







October 17, 2019

Mary Moore, District Ranger USDA Forest Service Jackson Ranger District PO Box 1689 340 N. Cache St. Jackson, WY 83001

Initial public scoping comments on the proposal to authorize the Wyoming Game and Fish Commission (WGFC) to use National Forest System (NFS) land for operation of an elk feedground at Alkali Creek.

re: File Code: 1950/2720 Date September 20, 2019.

Electronic scoping comments submitted to: comments-intermtn-bridger-tetonjackson@usda.gov

Hard copy hand delivered at 340 North Cache St., Jackson, WY, 83001 on October 17, 2018.

Dear Ranger Moore:

We submit these scoping comments regarding your letter dated September 20, 2019, File Code 1950/2720, (referred to hereinafter as scoping letter or notice) to re-authorize for Wyoming Game and Fish Commission (WGFC) to continue supplemental feeding of elk at Alkali Creek on the Jackson Ranger District of the Bridger-Teton National Forest (BTNF). The proposed authorization appears to be for five acres for five years, with the possibility for renewal for yet another five years. The proposed action is ostensibly for "emergency feeding only" and allegedly would "enable WGFC to phase out its use of the Alkali Creek Feedground." The undersigned organizations have long advocated that the BTNF end its permitting of winter elk feedgrounds. As has been made evident to the BTNF over time, there is virtual unanimity among wildlife experts that elk feedgrounds are harmful to wildlife and habitat. Phasing out an elk feedground is thus a worthy goal; however, this proposal appears to actually continue the status quo of feeding elk every winter, and may fall short of effecting the change necessary to ensure protection of USFS lands and wildlife. Indeed, the Jackson WGFD Regional Supervisor, Brad Hovinga, was quoted in the October 8, 2019 Jackson Hole Daily as saying this proposal, "changes little overall." This proposal raises many questions and concerns including how this proposed action is consistent with the District Court of Wyoming's September 14, 2018, ruling regarding Alkali Creek Feedground and other legal directives. We encourage you to review the court's ruling.

In light of that court's determination, we append to these scoping comments the entire letter submitted to you September 26, 2018, by Meyer Glitzenstein & Eubanks LLP on our behalf, and we await your answers to our questions included in that letter.

Among our concerns about this proposal is the apparent possibility of actually continuing elk feeding at Alkali Creek under arbitrary, vague, and subjective criteria for as long as ten years. Given the ongoing inherent and unavoidable severe environmental impacts of feeding elk on USFS lands, we oppose continuing the use of Alkali Creek or any other USFS lands for elk feeding beyond the absolute minimum time necessary to end that practice. Ten, or even five years, is well beyond a reasonable time to end elk feeding at Alkali Creek. Two years should be more than ample time to cease feeding elk and dismantle and remove the facilities at Alkali Creek. Therefore, we recommend that feeding elk forever end at Alkali Creek by April 2021, and preferably sooner.

#### 1. Introduction

The Sierra Club is a national non-profit conservation organization founded in 1892 with more than 3,000 members and supporters in Wyoming and 3.5 million members and supporters nationwide. Its mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.

Western Watersheds is a non-profit conservation organization founded in 1993 with the mission of protecting and restoring western watersheds and wildlife through education, public policy initiatives, and litigation. Headquartered in Hailey, Idaho, Western Watersheds Project has 2,000 members and field offices in Idaho, Montana, Oregon, Wyoming, Arizona and California.

Wyoming Wildlife Advocates is a non-profit organization focused on informing, educating, and empowering communities to preserve our wild legacy and protect our shared wildlife resources. They envision a Wyoming that leads the nation in exceptional and innovative wildlife management; all stakeholders are valued equally, and management decisions are driven by the best available science. Headquartered in Jackson, Wyoming, WWA has thousands of supporters in Wyoming, the Greater Yellowstone Ecosystem, and nationwide.

Gallatin Wildlife Association (GWA) is a small non-profit volunteer wildlife organization of approximately fifty members. Headquartered in Montana, GWA is composed of dedicated hunters, anglers, and other wildlife advocates in Southwest Montana and beyond. GWA's mission is to protect habitat and conserve fish and wildlife for this and future generations. GWA has longstanding interests in supporting the sustainable management of fish and wildlife populations through fair chase public hunting and fishing opportunities that will ensure these traditions are passed on for future generations to enjoy.

Our organizations and our members and supporters value the public lands, wildlife, scenery, air quality, waters, recreational and professional experiences, and other natural values of the Bridger-Teton National Forest including those within and near Alkali Creek and the entire Gros Ventre Valley, and will be affected by a decision in this matter.

# 2. Permitting a feedground at Alkali Creek does not qualify for a Categorical Exclusion

The Forest Service proposes to authorize the continued use of the Alkali Creek elk feedlot under a categorical exclusion (CE) from NEPA listed in Forest Service NEPA Act Handbook, FSH 1909.15, CHAPTER 30-- section 32.12 (3) Approval, modification, or continuation of minor special uses of NFS lands that require less than five contiguous acres of land.

The scoping notice contains a map that appears to be essentially the same map provided in the 2015 Final Record of Decision (p.17) that outlines 91 acres for the feedground (FROD:3). The scoping notice claims that one acre within the 91-acre polygon will be for the existing facilities consisting of a tagging corral, a horse corral, a tack shed, a hay stackyard containing 2 haysheds, and a water facility. The scoping letter indicates that the BTNF intends to authorize 4 acres for, "dispersed emergency spot feeding within the historic feedground permit area." The scoping notice also indicates that the 4 acres will somehow "permit the use of the route between Alkali Creek Feedground and Patrol Cabin Feedground to draw elk to Partol (sic) Cabin from Alkali Creek." More on that below. It's not indicated on the map where the 4 acres is within, or beyond, the 91-acre polygon. Since the proposed permit will authorize feeding hundreds of elk during winter for five or ten years, essentially the same practice that has been permitted for decades, the BTNF must explain how the public can expect the same actions and facilities that once needed 91 acres now only need 4 acres. The BTNF must also disclose how many acres at a time will be affected by equipment and elk during "dispersed emergency spot feeding". Although the scoping letter says the expectation is to, "minimize(e) the concentration of elk at any one feeding location", how dense will hundreds of elk be crowded together in this manner? The BTNF's own 2014 analysis describes:

