September 17, 2007

Dear Mr. Clark:

Please accept these comments from the Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, and Wyoming Outdoor Council in response to the U.S. Forest Service’s request for comments on a proposal to issue 20 year term permits for elk winter feeding activities by the State of Wyoming at the Fish Creek, Pritchard (Dog) Creek, Muddy Canyon (Muddy Creek), Fall Creek, Alkali Creek, Upper Green River, and Patrol Cabin elk feedgrounds.

Please include as part of these comments all the supporting documents (Exhibits) accompanying the August 14, 2007 letter to you from Earthjustice concerning scoping for temporary use authorizations for four elk feedgrounds (see list at the end of this letter). This letter contains some content from the August 14 letter from Earthjustice but is not identical to that letter since this is specific to a proposed Environmental Impact Statement (EIS) to analyze the effects of long term permits for the elk feedgrounds on USFS and other lands. We request that the entire contents of this letter along with all references and exhibits be considered by the Bridger-Teton Forest as you conduct an Environmental Impact Statement on this issue.

We recommend that, at the very least, the BTNF include in this analysis all feedgrounds operating solely or partially on USFS lands including Horse Creek, Dell Creek, and Forest Park. Even better, it would more appropriately and comprehensively consider the direct, indirect, and cumulative effects of elk feedgrounds in western Wyoming if the USFS and BLM would collaboratively conduct an EIS on all elk feedgrounds on both jurisdictions. Interagency EIS’s have been conducted for a variety of proposals in the past; for example, the Bison and Elk Management Plan and EIS was a
joint effort by the National Park Service and the US Fish and Wildlife Service. It would likely be a cost savings and serve all stakeholders better than a piecemeal approach. Therefore, we recommend that the USFS and BLM consider all elk feedgrounds possible in one analysis.

The need for an EIS

The Forest Service’s approval of new permits for elk feedgrounds and your allowance of other feedground-related facilities and operations, such as elk-proof fencing and test-and-slaughter facilities, must be informed by an analysis of the environmental impacts associated with artificial crowding of elk at the feedgrounds, testing and shipping to slaughter seropositive adult female elk, and analysis of alternatives to the proposed special use authorizations.

Such use of National Forest lands that has been continual and ongoing every winter for decades and appears likely to continue unaltered into the future under current management plans is a significant action requiring NEPA analysis. See 40 C.F.R. § 1508.27(b)(7) (“Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.”).

The Forest Service Handbook states that if “it is uncertain whether the proposed action may have a significant effect on the environment,” the Forest Service must prepare an Environmental Assessment (“EA”). FSH 1909.15, ch. 30, § 30.3(3). The handbook further states that if “the proposed action may have a significant environmental effect,” an Environmental Impact Statement (“EIS”) must be prepared. Id. Here there is abundant evidence that the elk feeding activities and the capture, testing, and shipment to slaughter of seropositive adult female elk made possible by the proposed authorizations may have a significant environmental effect, such that analysis in an EIS is required. See 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3 (both requiring EIS for major federal actions significantly affecting human environment); 40 C.F.R. §§ 1508.8 (defining effects under NEPA to include direct, indirect, and cumulative effects), 1508.27 (defining significance for purposes of NEPA).

Wildlife Disease Impacts

The most significant—and potentially most disastrous—environmental consequence associated with your agency’s proposed authorization of National Forest elk feedgrounds and the resulting artificial crowding of elk is the wildlife disease impact. The unnatural concentrations of elk at feedgrounds dramatically increase the incidence of disease and the potential for new disease outbreaks among the fed elk populations. Remarkably, the Forest Service’s scoping notice omits any mention of disease impacts as among the expected consequences of the proposed authorizations. Moreover, your agency’s July 23, 2007 notice of intent lists “Preliminary Issues” associated with the feedground
authorizations, but fails to include disease impacts among those issues. There is no legitimate basis for these omissions.

Brucellosis prevalence among western Wyoming’s elk is directly related to winter feedground operations. For example, brucellosis seroprevalence averages 23.6 percent at 12 feedgrounds where WGFD vaccinates for the disease, and 32 percent at a single feedground where no vaccination is conducted. See Ron Dean, et al., Elk Feedgrounds in Wyoming, at 10 (Aug. 2004) (Exhibit 1 submitted to BTNF by Earthjustice August 14, 2007). By contrast, brucellosis seroprevalence among elk not frequenting feedgrounds is only 2.3 percent and can be as low as zero. See id. Even WGFD admits that “[t]hese data support the contention that feedgrounds increase the probability of disease transmission.” Id.; see also WGFD, Muddy Creek Feedground Management Plan, at 1 (undated) (“Disease transmission, primarily Brucellosis, is a major problem associated with feedgrounds.”) (Exhibit 2). As recently summarized by Dr. Bruce Smith, former senior wildlife biologist at the National Elk Refuge in Jackson, Wyoming, “elk do not maintain brucellosis in the absence of feedgrounds (excepting where they commingle with chronically infected bison). Thus, elk management reliant on winter feeding to maintain excessively large populations of elk clearly perpetuates chronically infected elk herds.” Bruce L. Smith, Disease and Winter Feeding of Elk and Bison: A Review and Recommendations Pertinent to the Jackson Bison and Elk Management Plan and Environmental Impact Statement, at 6 (Oct. 2005) (emphasis added) (Exhibit 3)\(^1\); see also Leslie Bienen & Gary Tabor, Applying an ecosystem approach to brucellosis control: can an old conflict between wildlife and agriculture be successfully managed?, Frontiers in Ecol. & the Envt. 319, 321-22 (2006) (“Even among federal agencies such as the US Animal Health Association, that favor stringent control of wildlife species, there is agreement that without feed grounds, brucellosis would not be maintained in elk at levels that are a threat to cattle or other wildlife.”) (citation omitted) (Exhibit 4).

