

APPENDIX 8

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9 June 2016

Subj: Prairie Dog Management on the Thunder Basin

Select Federal Natural Resource Management Committee
Wyoming Legislative Service Office
213 State Capital
Cheyenne, WY 82002

Dear Committee Members,

What was the original Congressional Intent for the land utilization of what is now the Thunder Basin National Grasslands in Wyoming?

The Congressional direction for the Thunder Basin as spelled out in the following directives is for a stabilize local agricultural economy for the lawful ranching industry within the Thunder Basin along with sustain productive utilization of the forage resource.

Land Utilization Projects

*In 1931 a national conference entitled Land Utilization, called for a survey of submarginal lands. Once identified, the government began to purchase these lands under the authorization of the National Industrial Act of 1933 and Emergency Relief Appropriations Act of 1935. The aim was to **control erosion, produce more forage, and 'ensure economic stability' for remaining rural residents.***

The Land Utilization lands were not intended to be permanent natural areas; instead the goal was to transform marginal farmland into productive rangeland (Wooten 1965:53). Other resources were to be managed on the Land Utilization lands but the restoration of the 'local economy' through ranching was the 'critical goal' during the depression and afterwards. [Emphasis Added]

USDA Forest Service and the National Grasslands

*By Secretary of Agriculture Administrative Order dated 24 December 1953, administration of the Land Utilization lands was transferred from the Soil Conservation Service to the Forest Service. **"The original intent was for the Forest Service to act as interim manager pending final disposal of these acquired lands" [Emphasis Added]***

Direction for management of the National Grasslands was expanded in 1963 when the 1960 Order was amended. The additions served to reinforce the original Land Utilization mission of promoting grassland agriculture and sustained-yield management; while demonstrating sound land use practices to adjacent public and private landholders. [Emphasis Added]

STATUTORY DUTIES VIOLATED.

- b. The Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010, is the original Organic Act of the National Grasslands and requires that "[t]he Secretary is authorized and directed to develop a program of land conservation and land utilization in order thereby to correct maladjustments in land use, and thus assist in controlling soil erosion, reforestation, preserving natural resources, -----
- c. The very next section of the Bankhead-Jones Farm Tenant Act, 7 U.S.C. 1010a directs that "[i]n recognition of the increasing need for soil, water, and related resource data for land conservation, use, **and development for a 'balanced rural-urban growth,' [Emphasis Added]**

The Forest Service statutory duties to be a steward of the soil resource and to abate depredations are specific and clear. As the United States Supreme Court recently found in determining that the Endangered Species Act did not trump the Clean Water Act's mandatory duties on the EPA: "a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum."

The inability of the Forest Service to seriously consider the causal nature of the environmental damages caused by the prairie dog proliferation is a violation of its affirmative duties to monitor and study erosion damages and the degradation of the environment from the improper use of soil resources. 7 U.S.C. 1010a. [Emphasis Added]

Not only has the Forest Service bypassed the legislative charters or organic acts of the Forest Service and the National Grasslands by segmenting the evaluation areas, but it has not taken a hard look at the causation of overgrazing by prairie dogs and a de facto Black-footed Ferret Introduction Area as stated in the 2001 Thunder Basin Land and Resource Management Plan. [Emphasis Added]

Again the Bankhead-Jones Farm Tenant Act states:

- c. 7 U.S.C. 1010a directs that "[i]n recognition of the increasing need for soil, water, and related resource data for land conservation, use, **and development for a 'balanced rural-urban growth,' [Emphasis Added]**

The Northeast Wyoming Land Utilization and Land Conservation Project WY - LU - 21 states:

The primary purpose of the Northeastern Wyoming Land Utilization and Land Conservation Project WY - LU - 21, **was for “grassland agriculture”, which is for livestock grazing and “the economic stability of the local ranches.” [Emphasis Added]**

The Wyoming State Charter for the Thunder Basin Grazing Association states:

“to promote, aid, and protect the raising of livestock within the Thunder Basin Grazing Area,” [Emphasis added]

In the State of Wyoming the black-tailed prairie dog is a “Designated Pest”.¹ Wyoming Law requires the control of “Designated Pest” by all land owners.