"Elk density at the average state feedground in Wyoming is 1976.6 elk/km<sup>2</sup>, based on the reported average of 600 elk on 75 acres." (Johnson 2014:8) Elk lined up on haylines during winter feeding on feedgrounds can crowd into even denser concentrations. "However, that same herd can reach densities of 25,300 to 238,000 elk/km<sup>2</sup> when the elk are feeding on the feedlines (derived from proximity logging collars in a herd of 550-650 elk at one feedground) (Creech et al. 2012)." (Johnson 2014:9) If the density for 600 elk on 75 acres equates to 1976.6 elk/km2, what's the density of 300 or more elk on only 4 acres? When elk are crowded together in unnaturally dense concentrations, it amplifies the risk and prevalence of infectious diseases including brucellosis, hoof rot, and potentially CWD. As indicated above in Johnson 2014, densities on feedgrounds *during feeding* can increase to many thousands of elk per square kilometer. The BTNF must consider the effects of such crowding on habitat (including deposition of feces and urine-potentially carrying CWD prions, trampling of soils and plants, and overbrowsing of plants), and on wildlife. It is apparent that the direct, indirect, and cumulative effects of this action will occur over a much larger area than 4 acres.

The proposal also briefly mentions that the proposal "would include permitting the use of the route between Alkali Creek Feed ground and Patrol Cabin to draw elk to Partol (sic) Cabin from Alkali Creek." The proposal does not disclose what actions would take place in this route from Alkali Creek to Patrol Cabin elk feedground. It is approximately four miles between Alkali Creek to Patrol Cabin elk feedground (BTNF 2017). Even at only 20' wide, a four-mile long corridor would amount to an additional 9.7 acres, thus tripling the SUP area. The Forest Service must disclose what activities will be permitted on the 4-mile long route "to draw elk to Patrol Cabin from Alkali Creek"? What types of equipment, personnel, and supplies, and length of time would be involved in "drawing elk" to another elk feedground, and what would be the impacts to the environment from such activities? Would this be conducted on or near the USFS Roads #30400 and #30410? These roads are mapped and popular recreation routes for motorized recreationists; how would the proposed action affect this public use and other uses?

The BTNF must also disclose the geographic origin of the hay that is intended for storage and feeding at Alkali Creek, and assumedly along the four-mile long corridor, and must disclose if the area of origin is positive for CWD in cervids, and whether that hay may contain infectious CWD prions. Given that:

""Prions- the infectious, deformed proteins that cause chronic wasting disease in deer- can be taken up by plants such as alfalfa, corn and tomatoes, according to new research from the National Wildlife Health Center in Madison [Wisconsin]. The research further demonstrated that stems and leaves from tainted plants were infectious .... " (*LaCrosse Tribune* 2013)

the BTNF must consider the impacts of distributing hay that may contain infectious CWD prions in the Alkali Creek watershed and, assumedly, within the four-mile corridor to Patrol Cabin elk feedground.

Therefore, in light of the above and despite the claim in the scoping notice otherwise, the Forest Service fails to meet the "less than five contiguous acres of land" requirement of the CE on its face.

Even the example relied on in 36 CFR 220.6 (e) (3):

(viii) Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.

has not been complied with. Adding a four-mile long corridor indicates that the proposal has significantly changed from the previous authorization.

Additionally, the scoping notice claims this is a "minor special use" of NFS lands. Densely concentrating hundreds of vulnerable elk for months at a time, spreading out a ton or more hay daily, all the while exposing them to a variety of diseases and increasing the risk of deadly CWD infecting them is quite significant and does not constitute a minor use. As the court explained, "[A]rtificial feeding increases the risk of disease transmission, increases the risk that the site will be contaminated with prions for a very long time[.]" And, "There is *no question* that Alkali Creek Feedground could become a reservoir for CWD infection if it becomes established in elk populations in northwest Wyoming. That potential is increased with the concentration of elk at feedgrounds. If infected animals congregate, the environment will eventually be contaminated. This will significantly affect vegetation and soils, thus productivity, over a very long term (if not indefinitely) and may result in an irreversible and irretrievable loss of wildlife and habitat." (as quoted in 9-26-18 letter to USFS from Meyer Glitzenstein & Eubanks LLP)

NEPA allows for actions to be categorically excluded from NEPA analysis for "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect" (40 CFR 1508.4)

Cumulative is defined under NEPA as:

§1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment, which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

The Alkali Creek elk feedlot sits within a network of 23 interrelated elk feedlots throughout western Wyoming. The Forest Service has admitted, in EIS's since the mid 2000's to present filings in federal court, that continued authorization of this feedlot system has significant impacts on the environment, as defined under NEPA.

As determined by the Federal Court for the District of Wyoming, the Forest Service's recent EIS regarding the effects of the continued use of the Alkali Creek elk feedlot, which the Forest Service admitted would have significant impacts on the environment, violated the Forest Service's NEPA duties.

As we have discussed elsewhere in these scoping comments, the proposal is riddled with many loopholes which allows the WGFD to continue status quo feedlot operations at Alkali Creek for as long as another decade.

The Forest Service has admitted that operation of these elk feedlots both "individually or cumulatively have a significant effect on the human environment" (40 CFR 1508.4) (BTNF FROD 2015:6; Meyer Glitzenstein & Eubanks LLP 2018:2) yet at the same time it claims in the scoping letter that the same action is within "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect". The BTNF must explain how this proposed action is consistent with the Court's ruling regarding Alkali Creek Feedground.

