/or all lands. The DROD states that over 461 comments were received, containing 646 individual comments. DROD at 7. "By far the most common type of comment had to do with the role that feedgrounds play in the arrival and spread of wildlife disease. Comments indicated that brucellosis and chronic wasting disease were of particular concern" DROD at 9. The online Public Comment Reading Room for the Alkali Creek EIS on the BTNF's own website confirms this. *See* <http://www.fs.usda.gov/project/?project=39126>. More than 90% of the public comments therein favored closing the elk feedgrounds.

The FSEIS failed to consider, even in brief, the alternative suggested to cover or fence out haystacks and livestock feedlines. Rather, the FSEIS only briefly erects and knocks down a straw man version of this alternative—a proposal to “to construct elk-proof fencing around private lands in the Gros Ventre drainage.” FSEIS at 17. The FSEIS states that this would not be possible, as well as being environmentally harmful. *See also* DROD at 11 (stating that the only scenario to use elk proof fencing to prevent elk/livestock conflicts is “to construct elk-proof fencing around private lands in the Gros Ventre drainage,” and suggests that this was the only scenario “proposed during public scoping.”)

This is not accurate. The BTNF seriously misconstrues the elk-proof fencing alternatives proposed. In fact, GYC’s scoping comments described in detail multiple different fencing scenarios that should have been considered by the BTNF as options to the status quo of elk feedgrounds. GYC scoping comments at 4, 9, 10, 20, 23. The comments clearly state that the minimum amount of fencing should be used and that both private and federal lands should be considered. Examples of the agency elk-proof fences at Muddy Creek feedground and others were offered to illustrate that elk-proof fences can work. The DROD ignores the facts that small acreages can be enclosed by elk-proof fences in order to separate elk from hay and livestock. Indeed, virtually all haystacks are fenced in Teton County, Wyoming, including haystacks on private lands in the Gros Ventre Valley.

These errors fundamentally tainted the Forest Service’s ability to perform a fair analysis of the true impacts of its feeding program and “sharply defin[e] the issues and provid[e] a clear basis for choice among options by the decisionmaker and the public.” 40 C.F.R. § 1502.14. For these reasons, the FSEIS and Draft ROD failed to consider a reasonable range of alternatives, and violate NEPA.

Connection to Prior Comments. These issues were discussed in GYC’s DSEIS scoping comments at 1, 4, 8-10, 20, 23 (attached to WWP’s DSEIS comments). This issue is also new information pursuant to 36 C.F.R. § 218.8(c), since the alternatives analysis in the FSEIS changed from the DSEIS.

Suggested remedy. The EIS should be redone with a full and fair analysis of a range of alternatives including phasing out elk feeding on all BTNF lands, ending the feeding program as a whole, and different practical scenarios of elk-proof fencing that

would accomplish separation of elk and livestock in order to mitigate the impacts from not issuing a permit for an elk feedground at Alkali Creek. The BTNF must then fairly analyze all alternatives. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

C. Failure to Use Accurate Information and Take Hard Look at Direct, Indirect, and Cumulative Impacts of Elk Feeding

NEPA requires federal agencies to “take seriously the potential environmental consequences of a proposed action” by taking a “hard look” at the action’s consequences in an Environmental Assessment or Environmental Impact Statement. *Ocean Advocates v. U.S. Army Corps of Eng’rs*, 402 F.3d 846, 864 (9th Cir. 2005) (citation omitted). The statute’s twin objectives are (1) to ensure that agencies “consider every significant aspect of the environmental impact of a proposed action” and (2) to “inform the public that it has indeed considered environmental concerns in its decisionmaking process.” *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1153–54 (9th Cir. 2006) (citing *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1066 (9th Cir.2002)); *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council*, 462 U.S. 87, 97 (1983).

The EIS must take a “hard look” at the action’s consequences, and this “must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made.” *Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000). An EIS must include a “discussion of adverse impacts that does not improperly minimize negative side effects.” *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1159 (9th Cir.2006), *abrogated on other grounds by Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7 (2008). “Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). “[G]eneral statements about possible effects and some risk do not constitute a hard look absent a justification regarding why more definitive information could not be provided.” *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1213 (9th Cir.1998) (internal quotation marks omitted).

The EIS must “provide full and fair discussion of significant environmental impacts.” *Id.* § 1502.1. This includes studying the direct and indirect effects and cumulative impacts of the action. *See* 40 C.F.R. §§ 1508.7, 1508.8. Agencies shall also accurately describe baseline conditions of the area to be affected by the action. *Id.* § 1502.15. The “information must be of high quality,” as “[a]ccurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA.” 40 C.F.R. § 1500.1(b). Likewise, “[a]gencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements.” *Id.* § 1502.24.

“[T]he agency must 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 Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(internal quotation marks and citation omitted).

A range of direct, indirect, and cumulative impacts upon wildlife and other resources were not adequately considered, using accurate and high quality information, in the FSEIS.

a. Failure to Consider Impacts of Other Feedgrounds

Under NEPA, “[p]roposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement.” 40 C.F.R. § 1502.4(a). Agencies use the criteria for scope in § 1508.25 to determine which proposals should be addressed in a particular environmental analysis. *Id.* A federal agency must analyze multiple actions together in a single impact statement if they are “connected actions” or “cumulative actions.” 40 C.F.R. § 1508.25; *Klamath-Siskiyou Wildlands Center v. BLM*, 387 F.3d 989, 998–99 (9th Cir. 2004). “The purpose of this requirement is to prevent an agency from dividing a project into multiple actions, each of which individually has an insignificant environmental impact, but which collectively have a substantial impact.” *Great Basin Mine Watch v. Hankins*, 456 F.3d 955, 969 (9th Cir. 2006).

Actions are “connected” if they “automatically trigger other actions which may require environmental impact statements; cannot or will not proceed unless other actions are taken previously or simultaneously; or are interdependent parts of a larger action and depend on the larger action for their justification.” *Id.* at § 1508.25(a)(1)(i–iii). Cumulative actions are those “which when viewed with other proposed actions have cumulatively significant impacts.” *Id.* at (a)(2). “Similar actions” are those that “when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.” 40 C.F.R. § 1508.25(a)(3). An agency should analyze similar actions together in the same environmental analysis when doing so is “the best way to assess adequately the[ir] combined impacts.” *Id.*

Here, the FSEIS claims to be a “Supplement” to the 2008 EIS considering the five other feedgrounds on the BTNF. However, the FSEIS fails to consider almost any impacts of those other federal feedgrounds. Likewise, it fails to consider almost any impacts of the other feedgrounds operated by WGFD on non-federal land. It fails to “supplement” its analysis on any of those other feedgrounds with the critical new information about feedgrounds and their impacts that it now admits exists. *See* DROD at 3; FSEIS App. 7.

For most resources, the FSEIS only considers the direct impacts of the Alkali Creek feedground “project area” or a slightly larger “analysis area” encompassing a mile from the perimeter of the feedground. *E.g.*, FSEIS at 29 (soils); FSEIS at 72 (fishery/amphibian resources). For a handful of resources, it considered direct impacts of the “corridor analysis area,” consisting of the Gros Ventre River corridor between the BTNF boundary near Turpin Creek, to the Fish Creek Feedground. FSEIS at 79 (wildlife resources). This area encompasses two other feedgrounds.

For cumulative impacts, for most resources the FSEIS used the “analysis area.” FSEIS at 32 (soils- one mile from perimeter- not encompassing any other feedgrounds); FSEIS at 72 (fishery/amphibian resources- not encompassing any other feedgrounds). For vegetation, it used the “corridor analysis area.” FSEIS at 56.

However, for no resources did the FSEIS consider the impacts of any BTNF feedgrounds other than Fish Creek, or any other feedgrounds operated by WGFD other than Patrol Cabin.

This failure violates NEPA because the operation of these other feedgrounds are related to, connected to, and cumulative impacts of the operation of the Alkali Creek feedground. The record shows that the BTNF and WGFD consider operation of any one feedground to be an “interdependent part[] of a larger action.” 40 C.F.R. 1508.25(a)(1). Specifically, the larger action is the western Wyoming feeding program as a whole. The FSEIS even refers to it as a “program.” *E.g.*, FSEIS at 164. Indeed, that is the Forest Service’s repeated justification for repeatedly refusing to consider phasing out all elk feeding as an alternative, and for refusing to consider the actual impacts of feeding with respect to many resources. *See id.* (claiming no social or economic changes from either alternative in the FSEIS, due to continuation of “the program” regardless). There is little question that operation of all BTNF feedgrounds “have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography,” and that analyzing them together is “the best way to assess adequately the[ir] combined impacts.” 40 C.F.R. § 1508.25(a)(3). And there is no question that all the other western Wyoming feedgrounds “when viewed with other proposed actions have cumulatively significant impacts.” *Id.* at (a)(2). The Forest Service has admitted in this FSEIS that the operation of a single feedground has significant impacts.

