



Public Employees for Environmental Responsibility

962 Wayne Avenue • Suite 610 • Silver Spring, MD 20910 • 202-265-PEER(7337) • fax: 202-265-4192
e-mail: info@peer.org • website: www.peer.org

**Comments of Public Employees for Environmental Responsibility (PEER)
on Notice of Intent to Prepare a Comprehensive Conservation Plan
for the National Bison Range, Moiese Montana**

June 19, 2017

Toni Griffin, Refuge Planner
NBR CCP
134 Union Blvd.
Lakewood, CO 80228

By mail and by email to: scoping_NBR@fws.gov

On May 18, 2017, the U.S. Fish and Wildlife Service, Department of Interior (FWS or the Service), issued a “Notice of Intent to Prepare a Comprehensive Conservation Plan for the National Bison Range, Moiese Montana.” On the same date, the Service also issued a “Notice of Intent to Prepare a Comprehensive Conservation Plan; Pablo, Lost Trail and Ninepipe National Wildlife Refuges, and the Northwest Montana Wetland Management Districts, Montana.” Those units of the National Wildlife Refuge System (NWRS) are part of the National Bison Range Complex. Scoping comments on both Comprehensive Conservations Plans (CCPs) were requested to be submitted by June 19, 2017.

These comments are submitted in response to the Bison Range Notice by Public Employees for Environmental Responsibility (PEER). PEER is a national non-profit organization made up of local, state, and federal resource professionals whose mission is to promote open, ethical and accountable governmental administration of environmental laws and regulations and management of public lands throughout the United States. PEER has been involved with issues concerning the National Bison Range since 2004, and has been a strong advocate of continued federal management of the Bison Range in accordance with all applicable federal laws and policies. In 2010, PEER prevailed in litigation challenging the Service’s failure to comply with the National Environmental Policy Act (NEPA) regarding the last Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT). *Reed v. Salazar*, 744 F. Supp. 2d 98 (D.D.C. 2010). PEER is also a plaintiff in pending litigation challenging the failure of the Service to develop and complete a CCP for the Bison Range, which was required by law to have been completed by October 2012. 16 U.S.C. § 668dd(e)(1)(iv)(B). *Reneau, et al. v. U.S. Fish and Wildlife Service, et al.*, Case No. 16-cv-966 (D.D.C.). That case also challenges FWS’s failure to prepare an EIS in accordance with NEPA for its proposal, announced in February 2016, for legislation to transfer the Bison Range out of the NWRS and into a trust held by the United States for the benefit of the CSKT.

The current Notice of Intent (NOI) for the National Bison Range is a revision of a previous NOI published on January 18, 2017. The previous NOI stated the contradictory intentions to prepare a management plan for the National Bison Range as part of the NWRS for



the next 15 years, and at the same time to propose as the “preferred management option” that the Bison Range be transferred by Congress out of the NWRS and to the CSKT, returning the lands to “trib[al] control.” 82 Fed. Reg. 5598. PEER submitted comments on that NOI, pointing out that a CCP is legally required to be a plan for management of a refuge as part of the Refuge System, and cannot be a vehicle for a proposal to abolish a refuge. The current NOI appropriately disclaims the plan to propose transfer of the Bison Range as the “preferred management option” for the CCP, and instead commits to “evaluat[ing] how we [i.e., the FWS] will manage the NBR.” 82 Fed. Reg. 22844 (May 18, 2017). The NOI also acknowledges that, by law, the “purpose of a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System [NWRS], consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies.” *Id.*

PEER welcomes the Service’s return in the revised NOI to the proper legally mandated function of a CCP. However, PEER remains concerned about how this process is being carried out and whether it can result in a robust CCP that comports with the law and Service policy.

1. Sufficient resources at the refuge level must be devoted to preparing the CCP and accompanying NEPA document. As a result of plans for management or co-management of the Bison Range by the CSKT over more than a decade, the FWS has failed to fully fund and staff the Bison Range, apparently holding the Refuge in limbo pending anticipated new arrangements. The absence of a CCP that was due in 2012, one of the last CCPs remaining due in the entire Refuge System, is a manifestation of this problem. The entire Bison Range Complex now has only five full-time staff, and only three of these are professionals with the knowledge and skills needed to contribute to the preparation of a CCP. This is compared with 17 staff in 2003 and ten in 2013. The Bison Range has half the budget it had in 2010. This situation is evidently not due to a true shortage of resources at FWS, since as recently as 2015, in negotiations for an AFA with the CSKT, the Tribes were offered 13 positions. Now that the proposal to transfer the Bison Range out of the NWRS is off the table, the Bison Range must be restored to full funding and staffing so that it can properly carry out refuge functions, including preparing the CCP and NEPA documents and eventually implementing the CCP.