Examples of actions which the U.S. Forest Service has determined throughout their system "do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect", include:

(i) Approving the construction of a meteorological sampling site;

(ii) Approving the use of land for a one-time group event;

(iii) Approving the construction of temporary facilities for filming of staged or natural events or studies of natural or cultural history;

(iv) Approving the use of land for a 40-foot utility corridor that crosses one mile of a national forest;

(v) Approving the installation of a driveway, mailbox, or other facilities incidental to use of a residence;

(vi) Approving an additional telecommunication use at a site already used for such purposes;

(vii) Approving the removal of mineral materials from an existing community pit or common-use area; and

(viii) Approving the continued use of land where such use has not changed since authorized and no change in the physical environment or facilities are proposed.

Each one of these examples could fall within the "minor" category that do not individually or cumulatively have a significant effect. But here, the Forest Service again attempts to force the authorization into the "minor" category by ignoring its own admissions of the significance of this elk feedlot individually and cumulatively. The "phase-out" label attached to the proposal can not hide the several loopholes embedded in the proposal that would allow the Department to continue with business as usual for even longer than the original 2015 EIS Final Record of Decision attempted; possibly until 2029/2030 compared to 2028.

NEPA describes a number of factors, which it considers "extraordinary circumstances" at 40 CFR 6.204. The proposed action that inherently perpetuates diseased wildlife and degraded habitat, spanning as long as ten years, on 15 or more acres of USFS land, and involving four miles of corridor on pubic lands triggers 6.204 (b) 1, 4, 5 and 8.

(1) The proposed action is known or expected to have potentially significant environmental impacts on the quality of the human environment either individually or cumulatively over time.

The Forest Service has admitted, and the court has affirmed, over the last decade that these elk feedlots on USFS lands both individually and cumulatively are expected to have significant impacts. (BTNF FROD 2015:6; Meyer Glitzenstein & Eubanks LLP 2018:2) This proposal with the loopholes that could allow continued feedlot and other operations for a decade fall into the same category of significant impacts.

(4) The proposed action is known or expected to significantly affect national natural landmarks or any property with nationally significant historic, architectural, prehistoric, archeological, or cultural value

The operation of elk feedgrounds on USFS lands contaminates the lands and wildlife of a portion of the world renowned Greater Yellowstone Ecosystem, including amplifying wildlife diseases that are transported by migrating wildlife into Grand Teton and Yellowstone National Parks. Additionally, conditions inherent to elk feedgrounds increase the risk from the transmissible and long lasting prions of chronic wasting disease and would significantly affect wildlife on these valued public lands.

(5) The proposed action is known or expected to significantly affect environmentally important natural resource areas such as wetlands, floodplains, significant agricultural lands, aquifer recharge zones, coastal zones, barrier islands, wild and scenic rivers, and significant fish or wildlife habitat.

Again, the expected facilitation of the contamination of the Greater Yellowstone Ecosystem, including Grand Teton and Yellowstone National Parks, with the transmissible and long lasting chronic wasting disease prions would affect significant wildlife habitat.

(8) The proposed action is known or expected to cause significant public controversy about a potential environmental impact of the proposed action.

Actions that continue to facilitate harm to nationally significant wildlife and their habitats have and will cause significant public controversy regarding the impacts of the proposed action.

Clearly, the proposed action continuing winter elk feeding spanning ten years and miles of public lands with its loopholes fails to fit within any categorical exclusion, triggers multiple extraordinary circumstances as laid out above and in our previous comments, and require an EIS in compliance with the court order.

### 3. How does the continuation of feeding under the auspices of "emergency feeding" comply with the Court's determination?

On September 14, 2018, Judge Nancy Fruedenthal, in the U.S. District Court for the District of Wyoming, vacated the December 1, 2015, Final Record of Decision for Alkali Creek Feedground back to the BTNF and remanded it back "to the agency for further proceedings consistent with this decision." The BTNF must explain how this proposed action is consistent with the Court's ruling regarding Alkali Creek Feedground. Some additional specific questions we pose to the BTNF include:

#### a. What is the timeframe of feeding allowed?

One significant question that arises in this very briefly described proposal is whether elk feeding, under any label (e.g., "emergency feeding") will be permitted at Alkali Creek another ten years, into 2029 or even 2030. According to the scoping letter, this proposal is "for the 2019-2024 feeding seasons," and allows "emergency feeding". Additionally, "At the conclusion of five years, this authorization may be renewed for one additional five-year period, if necessary, to complete the plan to eliminate feeding at Alkali Creek Feedground." It isn't specified whether a feeding season begins in late fall/early winter in one calendar year and ends in springtime the following year. If so, then this proposed action would possibly continue at a minimum into the calendar year 2025. If the permit is renewed for another five years, it appears that feeding elk at Alkali Creek could continue into 2029 or possibly through the spring of 2030.

The December 1, 2015, Final Record of Decision for Alkali Creek feedground explains that the BTNF intended to add the permitted use at Alkali Creek to the WGFC's 2008 special use permit, and that "the special use tenure extends to 2028." (Alkali Creek Final ROD:5) The current proposal for "emergency feeding" of potentially hundreds of elk at Alkali Creek for the next ten years into 2029 or even 2030 in effect *could continue the feeding of hundreds of elk a year or more beyond what was permitted in the original Record of Decision.* That Decision was successfully challenged by scientists, business owners, hunters, and conservation organizations representing millions of members and supporters, and subsequently overturned by the Wyoming District Court. The BTNF must provide details how this proposed action, which may actually continue the status quo of feeding elk the same length of time or even longer than what was previously requested by WGFD, is consistent with the Court's ruling regarding Alkali Creek Feedground.