As noted, the FSEIS claims to be a “Supplement” to the 2008 EIS considering the five other feedgrounds on the BTNF. The proposed action is to amend the existing Special Use Authorization issued to WGFC for use of National Forest Service land for elk feeding on these five other feedgrounds, to include Alkali Creek feedground. FSEIS at 14. Thus, the Forest Service admits it has the ability and authority to amend its existing authorization for all these other feedgrounds on the BTNF. This further confirms the arbitrariness of the BTNF’s failure to consider the impacts of these other feedgrounds in the FSEIS, and update the stale analysis from 2008 with new information.

The elk feedground program is run as an integrated program by WGFD. Elk travel and intermingle between different feedgrounds—not just within the Gros Ventre Valley. Elk from the Jackson Elk Herd roam a vast area including the Gros Ventre Valley, Jackson Hole, Buffalo Valley, Grand Teton Park, National Elk Refuge, Teton Wilderness, Yellowstone Park, the upper Wind River Basin and the Upper Green River Basin. See GYC scoping comments at 4 (citing literature). The WGFD further admits that elk from different herd units “interchange” with one another. “Herd units are defined as populations with less than 10% interchange with adjacent herd units. . . . Over the past 27 years winters, an average of 20,500 (including the National Elk Refuge) elk per year have been provided supplemental winter feed.” FSEIS Apx. 2 at 6). Additionally,

another 20% of elk remain on native winter range each winter in western Wyoming. *Id.*, Table 2 at 7) Therefore, as many as 2,536 elk “interchange” among the elk herds each year ($20,500 = .80x$; $x = 20,500/.80 = 25,625$ [feedground + native range elk]; "less than 10% interchange" can be as much as $.099 \times 25,625 = 2,536$).

The FSEIS repeatedly admits that the disease impacts of all feedgrounds are interrelated. For example:

To the extent that the absence of feedground operations at Alkali Creek might reduce the longterm effects of CWD on elk in the Gros Ventre watershed and the Jackson elk herd overall . . . , wolves would neither gain, nor be negatively affected, by an expected increase in elk vulnerability caused by CWD infection because other feedgrounds in the watershed and region would, regardless, remain operational and help maintain the disease.

FSEIS at 128. The above is an admission that elk from many feedgrounds intermingle and use the same habitats if conditions are such that they're able to transmit diseases among themselves. This illustrates that a cumulative effects area that fails to encompass all the feedgrounds is arbitrary, irrational, and does not rationally address the actual environmental risks at issue.

For these reasons, the Forest Service violated NEPA by failing to consider the impacts of the other feedgrounds in western Wyoming. At a minimum, the FSEIS should have analyzed the other feedgrounds on the BTNF as connected and similar actions; and it should have analyzed the other non-federal feedgrounds operated by WGFD as cumulative actions.

Connection to Prior Comments. These issues were discussed in GYC’s DSEIS scoping comments at 4, 24 (attached to WWP’s DSEIS comments). This issue is also new information pursuant to 36 C.F.R. § 218.8(c), since analysis areas for some resources changed from the DSEIS.

Suggested remedy. The FSEIS should be redone with an analysis of the direct and indirect impacts of all BTNF feedgrounds, and an analysis of the cumulative impacts of all WGFD feedgrounds in western Wyoming. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

b. Assumption that Ending Feeding at Alkali Creek Feedground, and all BTNF Feedgrounds, is Futile.

A key inaccurate assumption that undergirds the entire FSEIS is the BTNF’s assumption that ending feeding at Alkali Creek feedgrounds, or all BTNF feedgrounds, would be futile in terms of disease. It repeats this countless times in the FSEIS, as a justification for failing to analyze any differences between the two alternatives. For example:

The social or economic effects are not expected to vary from implementation of the Proposed Action or No Action Alternatives. In both Alternatives, WGFC would continue to operate their winter elk management activities on private, state, and federal lands. Whether or not National Forest System lands are available, the program would continue with no expected change to the social or economic environment. Elk population numbers would not be affected by any actions described in the alternatives; therefore there would be no impacts to tourism or other wildlife related economies.

FSEIS at 164.

Neither the science nor the record support this assumption. The Forest Service has taken the welcome and overdue leap in this FSEIS and DROD of admitting that feedgrounds spread disease. DROD at 5, FSEIS App. 7. However, it has failed to integrate into its analysis the principle that more feedgrounds will speed or amplify the spread of disease faster, and increase the level of infection within given populations. Instead, it threw up its hands and implied that one feedground is the same as 21.

Commenters explained that the BTNF appears to confuse the “spread” of a disease with the *level* of infection within a given populations, or “prevalence,” of the disease. While the discovery of a single new infected individual in a geography not previously known for any infection can amount to a spreading of the disease in a geographic context and may occur in a timeframe affected by many geophysical, anthropogenic and ecological variables, the number of infected individuals at a given time within the population is of the utmost concern among scientists and wildlife professionals. This is why virtually every expert and expert panel in North America recommends *not* to densely concentrate cervids. Most experts recognize that the geographic spread of CWD in the Colorado and Wyoming areas may be inevitable, but all experts counsel to mitigate the transmissibility and rate of the infection using the best known method available: don’t feed or bait in order to allow cervids to disperse in natural densities rather than higher artificial densities. The BTNF repeats this mistake many times in this DSEIS. Their assertion that their actions- no matter what decision they make- have no effect on the “rate of spread of disease” is not accurate. See GYC DSEIS comments at 10-13.

Nor does the record support with any data or information the related assumption that the WGFD would be able to replace every federal feedground with an alternate site, or that the WGFD would not reconsider its feeding program if it lost one or more of its BTNF sites, as discussed elsewhere in these objections. For these reasons, the FSEIS failed to take a hard look, using accurate information, on the effect of closing Alkali Creek feedground and other BTNF feedgrounds on disease.

Connection to prior comments: This issue was discussed in GYC’s DSEIS scoping comments at 10-12, 23-24 (attached to WWP’s DSEIS comments). This issue is

also new information pursuant to 36 C.F.R. § 218.8(c), due to new science now available, including the Johnson study in Appendix 7.

Remedy: The BTNF must redo its FSEIS to include a full and accurate analysis of the environmental impacts of closing the Alkali Creek feedground and other BTNF feedgrounds, including how it would affect the spread and level/prevalence of diseases such as CWD and brucellosis.

c. Failure to Reconcile Action with USDA-APHIS-VS's Position on Elk Feedgrounds

The federal USDA-APHIS (Animal and Plant Health Inspection Service), an agency within USDA with the Forest Service, considers CWD a serious disease and allocates significant financial and educational resources in order to control it. Since 2002-03, APHIS has helped fund the surveillance of 70,000 – 100,000 wild cervids each year in the U.S.

In the 2012 Review of Wyoming's Brucellosis Management Plan by APHIS (Dates of Review: September 10 & 11, 2012) under Recommendations at page 17, APHIS counsels to *“Continue research and specific herd management actions that could lead to the eventual discontinuation of elk feed grounds and elimination of brucellosis from elk.”*

In the FEIS, the BTNF did not explain or reconcile this recommendation from its expert sister agency with its decision and policies of permitting elk feedground that perpetuates elevated levels of brucellosis in elk, elevated risk to nearby livestock from brucellosis, and elevated risk for CWD in elk. The failure to articulate a satisfactory explanation for this contradiction violates NEPA and the APA. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. at 43.

Connection to prior comments: This issue was discussed in GYC's DSEIS scoping comments at 11-12, 22 (attached to WWP's DSEIS comments).

Remedy: The BTNF must consult with USDA-APHIS-VS and arrive at a mutual practical policy statement that does not maintain the opposing policies within the USDA regarding the role of elk feedgrounds and brucellosis and CWD management. Such a revised policy statement must be appended to a revised Record of Decision for the elk feedgrounds on the BTNF.

d. Ineffectiveness of s19 Brucellosis Vaccinations

The Draft ROD authorizes the use of the 91-acre Alkali Creek Feedground site for “Commission elk management activities.” DROD at 2. “Winter elk management activities include, but are not limited to feeding, capturing, vaccinating and testing elk, and removing seral positive elk from the population, traveling to and from the

feedground, and delivering hay to storage sheds, and maintaining constructed facilities.” DROD at 9.

Commenters provided information about the lack of effectiveness of the so-called Strain 19 vaccinations. GYC explained that WGFD has suspected this since brucellosis seroprevalence in elk on the Greys River feedground increased around the year 2000 despite their having vaccinated elk there since 1985. The data is now conclusive. "Brucellosis seroprevalence data from Dell Creek and Grey's River feedground elk indicate no significant difference, no downward trend . . ." (WGFD 2011). The WGFD has never vaccinated elk at Dell Creek, they've vaccinated at Grey's River since 1985, and *data shows no statistically significant difference in seroprevalence between the two after 27 years*. Indeed, the elk contract and maintain brucellosis by being densely concentrated and have lower seroprevalence in western Wyoming when allowed to free range.

Further, the WGFD determined in 2013 that the use of s19 vaccine in elk has actually *increased* seroprevalence for exposure to brucellosis in adult female elk. (WGFD Job Completion Report Brucellosis-Feedground-Habitat Report 2013, pp. 68-69.) In other words, the vaccine may actually cause additional illness and miscarriages in elk.

