



TANKATM FUND

PO BOX 1847
Rapid City, SD 57709
605.519.8217
info@tankafund.org
tankafund.org

January 30, 2025

Honorable Doug Burgum, Secretary
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Sonya Germann, State Director
Montana/Dakotas BLM State Office
5001 Southgate Drive
Billings, MT 59101

RE: Response to and Notice of Appeal to the BLM Notice of Proposed Decision to American Prairie, January 16, 2026.

Dear Secretary Burgum and Director Germann,

I write on behalf of Tanka Fund, and the twenty-five private ranching operations across the United States that our organization works with. Tanka Fund's mission is to restore the American Bison, commonly known as Buffalo, to the care and management of individual Native American ranchers to effectuate the enhancement of Native Lands, Lives, and Economy. Remarkably, we are the only organization that works directly with and provides financial support to independent Native American ranchers. We are distinct from other organizations, such as the Inter-Tribal Buffalo Council, which work with tribal government bison herds.

Based in South Dakota, we work directly with individual Native cattle and bison ranchers who are enrolled with federally recognized tribes across the United States to promote and sustain the viability of their ranching operations. The ranchers that Tanka Fund works with represent more than 2,500 head of bison over 100,000 acres of land. This includes a select number of Native ranchers who maintain federal leases with the Department of Interior (DOI) and its agencies.

The issue at hand is due to a recent decision from your office, the Notice of Proposed Decision (the "Decision") issued on January 16, 2026 (cited above). Because Tanka Fund works with individual Native ranchers who lease federal grazing units from the DOI, our interests are adversely affected as our mission and services may be restricted due to this decision, stemming from the interpretation of the federal statutes therein and their application to bison.

I. DOI's Rationale for the Decision to Define Ambiguous Terms of Federal Statutes is a Violation of the Administrative Procedure Act and Should be Withdrawn.

The Supreme Court's holding in *Loper Bright Enters. v. Raimondo*, provides that Court's "may not defer to an agency's interpretation of the law simply because a statute is ambiguous." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 219 L. Ed. 2d 832 (2024). At issue here is DOI's identification and attempted interpretation of the TGA, FLPMA, and PRIA to define *livestock*, and *domestic livestock*, as ambiguous terms. Because of this, to the extent that DOI finds that an ambiguity must be clarified, it must do so with respect to Indians. Indeed, "ambiguities in federal law should be construed generously" in favor of the tribes. *Ramah Navajo School Board v. Bureau of Revenue*, 458 U.S. 832 (1982); and that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit," *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985); *see also*: "that (1) ambiguities in a federal statute must be resolved in favor of Indians and (2) a clear expression of Congressional intent is necessary before a court may construe a federal statute so as to impair tribal sovereignty." *San Manuel v. N.L.R.B.*, 475 F.3d 1306, at 1311 (D.C. Cir. 2007).

Here, DOI has failed to show the deference to Indians in this definition, due to a lack of consultation with tribes or Indians. Had consultations been conducted, DOI would find that there are Native cattle and bison producers that utilize a "hands off" management plan, presently misconstrued as "wild", that allows the animals to naturally graze with minimal intervention from their owners. This plan may also be required because the tribe or Native ranchers obtained their animals from the United States as a conservation herd, and therefore must comply with the federal requirements attached to those animals.¹ The new definition in this Decision is at odds with this traditional management practice and conflicts with other federal requirements; and as it stands in this DOI decision, Native producers would be prevented from obtaining federal land leases through the BLM under a traditional management plan. Ultimately, the denial of a Native rancher's application under this Decision because they are bison producer would likely trigger a class action discrimination case against DOI filed by Indians and/or tribes who were denied grazing permits under this DOI decision. *See Keepseagle v. Vilsack*, Civil Action No. 99-3119, Order on Plaintiffs' Motion for Final Approval of Settlement ¶ 8 (D.D.C. Apr. 28, 2011).

Additionally, this decision appears to be a violation of 5 U.S.C. 553. As required under the Administrative Procedures Act (APA), broadly applicable rules and regulations must be adopted through notice and comment rulemaking that enables public review of the agency's proposal and ensures the agency is accountable to public opinion. The APA requires federal agencies to publish a "[g]eneral notice of proposed rulemaking" in the Federal Register and, after such notice, to "give interested persons an opportunity to participate in the rule making" through submission of comments, views, or arguments. 5 U.S.C. 553(b), (c). Section 553 reflects Congress's commitment

¹ A *conservation herd* is defined for the purposes of this Protocol, consistent with that provided by 701 FW 5.3B, as a free-ranging (freely occupying habitat adequate in size and quality to provide for all biological needs and allowed to reproduce freely) population. A herd that routinely requires supplemental forage (hay or other feed not occurring naturally within the habitat) does not meet the conservation herd criteria. Recipients of bison donated for conservation purposes will provide documentation that their project or program meets the definition of a conservation herd as defined in this Protocol. *See*: FWS Form 3-2555 (Rev. 06/2022), OMB Control No. 1018-0190 U.S. Department of the Interior (Expires 03/31/2026).

to “public participation and fairness to affected parties.” *Dia Nav. Co. v. Pomeroy*, 34 F.3d 1255, 1265 (3d Cir. 1994) (quoting *Batterton v. Marshall*, 648 F.2d 694, 705 (D.C. Cir. 1980)). Compliance with § 553 is essential to the scheme of administrative governance established by the APA. Procedures promulgated under § 553 reflect Congress’s view that informed decision making requires agency decisions to afford interested persons an opportunity to communicate their views to an agency because openness, explanation, and participatory democracy in rulemaking assures legitimacy of administrative norms. *Transport Assoc. of America v. Dept. of Trans.*, 900 F.3d 369 (D.C. Cir. 1990). Here, DOI has failed to satisfy these legal requirements. Because of this, under the APA, this decision would not survive judicial review. Therefore, the DOI decision should be withdrawn, or revised to take no position on whether bison are livestock or domestic livestock, and to identify that traditional Native rancher applicants may obtain and utilize grazing permits without restriction to their management practices.

II. Conclusion

For the reasons stated above, this Decision should be withdrawn or revised to exclude the discussion of bison generally and observe Native ranchers’ rights to raise bison in a traditional manner. If DOI finds that the determination to terminate the grazing permits obtained by American Prairie is necessary, that decision should be made on other grounds and exclusive to American Prairie that do not implicate tribes or Indians or exclude them from raising bison or cattle – or any animal that may be bought, sold, donated, or traded because there is at least an ownership interest in that animal.

Sincerest Regards,

Dawn Sherman

Dawn Sherman, Executive Director
Tanka Fund

CC: Billy Kirkland, Assistant Secretary – Indian Affairs
Janel Broderick, Principal Deputy Assistant Secretary – Indian Affairs
Kennis Bellmard, Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development
Scott Davis, Deputy Assistant Secretary – Indian Affairs