### b. Emergency feeding would be allowed "If a significant elk damage or elk/livestock co-mingling situation develops on nearby private land and it is deemed necessary to feed in order to draw and keep elk away from the conflict on private land;"

As addressed in the 2013 comments by Greater Yellowstone Coalition, "Despite feedgrounds operating each winter, conflicts with elk continue to occur at [Gros Ventre Valley] ranches year after year. So, *without* fences and *with* feedgrounds it's a failed policy all around; elk keep getting into livestock and feedlines and elk keep getting sick on feedgrounds." (GYC 2013:12-13)The undersigned organizations agree, and suggest that solutions such as elk-proof fencing where appropriate, or shipping livestock to winter elsewhere, can solve many of these conflicts. These are solutions that have been used throughout the Rocky Mountain states, including in Wyoming. Indeed, the WGFD admits that, *"some of the private lands have erected* 

*fencing to protect stored crops and livestock from elk."* (WGFD 2016 JEH BMAP:5) The BTNF must be an active partner in seeking and implementing such solutions.

There's an old saying, "Good fences make good neighbors." We agree with the following paragraphs about effective fences submitted to the BTNF in 2013:

The BTNF must include in its alternatives pragmatic step by step plans to end feeding of elk at all the feedlot sites and transition those elk to native range. Besides forage assessments and carrying capacity estimates, these plans must include, but not be limited to identification of and mitigation plans for preventing wintering livestock from commingling with elk, and preventing private property damage by elk to haystacks and livestock fences that exist on private lands. Mitigation plans must include elk-proof fencing to prevent commingling and damage to haystacks, and funding sources for such projects. Some of these fences may best be located on USFS or other public lands in order to expedite the mitigation against commingling. Even though these fences need to be elk-proof, they may be of a kind that is entirely or partially removable or otherwise adjusted during the summer months to allow passage of wildlife, livestock, and people. The elk fence near Soda Lake feedlot near Pinedale may offer some ideas, although there are many other types of fencing available.

Regarding elk-proof fencing alluded to above, the US Forest Service has their own 1993 report from the Pacific Northwest Research Station describing techniques to construct elk-proof fences. (USDA-FS 1993)

### (GYC 2013:9 both paragraphs above)

Besides the Soda Lake elk fence alluded to above, near Pinedale, Wyoming (WGFD 2006c:37), other examples of elk-proof fencing partially on the BTNF include the Muddy Creek elk fence southeast of Boulder, Wyoming, (WGFD 2006b:40) and the elk fence extending southeast and south from the Greys River feedground in Star Valley, Wyoming (WGFD 2006a:17). Fences should, of course, be constructed to as minimal length as possible, and affect as little of the landscape as possible. The USFS undeniably has expertise in this area. (USDA-FS 1993)

### c. "Emergency feeding" would be initiated if hundreds of elk are in Alkali Creek:

The current proposal allows feeding of elk at Alkali Creek for another 5-10 years, if "large numbers of elk, in excess of 300" are at Alkali Creek. This is included in the proposal as one of the potential criteria for "emergency feeding." Yet upon review of public documents, the average number of elk fed during winter at Alkali Creek over time is calculated at 454 elk (Dean, et al. 2004:6, average from 1976-2002) or 473 elk (WGFD JEH JCR 2010:76, average from 1975-2011). So feeding "large numbers of elk, in excess of 300" at Alkali Creek for the next five or ten years under alleged "emergency feeding" protocol appears to be similar, perhaps identical, to the status quo. The BTNF must provide details how this proposed action is consistent with the Court's ruling regarding Alkali Creek Feedground.

#### d. Elk do not need artificial feed in the Gros Ventre Valley:

As indicated above, one of the criteria to allow "emergency feeding" as listed in the September 20, 2019, scoping letter is "If there are large numbers of elk, in excess of 300, staged at Alkali Creek, feeding has been initiated at Patrol Cabin or Fish Creek elk feedgrounds(.)" Additionally, the scoping letter indicates that emergency feeding will be allowed when an "authorized officer of the Forest Service concurs that one of these emergency situations exists and approves initiation of emergency feeding, including when emergency feeding must cease." The BTNF must take a hard look at the rationale that compels the WGFD to initiate feeding elk on feedgrounds in the Gros Ventre Valley. The BTNF must not simply adopt or default to the WGFD policy to feed regardless of the impacts to USFS lands and resources. As our 9-26-18 letter to the BTNF said in part:

As the Court recognized, whether WGFD continues its artificial feeding program elsewhere is irrelevant to "the issue . . . [of] WGFD's use of NFS land." Alternatives that phase out artificial feeding on NFS lands are "reasonable, within the [Forest Service's] jurisdiction, and feasible." Additionally, the implementation of a phase-out alternative would further the BTNF Land and Resource Management Plan's stated goal to "[h]elp reestablish historic elk migration routes to provide increased viewing and hunting opportunities for outfitters and clients." In contrast, "[b]ased on the record, feedgrounds seem to undermine this goal."

Unfortunately, the public record shows plainly that, regardless of the weather or available forage in the Gros Ventre Valley, the WGFD appears compelled to feed elk on one or more feedgrounds in the Gros Ventre Valley virtually every winter. (WGFD JCR\_BGJACKSON\_ELK\_2010:73-75) Of the winters beginning in 1975, through early 2011, elk *weren't* fed only twice; in 1976-77 and 1980-81. In 36 years, the WGFD fed elk in the Gros Ventre Valley 95% of the winters. The WGFD feeds elk despite having designated 100,000 acres of USFS lands in the Gros Ventre Valley as winter range for big game animals including elk. (WGFD JCR\_BGJACKSON\_ELK\_2010:3, map of "E102 Seasonal Ranges") See map below.



Figure 2. Currently delineated seasonal elk ranges and feedgrounds within the JEH.