Despite this information, the FSEIS simply defers to WGFD and states that the Brucella strain 19 vaccination is given at the feedgrounds, strongly implying that it is effective. FSEIS at 16, 83. The FSEIS appends an outdated 2004 report that discusses only benefits of vaccination, with no discussion of the later data. FSEIS App. 2. The BTNF conducted no independent analysis of the data and whether the vaccination program occurring on Forest Service lands was actually neutral or harmful to elk. See FSEIS App. 8 at 111. For these reasons, the FSEIS failed to take a hard look, using accurate information, of the use of the brucellosis vaccine.

Connection to prior comments: This issue was discussed in GYC’s DSEIS scoping comments at 22-23 (attached to WWP’s DSEIS comments). This issue is also new information pursuant to 36 C.F.R. § 218.8(c), because the 2013 data (WGFD Job Completion Report Brucellosis-Feedground-Habitat Report 2013) was issued following the DSEIS comment opportunity.

Remedy: The BTNF must analyze whether the rationale for feedgrounds of vaccinations is a valid one, and consult with USDA-APHIS-VS to determine the appropriate USDA policy of allowing s19 vaccines on USFS lands. It should amend the Draft ROD to prohibit s19 brucellosis vaccinations to elk on USFS lands.

e. Elk Winter Range Capacity

The FSEIS states that the winter range in the Gros Ventre Valley cannot support "historic (pre-feeding) numbers" of elk in "dry spring-fall seasons." FSEIS at 82. It uses this supposed problem as a justification for continued elk feeding. The BTNF alludes to

a few different analyses of the capacity of the winter range including an analysis conducted by the WGFD in 2004 that cites Chester Anderson with an historic range of elk from 692 to 9,128. *Id.* Even taking this error-ridden analysis at face value, the Gros Ventre would be able to winter at the very least 1,519-3,440 elk "during dry years." FSEIS at 82. It is unsupported and incorrect to draw the conclusion from these analyses that the Gros Ventre winter range cannot support historic elk numbers during dry years.

Further, the FSEIS fails to consider or quantify recent information provided in comments about recent burns in the Ditch Creek, Atherton Creek, Horsetail Creek, Red Cliffs, Lavender Hills, Slate Creek, Gray Cliffs and Red Rock areas. These fires will have added to available elk habitat; but this is not discussed or mentioned, nor did the BTNF update any calculations of how much forage is now available. The FSEIS also fails to consider or attempt to quantify the impacts of global warming on winter range, even though it admitted in the DSEIS that warmer weather would improve natural forage opportunities for elk. DSEIS at 149. *See also* GYC DSEIS comments at 28-29. For these reasons, the FSEIS failed to take a hard look, using accurate information, of current and future elk winter range conditions and capacity.

Connection to comments: This issue was discussed in GYC's DSEIS scoping comments at 6 (attached to WWP's DSEIS comments).

Remedy: The BTNF must conduct a new analysis of available elk capacity in the Gros Ventre winter range using accurate, updated information. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

f. Brucellosis Risk to Cattle

The FSEIS states that the potential for elk-to-cattle brucellosis exposure is higher for Alternative 1 (the no-action alternative) compared the feeding alternative. It claims that: "In Alternative 1, elk may leave National Forest System lands and seek feed on lower elevation private lands and the National Elk Refuge. Cattle that winter on private land between Alkali Creek Feedground and the National Elk Refuge would also be at more risk of brucellosis infection in Alternative 1, owing to the reduced ability of the Wyoming Game and Fish Department to keep elk from moving down river." FSEIS at 109.

It claims that under Alternative 2, the action alternative, "[t]he potential for elk-to-cattle brucellosis transmission would be low because elk would be held on the BTNF, reducing intermingling with most private land livestock operations." FSEIS at 115.

The BTNF mischaracterizes the potential risk to cattle if elk are not fed on the Alkali Creek feedground. It is well-established that many elk do not attend feedgrounds and despite feeding elk at the three feedgrounds in the Gros Ventre Valley nearly every winter, some elk still go to private lands when the livestock owners- absent elk-proof fences- put hay on the ground to feed their livestock.

In fact, despite the feedgrounds, nearby livestock owners regularly have elk attend their livestock feedlines during winter and regularly call the WGFD to drive the elk away. As the FSEIS admits, the Alkali Creek feedground is “closest among the three to the private lands down-river where conflicts (cattle, haystacks croplands) are common (WGFD 2006a).” FSEIS at 83. If "conflicts" are "common" despite the ongoing feeding regime, then how can the FSEIS assert that feeding elk on feedgrounds "reduces intermingling with most private land livestock operations"? Ironically, elk feedgrounds *perpetuate* elevated levels of brucellosis among elk compared to non-feedground elk. ("Elk completely independent of feedgrounds have no prevalence of the disease (Scurlock and Edwards 2010).” FSEIS at 83. The FSEIS inexplicably fails to discuss this critical point as part of its brucellosis transmission analysis.

Indeed, the FSEIS never explains how it reached its conclusions regarding transmission risk. It does not calculate or quantify risk of exposure or infection, only saying that both alternatives contain risk. If the risk is present at some level when only one elk commingles with one cattle, then regardless of the Alternative chosen in this EIS with only 2 choices, because both Alternatives have elk mingling with cattle on private lands, it doesn't change the risk. How many elk get onto private lands despite the feedgrounds each winter? What is the quantifiable risk? Is there a level of risk associated with a certain number of elk, and then does the risk "level off" after a certain number of elk have appeared on private land? The FSEIS is silent on these important questions, yet it uses the risk of exposure as an important element and justification of its decision to permit the feedground. For these reasons, the FSEIS failed to take a hard look, using accurate information, of baseline brucellosis risks and projected brucellosis risks of the alternatives.

Connection to comments: This issue was discussed in GYC’s DSEIS scoping comments at 21 (attached to WWP’s DSEIS comments). It was also discussed in WWP & Gravelbar’s 5/6/05 comments at 17 (also attached to WWP’s DSEIS comments).

Remedy: The BTNF must redo the FSEIS with an accurate, updated brucellosis risk assessment to determine if there is a significant difference of risk from no-action and from issuing the permit, as well as from other alternatives that incorporate impermeable fences that enforce separation between elk and cattle. Brucellosis transmission to cattle is of importance to the USDA-APHIS-VS, a sister agency of the BTNF, and as such the BTNF should consult with and avail itself of the expertise of APHIS in its risk assessment. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

g. Failure to Adequately Analyze Impacts upon Carnivores Including Grizzly Bears and Wolves.

The permitting of the Alkali Creek feedlot will continue to raise the risk of diseases including the always-fatal CWD, the spread of which would likely devastate the elk population in western Wyoming. A 2014 study confirms the effects of CWD:

“Taken together, studies on free-ranging and farmed elk and deer are clear in showing that *population level impacts are to be expected* from the introduction and spread of CWD in elk on the Bridger-Teton National Forest and nearby areas.” FSEIS App. 7 at 7.

In turn, population-level impacts upon the elk population in western Wyoming would have a significant impact upon native carnivores that use elk for prey, such as grizzly bears and wolves. However, the FSEIS fails to fairly analyze the direct, indirect, and cumulative impacts that would result from the concomitant effects to carnivores. Nor does it adequately analyze the impacts to carnivores from being concentrated and themselves targeted at feedgrounds.

The FSEIS begins with a misleading analysis of the impacts from the no-action alternative upon grizzlies. Incredibly, it claims that closing the Alkali feedground would have mixed impacts upon grizzlies because some elk might leave the valley to winter at the National Elk Refuge. FSEIS at 126.

It greatly downplays the fact that feedgrounds breed and spread disease such as CWD in ungulates. It states that “[t]he effect of chronic wasting disease on population dynamics of elk is unknown,” citing a 2002 study. This is misleading because it fails to acknowledge the more recent literature finding that the impacts will likely be very harmful. FSEIS App. 7. It fails to acknowledge that there is suitable habitat to support healthy free-ranging ungulate herds in the Gros Ventre Valley, and that allowing wildlife to function naturally would greatly increase the long-term conservation of the grizzly bear. This further confirms how the BTNF’s narrow purpose and need statement and failure to consider any alternatives to phase out elk feeding on all Forest Service lands (and all lands) biased and undermined the entire FSEIS.

These errors continue in the analysis of the action alternative. It errs when it states that there will be a minimum overlap period between feeding and grizzlies, relying on a claim that bears only emerge from hibernation in mid-March. FSEIS at 132. In this era of climate change, bears are emerging earlier. A grizzly was documented in the Yellowstone ecosystem in early February 2015. *See* Laura Zuckerman, Yellowstone grizzlies existing winter hibernation early amid mild weather (Feb. 10, 2015), at <http://www.reuters.com/article/2015/02/11/us-usa-grizzlies-yellowstone-idUSKBN0LF05N20150211>. The article quoted a Yellowstone National Park spokesman stating that emergence was roughly a month earlier than in recent years.

It again downplays the impacts of the spread of disease on grizzlies, and for the cumulative impacts analysis, simply refers to the analysis for the no-action alternative. There is no analysis of the cumulative effects on grizzly bear individuals or populations of losing a major prey source from disease, or the concomitant ecological and economic effects from loss of this apex predator. There has been a great deal of research on the cascading ecosystem impacts of losing apex predators, known as trophic cascade impacts.