Of even greater concern, the unnatural elk concentrations on western Wyoming’s feedgrounds present a grave risk of a chronic wasting disease (“CWD”) epidemic among the fed elk populations. This highly contagious disease is the elk form of “mad cow disease,” an affliction that is spread by abnormal proteins known as “prions” and that results in brain lesions and ultimately death for infected animals. While CWD has not yet been documented in western Wyoming’s elk herds, an expert evaluation of this disease threat prepared in conjunction with the recently completed planning process for the Jackson elk refuge states that “[i]n the professional opinion of disease experts from state and federal agencies, it is just a matter of time until [CWD] becomes established in the Jackson elk herd.” Don DeLong, Potential Effects of Management Alternatives of the Bison and Elk Management Planning Document/EIS on the Ability of the U.S. Fish and Wildlife Service and National Park Service to Fulfill Legal Directives, at 39 (July 2004) (Exhibit 5). As further explained in the Smith report:

\(^1\) While Dr. Smith’s report focuses primarily on elk management on the Jackson Hole National Elk Refuge, its conclusions and observations apply equally to elk feeding on WGFD’s western Wyoming feedgrounds. See Smith, supra, at 1. The same is true of the DeLong memorandum cited elsewhere in this letter.
The most likely routes by which CWD may enter the Jackson elk herd are from the east from the Dubois area, or from the Green River basin to the south. Diseased animals would likely first appear in the Gros Ventre drainage, the eastern and southern hydrographic divides of which serve as migratory pathways. The most recently detected expansion to Worland and then Thermopolis, Wyoming, puts CWD at the foot of the Owl Creek and Absaroka Mountains, ranges that rise to the west toward the Continental Divide and support large populations of deer and elk contiguous with the Jackson elk.

Smith, supra, at 14. In sum, CWD is moving north and west in Wyoming, overlapping seasonal wildlife ranges and migratory pathways connect known CWD areas with western Wyoming’s fed elk populations, and CWD’s entry into the western Wyoming herds appears to be inevitable. Indeed, the map included with the Forest Service’s scoping notice makes it plain that the feedgrounds being considered for analysis are situated such that they are likely to facilitate the spread of CWD from the east and south into the Greater Yellowstone area. The fact is all elk feedgrounds in western Wyoming are situated similarly, and thus there is the need to consider impacts collectively in one analysis.

Once established among western Wyoming’s fed elk populations, CWD threatens to spread rapidly among the densely clustered feedground elk, with disastrous consequences. Dr. Markus Peterson, an associate professor specializing in wildlife disease ecology in the Department of Wildlife and Fisheries Sciences at Texas A&M University, recently summarized this grim threat:

Feedground elk in the GYA [Greater Yellowstone Area] are highly vulnerable to a CWD outbreak. Elk densities associated with the National Elk Refuge and other Greater Yellowstone Area (GYA) feedgrounds are far higher than in free-roaming elk populations in the Colorado–Wyoming endemic area where CWD prevalence is 1–3%. Instead, functional densities are at least as high as observed in captive elk herds where CWD prevalence was 17.4 to 58.8%. These are nearly ideal conditions for CWD transmission among free-roaming elk. … Based on what is known about CWD in elk, prevalence in a chronically infected feedground herd could exceed 50% if feeding programs remained unchanged and the disease was allowed to take its course.

Markus J. Peterson, Chronic Wasting Disease and the Greater Yellowstone Area, at 7 (Nov. 2005) (emphases added, citation omitted) (Exhibit 6).

Given that “[d]eath is inevitable once clinical signs develop,” id. at 3, even a CWD prevalence rate of 17.4 percent among the 13,000 elk fed on WGFD feedgrounds would mean the loss of 2,262 elk from the disease; a more likely prevalence rate approaching 50 percent would be even more catastrophic. The threat is particularly grave because the incubation period for CWD is 12 to 34 months in elk, see id., meaning that CWD could spread widely throughout elk populations congregated on feedgrounds before the first
physical signs are detected. Moreover, this threat is not limited to elk in western Wyoming. As Smith has explained,

should a disease as virulent and transmissible as CWD or bovine tuberculosis become established within the GYA, the number of infected herds of susceptible species could rapidly expand. Twenty-five elk herds alone, totaling 120,000 elk, winter in the GYA (Toman et al. 1997). Because distributions of adjacent herds overlap, disease could ultimately spread across the 18 million acre area.

Smith, supra, at 16.

Not only does CWD threaten a lethal epidemic in western Wyoming's fed elk populations that could spread across the Greater Yellowstone Ecosystem, but it also threatens severe environmental contamination at the feedgrounds where elk concentrate.

[CWD] is of particular concern because the prions are extremely resistant, and it appears that the prions can persist in the environment for long periods and that ungulates can be infected by prions in the environment. Hence, if an ungulate population that annually concentrates on the same piece of ground for long periods becomes infected with chronic wasting disease, this behavior could increase the potential for spread of the disease in the population. High infection rates could result in a high level environmental contamination that can last for many years.

DeLong, supra, at 88 (citations omitted). Smith echoes these concerns:

Environmental contamination with the infectious agent is a particularly insidious characteristic of CWD where cervids are crowded. It would serve as a perennial source of CWD exposure as elk return to feedgrounds each winter. … The agent is extremely resistant to chemical disinfectants as well as to physical methods of inactivation. It is still not known whether environments contaminated with TSE agents can ever be completely disinfected.

Smith, supra, at 19 (citations omitted); see also Peterson, supra, at 4 (“CWD can be transmitted via environmental contamination as well as directly among animals, and … contaminated materials can remain infectious for prolonged periods”).

Recent research indicates that certain soils enhance the oral transmission of the CWD prion. See Christopher J. Johnson, et al., Oral Transmission of Prion Disease is Enhanced by Binding to Soil Particles, 3 PLoS Pathogens 874 (2007) (Exhibit 7); see also Marilyn Stone, CWD Revisited, Wyoming Wildlife (May 2007), at 7 (discussing research regarding the environmental persistence of CWD prions) (Exhibit 8).
Consistent with these predictions and research results, WGFD has observed 26 percent mortality from CWD among healthy, free-ranging elk that were captured and held for 46 months in pens contaminated with the CWD prion. See WGFD, Chronic Wasting Disease Management Plan, at 7-8 (Feb. 17, 2006) (Exhibit 9). Thus, a CWD outbreak threatens not only to kill many thousands of western Wyoming’s prized elk, but to convert the feedgrounds themselves into contaminated environments that spread and perpetuate this devastating disease. Given these severe potential consequences, application of a detailed environmental review is required.