Yet, prior to the middle of the 20<sup>th</sup> century, many thousands of elk wintered without artificial feeding in the Gros Ventre Valley. (Anderson 1958: Table 3 p.161; Nowlin 1907). Further, conservation groups have submitted to both the BTNF and the WGFD empirical evidence that there is more than enough natural winter forage to sustain thousands of elk in the Gros Ventre Valley (GYC 2005). See this excerpt from the WGFD 2016 Brucellosis Management Action Plan (BMAP) for the Jackson Elk Herd:

In January of 2005, the Greater Yellowstone Coalition, Wyoming Outdoor council, and Jackson Hole Conservation Alliance sent a proposal to Wyoming's Governor calling for a phase-out of elk feeding in 4 different areas in Wyoming, including the 3 feedgrounds in the Gros Ventre drainage (Dorsey et al. 2005). That same year, the Greater Yellowstone Coalition released an estimate of forage production and availability for the roughly 100,000 acres of winter range in the Gros Ventre valley, suggesting that between 4,419 – 6,628 elk could winter on native ranges there (Dorsey 2005). The WGFD completed an evaluation of feeding phase-out in the Gros Ventre in response, and reported that the only way a trial

phase-out of feeding could be attempted is if the current population of elk wintering in the *Gros Ventre is reduced by 1,000 -1,500 animals, mitigation measures to prevent livestock* and elk commingling are implemented in areas of highest potential for damage and commingling, and the NER agrees to accommodate any additional elk that could move from the Gros Ventre winter range to the NER (WGFD 2006). Over the last decade, some conditions have changed to facilitate feeding phase out in the Gros Ventre; elk numbers wintering on the feedarounds in the valley have decreased substantially in recent years (ava. 2002-2006, 2,887 elk; avg. 2010-2016, 1,916 elk), and some of the private lands have erected fencing to protect stored crops and livestock from elk. However, GPS collar data indicate that the reason for at least some of the reduced elk numbers wintering in the Gros Ventre is movement to the NER, despite attempts to begin feeding earlier than typical on the State feedgrounds. Additional elk wintering on the NER is problematic, as the 2007 Bison and Elk Management Plan calls for only 5,000 elk and the average number of animals counted on the NER the last 5 years has been over 7,500 (2010-2016; range 6,285-8,390). Concerns also remain over the potential for damage to stored crops and elk-cattle commingling without feeding in the area. Thus, the WGFD will not pursue feedground phase-out in the Gros Ventre at this time, and will reevaluate feeding phase-out as conditions continue to change. (WGFD BMAP JEH 2016:p5)

See also the June 3, 2013, comments to the BTNF from Greater Yellowstone Coalition on the Bridger-Teton National Forest's Draft Supplement to the Environmental Impact Statement Long Term Special Use Authorization for Wyoming Game and Fish Commission to Use National Forest System Lands for their Winter Elk Management Programs; comments Section 7. "Feedgrounds are not necessary to manage elk", pp:11-13. (Available at: <u>https://cara.ecosystem-</u>

**management.org/Public/DownloadCommentFile?dmdId=FSPLT3\_1423845)** Those comments offer additional empirical context and data why the solution to the harmful impacts *caused by* elk feedgrounds should be achievable by the BTNF and partners.

As the WGFD Jackson Elk Herd Seasonal Range map above plainly shows, Alkali Creek is literally within the big game winter range polygon as determined by the BTNF and the WGFD. There are no physical barriers preventing elk from using this winter range. See also the photo of a sign in the Gros Ventre Valley east of Alkali Creek with the logos of the USFS and WGFD among others; further proof that the agencies recognize this area as natural big game winter range. What prevents elk from relying on native range are the piles of hay permitted by the BTNF and distributed by WGFD on feedgrounds.



Critical Wildlife Winter Range sign in the Gros Ventre Valley. L. Dorsey

This important wildlife habitat was recognized in early settlement times by Game Warden DC Nowlin and others (Nowlin 1907), and is recognized in modern times by conservationists and agencies as being able to sustain thousands of elk during winter. See the study by conservation groups alluded to above in the WGFD 2016 BMAP indicating plenty of forage available in the Gros Ventre Valley during winter to sustain thousands of elk. Conditions in recent years have even *improved* for wintering big game in the Gros Ventre Valley due to repeated prescribed and wild fires rejuvenating plant communities (e.g., Haystack Fire, Red Cliff Fire, Upper and Lower Gros Ventre Prescribed Fires, Purdy Basin Fire), and with the retirement of USFS livestock grazing allotments in the Slate Creek-Fish Creek-Bacon Creek watersheds, and in the Crystal Creek-Alkali Creek-Lake Creek-Burnt Creek watersheds. On just one of the retired USFS livestock allotments, Bacon Creek/Fish Creek, fully 59,000 acres is designated "Big Game Winter Forage Allotment". (GYC 2013:20) There are very few livestock in the entire Gros Ventre River watershed that graze the winter ranges during or after the plant growing season in summer and fall each year, and there are very few livestock wintering on private lands in the Gros Ventre Valley. The BTNF has a very different framework to consider when protecting USFS lands, waters, and wildlife than does the WGFD, and must not merely "concur" with the policies of the WGFD. The BTNF must consider and protect the healthy ecosystem dynamics of winter range and the natural nomadic behaviors of wildlife in response to natural seasonal influences. Those phenomena aren't to be avoided; they're to be restored and protected. There is no reason that hundreds of elk in the Alkali Creek area during winter should trigger "emergency feeding" as included in the current proposal. While the policies and practices of the WGFD run counter to the science, the empirical evidence, and the history of elk in the region, the District Court of Wyoming pointed out that the BTNF must not merely adopt or default to the policies of the WGFD. The BTNF must provide details how this proposed action and the emergency feeding exemptions are consistent with available science, USFS legal directives, and with the Court's ruling regarding Alkali Creek Feedground.

### 4. The Forest Service must address the core issues of the entire elk feedgrounds program, not just issue term permits that continues feeding elk.

As was explained to the BTNF in the attached letter to Chief Christiansen and Supervisor O'Connor, from Meyer Glitzenstein & Eubanks LLP, dated September 26, 2018,

the Forest Service *must* "consider cumulative impacts from the integrated feedground program considering the best and currently available science that has advanced the understanding of CWD risk, transmission and mitigation since the 2008 analysis." The analysis of disease impacts in the 2008 Final EIS accompanying the 2008 special use permit is woefully outdated, and does not reflect the current state of the science on the potential impacts of CWD. Therefore, the Forest Service must update its analysis and thoroughly examine the impacts of the entire feedground *program* on the region's wildlife resources.