For wolves, the FSEIS implies that the Alkali Creek feedground would be overall beneficial to wolves, because it “would provide a continued, stabilizing influence on the

distribution and number of elk in the area.” FSEIS at 134. This is inaccurate and oversimplistic.

The FSEIS admits that the feedgrounds attract wolves, but fails to acknowledge that wolves themselves have been, and will likely continued to be, targeted for sport hunting and government killing at feedgrounds, causing significant mortality. This is a major omission. The 2007 Wyoming Wolf Management Plan (WGFD 2007: 23-25) discusses wolves' alleged negative impacts on elk feedgrounds, claiming it requires “aggressive” (lethal) management. Significant numbers of wolves killed in Wyoming’s predatory animal zones following delisting were killed on or near elk feedgrounds (see WGFD Weekly Wolf Updates at <http://gf.state.wy.us/services/education/wolves/index.asp#WolfUpdate>).

It contains a similar avoidance of any real analysis of feedgrounds on diseases in elk, claiming that because the disease will spread at other feedgrounds, the role of Alkali Creek feedground is negligible. The FSEIS was dishonest and inaccurate to downplay the major disease-spreading role of feedgrounds—and state that feeding and not feeding carry the same cumulative effects—when assessing impacts on grizzlies and wolves.

For these reasons, the FSEIS failed to take the required hard look, using accurate information, at the direct, indirect, and cumulative impacts of the action on grizzly bears and wolves.

Connections to prior comments: This issue was discussed in GYC’s DSEIS scoping comments at 15-17 (attached to WWP’s DSEIS comments). It was also discussed in WWP & Gravelbar’s 5/6/05 comments at 19 (also attached to WWP’s DSEIS comments).

Remedy: The BTNF must redo its analysis on carnivores, including grizzly bears and wolves, using the best available science about direct, indirect, and cumulative impacts, including mortality at feedgrounds and impacts from disease spreading to cervid prey species. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

h. Social and Economic Costs

The FSEIS fails to conduct an adequate analysis of the direct, indirect, and cumulative social and economic costs of the project. The social and economic “chapter” of the FSEIS consists of literally one paragraph stating that under either alternative, there will be “no expected change to the social or economic environment,” because “*the program* would continue with no expected change.” FSEIS at 164 (emphasis added).

This is an astonishing and arbitrary brush-off. Once again, it relies on the inaccurate, unsupported claim that closing any one feedground has no impact on the spread of disease; and highlights the inadequate range of alternatives considered in the FSEIS.

Commenters have repeatedly pointed out to the BTNF that the direct, indirect, and cumulative costs of feedgrounds are immense, but BTNF has never grappled with these true costs. The FSEIS fails to even provide how much the Alkali Creek feedground costs each agency (Forest Service and WGFD) to operate, much less consider costs of degraded natural resources, increased risk of catastrophic diseases in cervids, and the costs of monitoring and enforcing the conditions of the permits. What restoration has been done at Alkali Creek and other feedground sites? The FSEIS fails to disclose how much money, if any, it charges WGFD/WGFC for the use of public land for feedgrounds at Alkali Creek and elsewhere. If no fees are assessed, the BTNF should have explained why costs are not recovered.

Researchers have noted that “[t]he state of Wyoming has spent millions of dollars on supplemental feeding, which maintains artificially high populations of elk” (Donahue 2010 at 289) (attached to WWP DSEIS comments). A 2005 proposal from three NGOs to phase out eight elk feedgrounds promised an annual savings of \$352,000, and \$3.52 million over ten years. GYC, et al. 2005. Enabling free-ranging elk would be cheaper and less labor intensive and would serve the elk and other wildlife and natural resources far better than promulgating expensive and harmful feedground conditions.

Commenters also noted that the costs of maintaining brucellosis to various stakeholders such as livestock producers, the WGFD, and others should have been quantified in order to truly realize the costs of elk feedlots, and the savings when feeding and vaccinating is phased out and brucellosis is no longer a problem for elk or livestock. The BTNF erred by failing to consider these points.

Commenters have also explained that social costs are high. These comments too, were completely brushed off. Direct social impacts include impacts to recreation from the Alkali Creek feedground and other BTNF feedgrounds. Wilderness Watch’s DSEIS comments explained that the aspen surrounding the Alkali Creek feedground are severely denuded. Other commenters have noted the terrible stench and appearance of profuse amounts of concentrated elk waste at feedgrounds including Alkali Creek. The FSEIS never analyzes how these issues affect recreation, including wilderness recreation in the Gros Ventre Wilderness, winter recreation near feedgrounds, wildlife-watching, hiking, boating, fishing, and the like.

As for indirect and cumulative social costs, the FSEIS again fails to even attempt to grapple with them. Now that it has admitted that feedgrounds spread disease, FSEIS App. 7, the BTNF must consider the social costs of population-wide elk declines, including the effects on wildlife-dependent pursuits of residents and visitors such as wildlife watching and hunting. It also must consider the related social costs of declines of elk predators such as grizzly bears, wolves, and wolverines.

For these reasons, the FSEIS failed to take a hard look, using accurate information, of the social and economic costs of the alternatives.

Connections to prior comments: This issue was discussed in GYC’s DSEIS scoping comments at 23 (attached to WWP’s DSEIS comments).

Remedy: The BTNF must redo its analysis on social and economic costs, using the best available science (including social science) and economic studies about direct, indirect, and cumulative impacts from feedgrounds. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

i. Soils, Wetlands, Water Quality, Amphibians, and Aspen

The FSEIS fails to conduct an adequate analysis of the direct, indirect, and cumulative impacts on soils, wetlands, water quality, and aspen. Commenters advised that the analyses of these important resources were inadequate in the DSEIS. However, the FSEIS failed to provide more robust analyses.

For example, two wetland complexes sit within the Alkali feedground, yet the FSEIS states that: “There are no short term direct or indirect effects from the proposed activity to amphibians. Long term direct impacts are minimal because changes in the amount of snow and temperature vary in length and duration from one winter to the next.” FSEIS at 77. In the recent past approximately 2,000 elk were fed for 3 months. Approximately 200 tons of hay were fed, resulting approximately 100 tons of feces lying on or in the snowpack. During spring runoff large quantities of nutrients, bacteria and as well as the feces and urine would run off into these wetlands. This is also during or immediately preceding the the amphibian breeding season. This impact on wetlands, amphibians, and water quality was entirely ignored by the FSEIS and DROD.

For these reasons, the FSEIS failed to take a hard look, using accurate information, of the impacts upon soils, wetlands, water quality, amphibians, and aspen.

Connections to prior comments: This issue was discussed in GYC’s DSEIS scoping comments at 12-14, 22-23 (attached to WWP’s DSEIS comments). This is also new information due to the new analyses presented in the FSEIS.

Remedy: The BTNF must redo its analysis on these resources, using the best available science about direct, indirect, and cumulative impacts from feedgrounds.

D. Reliance on ineffective mitigation

NEPA requires that an EIS discuss mitigation measures with “sufficient detail to ensure that environmental consequences have been fairly evaluated.” Methow Valley, 490 U.S. at 352. “An essential component of a reasonably complete mitigation discussion is an assessment of whether the proposed mitigation measures can be effective. *Compare Neighbors of Cuddy Mountain v. U.S. Forest Service*, 137 F.3d 1372, 1381 (9th Cir.1998) (disapproving an EIS that lacked such an assessment) with *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 477 (9th Cir.2000) (upholding an EIS where “[e]ach mitigating process was evaluated separately and given an

effectiveness rating”). The Supreme Court has required a mitigation discussion precisely for the purpose of evaluating whether anticipated environmental impacts can be avoided. *Methow Valley*, 490 U.S. at 351–52, 109 S.Ct. 1835(citing 42 U.S.C. § 4332(C)(ii)). A mitigation discussion without at least *some* evaluation of effectiveness is useless in making that determination.” *South Fork Band Council v. DOI*, 588 F.3d 718, 727 (9th Cir. 2009). Nor can agencies rely on mitigation measures unsupported by substantial evidence in the record. *Wyo. Outdoor Council v. U.S. Army Corps of Eng’rs*, 351 F.Supp.2d 1232, 1238 (D. Wyo. 2005).

Here, the BTNF’s FSEIS and DROD rely on a series of weak, unenforceable mitigation measures and fail to provide a coherent analysis of whether they will actually be effective at mitigating the environmental damage from feeding elk. Nor are they supported by substantial evidence in the record. To the contrary, the record contains evidence that they will not be effective.