**Contamination of Feedground Soils with Parasites**

Feeding and bedding areas on many elk feedgrounds have been used for decades and typically have a build-up of old hay and feces. Urine from elk, and possibly blood from injured elk, would be present during the feeding season as well. These areas may serve as reservoirs for other pathogens besides CWD prions, such as internal parasites that may infect elk. See U.S. Fish & Wildlife Serv., Final Bison & Elk Management Plan & Environmental Impact Statement for the National Elk Refuge/Grand Teton National Park/John D. Rockefeller, Jr., Memorial Parkway 134 (2007) (“Loads of lungworms in elk can be high, and lung-worm infection is density dependent (Disease Expert Meeting 2002). Winter-feeding would contribute to high elk density, and lungworm infections would be greatest under winter-feeding conditions because lungworm larvae are shed in the feces. Elk are infected when they accidentally ingest larvae with vegetation (Thorne et al. 2002).”). Repeated use of these areas by large numbers of elk can continue the disease cycle for some parasitic infections and must be among the impacts analyzed by the Forest Service in connection with the proposed authorizations.

**Bovine tuberculosis (TB)**

Bovine tuberculosis (bovine TB) is a “subacute to typically chronic disease in bison and cervids that can spread directly via aerosols . . . Thus transmission of (the causative bacteria *Mycobacterium bovis*) is directly dependent on the density of susceptible hosts,” (Peterson 2003: 40). Bovine TB can also infect humans (Draft Bison and Elk Management Plan and EIS:170).

While bovine TB is not known to exist in elk or bison in GTNP or the NER, it has been known to exist in captive and free-ranging cervids, cattle, and bison in other states and provinces (Peterson 2003). “If one desired ideal circumstances for maintaining *M. bovis* in a free-roaming elk population, they would have to go no further than the National Elk Refuge and other GYA (elk) feedgrounds . . . If *M. bovis* somehow became established in the Jackson elk and bison herds, intense effort on the part of managers would be required to eliminate this chronic disease. . . Almost certainly, winter feeding of elk and bison would have to be discontinued” and elk and bison densities would have to be significantly reduced.” (Ibid).
Since bovine TB is density dependent it is incumbent on the USFS to analyze alternatives which best minimize the risk of significant deleterious effects from this and other density dependent diseases.

**Bovine paratuberculosis (Johne’s disease)**

Bovine paratuberculosis is a chronic disease of bovids and cervids worldwide (Peterson 2003). Transmission is directly related to host density and environmental contamination is important (Ibid). Paratuberculosis has been documented in ranched bison in the northern GYA. . . should paratuberculosis become established in Jackson Hole bison or elk . . . reducing host density would be the best available method for controlling the disease (Ibid). Our comments above at the end of **Bovine TB** apply here as well.

**Elk Test and Slaughter**

As set forth above, the elk feeding authorized by the Forest Service has yielded high brucellosis prevalence rates among western Wyoming’s elk. This high brucellosis prevalence, in turn, has triggered management responses in an effort to shield Wyoming’s livestock from brucellosis transmission. The latest, and most draconian, such management response is the test and slaughter of pregnant female elk that began during the winter of 2005-06 at the Muddy Creek feedground. Under the program, female elk at the Muddy Creek feedground are tested for brucellosis antibodies, and those that test positive are trucked to a facility in Idaho to be slaughtered. The plan allows as much as 10 percent of the 1,900-animal Pinedale elk herd to be slaughtered each winter. During the first winter of the program, WGFD killed or sent to slaughter 58 female elk from the Muddy Creek feedground. See WGFD, Pinedale Elk Herd Unit Test and Removal Pilot Project, Year One: Muddy Creek Feedground 2006, at 4-6 (2006) (Exhibit 10). WGFD intends to continue the program at the Muddy Creek feedground, and even plans to expand the program to the Fall Creek and Scab Creek feedgrounds. See WGFD, Wyoming Game and Fish News, Test-and-Removal Pilot Project Continues (Nov. 9, 2006) (Exhibit 11); see also WGFD, Wyoming Game and Fish News, Test-and-Removal Pilot Project Year-Two Report (June 22, 2007) (Exhibit 12).

This test-and-slaughter program and its consequences are inextricably related to your agency’s proposed special use authorization for the Muddy Creek feedground. Your authorization makes possible the winter feeding that attracts elk to the feedground and thereby enables the test-and-slaughter program to proceed. That same winter feeding activity also results in the crowded elk conditions that yield high brucellosis prevalence in the first place, the control of which is the asserted justification for the test-and-slaughter program. These consequences therefore constitute additional indirect effects of your agency’s proposed authorization that must be considered in an EIS. See 40 C.F.R. § 1508.8.
Impacts to Other National Forest Resources

Even apart from the grave disease threats and the WGFD’s lethal management response, western Wyoming’s elk feeding operations implicate significant environmental concerns. The unnatural concentrations of elk at and around feedgrounds result in extensive impacts to the vegetation of National Forest lands used for and surrounding the feedground areas, including elimination of native plants, introduction of invasive weeds, overgrazing, overbrowsing, soil compaction and erosion. See Western EcoSystems Technology, Inc., Summary of Elk Feedgrounds Operated by the WGFD, at 6 (Dec. 2004) (“Habitat degradation: High concentrations of elk frequently cause damage to surrounding native vegetation, particularly to browse species such as aspen, serviceberry, willow, and other deciduous woody vegetation.”) (Exhibit 13).

In fact, available biological information already establishes significant adverse impacts to federal land resources due to elk feeding operations at two of the sites involved in the current permitting proposal. A 2003 Forest Service assessment of the Gros Ventre drainage, where the Fish Creek feedground is located, states that, “[n]ear elk feed grounds in the Gros Ventre, woody vegetation along streams and rivers are annually impacted by heavy concentrations of elk. … Feeding and concentrating elk each winter may preclude any willow recolonization and establishment.” U.S. Forest Serv., Teton Division Landscape Scale Assessment 3-59 (Apr. 2003) (Exhibit 14). Similarly, a WGFD analysis of the Dog Creek feedground site from 1996 observes that “[t]he area is in a riparian plant community which is subject to habitat degradation by feeding elk in the area. No cottonwood reproduction is likely to occur and damage to willow, red osier, and other shrubs is evident.” WGFD Memorandum Regarding Alternatives to the current Dog Creek Feedground Site (Mar. 26, 1996), at 1 (Exhibit 15). This same Dog Creek feedground analysis observes that “[t]he area has a high water table and leaching of nitrates and contamination of ground water with fecal coliform bacteria is likely, given the amount of manure concentrated near Pritchard Pond and Pritchard Creek.” Id. Any analysis must include comprehensive, detailed, and scientifically acquired up-to-date information on the impacts to surface and subsurface water quality from elk feeding at and around all feedlots on or adjacent to USFS lands.