Since this proposal would perpetuate feeding elk each winter at Alkali Creek potentially for the next decade, albeit ostensibly under the rubric of "emergency feeding", the same cumulative impacts come into play here just as if the permit was to be until 2028 as originally intended by the WGFD and the BTNF, overturned by the District Court of Wyoming. Additionally, the quote discussed above from the Jackson WGFD Regional Supervisor, Brad Hovinga, in the October 8, 2019 Jackson Hole Daily as saying this proposal, "changes little overall(,)" (Koshmrl 2018), is troublesome in that it indicates that the BTNF and the WGFD either do not intend to end feeding for at least another decade at Alkali Creek, or that the BTNF still defers to the WGFD policies and their elk feedground paradigm on and around the Forest that maintains and, over time, increases the jeopardy from lethal diseases to elk on the National Forest. As we described above, ending feeding at one elk feedground is a worthy goal, but it must not be the entirety of change implemented by the BTNF to ensure the health of USFS lands and wildlife. The BTNF Supervisor, Tricia O'Connor, was quoted September 30, 2019, in an online Buckrail.com article as saying, "(W)e know feeding is not the right thing to do in the long term." (O'Connor 2018) In this light, the BTNF must thoroughly examine the cumulative impacts of the entire feedground program on the region's wildlife resources, using available up to date information.

#### 5. Alkali Creek is at the front of a rapidly expanding CWD endemic area.

Alkali Creek is near - and is at risk of being enveloped by - an ever-expanding Chronic Wasting Disease (CWD) endemic area. Deer Hunt Area 128, which is positive for CWD in deer, is merely 15 miles due east of Alkali Creek. Deer Hunt Area 139, positive for CWD in deer, is 55 miles southeast of Alkali Creek. Grand Teton National Park, that includes the lower Gros Ventre River watershed and where a CWD positive mule deer was detected in November 2018, is 10 miles west. Deer Hunt Area 152, found to be CWD positive in September 2019 (WGFD 2019), is only 9 miles to the south. Deer Hunt Area 145, positive for CWD in deer, is 45 miles southwest of Alkali Creek. The fact that CWD is now inside the range of the Jackson Elk Herd should be considered by the Bridger -Teton Forest and should compel the BTNF to consider and implement other alternatives than approving elk feeding in Alkali Creek. *The CWD endemic area in Wyoming expands nearly 2 million acres each year* and will likely expand soon into the upper Gros Ventre River watershed that includes Alkali Creek. (See the *Chronic Wasting Disease*  *in Wyoming Endemic Deer Hunt Areas –May 2019* map by Sierra Club and Wyoming Wildlife Advocates, below, in Reference section, and attached.)



Chronic Wasting Disease, "is an incurable, invariably fatal neurological disease of cervids (deer, elk, and their relatives) caused by a misfolded version ( $PrP^{cwd}$ ) of the normal prion protein ( $Pr^P$ )...CWD is highly transmissible via multiple direct and indirect pathways between and among cervid species...CWD can persist in the environment well after the infected animal has died. In this way, CWD differs from most other wildlife diseases in that environmental transmission plays an important role in the dynamics of the disease, something that isn't common for bacterial or viral diseases, which tend not to persist in the environment." (Johnson 2014:1 parenthesis in original)

"Studies on naturally occurring populations of elk have shown that mortality from chronic wasting disease by itself can exceed natural rates of mortality and reduce the overall survival of free roaming cow elk below 85% (Monello et al. 2014)." (Johnson 2014:7) It is evident that CWD can have a catastrophic effect on deer and elk on the Bridger-Teton National Forest. "(S)tudies 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." (Id.)

The dense concentrations of elk characteristic of elk feedgrounds will amplify the adverse effects of CWD on elk. "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. . .(E)lk feedgrounds attract elk from large catchments and congregate elk that might not otherwise contact each other, thereby increasing the chance that an infected elk from a distant locale would be the one to introduce the disease to a new herd area." (Johnson 2014:6)

The location of Alkali Creek makes the elk on a feedground at that location especially vulnerable to contract CWD. CWD has been moving across Wyoming for several years and Alkali Creek is now within the leading edge of this expansion. The BTNF must disclose and consider the effects of this disease, must mitigate the effects of this disease according to the best available science, and *must phase out all elk feedgrounds* and not permit emergency feeding *before* CWD or other diseases inflict irrevocable harm on our elk herds.

#### 6. Feedground elk are densely concentrated and at high risk of diseases

Many of the science-based concerns stem from the inherent conditions promulgated by the practice of concentrating hundreds of elk for many months on small tracts of land and feeding them hay on a daily basis throughout the winter. The current proposal to continue feeding hundreds of elk under the "emergency feeding" criteria for potentially another decade, does not appear to mitigate these impacts in a reasonable timeframe. These densely crowded conditions- characteristic of and unavoidable on feedgrounds- are unnatural for wild elk and result in perfect conditions for diseases to affect the elk herds in higher than normal prevalence compared to elk that free-range year round. Brucellosis, an endemic disease among elk in western Wyoming, affects feedground elk at approximately 25-35% seroprevalence, whereas wild, free-ranging elk in the Greater Yellowstone Ecosystem typically have zero to single-digit seroprevalence for brucellosis exposure. It is known that brucellosis is a density dependent disease and affects densely crowded elk more than free-ranging elk. (Smith 2001) The BTNF must consider the effects of brucellosis on elk attending an elk feedground, as well as on elk that do not attend feedgrounds but may comingle with diseased feedground elk.