For example, the FSEIS and DROD rely upon the Acting Supervisor “directing (her) staff to review the management practices of all feedgrounds on the BTNF every five years and prepare a report recommending any needed changes. The first report should be filed no later than January 1, 2020.” DROD at 4. The only identifiable purpose of such a review years into the future is apparently “to ensure interagency cohesion.” *Id.* BTNF states that it “should invite” participation in the review by personnel from the Elk Refuge, Grand Teton Park, Yellowstone, the BLM, “and the WGFD and the Commission[.]” Such a review should focus on identifying changing conditions, emerging and known threats, and recommending corresponding feedground management changes to ensure interagency cohesion with regard to the elk herds that use the feedgrounds on the BTNF and adjacent state, federal, and private lands.” *Id.*

“If CWD is found in a herd unit west of the Continental Divide,” BTNF promises to file reports “at least annually as the disease spreads through the BTNF.” DROD at 5.

There is nothing in these vague promises of reports that provides assurances that the significant disease risks to elk will be mitigated, nor is any timeline for action given. There is no analysis as to whether this provision will prove effective. Will the report be enforceable? Will the Forest Service be willing to amend or cancel its Special Use Permit for elk feedgrounds if the report says this is necessary? The FSEIS and DROD do not say.

Another form of mitigation offered by the BTNF for the known and expected impacts of CWD is: “If chronic wasting disease is detected in Wyoming west of the Continental Divide the provisions of the WGFD Chronic Wasting Disease Management Plan will be implemented and the Bridger-Teton will intensify coordination with the WGFD and surrounding federal and state land management agencies concerning disease management actions.” DROD at 3.

This mitigation provision similarly lacks substance, because any implementation of the WGFD CWD Management Plan will have no effect on the occurrence, persistence

or prevalence of CWD. There is no evidence that implementation of any or all of the CWD Plan has ever or will influence the spatial or temporal spread and/or prevalence of CWD in Wyoming. That is because CWD Plan's application to feedgrounds consists of monitoring and sampling (aka, surveillance)—nothing more. *See* FSEIS App. 3 at 5-6. The CWD Plan claims WGFD will “take any other actions to decrease elk concentration,” *but only* “provided such actions are consistent with other necessary wildlife management and feedground practices.” FSEIS App. 3 at 6. This means that the CWD Plan will do nothing to mitigate the known and impending harm to the land and wildlife inherently incurred by operating elk feedgrounds. This plan is additionally now outdated. It states that the impacts of CWD on populations are unknown, *id.* at 5, but that fails to consider newer research finding that the impacts are known, and severe. FSEIS App. 7. The BTNF conducted no analysis as to whether and how this Plan will be effective. Thus, the mitigation measure of allowing the WGFD to implement their CWD Management Plan is misleading, lacking any substance or merit.

Further, some of the mitigation triggers have already occurred. The FSEIS and DROD indicate that both the annual reports and the WGFD's CWD Plan will not be triggered until CWD has been detected west of the Continental Divide, but CWD has *already* been detected west of the Continental Divide in Wyoming. It was found in a moose near Bedford, Wyoming in 2008 (FSEIS at 5), and in at least 3 mule deer in Green River, Wyoming, in 2012. (WGFD Green River Regional Office News Release 10-18-12; 2012 Wyoming Chronic Wasting Disease Surveillance: Positive by Species map, WGFD Wildlife Disease Lab January 2013). The failure of the BTNF to acknowledge this is troubling and adds further doubts about the effectiveness of both measures. Does BTNF consider either or both of these items to be triggered?

In sum, the mitigation measures relied upon are merely palliative measures, unsupported by any proof, analysis, or substantial evidence of effectiveness, in violation of NEPA.

Connection to prior comments: This issue was discussed in GYC's DSEIS scoping comments at 8-9 (attached to WWP's DSEIS comments). It was also discussed in WWP & Gravelbar's 5/6/05 comments at 2, 8-9, 21 (also attached to WWP's DSEIS comments). This issue is also new information pursuant to 36 C.F.R. § 218.8(c), because the FSEIS contained different mitigation language from the DSEIS.

Remedy: The BTNF must redo the FSEIS and DROD with enforceable, effective mitigation measures for the adverse environmental effects caused by elk feedgrounds, including CWD. If such measures are not possible, it should deny the Alkali Creek feedground permit.

II. VIOLATIONS RELATING TO WILDERNESS

The Wyoming Wilderness Act of 1984 (WWA) designated the Gros Ventre Wilderness and requires the Forest Service to manage it pursuant to the Wilderness Act. Pub.L. No. 98-550, § 201(a)(3).

In turn, the Wilderness Act provides for a National Wilderness Preservation System to assure that man does not occupy or modify all lands within the country, leaving no lands designated for “preservation and protection in their natural condition.” 16 U.S.C. § 1131(a). Wilderness areas must be administered in a manner that will leave them “unimpaired for future use and enjoyment as wilderness,” and that will provide for “the protection of these areas” and “the preservation of their wilderness character.” *Id.* The definition of “wilderness” is an area where the community of life is “untrammeled” by man and the land retains its primeval character and influence, and which is “protected and managed so as to preserve its natural conditions.” *Id.*, § 1131(c). These are areas affected primarily by the forces of nature that have outstanding opportunities for solitude or a primitive type of recreation. *Id.*

Agencies administering wilderness “shall be responsible for *preserving the wilderness character of the area.*” *Id.* at § 1133(b) (emphasis added). The implementing regulations provide that:

Except as otherwise provided in the regulations in this part, National Forest Wilderness shall be so administered as to meet the public purposes of recreational, scenic, scientific, educational, conservation, and historical uses; and it shall also be administered for such other purposes for which it may have been established in such a manner as to preserve and protect its wilderness character. In carrying out such purposes, National Forest Wilderness resources *shall be managed to promote, perpetuate, and, where necessary, restore the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation.* To that end:

- (a) *Natural ecological succession will be allowed to operate freely to the extent feasible.*
- (b) Wilderness will be made available for human use to the optimum extent consistent with the maintenance of primitive conditions.
- (c) In resolving conflicts in resource use, wilderness values will be dominant to the extent not limited by the Wilderness Act, subsequent establishing legislation, or the regulations in this part.

36 C.F.R. § 293.2 (emphases added).

In addition the Bridger-Teton LRMP or Forest Plan contains provisions to protect wilderness.

- Wildernesses: “Wilderness-wide Prescriptions, Standards, and Guidelines apply to all resources within Wilderness.” LRMP at 186. “The Wilderness shows you the natural processes of plants and animals living and dying.” *Id.* at 185. “Visitor actions which tend to alter the natural behavior of wildlife, such as the practice of leaving food or garbage available to be eaten by bears, is not allowed.” *Id.* at 188. “Human

Influence Standard- Natural agents of ecological change will be allowed to operate freely in the Wilderness.” *Id.* at 190.

- DFC 6B: “Management emphasis is to provide for the protection and perpetuation of natural biophysical conditions . . .” LRMP at 192. “Animal populations and distribution are affected by natural processes.” *Id.* at 193.
- 6C: “Management emphasis is to provide for the protection and perpetuation of essentially natural biophysical conditions.” LRMP at 193. “Animal populations and distribution are affected by natural processes.” *Id.* at 194.
- 6D: “Management emphasis is to provide for the protection and perpetuation of essentially natural biophysical conditions inside Wilderness boundaries which are adjacent to and accessed from heavily used developed recreation sites.” LRMP at 195. “Animal populations and distribution are affected by natural processes. *Management of habitat is not permitted* except [for recovery of T&E species].” *Id.* at 195, emphasis and brackets added.

Here, the Alkali Creek feedground is immediately adjacent to the Gros Ventre Wilderness. In fact, the original EIS found that the feedground was partially *within* the wilderness, meaning that elk feeding illegally occurred within the wilderness for years. Only recently were 14 acres of the feedground inside the wilderness removed. There are currently 3,000 feet of boundary remaining. FSEIS at 156-157. The Forest Service’s permitting the operations of the feedground has caused, and with this challenged decision will continue to cause, serious degradation to the wilderness character of the Gros Ventre Wilderness in violation of the WWA, Wilderness Act, and its regulations. This occurs in two primary ways: (1) direct environmental degradation to resources such as soils and aspen caused by the artificial concentration of elk on the wilderness boundary, and (2) the feeding’s impact on maintaining artificial populations of elk in the wilderness.

This ongoing degradation to wilderness character is largely admitted in the Forest Service’s own documents. The DSEIS admitted that:

Assessments of indirect vegetative impacts to areas off of and adjacent to elk feedgrounds suggest that browsing of palatable shrubs and trees and consumption of herbaceous forage are *extensive* up to 1 mile from the feedground, often impacting the seral-stage of vegetation communities (WGFD, unpublished data) . . . However, in most cases, based on visual estimates, vegetative impacts are limited to 2 kilometers from feedgrounds. . . Effects on aspen stands in the feedgrounds’ vicinities consist of over-browsed and debarked trees. These effects would continue under these two [action] alternatives

DSEIS at 40 (emphasis added). It further admitted that:

- Field study indicates that there is “low regeneration (of aspen)” two kilometers and less from the Alkali Feedground area. DSEIS at 37.

- “In the immediate area where feeding takes place more stems are browsed than are grown anew each year and the aspen are thus dying back. (WGFD 2011)” DSEIS at 45.

- If no feedground is operated at Alkali Creek, “vegetation would increase in diversity and shrub densities.” DSEIS at 48.