Your analysis must also include the impacts to other species such as, but not limited to, moose, beaver, songbirds, mule deer and cutthroat trout. Given some of the environmental impacts from elk feedlots set forth herein and in available reports, adverse impacts are likely to other wildlife species and must be considered.

The feedgrounds also substantially impact elk migration and movement. Indeed, alteration of natural elk movement to winter range is among the very purposes of the feedgrounds. Such alteration of the distribution of elk and areas that are or would be used by elk is also a significant impact that must be subjected to environmental analysis before the proposed authorizations may be issued. See C. Cromley, Historical Elk Migrations Around Jackson Hole, Wyoming, Yale School of Forestry and Environmental Studies, Bulletin Series 104, at 53 (2000) (Exhibit 16).
Given these well-documented impacts ranging from increased wildlife disease prevalence and transmission, impacts to other wildlife species, to test-and-slaughter of elk, to impacts to vegetation and elk movements and migration, and surface and groundwater contamination, the Forest Service must conduct a comprehensive environmental analysis pursuant to NEPA. These impacts implicate many of the “intensity” factors contributing to a finding of significance pursuant to 40 C.F.R. § 1508.27(b), including effects on public health and safety, scientific and public controversy, cumulatively significant consequences, and apparently even claims by the Forest Service and the State of Wyoming that maintenance of these feedgrounds is beneficial. Accordingly, NEPA requires your agency to fully evaluate all such impacts, as well as alternatives to avoid them, in an EIS.

Indeed, this is precisely what your agency committed to do in 2002, when Jackson District Ranger Nancy Hall wrote to GYC promising that the Forest Service would initiate an EIS to consider renewing permits for the Fish Creek and Dog Creek feedgrounds. See Letter from Nancy Hall to Scott Groene (Nov. 8, 2002) (Exhibit 17). In that letter, Ranger Hall stated that “[w]e anticipate a need for an EIS because it is foreseeable that any decision, including not reauthorizing WGFD permits, may have significant impacts.” Id. (emphasis added). The same holds true today, despite the passage of nearly five years during which the Forest Service has never made good on Ranger Hall’s promise. The threat of a chronic wasting disease outbreak on the western Wyoming elk feedgrounds looms even larger now than it did when Ranger Hall promised an EIS to evaluate this and other environmental impacts associated with the feedgrounds.

In summary elk feedgrounds are not a minor use of National Forest lands due to the well-documented significance of environmental impacts associated with elk feeding. Feedgrounds in these locations also are not “short term” uses of National Forest lands; feeding operations at these same locations have been ongoing for decades and show no signs of coming to a halt in the future under current management. Accordingly, we strongly urge the Forest Service to undertake a comprehensive analysis of impacts resulting from the elk feedgrounds, as well as a thorough study of sustainable alternatives to artificially feeding elk, in an EIS as required by NEPA.

Some components needed in alternatives

When analyzing a range of alternatives to elk feedlots, the BTNF must include analyses of elk transitioning to completely using natural forage on big game winter ranges to survive the winters. Maps of big game winter ranges designated by the USFS, NPS, FWS, BLM, and WGFD can be obtained from the WGFD; the winter ranges consist of many tens of thousands of acres and may spread across USFS, NPS, FWS, BLM, State and other lands. Winter ranges adjacent to current feedlot sites as well as winter ranges at reasonable distances from feedlot sites must be considered, as should the feasibility of the elk to access those ranges. The BTNF must assess the amount of forage on designated winter ranges left after the growing season that may be used by big game during winter. They must calculate the tonnage of forage using scientifically valid production plots, or use available information that may be applied to similar slopes, elevations, snow pack, and
vegetation types as exist on the various winter ranges. Most importantly, the USFS should calculate the ability of that amount of forage to sustain the estimated number of elk using the range (i.e., carrying capacity).

If any of those winter ranges are included in summer livestock grazing allotments, the BTNF must assess whether adjustments to livestock grazing management may allow for more forage left for wintering big game on the winter range portions of those allotments. For any unoccupied, vacant, or closed livestock allotments the BTNF must analyze how much of an increase of winter forage is available for wintering big game due to the absence of livestock use.

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.

It is important when considering elk-proof fencing that consideration be given to not impeding trans-landscape movement of big game. Therefore, a minimum amount of fencing is desirable, and fencing as close to the livestock feeding and haystack areas as possible to be effective would ameliorate this issue.

The BTNF should also do a cost analysis for phasing out specific feedlots or several at a time if they are near one another, compared with the costs of maintaining the elk feedlots. Included in that cost analysis should be the elimination of vaccinating elk against brucellosis which would no longer be needed. It is a cost savings to phase out the feedlots, even considering initial costs such as fencing, rather than maintaining feeding and vaccinating at elk feedlots in the long term (see Brucellosis Solution 2005). The costs of maintaining brucellosis to various stakeholders such as livestock producers, the WGFD, and others should also be quantified as best as possible 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. This will greatly assist the BTNF in analyzing reasonable alternatives to artificially feeding elk at state operated feedlots. A wide range of alternatives is necessary in order for the public and decisionmakers to draw informed conclusions.

In sum, we strongly urge the Forest Service to undertake a comprehensive analysis of impacts resulting from the elk feedgrounds, as well as a thorough study of sustainable
alternatives to feeding elk in an EIS as required by NEPA. We look forward to working with the various stakeholders and agencies to seek balanced solutions to these issues. Please inform us of any developments in this matter.

Sincerely,

Lloyd Dorsey
Greater Yellowstone Coalition  307-734-6004

and on behalf of:

Louise Lasley
Jackson Hole Conservation Alliance  307-733-9417

Bruce Pendery
Wyoming Outdoor Council  435-752-2111

List of exhibits attached to August 14, 2007 letter form Earthjustice to USFS, and to be considered by the USFS as attached to this letter as well:

1. WGFD "Elk Feedgrounds in Wyoming
2. Muddy Creek Feedground Management Plan
3. Disease and Winter Feeding of Elk and Bison
4. Applying an ecosystem approach to brucellosis control: Can the old conflict between wildlife and agriculture be successfully managed?
5. Potential Effects of Management Alternatives of the Bison and Elk Management Planning Document/EIS on the Ability of the FWS and NPS to Fulfill Legal Directives
6. Chronic Wasting Disease in the Greater Yellowstone Area
7. Oral Transmissibility of Prion Disease Is Enhanced by Binding to Soil Particles
8. CWD Revisited
9. Chronic Wasting Disease Management Plan
10. Pinedale Elk Herd Unit Test and Removal Pilot Project
11. Test-and-Removal Pilot Project Continues