"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 to 1.2 elk/km<sup>2</sup> . . . Elk density at the average state feedground in Wyoming is 1976.6 elk/km<sup>2</sup>, based on the reported average of 600 elk on 75 acres." (Johnson 2014:8) Elk lined up on haylines during winter feeding on feedgrounds can crowd into even denser concentrations. "However, that same herd can reach densities of 25,300 to 238,000 elk/km<sup>2</sup> when the elk are feeding on the feedlines (derived from proximity logging collars in a herd of 550-650 elk at one feedground) (Creech et al. 2012)." (Johnson 2014:9)

CWD is "expected" to impact elk populations on USFS lands. "(S)tudies 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." (Johnson 2014:7) Alluding to the Jackson elk herd where most of the elk in that herd are artificially concentrated and fed each winter, Peterson characterizes the conditions on elk feeding grounds as, "probably nearly ideal conditions for a CWD epidemic(.)" (Peterson 2003:52) By permitting elk feedgrounds the BTNF is knowingly complicit in promulgating conditions that harm wildlife and potentially harm wildlife for decades to come. If the BTNF proposes to authorize elk feedgrounds it must undertake an environmental impact statement and consider and analyze reasonable alternatives to protect the public's interest in healthy wildlife including alternatives that would bring an end to this harmful practice.

#### 7. National Forest Management Act (NFMA) Compliance

The BTNF must also act within the mandates of 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 USC Sec. 1604(g)(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 CFR Part 219.9) Elk feedgrounds are the opposite of healthy ecosystems, they prevent healthy wildlife populations, and, thus, do not comply with NFMA.

# 8. Impacts on rare wildlife including some protected under the Endangered Species Act

Alkali Creek is located in critical Canada lynx habitat (USFWS 2014,), grizzly bear occupied and Demographic Monitoring Area (WGFD 2016), a wolverine dispersal corridor (BTNF 2016b), and known gray wolf habitat (USFWS, et al. 2015). Canada lynx and grizzly bears are protected under the Endangered Species Act (ESA), and the wolverine is being considered for ESA protection by the US Fish and Wildlife Service. All these large carnivores are rare but important to the dynamic ecosystem function of predator/prey relationships. Since the promulgation of elk feedgrounds by the BTNF adversely affects the health of prey species such as deer, moose and elk, elk feedgrounds have the potential to adversely affect carnivores including those protected under the ESA. Due to these impacts on ESA-listed species, the Forest Service also needs to consult with the US Fish and Wildlife Service about potential effects to listed species under the ESA on any elk feedground permit regardless of term.

The BTNF must also consider the beneficial effects of abundant predators of elk and deer on the prevalence of CWD and other diseases in elk and deer and whether the existence of elk feedgrounds will affect the ability of predators to influence the health of elk and deer herds.

#### 9. Economics of sustainable wildlife management

Data show that hunters, anglers and wildlife watchers spent an estimated \$788 million in Wyoming, with the total economic importance up to \$1 billion in business activity. (WGFD, 2018) Direct expenditures (plus a multiplier effect of expenditures) of wildlife watchers in Wyoming during 2016 were \$556 million dollars. In addition, hunters in Wyoming spent \$288.7 million dollars in 2011. (USFWS 2012:7-8) While the three counties in western Wyoming where elk feedgrounds are located are only a portion of the state of Wyoming, the annual revenue from wildlife-related recreation in Sublette, Teton and Lincoln counties is undoubtedly many millions of dollars annually. The allowance of elk feedgrounds that promulgate diseases in elk and other wildlife threatens the tourism and wildlife-based economies of western Wyoming and the Greater Yellowstone Ecosystem. The BTNF must consider these facts, and must consider the impacts of disease-ridden elk feedgrounds on the economy, and must consider a prompt transition to a healthier more sustainable paradigm of wildlife and habitat management, which will better serve the regional economy in the future.

#### **10.Climate change**

It is clear that climate change is affecting the natural ecosystems of Wyoming and the Greater Yellowstone Ecosystem. "The frequent warm years coincide with a reduction in the frequency of extremely low (<-20 degrees C) January temperatures ... "(Shuman 2011) Wildlife are affected by changes in climate. "The ecology of ungulates in the (Rocky Mountains and Upper Columbia Basin) is strongly influenced by climate." (NPS 2010:48) "One of the key issues for ungulate management is wildlife disease, the spread and virulence of which is likely to be exacerbated by climate change (Harvell 2002)." (Id.) It is known that elk feedgrounds exacerbate the incidence of diseases in elk. (Smith 2001; Peterson 2003) "Climate change will likely increase the range, frequency, severity, and impact of plant and wildlife disease (Harvell et al 2002)." (NPS 2010:17) "Plant communities and wildlife that are faced with multiple stressors are the least likely to resist the emergence of novel diseases." (Id.) The BTNF must consider the effects of climate change on elk and elk habitat and must consider alleviating stressors on elk (such as density dependent diseases and diseased habitats) and implementing less harmful alternatives to managing elk than confining them on feedgrounds for months every winter.

The BTNF must also consider available natural forage for elk on important habitats such as native winter ranges. (see our comments above) The impacts of seasonal livestock grazing on USFS and BLM lands that also serve as big game winter ranges must be considered and managed to allow for residual forage to sustain wintering elk and other big game.

# 11.Effects to wildlife and people from Prions in soil, plants, water, feces, and mineral licks

"Prions- the infectious, deformed proteins that cause chronic wasting disease in deer- can be taken up by plants such as alfalfa, corn and tomatoes, according to new research from the National Wildlife Health Center in Madison [Wisconsin]. The research further demonstrated that stems and leaves from tainted plants were infectious when injected into laboratory mice." (*LaCrosse Tribune* 2013 brackets added)

"Scientists searched for prions at Mineral licks – areas where deer seek out essential nutrients and minerals – in the CWD endemic area across south-central Wisconsin. Out of 11 sites, nine had detectable levels of the disease-causing misfolded proteins. Prions were found both in soil and in water from the sites, as well as in nearby fecal samples from one site." (*Outbreak News Today*, May, 2018)