- “(A)spen are dying back (as a result of feeding operations), which is contrary to the Aspen Management Guideline in the BTNF LRMP which says that aspen should be sustained. Elimination of elk management activities at Alkali Creek feedground would improve aspen health and be consistent with the Aspen Management Guideline.” DSEIS at 51.

The FSEIS likewise admits that the elk feeding causes heavy browsing on aspen shoots at least 750 meters inside the wilderness, affecting at least 350 acres of wilderness. FSEIS at 158. Because the wilderness is the closest treed area to the feedground, the elk gather there to find cover. The FSEIS also notes that the feedground makes the wilderness a potential target of illegal motorized trespass via people looking for antlers.

Wilderness Watch conducted field visits to Alkali Feedground on May 13, 2012, and in May 2013, and observed extensive habitat degradation within the site and for up to 1 mile inside the wilderness. It explained in its comments that the DSEIS’s description of “over-browsed and de-barked trees” did not begin to adequately describe the degree of damage to aspen stands observed.

The Forest Service further admits that the feeding causes elk populations to be maintained at an unnatural “human-influenced high level,” FSEIS at 49, as well as an unnatural distribution of elk, and therefore of elk predators. For example, the FSEIS states that: “Free-ranging elk herds in Wyoming (Cross et al. 2013, Williams et al. 2014) and Canada (Vander Wal et al. 2013, 2014) have herd densities ranging from .21 and 7.1 elk/km² and elk at Rocky Mountain National Park have densities between 15 and 100 elk/km²,” while “[e]lk density at the average state feedground in Wyoming is 1976.6 elk/km², base on the reported average of 600 elk on 75 acres.” FSEIS, App. 7 at 8. In its response to comments, the Forest Service “agree[d] that that (sic) the presence of the feedground does concentrate elk, not only within the feedground but within the area immediately surrounding the feedground, including within the Wilderness.” FSEIS, App. 8 at 20.

In turn, this non-natural concentration of elk causes other cascading wildlife impacts, such as non-natural concentration of carnivores preying on elk, such as grizzly bears and wolves. FSEIS at 126-134.

The Forest Service’s authorization of feedground activities at the Alkali Creek feedground, immediately adjacent to designated wilderness, is resulting in the degradation of wilderness character in violation of the Wilderness Act. The Forest Service responds to this violation by claiming that the degradation to wilderness occurring due to the Alkali feedground “is within acceptable limits considering the overall natural quality of Wilderness.” FSEIS at 163.

This statement is nonsensical and fails to demonstrate compliance with the WWA, Wilderness Act, or relevant Forest Plan standards. Those provisions do not set forth levels of degradation that are “within acceptable limits,” and the Forest Service has pointed to no provision that allows for such a balancing act. Rather, they require the Forest Service to manage wilderness “to preserve the wilderness character,” 16 U.S.C. § 1133(b), and “to promote, perpetuate, and, *where necessary, restore* the wilderness character of the land and its specific values of solitude, physical and mental challenge, scientific study, inspiration, and primitive recreation.” 36 C.F.R. § 293.2 (emphasis added). To that end, “[n]atural ecological succession will be allowed to operate freely to the extent feasible.” *Id.* Instead of restoring the admittedly degraded wilderness character, as required, the Forest Service’s decision continues to at best, maintain it in a degraded condition, and more likely, further degrade it.

The Forest Service’s authorization of feedground activities at the Alkali Creek feedground, immediately adjacent to designated wilderness, also violates the LRMP provisions listed above. As the FSEIS admits, the feeding fails to provide for perpetuation of natural biophysical conditions; fails to allow animal populations and distribution to be affected by natural processes; and by dumping large amounts of food, serves to manage habitat, which is not permitted. LRMP at 190-195. The FSEIS and DROD fail to explain how the decision is consistent with these provisions.

The FSEIS also seeks to justify the feeding by claiming that “[i]n terms of the temporal context, the feedground has been in the same location since 1976, eight years prior to passage of the Wyoming Wilderness Act. No expansion of feedground operations has occurred since designation” FSEIS at 163.

But the mere fact that the feedground existed prior to wilderness designation does not mean that the Forest Service’s continued authorization of activities that degrade wilderness character are legal or that impacts have not changed. In fact, the Forest Service’s wilderness analysis fails to acknowledge that feeding intensity and impacts have increased since wilderness designation in 1984. The DSEIS Appendix 1 set forth the following data:

Alkali, Patrol Cabin, and Fish Creek feedgrounds combined:

For 1983-84: **1584 elk**, 538 tons, 102 days

For 1984-85: **1338 elk**, 413 tons, 73 days

For 2010-11: **2546 elk**, 1254 tons, 97 days

For 2011-12: **2602 elk**, 415 tons, 63 days (most recent data presented)

Alkali feedground alone:

For 1983-84: **437 elk**, 236 tons, 107 days

For 1984-85: **223 elk**, 73 tons, 77 days

For 2008-09: **1200 elk**, 143 tons, 20 days

For 2009-10: **1700 elk**, 86 tons, 29 days

For 2010-11: **412 elk**, 323 tons, 123 days

For 2011-12: **2345 elk**, 132 tons, 63 days

These data show that overall, there has been a significant increase in number of elk fed since the wilderness was designated in 1984. The Forest Service did not admit or discuss these increased numbers or the associated increased level of impacts upon the wilderness and the wilderness character, or explain how such an increase in numbers and impacts is consistent with its duties under the Wilderness Act. Its failure to do so renders the decision arbitrary and in violation of the Wilderness Act mandates discussed above and the National Environmental Policy Act.

Finally, the FSEIS claims that it need not consider how its action will affect the untrammelled quality of the wilderness, because “[t]he requirement to not ‘trammel’ Wilderness applies inside Wilderness, not outside Wilderness.” FSEIS at 163. This is an incorrect oversimplification. The Wilderness Act can bar activities occurring outside of wilderness that degrade wilderness character. See *Izaak Walton League of Am., Inc. v. Kimbell*, 516 F. Supp. 2d 982, 988-90 (D. Minn. 2007) (stating that “the agency’s duty to preserve the wilderness area is wholly independent of the source or location of that activity,” and thus, that Section 4(b) of the Wilderness Act “may apply to agency activity that occurs outside of the boundaries of the wilderness area.”); *Izaak Walton League v. St. Kimbell*, 558 F.3d 751 (8th Cir. 2009) (discussing noise impacts from snowmobile trail outside of wilderness boundary). Here, the elk feedground is degrading wilderness character by (1) direct environmental degradation to resources such as soils and aspen caused by the artificial concentration of elk inside the wilderness and on the wilderness boundary, and (2) the maintenance of artificial populations and distributions of elk, as well as predators and humans, within the wilderness. The Forest Service must explore reasonable alternatives that will not degrade wilderness character.

For these reasons, the Forest Service’s FSEIS and Draft ROD are inconsistent with and violate the WWA, the Wilderness Act, and its regulations. The Forest Service has an affirmative duty to manage its lands to protect, perpetuate, and restore wilderness character and allow natural ecological succession to occur. The FSEIS and Draft ROD fail to do so. Instead, its authorized feeding has and will continue to diminish and degrade wilderness character in the Gros Ventre Wilderness.

Connection to Prior Comments. These issues were discussed in Wilderness Watch’s DSEIS comments at 1-4, its DEIS comments at 23-24, and GYC’s scoping comments at 12-13 (incorporated into WWP’s DSEIS comments).

Suggested remedy. The FSEIS should be redone to comply with the WWA, Wilderness Act, and its regulations. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

III. VIOLATIONS OF THE NATIONAL FOREST MANAGEMENT ACT, FOREST PLAN, AND MULTIPLE USE-SUSTAINED YIELD ACT.

The Forest Service makes a series of surprisingly frank admissions in its FSEIS, its appendices, and the Draft ROD about elk feedgrounds' role in spreading disease such as CWD, and thus how feedgrounds are likely to cause and contribute to population-level impacts to elk in the region.

The Draft ROD stated “I clearly understand and acknowledge that the Commission’s action of feeding results in artificially high concentrations of elk during winter and early spring which increases risk of disease transmission (Johnson, 2014; Appendix 7; and Appendix 3 in the 2015 Final SEIS).” DROD at 5. It continued that “[t]he arrival and spread of chronic wasting disease in elk in western Wyoming is likely to have *population level impacts*, after a time-lag, and *the presence of feedgrounds as a whole is likely to accelerate the spread of the disease.*” *Id.* at 9 (emphases added).

The body of the FSEIS further acknowledged the disease-spreading role of feedgrounds. It admitted that “artificial concentration of elk during winter and early spring results in the transmission and increased prevalence of diseases in the herd.” FSEIS at 83. It continued:

The potential exists for irretrievable commitments of both elk and deer resources if chronic wasting disease (CWD) became established in western Wyoming and substantially reduces these populations. While the arrival of CWD is beyond the control of wildlife managers, *the potential effect would be greater under any alternative where large numbers of animals are concentrated on feedgrounds.* The loss would be irretrievable because in addition to always being fatal to infected animals, chronic wasting disease contaminates the environment for long periods of time.

FSEIS at 169.