12. Test-and-Removal Pilot Project Two Year Report

13. Summary of Elk Feedgrounds Operated by the Wyoming Game and Fish Department

14. Teton Division Landscape Scale Assessment

15. Memo: Alternatives to Dog Creek Feedground Site

16. Historical Elk Migrations Around Jackson Hole, Wyoming

17. USFS Letter to Scott Groene

Additional references and attachments


Greater Yellowstone Coalition
Jackson Hole Conservation Alliance
Wyoming Outdoor Council
Wilderness Watch

May 5, 2008

Knify Hamilton, Supervisor
Bridger-Teton National Forest
Winter Elk Management SUP
POB 1888
Jackson, WY 83001

Dear Supervisor Hamilton:

Please accept these comments from the Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, Wyoming Outdoor Council, and Wilderness Watch in response to the Bridger-Teton National Forest’s Draft Environmental Impact Statement (DEIS) analyzing the Wyoming Game and Fish Commission’s (WGFC) use of National Forest lands for various winter elk management programs and activities. These activities by the State of Wyoming have in the past occurred at the Fish Creek, Dog Creek, Muddy Creek, Fall Creek, Alkali Creek, and Upper Green River elk feedgrounds, and are proposed to be expanded onto USFS lands adjacent to Patrol Cabin elk feedground.

In order for the BTNF to fully consider a broad range of reasonable alternatives on this issue and in order for the BTNF to avail itself of pertinent scientific information regarding these issues, please include as part of these comments and the administrative and official record, all the supporting documents and Exhibits accompanying the August 14, 2007 letter to you from Earthjustice concerning scoping for temporary use authorizations analyzing four elk feedgrounds. Also include as part of these comments and the administrative and official record, scoping comments sent to your office on September 17, 2007 for the consideration of issuing 20-year permits for the potential continuation of the same elk feedgrounds at issue here and related activities. Please also include in the administrative and official record any and all other additional comments, materials, references, and/or exhibits that we submit on this issue.

Some of the information submitted in these comments is from the much appreciated work of others including Tom Darin of the Jackson Hole Conservation Alliance, and Bruce Pendery and Lisa McGee of the Wyoming Outdoor Council.

1. Introduction

We have found this DEIS to be legally deficient, hastily prepared without adequate information, and not in compliance with the National Environmental Policy Act (NEPA), the Administrative Procedures Act (APA), the National Wilderness System Preservation Act (the Wilderness Act), and the National Forest Management Act (NFMA). It is apparent in reading this DEIS that little if any of the scientific materials and reports submitted by the public interest groups were considered, nor, apparently, were the scoping comments submitted on September 17, 2007. Rather than analyze only the 6 feedgrounds addressed in the EIS, we again recommend that the BTNF analyze all elk feedgrounds operated by the WGFC on USFS lands, including Forest Park, Horse Creek, and Dell Creek. We recommend that the BTNF issue a Supplemental DEIS that is in compliance with all legal directives and offers better information to the public, stakeholders, and agencies so that informed participation and decision making can move forward and the natural resources under the stewardship of the USFS may be protected and managed for the benefit of the most people for the longest time. We offer our comments and include specific recommendations in the following sections.

2. A new feedground at Yellowjacket Flat is arbitrary and violates NEPA
This DEIS states, “The Proposed Action includes an increase in authorized area on NFS lands at Patrol Cabin and Fish Creek to accommodate the larger number of animals and decrease the density of animals on the feeding area” (DEIS:4). This statement is flawed because there is no “authorized area” on NFS lands at Patrol Cabin Feedground. The DEIS states that “Patrol Cabin Feedground is operated on state managed lands” and “expansion from State managed lands onto NFS land is desired at Patrol Cabin” (DEIS:4). These state managed lands are identified as a “WGFD Wildlife Habitat Management Area” (WHMA) (DEIS:20). Therefore, while a new authorization on USFS lands may be possible, no increase of extant authorized use on USFS lands can occur at Patrol Cabin. Furthermore, the Federal Register notice (Federal Register/ Vol 72 No. 140/ Monday, July 23, 2007/Notices pages 40111 and 4401112) states that the WGFC seeks “to continue to use certain facilities on tracts of NFS lands . . .” (underline added). However, as we have shown, there are no facilities on USFS lands at the current Patrol Cabin elk feedground. Any such facilities would be entirely new. The USFS may not arbitrarily inject a proposal new to the public at the DEIS stage.

Also confusing to the public is the mention in the scoping notice (USDA-USFS File Code 2720 July 18, 2007) that “Patrol Cabin” in one of 7 locations being considered for a 20 year term permit. Yet, again, “Patrol Cabin Feedground is operated on state managed lands” (underline added) (DEIS:4). Additionally, in describing “Alternative 3” the BTNF states that “Special Use Authorizations would be issued for use of NFS lands at the six existing locations and one new location” (underline added) (DEIS:16). The BTNF’s use of the word “new” clearly supports our contention that there is no current authorized use at Patrol Cabin. Furthermore, the DEIS suggests that additional facilities are proposed for undisclosed locations at the Patrol Creek feedground: “(A) haystack yard with 2 hay sheds, horse corrals, water facilities, and additional feeding areas at Patrol Cabin Feedground” (Ibid). The DEIS states that a full description of structures on feedgrounds is to be found at Table 3, DEIS:17, but it offers no additional information for the proposed structures at Patrol Cabin other than a reiteration of the above. And Figure 9 (“Patrol Cabin Feedground”) shows the red outline of two parcels on USFS lands adjacent to the WGFD WHMA allegedly totaling 88 acres that may comprise the desired Alternative 3 portion of Patrol Cabin (DEIS:20). However, the DEIS fails to describe or depict the location of the “haystack yard with 2 hay sheds, horse corrals, water facilities, and additional feeding areas at Patrol Cabin Feedground” in any of its discussions or representations of the proposed feedground expansion.

A phone inquiry in March 2008 to the BTNF by GYC and resulting return phone message by BTNF staff indicated that the new facilities were to be located somewhere on Yellowjacket Flat, but the specific location was still not known.