Chief Justice John Roberts wrote the following in the 2013 case; *Shelby v. Holder*:

*“The Constitution and laws of the United States are “the supreme Law of the Land.” U. S. Const., Art. VI, cl. 2. State legislation may not contravene federal law. **The Federal Government does not, however, have a general right to review and veto state enactments before they go into effect.** A proposal to grant such authority to “negative” state laws was considered at the Constitutional Convention, **but rejected in favor of allowing state laws to take effect, subject to later challenge under the Supremacy Clause.***

*Outside the strictures of the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives. **Indeed, the Constitution provides that all powers not specifically granted to the Federal Government are reserved to the States or citizens. This “allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States.”** But the federal balance “is not just an end in itself: **Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.” [Emphasis Added]***

In violation of Wyoming Law ² the Douglas District Ranger is allowing the Black-tailed Prairie Dog, a State of Wyoming “Designated Pest” to multiply in astronomic numbers within the Ferret Introduction Area (MA 3.63) without any controlling measures to keep said “Designated Pest” from encroaching upon the deeded lands within the Ferret Introduction Area. By allowing these very large populations of said “Designated Pest” within the Thunder Basin the Douglas District Ranger is putting a significant **Health**

¹ (xii) "Designated pest" means any animal or insect species that is determined to be detrimental to the health or general welfare of the state based upon the following: (C) Is a carrier of disease or parasites;

² (TITLE 11, AGRICULTURE, LIVESTOCK AND OTHER ANIMALS, CHAPTER 5, WEED AND PEST CONTROL, ARTICLE 1 and ARTICLE 3)

Risk and Economic Burden upon the Livestock Operators and is interfering with the lawful operation of said ranch units, a violation of many State and Federal Laws as attested to by many Court Decisions³. "Designated Pest" are considered a third party.

By U.S. Supreme Court Decisions, the Forest Service is considered a landowner in Wyoming and thus is subject to Wyoming Law.⁴

This brings me to the point as to why the State of Wyoming should initiate its Sovereign Power and take over the Administration and Management of the Thunder Basin National Grasslands.

First and very important, Federal Law is already written and in place for the President to do this. Section 32 (c) of the Bankhead-Jones Farm Tenant Act is clear on the intent of Congress:

*"To sell, exchange, lease or otherwise dispose of, with or without a consideration, any property so acquired, under such terms and conditions as he deems will best accomplish the purposes of this title, but any sale, exchange, or grant shall be made only to public authorities and agencies and only on condition that the property is used for public purposes. **The Secretary may recommend to the President other Federal, State or Territorial agencies to administer such property, together with the conditions of use and administration which will best serve the purpose of a land-conservation and land-utilization program, and the President is authorized to transfer such property to such agencies.**" [Emphasis Added]*

Second, the infrastructure for the management and administration of the Thunder Basin is already in place. Each of the 3 Grazing Associations within the Thunder Basin have Charters dating back to 1937 and 1939 from the State of Wyoming to administer and manage said lands. Each Grazing Board of Directors is responsible for the administration of the Grazing Allotments within each Association. **In essence, each Grazing Association is a political subdivision of the State of Wyoming.** The boards have been functioning for 79 years in a very effective manner until the overbearing Forest Service policies changed in recent years and the Forest Service started ignoring Congressional intent and Law. Grazing Allotment Administration and Management need to be put back into the hands of the three highly qualified local Grazing Associations, the Thunder Basin Grazing Association, the Spring Creek Grazing association and the Inyan Kara Grazing Association with minimum oversight by a administrative agency.

³ **United States vs Fuller**

In United States v. Fuller, the U.S. Supreme Court held that while grazing permits on government's land are unrevoked, **neither the grantor or a third party may interfere with their exercise and that government has an affirmative obligation to safeguard them adequately.**

⁴ "Landowner" means any person who has actual use, exclusive possession of or exercises control over the land through any lease, easement, right-of-way or estate in the land. **Federal landowner means the federal agency having jurisdiction over any lands affected by this act; [Emphasis Added]**

Third, the cost or expense to the state would be nil. Each Grazing Association is financially independent. Grazing Association income is derived from grazing fees using the PRIA formula and paid by each permittee for each Animal Unit Month (AUM) that he has in his grazing allotments.

As Governor Mead wrote On 17 April 2013 to the Regional Forester 3 years ago:

"The current prairie dog management plan for Thunder Basin National Grasslands (TBNG) is unworkable and adversely impacts landowners in and around TBNG."

Nothing has changed for 15 years with Forest Service management, there has been no effective control of a "Designated Agricultural Pest" by the Federal landowner as required by Wyoming Law. Just talk, more meetings, more talk, need more meetings for more talk, resulting in more encroachment by the "Pest" onto our Private Lands and our "Property Right" to graze our livestock on our Grazing Allotments. The "Pest" is destroying our valuable forage and rangeland that is needed for our Livelihoods.

As the PD issue on the Thunder Basin National Grasslands is now at an acute stage and remedial action is now needed, the 4W Ranch trusts that this paper will shed needed light on why the ranching community is so opposed to the current mismanagement of PD population densities by the Forest Service within the Thunder Basin. We are methodically being destroyed by an inapt Federal Agency.

Respectfully submitted for your consideration,

Major Robert L. Harshbarger, USAF Retired
Member, 4W Family Limited Partnership
President, Association of National Grasslands