The FSEIS notes that in 2014, CWD was found in a Deer Hunt Area only 25 miles east of an elk hunt area with feedgrounds. FSEIS at 5. Deer and elk from the CWD endemic watersheds (e.g., Wind River and Green River) are known to mingle with elk that use the Gros Ventre Valley, *id.* at 85, and, indeed, since virtually all feedground elk in the Gros Ventre will attend the Alkali Creek feedground during each winter, *id.* at 82, pre-clinical elk or deer from the CWD endemic area(s) will likely shed infectious prions on the Alkali Creek feedground.

And last but not least, the powerful Johnson report in the FSEIS's Appendix 7 explains how deer and elk infected with CWD may be carriers, transmitters and shedders of infectious prions even before becoming symptomatic. It explained that unlike most bacterial or viral diseases, "environmental transmission plays an important role in the dynamics of the disease," which can be transmitted solely by environmental contamination. FSEIS App 7 at 1, 4. It explained how the prions are shed:

Typically around 6 months prior to clinical onset, the animal begins to shed prions in saliva, nasal mucous, urine, feces, and milk (Argue et al. 2007, Saunders et al. 2012). Prions shed in this manner are able to infect both nearby animals and the environment. Some animals perish as soon as the clinical stage begins, while others last for 12 or more months before death (Miller et al. 1998). . . . Animals that are in the clinical phase are still shedding prions.

Id. at 2. It explained that "the longer that CWD is infectious in the environment the more influential it becomes on disease prevalence and transmission, owing to an increased pool of environmental sources of infection over time." *Id.* at 5. It explained that feedgrounds speed the spread of disease:

In the early stages of a disease outbreak, the density of infectious and susceptible individuals drives the course of the disease. Owing to highly efficient direct transmission of CWD among cervids the number, duration, and frequency with which infectious individuals encounter susceptible ones is likely to drive early density dependent transmission of CWD. . . . (S)tudies have shown that in general, elk in higher density populations contact other elk more frequently and for longer durations. . . .

Cross et al. 2013 demonstrated that in areas where elk are artificially congregated at feedgrounds per capita rates of contact and duration of contact were more than twice as high as groups not receiving supplemental feed. The same study showed that supplemental feeding can increase contact rates beyond that which a larger group size will incur on its own.

Id. at 5, 6.

The BTNF's decision to proceed with an activity that it admits will cause and contribute to devastating impacts to wildlife (particularly elk) and other resources violates several substantive mandates, including the National Forest Management Act ("NFMA"), the Bridger-Teton Land and Resource Management Plan ("LRMP") or Forest Plan, and the Multiple Use-Sustained Yield Act ("MUSYA").

NFMA and its regulations require that actions taken on National Forest system lands be consistent with the relevant land management plan, 16 U.S.C. 1604(i), 36 C.F.R. 219.15, and that each "project or activity approval document must describe how the project or activity is consistent with applicable plan components." 36 C.F.R. 219.15(d).

It also requires the Forest Service to “provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives.” 16 U.S.C. 1604(g)(3)(B). And FSM 2672.1 requires that: “There must be no impacts to sensitive species without an analysis of the significance of adverse effects on the populations, its habitat, and on the viability of the species as a whole. It is essential to establish population viability objectives when making decisions that would significantly reduce sensitive species numbers.”

The DROD states that: “My decision is in compliance with the National Forest Management Act (Public Law 94-588). The project was designed in conformance with Forest Plan standards and incorporates appropriate land use and resource management plan guidelines. My decision is consistent with forest-wide and specific management prescriptions, standards and guides in the Forest Plan associated with Desired Future Conditions 3C, 6A, 6B, 6C, 6D, and 12, that fall within the various cumulative effects areas as documented in the 2015 Final SETS and analyses by resource specialists (see the project file).

However, there is virtually no analysis in the FSEIS to support these assertions. The following LRMP requirements are not adequately discussed in the DROD and FSEIS, and are not complied with.

Diseases, pests:

Protection Prescription – Natural resources of and human presence on the Bridger-Teton National Forest are protected from catastrophic events and endemic and epidemic pests. LRMP at 142.

Epidemic Insect and Disease Treatment Guideline – Epidemic insect and disease populations should be controlled and prevented. LRMP at 145.

The admissions highlighted above show that the decision fails to protect natural resources on the BTNF, particularly cervids, from catastrophic events or endemic and epidemic pests. Nor does the decision control or prevent disease.

Limited time and area:

DFC 12 Management Activity Guideline – All management activities should be concentrated to within the shortest period of time and to the smallest possible area. FP at 243.

The FEIS fails to establish that the decision concentrates elk feeding, a management activity, to the shortest period of time or to the smallest possible area. In fact, the SUP at Appendix 6, III. Operations, A. Period of Use: says "use or occupancy of the permit area shall be exercised at least 30 days each year." So, a *minimum* time, rather than a maximum time, is provided for. No analysis is present as to whether the feedgrounds operates in the smallest possible area.

Aspen:

Guideline - Aspen sites should be managed for aspen-type perpetuation. The loss of aspen stands due to old age, conifer encroachment and possible overgrazing should be prevented. LRMP at 132.

DFC 12 Aspen Management Guideline – Aspen should be managed for its value as wildlife habitat and for providing seasonal colors while emphasizing browse and cover for big game species. LRMP at 245.

The FEIS fails to establish that the decision manages aspen sites near the Alkali Creek feedground for aspen-type perpetuation or that the loss of aspen stands due to overbrowsing is being prevented. Nor are these stands being managed for their value as wildlife habitat, seasonal colors, and browse and cover for big game. To the contrary, overgrazing by elk attending the feedgrounds is killing the aspen stands. See Appendix photo titled, “Over-browsed Aspen within Analysis Area” ; FSEIS at 46 (“In the immediate vicinity of where feeding takes place more stems are browsed than are grown anew each year (LD index [footnote 4] much less than zero) and the aspen are thus dying back.”

Road Density:

DFC 12 Road Density Standard – Over the life of the Forest Plan, the average open road density will be 0.25 miles per square mile of standard or equivalent open road density, with 1-year to 5 year variation of 0 to 0.5 miles of road per square mile. FP at 246.

The BTNF’s GIS data, as highlighted in the attached map, shows the DF 12 unit that the Alkali Creek feedlot sits on (right side near the word Corral). In it there is approximately 4.4 square miles of FS lands in the unit and there are approximately 7.75 miles of open roads within the unit or ~1.8 miles of open road per square mile. Some of these open roads are for the purpose of the elk feedlot, and the decision perpetuates them. Thus, the decision is not in keeping with the road density standard.

Nor does the FSEIS or ROD explain how they are consistent with the Sensitive Species provision highlighted above, or conducted the required analysis of the significant of adverse effects on the population, its habitat, and viability of the BTNF sensitive species as a whole.

The Forest Service’s assertions that the decision complies with the Forest Plan is meaningless without specific explanations and record support, both of which are missing here. The NFMA regs are clear in that each “project or activity approval document must *describe how* the project or activity is consistent with applicable plan components.” 36 C.F.R 219.15(d) (emphasis added). *Barnes v. U.S. Dep’t of Transp.*, 655 F.3d 1124, 1131 (9th Cir. 2011) (“the agencies would like this court to take their word for it and not

question their conclusory assertions”; “their word, however, is not entitled to significant deference that courts give [agency methodology]”).

Additionally, as highlighted in excerpts above, the FSEIS admits that the decision will cause population-level impacts to wildlife such as elk, and that the environmental contamination from CWD prions will last for years. A decision that causes such impacts violates the mandate under NFMA and MUSYA to administer national forests for multiple use and sustained yield, which means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land. 16 U.S.C. 529, 531. Management that knowingly furthers population-level reductions of elk is the antithesis of multiple use and a sustained yield.

Connection to Prior Comments. These issues were discussed in GYC’s DSEIS scoping comments 16-18 (attached to WWP’s DSEIS comments). They were also discussed in Wilderness Watch’s DSEIS comments at 1-4, and its DEIS comments at 21-24; and in Gallatin Wildlife Association’s DSEIS comments. This issue is also new information pursuant to 36 C.F.R. § 218.8(c), because the FSEIS and DROD contain multiple new relevant admissions and provisions; and the FSEIS relies upon new literature such as the 2014 Johnson study.

Suggested remedy. The FSEIS and DROD should be redone to comply with the mandates of NFMA, the Forest Plan, and MUSYA. Until the new EIS is completed, feeding at Alkali Creek feedground should be suspended.

IV. ADDITIONAL OBJECTIONS

a. Inconsistencies and Failure to Reconcile Decision with Forest Plan Provisions re: Elk Migrations

The "commitment" of the BTNF to the "elk migrations" alluded to in the 1990 Forest Plan as some future remedy for this decision is an empty promise. This alleged commitment contradicts other components of the DROD. At the same time, the BTNF alleges it cannot actually allow elk to migrate because another agency doesn't want the elk to come onto their jurisdiction. This is contradictory and requires clarification by the BTNF.