It is our contention that if no current permit for the WGFC to operate feedgrounds or construct and maintain facilities on USFS lands at Patrol Cabin currently exists and newly proposed facilities and elk-feeding areas are slated for USFS lands where none currently occurs, then the BTNF is in actuality proposing a new elk feedground. The BTNF admits that “Under Alternative 3 winter elk management would take place in the Coal Mine Draw
and Yellowjacket Flat areas” (DEIS:62). Yet the BTNF failed to inform the public of the true nature of the proposal and provide a description and locations for the proposed new facilities during scoping and in the Federal Register posting, despite having had every opportunity to do so.

Beginning with the scoping notice, the public has been led to understand that the proposed action continues or expands operations that already exist on USFS lands. This is not the case at Patrol Cabin since the feedground is on state land. Upon revealing that it is not only the intent but is also the “Agency’s Preferred Alternative” (DEIS:16) to permit the use of some 88 acres of USFS lands in two parcels plus haysheds, corrals, and water facilities, the DEIS then fails to inform the public where the facilities and the new elk feedground would be located. Additionally, there is no analysis of the impacts of the facilities or the uses associated with those facilities upon which the USFS could make an informed decision, nor is there adequate information upon which the public could provide informed comments on this part of the DEIS. Yellowjacket Flat is a popular summer and fall public camping and hunting area and a USFS-designated winter snowmobile trail cuts across Yellowjacket Flat. The public deserves to be informed about and have an opportunity to offer comments on how the proposed elk facilities and WGFC activities could impact the public’s use and enjoyment of this area. For the BTNF to exclude this information in the DEIS is arbitrary, capricious, and not in compliance with NEPA.

There also appear to be contradictory management opinions within the BTNF: The Jackson District Range Conservationist has stated that wooden post and metal wire corrals for sorting and loading cattle are inappropriate for this Yellowjacket Flat location, partly because of potential impacts to easily erodible soils and to vegetation, and partly because of the condition of the main USFS road accessing this location, which can be muddy. Given this stated opinion, we fail to see how the BTNF can contemplate siting an elk feedground in this area, particularly considering the known negative impacts of elk feedground activities on soils and associated vegetation.

Constructing a new elk feedground in the Yellowjacket Flat area would essentially sacrifice a tract of USFS land with sensitive soils and vegetation and an unpredictable access road that currently serves as a dispersed summer and fall recreation hub for the Gros Ventre Valley. It would necessitate the construction of a spur road across sensitive soils, and promote the removal of vegetation in order to construct and access large haybarns, equipment sheds, horse corrals, and a water facility. The construction of these facilities and delivery of the many tons of hay needed to feed elk would also eliminate dispersed summer and fall camping sites. Then, during winter, whether temperatures were cold enough to ensure that frozen soils were not easily eroded or warm enough to cause very muddy conditions, this area would be off-limits to recreational snowmobiling. More significantly, the Yellowjacket Flat area would be subjected to the activities inherent in operating an elk feedground that are known to cause soil erosion and the deposition of feces and old hay, and that perpetuate the transmission of wildlife diseases such as brucellosis and CWD.
The fact that a new elk feedground on USFS land at Yellowjacket Flat is being proposed needs to be clearly explained and legally brought to the public’s attention. Furthermore, it needs to be scoped to undergo an adequate analysis of potential impacts and to be subject to appropriate public comment periods.

3. The purposes of an EIS

The USFS must bear in mind that the “primary purpose” of an EIS is to “insure that the policies and goals defined in [the National Environmental Policy Act—NEPA] are infused into the ongoing programs and actions of the Federal Government.” 40 C.F.R. § 1502.1. The policies and goals of NEPA include:

- Encouraging a “productive and enjoyable harmony between man and his environment,”
- Promoting “efforts which will prevent or eliminate damage to the environment and biosphere,”
- Using “all practicable means and measures . . . to create and maintain conditions under which man and nature can exist in productive harmony . . . ,”
- Fulfilling “the responsibilities of each generation as trustee of the environment for succeeding generations,”
- Assuring “all Americans safe, healthful, productive and esthetically and culturally pleasing surroundings,”
- Allowing beneficial use of the environment “without degradation . . . or other undesirable or unintended consequences,”
- Preserving “important historic, cultural and natural aspects of our national heritage . . . ,”
- Achieving a “balance between population and resource use . . . ,” and
- Enhancing “the quality of renewable resources” and maximizing recycling of depletable resources. (42 U.S.C. §§ 4321-4331).

Thus, the needs that USFS must identify for analysis in its environmental analysis include the above goals and policies, and we ask the USFS to “insure” that these goals and policies are “infused” into the WGFC elk feedground environmental review and decision document. We are particularly concerned that the USFS’s failure to adequately address the threat posed by feedgrounds of increased CWD and brucellosis transmission does not comply with the NEPA goal of allowing beneficial uses of the environment that do not degrade or subject the environment to “undesirable or unintended consequences.”

NEPA requires federal agencies to make a number of considerations that we specifically urge the USFS not to overlook. NEPA requires the USFS to “insure that presently un-quantified environmental amenities and values” (such as a CWD-free environment) are given consideration, “recognize the worldwide and long-range character of environmental problems and thus support international efforts to prevent declines in the world environment” and “initiate and utilize ecological information in the planning and development of resource-oriented projects.” 42 U.S.C. § 4332, 40 C.F.R. § 1507.2. Thus, in preparing the WGFC elk feedground environmental review, the USFS should consider, analyze, and wherever appropriate facilitate efforts to prevent environmental decline. These include a number of international agreements and treaties for resource protection, such as United Nations biosphere reserves, migratory bird treaties, the Convention on
International Trade in Endangered Species (CITES), and international efforts related to biological diversity preservation, among others. The environmental analysis also should explicitly address un-quantified environmental values and ensure they are given equal emphasis relative to economic analyses, and ensure up-to-date ecological information is used in developing the environmental analysis and decision document.