These concerns are magnified by the fact that FWS plans to engage in two separate CCP/NEPA processes at once – one for the Bison Range with an EIS and one for the rest of the units of the National Bison Range Complex with an environmental assessment (EA) -- greatly increasing the workload and the burden on Refuge staff. Also, FWS has pre-determined that an EIS should be prepared for the Bison Range, a far more demanding and resource-intensive process than the usual process of preparing an EA and then moving to an EIS only if issues revealed in the EA process demonstrate the need for an EIS. FWS should prepare one CCP for the entire National Bison Range Complex, and begin with an EA that would evaluate the need for an EIS.

2. Having the CCP/NEPA process run out of the Regional Office cannot substitute for leadership and professional contributions at the refuge level. FWS apparently intends to prepare the CCP/NEPA documents at the Regional Office, perhaps to sidestep the need for adequate funding and staffing at the Bison Range. The NOI is directed from, and comments are to be submitted to, Regional personnel. The Bison Range refuge manager has not been named the planning team leader for the CCP, as is customary. The refuge manager was sidelined in the CCP scoping meetings that have already taken place. While the Regional Office has a role to play, it cannot substitute for the on-the-ground knowledge and leadership at the refuge level that is necessary to prepare a CCP.
3. FWS is not following its own Manual for Comprehensive Conservation Planning, casting doubt on whether there will be a legitimate, robust, and ultimately successful CCP process. FWS is already failing to follow its own Comprehensive Planning Process, 602 FWS 3, which provides “minimum requirements for all CCPs.” *Id.* at § 3.1. The Manual sets out a series of steps that result in the data gathering, analysis, and public input that are necessary to produce a quality, legally compliant CCP that will actually “provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System” 82 Fed. Reg. 22844. Even the issuance of the NOI should not have occurred without numerous prior planning steps, including assembling the planning team, establishing refuge purposes and history, identifying planning and compliance requirements, establishing the purpose and need for the plan, delineating the planning area and identifying data needs, reviewing existing vision and goals for the refuge, beginning internal scoping, preparing a plan for public involvement and outreach, and establishing a work plan and schedule for the CCP. 602 FW 3, Sec. 3.4.C(1). There is no indication that any of this has occurred, casting doubt on the existence of a serious, compliant CCP process as opposed to actions that merely create an appearance that the process is going forward.

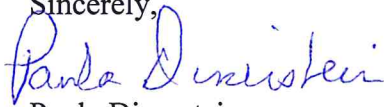
FWS has also already held two public scoping meetings that served little or no legitimate purpose, as FWS had not done all of the pre-planning steps described above in order to obtain information and analysis to present to the public. The meetings were also poorly publicized and poorly attended; leaving the impression that FWS was trying to check off a box without providing any actual substance.

4. Another AFA with the CSKT should not be considered in the CCP. Although not noted in the NOI, the FWS revealed at the scoping meetings that consideration of another AFA with the CSKT would be part of the CCP process. A CCP is a plan for management of a refuge by FWS as part of the NWRs for a 15-year period, including addressing management of fish and wildlife, ecological integrity, public use, budgetary and staffing needs, and public involvement. It should not be a vehicle to consider the entirely separate issue of another AFA, which would provide for the CSKT to participate in performing some of the refuge functions. Rather, the plans for management of the Bison Range as a part of the Refuge System should be completed before considering how another AFA might fit into them. In addition, even if it were

otherwise appropriate to consider an AFA as part of the CCP process, at this point there is no proposed AFA to consider. Attempting to meld the CCP process with an AFA process could significantly delay the already long-overdue CCP.

In conclusion, the CCP process should be restarted in accordance with the steps laid out in FWS's Comprehensive Conservation Planning Manual, with adequate staffing and resources at the Bison Range to successfully lead the process.

Sincerely,



Paula Dinerstein
Senior Counsel