In addition to the risk of CWD to our elk, deer, and moose, there also exists a human health risk. (Osterholm, et al., 2019; Waddell, et al., 2008). Since 1997, the Centers for Disease Control and the World Health Organization have recommended that agents of any prion disease should not enter the human food chain. Bovine spongiform encephalopathy, a prion disease, became an epidemic in the United Kingdom in the 1980s and 1990s after infected beef was consumed by humans. This caused world-wide panic and devastated farming communities. There exists the same risk of CWD becoming zoonotic and causing similar panic with resulting economic consequences for the economy of Wyoming that is dependent on wildlife-related recreation and where many consume game meat. Michael Osterholm, one of the world's experts on spongiform encephalopathies recently told Minnesota lawmakers that in his judgment, it's "probable that human cases of CWD associated with the consumption of contaminated meat will be documented in the years ahead. It is possible that number of human cases will be substantial and will not be isolated events." (Williams, 2019) Due to the long incubation period of this disease and the increased risk to humans when prevalence rates are high (>10%) in wildlife, the WGFD and the Bridger-Teton National Forest should be taking proactive measures to limit the exposure of humans to prions. With a CWD positive deer now found in a hunt area that includes three feedgrounds (Deer Hunt Area 152 per WGFD 2019), it is only a matter of time until the disease finds its way onto the feedground land. Prions persist in the environment for decades and will be difficult if not impossible to remove once located in the soil on feedgrounds. (*Outbreak News Today*, May, 2018) As CWD moves closer to the feedgrounds, the prevalence of prions in the environment will undoubtedly increase therefore increasing the likelihood of human exposure.

Given the reality that infectious CWD prions can be in soil, plants, water, feces and minerals, *and, when ingested, may be infectious for mammals*, the BTNF must analyze the potential effects of hay grown and harvested in CWD endemic areas being fed to feedground elk, *including being spread over miles of USFS land to draw elk towards an elk feedground*. The BTNF must also consider the effects of mineral licks, both natural licks and minerals placed by people for livestock use, on wildlife and the environment. The BTNF must also consider the effects on wildlife *and human health* given the potential for infectious prions to be in plants, water, and soil, and the potential of elk feedgrounds to amplify the distribution and prevalence of CWD in deer and elk, and consider the effects to wildlife *and people* of increased exposure to CWD prions.

# 12. The BTNF must consider the USFWS-NPS Bison and Elk Management Plan prior to issuing a feedground permit.

As explained in the 9-26-18 letter to the BTNF, "prior to issuing any special use permit for elk feedgrounds on the BTNF, the Forest Service() must "examine how granting the permit through 2028 or some shorter term would interrelate with, potentially support, or potentially undermine, the objectives" of the Fish and Wildlife Service and National Park Service's joint 2007 Bison and Elk Management Plan ("2007 BEMP"), which anticipates a step-down approach to phase out artificial feeding on the National Elk Refuge, *regardless of whether an implementation framework has been adopted*. Alkali Creek Feedground, together with the other feedgrounds in the Gros Ventre drainage and on the National Elk Refuge, are "all part of an integrated program which cumulatively impacts the Jackson elk herd."" (Meyer Glitzenstein & Eubanks LLP 2018)

#### **13.Conclusion:**

Elk that attend winter feedgrounds in western Wyoming, including on the BTNF, have elevated seroprevalence for exposure to *Brucella abortus*, which can cause brucellosis in elk, and elevated levels of other diseases, in comparison to elk that free range. (Smith 2001) These are serious indicators that these elk herds are unhealthy and at risk of other diseases such as lethal Chronic Wasting Disease, and that a prompt change in the management paradigm for elk including those elk that use the BTNF is needed.

As of September 2019, CWD endemic areas have now virtually surrounded the upper Gros Ventre Valley and Alkali Creek watershed. Indeed, the CWD positive mule deer found near Kelly, Wyoming, within Grand Teton National Park in late 2018, is within the lower Gros Ventre watershed. Densely concentrated elk on winter feedgrounds will amplify this lethal disease with far reaching effects. The time is at hand to take the necessary steps to protect wildlife and habitat on USFS public lands in and around the Alkali Creek watershed.

Please see the entire letter submitted to you September 26, 2018, by Meyer Glitzenstein & Eubanks LLP on our behalf for an explanation of the Forest Service's Obligations on Remand per the District Court of Wyoming's September 14, 2018, decision, and other important information regarding a way forward to consider and achieve solutions for healthy wildlife on USFS lands. We have also provided many resources for the BTNF to consider as necessary changes are implemented in the Gros Ventre Valley and elsewhere.

The exemptions or loopholes listed in the September 20, 2019 scoping letter that would still allow "emergency" feeding of elk during winters for years at Alkali Creek BTNF are troubling; they appear to be arbitrary, vague, and subjective, and the BTNF should not accede to these impediments to achieving healthier wildlife. The proposed permit for storage, facilities, and "emergency feeding" at Alkali Creek, especially if drawn out over five or ten years does not appear to be consistent with the USFS' legal directives including the District Court of Wyoming's September 14, 2018, decision. Astonishingly, the proposal at hand essentially permits elk feeding for hundreds of elk at Alkali Creek, with all the concomitant harm to USFS lands, waters, and wildlife inherent and unavoidable in elk feedgrounds, for an even longer time period than the 2015 Final Record of Decision that would have permitted feeding into 2028. Furthermore, the BTNF should not need even five years to phase out elk feeding at Alkali Creek because, per the WGFD's and conservation groups' conservative analyses, and the historical record, there is enough forage on designated winter range in the Gros Ventre Valley surrounding Alkali Creek to sustain thousands of elk and other big game during winter. The BTNF has had many years to review and assess those analyses. Additionally, fire has rejuvenated some winter range plant communities, livestock allotments have been vacated, and, as stated by the WGFD, some nearby private land winter livestock feeding areas have already been high fenced to mitigate conflicts with wildlife.

Therefore, we recommend that feeding elk forever end at Alkali Creek no later than April 2021, and preferably sooner.

Sincerely,

Lloyd Doregy

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and on behalf of:

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