4. By leading to a predetermined outcome, this limited DEIS violates NEPA

This DEIS appears to be a mere paper exercise to the BTNPF, hastily prepared to enable an outcome already decided upon. The Council on Environmental Quality (CEQ) regulations require that Environmental Impact Statements 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)) There is a dearth of information in the DEIS despite pertinent and valuable references, reports, and suggested alternatives supplied by public interest groups to the BTNPF during scoping. To assure that a fair discussion occurs, agencies are required to obtain high quality information, including accurate scientific analysis. (40 C.F.R. 1500.1 (b)) Yet much of this DEIS contains only that information supplied by the proponent, the WGFC, and regurgitated by the BTNPF without verification and without much assurance that actions resulting from the ROD would comply with NFMA, NEPA, The Wilderness Act, Administrative Procedures Act (APA) and other federal legal directives. Courts’ interpretation of NEPA’s requirements are clear: “[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency's action…[as] the EIS would become a foreordained formality.” Citizens Against Burlington, 938 F.2d at 196. The outcome of this EIS is clearly predetermined. Rather than being viewed as an inconvenient paper exercise, this EIS should have been used by the BTNPF as an opportunity to enact change that moves the National Forest’s habitat and wildlife toward healthier conditions. The BTNPF has the duty to do so. Instead, the BTNPF selected the most environmentally harmful Alternative as the preferred. This EIS merely continues the status quo - and even worse - by expanding the areas of Fish Creek and Patrol Cabin feedgrounds. A Supplemental Draft Environmental Impact Statement (SDEIS) is required to comply with legal directives.

Because the Forest Service failed to analyze a true range of alternatives, the record of decision risks becoming a foreordained formality. Either the Forest Service chooses the no action alternative, which seems highly unlikely given that it fails to meet the purpose and need, which is merely a reiteration of the proposal, or it chooses one of the nearly identical action alternatives, both of which are calculated to meet the purpose and need for the project perfectly. Neither action alternative differs from the other in any meaningful way so as to “insure a fully informed and well-considered decision” Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978). This failure must be remedied in a SDEIS by a full and thorough consideration of alternatives that differ substantially from the current action alternatives so as to allow the Forest Service - and the public - the opportunity to adequately review a true array of options.
5. A narrow Purpose and Need violates NEPA by leading to a predetermined outcome

The Forest Service has improperly defined the purpose and need for the EIS and subsequent actions by arbitrarily selecting the proposal from the WGFC as the purpose and need; this then justifies the issuance of Special Use Permits to continue and expand elk feeding and test and slaughter facilities and other feedground-related activities on USFS lands. This is a violation of NEPA. Because the stated purpose and need for a federal action determines the range of alternatives, it is essential that the Forest Service clearly articulate the project’s purpose and need from the USFS’ perspective and not simply adopt the WGFC objectives for the project as its own. (40 C.F.R. § 1502.13). As courts have cautioned, “One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.)” Davis v. Mineta, 302 F.3d 1104, 1119 (10th Cir. 2002) (quoting Simmons v. United States Army Corps of Engrs, 120 F.3d 664, 669 (7th Cir. 1997).

The purpose and need for the proposed action is defined solely from the WGFC perspective: “This DEIS discloses the direct, indirect, and cumulative environmental impacts that would result from the proposed action and alternatives to the proposed action” (DEIS:3). Rather than also including the commitment to protect surface resources as a purpose and need on par with elk feedgrounds and related activities, the Forest Service impermissibly truncated the purpose and need statement to meet only the needs of the applicant.

Although the Forest Service briefly mentions protecting other natural resources and environmental quality as general background information in the DEIS, these values are not carried forward in an explicit statement of purpose and need. The goals of a proponent are, to a limited extent, relevant in determining a project’s purpose and need, but “more importantly, an agency should always consider the views of Congress, expressed, to the extent that an agency can determine them, in the agency’s statutory authorization to act, as well as in other Congressional directives” Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991). As just one example, Congress was unwavering in its message when it passed the National Environmental Policy Act: federal agencies are entrusted to act as trustees of the environment for present and future generations.” 42 U.S.C. § 4331(b). Had the Forest Service considered this broader responsibility, the purpose and need statement may have included greater protection of the sensitive and irreplaceable National Forest lands at stake.
The purpose and need statement sets the stage for the range of alternatives the 
Forest Service selects to consider in an EIS. By choosing a statement that defines the 
project from the narrow perspective of the project proponent, the WGFC, the Forest 
Service foreclosed on a range of diverse alternatives, some of which had been suggested 
by public interest groups during scoping. Describing and giving careful consideration to 
such alternatives would have enabled the forest to move toward healthier habitat (less soil 
compaction, stunted vegetation, and eroded streambanks) and healthier wildlife (lower 
potential for disease transmission, more natural movements and foraging, less need for 
heavy-handed management through vaccination and test-and-slaughter programs).

6. Arbitrary assumptions in Alternative 1 violate NEPA

The BTNF makes assumptions in Alternative 1 that cause it to foreclose any 
possibility of not issuing permits to the WGFC to operate elk feedgrounds on USFS lands. 
Those assumptions are based on the statement that, “The WGFC has informed the Forest 
Service that under this alternative (Alternative 1), they would continue to implement their 
winter elk management programs with facilities and feedgrounds at other locations on 
federal, state, and private lands. This includes continued operation of two feedgrounds on 
NFS lands at Dell Creek and Forest Park that are not included in this analysis. . . ” (DEIS: 
13-14). The BTNF does not reveal in what form the information was supplied by the 
WGFC, whether by document or verbal conveyance (phone call or in-person discussion); 
nor does the BTNF bring forth the actual information or allude to any specific document or 
phone call or conversation with the WGFC by incorporating a footnote or reference in order 
that the public be able to read it for themselves. The BTNF rationalizes away the 
consideration of other alternatives and adopts as conclusive the futility of such analysis by 
stating, “Because this activity would continue outside the jurisdiction of the Forest Service, 
the agency has no ability to affect several of the impacts associated with WGFC's winter 
elk management programs . . .” (DEIS:22-23). A close reading of the DEIS reveals that 
the information for this assumption is not sound enough to be conclusive, and for the 
BTNF to limit the alternatives considered and analyzed in this DEIS on such a 
specious assumption - and not to exercise its authority where it plainly has it to protect USFS lands 
from harmful impacts - is not in the public interest nor in compliance with legal directives.