The DROD provides that:

"One of the Bridger-Teton National forest Land and Resources Management Plan (Forest Plan) goals is to help communities continue or gain greater prosperity by helping to re-establish historic elk migration routes to provide increased viewing and hunting opportunities for outfitters and clients (page 112, Forest Plan 1990), I remain committed to this goal in the long term. . . . Through efforts such as the Jackson Interagency Habitat Initiative and coordination with the National Elk Refuge, Grand Teton National Park, and the WGFD on development of the

Adaptive Management Plan for the 2007 Bison and Elk Management Plan and the National Elk Refuge Comprehensive Conservation Plan, the Bridger-Teton National Forest continues to work with interagency partners on ways to reduce reliance on supplemental feeding and management of feedgrounds."

DROD at 4. It also notes that:

"The U.S. Department of the Interior's 2007 Bison and Elk Management Plan for Grand Teton National Park and the National Elk Refuge sets an objective for having about 5,000 elk on feed on the National Elk Refuge, which at current herd populations cannot be met if substantial numbers of elk leave the Gros Ventre drainage."

DROD at 1.

The above statement in the DROD contradicts the statement from the DROD at 4 where it indicates that the Adaptive Management Plan (which does not exist) for the Bison and Elk Management Plan will "reduce reliance on supplemental feeding." Which is it, have 5,000 elk "on feed" or "reduce reliance on supplemental feeding"? Furthermore, if there is a set number of elk "not to exceed" whether on feed or not on the National Elk Refuge and the USFWS somehow allows no more elk, how could there come a day when the BTNF feels they need to no longer hold elk in the Gros Ventre Valley on feedgrounds and can allow them to range freely? The Acting BTNF Supervisor states that, "My decision concerning Alkali Creek Feedground does not foreclose the options for seeking long-term alternatives to winter feeding, and those efforts continue." DROD at 4. The BTNF failed to disclose what "those efforts" consist of and offer clarification as to how the seemingly unresolvable requirements of the WGFD and the USFWS can be overcome. The BTNF is plainly throwing up its hands and essentially saying that nothing can change when the DROD observes, "The complications and disagreements arise from the application of this science to a complex landscape with multiple and often conflicting managerial, social, and political objectives." Furthermore, the BTNF Acting Supervisor says, "I decided it would be inappropriate to act unilaterally on this issue, for example by selecting the No Action Alternative, given the potential to displace impacts and conflicts and potential for unintended consequences to other state, private and federal jurisdictions." DROD at 5-6 How is this so if the BTNF has been committed for a quarter of century to changing this paradigm, and tells the public that there are unspecified "long term alternatives to winter feeding"?

Given that the Forest Plan is 25 years old and the BTNF has done nothing to remedy or implement alternatives to elk feedgrounds (proof: they keep permitting them), this commitment is without substance. Rather than merely commit to something mentioned a quarter of a century ago, the BTNF should actually take advantage of the obvious opportunities to change the paradigm through the USFS elk feedground EIS processes and decisions. In this DROD the BTNF attempts to cover this failure by offering very mixed messages to the public.

Connection to prior comments: These issues were described in WWP & Gravelbar's 5/6/05 comments at 2, 5-6, 7-8, 16.

Suggested remedy: The Draft Record of Decision must reconcile the contradictions inherent in their claim that the BTNF is working and will work towards alternatives to supplemental feeding and all the while claiming that they cannot deny a permit to operate an elk feedground at Alkali Creek because doing otherwise would adversely affect the WGFD elk objective numbers and the desired numbers of elk on the National Elk Refuge during winter.

b. Unwarranted Deference to National Elk Refuge

The BTNF cannot use the Elk Refuge's management objectives for elk as an excuse to maintain the Alkali Creek feedground. As the DROD stated, "Alkali Creek Feedground is situated such that it is critical for holding elk in the Gros Ventre River drainage that otherwise would end up overwintering on adjoining private agricultural lands or the National Elk Refuge. The U.S. Department of the Interior's 2007 Bison and Elk Management Plan for Grand Teton National Park and the National Elk Refuge sets an objective for having about 5,000 elk on feed on the National Elk Refuge, which at current herd populations cannot be met if substantial numbers of elk leave the Gros Ventre drainage." DROD at 1.

If this excuse stands, and there is always an Elk Refuge mere miles away from Alkali Creek, then ending one or more elk feedgrounds can never happen because it will always have the potential for elk to affect the Elk Refuge numbers. This is an insurmountable artificial prohibition because it forever forecloses on the "environmentally preferred alternative," DROD at 9, of closing one or more feedgrounds. It essentially gives the USFWS Refuge System blocking power or veto over what happens on USFS land, a violation of NFMA. (16 U.S.C. Sec. 2(6)).

The rationale that feeding at Alkali Creek prevents problems on another jurisdiction fails, because the BTNF admits that, even when winter feeding is conducted at Alkali Creek, "Some elk routinely migrate out of the Gros Ventre watershed to the vicinity of Kelly, Wyoming, and on to the National Elk Refuge, and the reverse movement occurs as well." FSEIS at 82. And again, "Elk movements down-river toward private lands in the Gros Ventre watershed and to the National Elk Refuge are well documented and are expected to continue under this (No Action) alternative . . ." FSEIS at 108, parentheses added.

Again, the USFWS has actually *increased* the numbers of elk fed at the Elk Refuge to 8,390 elk in February 2015, more than any recent year back to 1998, seventeen years ago. (JHN&G 2-21-15 "Refuge elk ranks grow"). This despite the BTNF allowing the WGFD to feed elk at the feedgrounds in the Gros Ventre Valley. Given the substantial increase in elk wintering on the Elk Refuge, the BTNF must offer the public a candid assessment of the likelihood that the USFWS Refuge System will ever be

amenable to having free ranging elk in Jackson Hole and not try to influence other jurisdictions' managing free ranging elk.

In fact, the BTNF may be giving undue credit to the effects of haybales and not enough to the influence of wolves on elk movements. As indicated above, the presence or absence of an elk feedground at Alkali Creek has, at best, only a limited effect on keeping elk in the Gros Ventre Valley whereas, wolf activity has influenced elk distribution more significantly. DROD at 2.

Connection to prior comments: These issues were discussed in WWP & Gravelbar's comments 5/6/05 at 9, referring to pages 23-24 in the BEMP FEIS.

Suggested remedy: The BTNF must explain what influence the desired objectives for wildlife on the Elk Refuge have on decisions that are solely the responsibility of the USFS-BTNF. The BTNF must explain if the mere existence of the National Elk Refuge will always prevent the BTNF from managing healthy, free-ranging elk, i.e., without elk feedgrounds. The BTNF must explain, if the USFWS doesn't want to make decisions for the USFS-BTNF, why the 3.4 million-acre BTNF defers to the desired objectives of the 25,000-acre Elk Refuge.

c. Unwarranted Deference to WGFD/WGFC

The BTNF concedes to the use of the WGFD elk objective number and entrenched entitlement to operate feedgrounds appropriate analysis. The DROD states that "The U.S. Department of Interior's 2007 Bison and Elk Management Plan for Grand Teton National Park and the National Elk Refuge sets an objective for having about 5,000 elk on feed on the National Elk Refuge, which at current herd populations cannot be met if substantial numbers of elk leave the Gros Ventre drainage." DROD at 1. "The population objective for the Jackson elk herd unit is 11,000 +/- 10 percent. The herd is currently within 10 percent of objective." FSEIS at 82. But nothing in NFMA or elsewhere requires the BTNF to manage to the WGFD numbers or methods. In fact no analysis or scientific determination was ever conducted by the USFS as to the appropriate numbers of elk on USFS lands. Therefore, to manage to the numbers (aka, herd objectives) and management proclivities set forth by the WGFD without appropriate scientific analysis transfers authority from the USFS to the WGFD which is inconsistent with NFMA. 16 U.S.C. Sec. 2(6).

Similarly, the DROD notes that: "The Commission has informed the Forest Service they intend to continue to feed elk on private, state, or other federal lands, even if authorization is not issued for Alkali Creek Feedground . . ." DROD at 10. The influence of this threat by the WGFD to operate elk feedground(s) elsewhere if Alkali isn't available gives what is essentially veto power over USFS decisions to the WGFD, a violation of NFMA. 16 U.S.C. Sec. 2(6).

Connection to prior comments: These issues were discussed in WWP & Gravelbar's comments 5/6/05 at 3, 14, 20; and GYC's DSEIS scoping comments at 8-9, 11 (attached to WWP's DSEIS comments).

Suggested remedy: The BTNF must conduct an analysis and arrive at its own scientifically-based determination of what is the appropriate numbers of elk on US Forest Service lands in the Gros Ventre watershed. The BTNF must present to the public evidence of the "intention" conveyed to them by the WGFD/Commission to operate feedgrounds elsewhere if a Special Use Permit is not issued for Alkali Creek. In addition, the BTNF must explain why they bend to the threats of the WGFD/Commission rather than protect USFS lands on behalf of the people of the United States.

CONCLUSION

We look forward to working with the USFS to resolve these objection points and craft a solution that benefits the wildlife and wilderness values of the Bridger-Teton National Forest.

Respectfully submitted,

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Attachment: Road density map made from BTNF GIS data obtained through FOIA.