The BTNF's reasoning that it cannot effect a change in the WGFC's activities is 
seriously flawed and compromises the credibility of the DEIS by revealing that its outcome 
is largely predetermined. Aside from its vague allusion that the WGFC told the BTNF that 
feedgrounds will continue (Ibid) whether or not the USFS reauthorizes its permits, the 
BTNF further justifies continuance of feeding at all the feedgrounds in question by having 
already permitted WGFC activities at two additional feedgrounds, Dell Creek and Forest 
Park, both of which are on USFS lands. Since the issuance of permits is entirely under the 
discretion of the BTNF (“Under 36 CFR 251.50, authorization is required for all uses of 
NFS land” DEIS:8), it cannot excuse itself from fully analyzing a reasonable alternative, 
e.g., phasing out elk feedgrounds, nor can it foreclose on a reasonable alternative - not 
issuing permits for feedgrounds - merely because it has previously exercised its authority 
in separate cases. The BTNF chose to exclude Forest Park and Dell Creek from this 
DEIS, despite Dell Creek feedgrounds never having undergone a NEPA analysis and
public interest groups having recommended that all USFS - and even BLM - elk feedgrounds be included in one EIS. Thus the separate treatment of Forest Park and Dell Creek feedgrounds, whether lawful or not, does not force the BTNF to permit the feedgrounds at issue here. Despite the public requesting that all feedgrounds be incorporated into one EIS, the BTNF has chosen not to do a comprehensive EIS on all feedgrounds, either with or without joining with the BLM on analyzing feedgrounds on BLM jurisdiction. It has purposefully chosen to treat the Dell Creek and Forest Park feedgrounds separately and may not use the existence of those feedgrounds - or the claims by the WGFC that it may intend to continue those elk feedgrounds - as rationale for permitting others, nor as reasons to prematurely foreclose on reasonable alternatives to issuing permits for the feedgrounds under consideration in this NEPA analysis.

Second, whether or not the BTNF ever received a declaration from the WGFC that it intends to operate elk feedgrounds on other jurisdictions regardless of receiving SUPs from the USFS (the communication documentation was not revealed in the DEIS), it does not relieve the BTNF of its duties and responsibilities to manage the resources on USFS lands in a manner which protects the environment and mitigates impacts harmful to the environment. Whether healthy, harmful, or benign activities occur on adjacent, nearby, or distant lands does not diminish the responsibilities and duties held by the USFS through acts of Congress. Nor do such activities allow the USFS to deflect the responsibilities assigned to it by Congress onto other parties, such as the WGFC. If the mere existence of - or the threat of - harmful activities beyond USFS lands was justification or impetus for the USFS to permit such activities on USFS lands, it would open the door to any number of harmful activities occurring on USFS lands merely upon threat, coercion, implementation of such acts on other lands, or insinuation of intent to do so by any proponent. This would effectively remove the assurance to the American public that the USFS acts as stewards of these public lands. A duty clearly lacking fulfillment here.

If the WGFC did notify the BTNF that it intends to operate elk feedgrounds on other jurisdictions, it may be true that the BTNF has no reason or ability to stop them. But the BTNF also has no reason to convince, enable, or solicit the WGFC to operate elk feedgrounds on USFS lands rather than on these other lands. By the BTNF’s own reasoning, not allowing these elk feedgrounds on USFS lands, “improves habitat. . .” on USFS lands, whereas allowing these elk feedgrounds and associated activities on USFS lands “maintains . . .”, or, “increases [the] amount of degraded habitat . . .” on USFS lands (DEIS:23). It would best serve the American public and clearly better protect USFS resources for the BTNF to bow out of permitting WGFC elk feedgrounds completely.

A further indication of the arbitrary nature of predating the limited alternatives analyzed and the outcome of this EIS on the assumptions arising from the WGFC telling the BTNF it intends to operate elk feedgrounds on lands other than those considered here anyway, is the admission that the WGFC has no specific alternative locations in mind for the Muddy Creek and Upper Green River elk feedgrounds, two of the six feedgrounds at issue here, if no permits are issued. The DEIS states it is “unknown” where alternative locations would be for those two feedgrounds (DEIS:14). This veiled threat by the WGFC and the absence of alternatives analyzed in this DEIS do nothing to inform the public as to
what the tradeoffs would be under a scenario of not issuing SUPs for elk feedgrounds at these locations. The WGFC may have better, equal, or less desirable locations for elk feedgrounds, but the BTNFR has evidently chosen to acquiesce to threats rather than seek the requisite information for the public to become fully informed before engaging in this analysis and for the BTNFR to be able to render an informed decision.

The DEIS errs when it assumes that alternative locations would increase the risk of disease transmission from elk to livestock. "If the new location is near private land that supports a livestock operation, elk-to-cattle brucellosis exposure potential would be higher than described in Alternatives 2 and 3" (DEIS:78). Without specific locations identified, the BTNFR cannot conclude that the risk is higher. While it may be true that risk would increase if elk feeding occurred closer to livestock operations, this would not be the case if the location was 1) farther away from livestock; or 2) if better measures were implemented to prevent commingling. Better measures might include the use of elk-proof fences or working with ranchers to move livestock away from elk or to graze yearlings rather than cow/calf pairs in proximity to elk. In fact, the threat of increased commingling risk disintegrates if we scrutinize the facts. The DEIS offers the Muddy Creek and Upper Green River Feedgrounds, among others, as examples of such increased risk. In fact, the Muddy Creek Feedground is currently located on or adjacent to a multijurisdictional landscape (state, USFS, BLM and private) (WGFD Pinedale Elk BMAP: 39 & 40). Ranchland adjacent to Muddy Creek Feedground was the site of the brucellosis contamination that was detected in cattle in December 2003. Therefore, the feedground did not prevent contamination of cattle, nor would alternative locations differ much in terms of their proximity to livestock compared to the current location.

The current Upper Green Feedground is located some 10 to 15 miles or more from the nearest wintering livestock. There are some small parcels of private land inholdings within the BTNFR within 6 miles of the current feedground, but no known wintering livestock on those inholdings. Since this feedground sits amidst native elk winter range managed by the USFS, it is an excellent candidate for being phased out when elk numbers meet or are below the carrying capacity of the native range. Since it is known that use of this feedground causes habitat damage (DEIS:60 and elsewhere), and it is known that feedgrounds maintain brucellosis among elk (Cheville 1998, Smith 2001), and it is known that dense concentrations of elk may increase the risk of a CWD epidemic among elk (Peterson 2003), it would benefit elk and the public interest to not reauthorize the current permit.

Commingling of elk with livestock can be prevented by the use of elk-proof fences or moving the livestock to other locations away from brucellosis-exposed elk, as mentioned above. Such mitigation of elk-to-livestock infection risk may best be achieved by a combination of actions, some enacted solely by the USFS and some with partnering agencies and stakeholders. Careful phasing out of the feedgrounds, while managing the elk herds to fit the carrying capacity of the native range, maintaining elk-proof fencing around wintering livestock when brucellosis-exposed elk are nearby, and moving some livestock herds to other locations would all work far better than the current feedground system that perpetuates damage to habitat and disease prevalence among elk.
7. Failure to develop and consider a reasonable range of Alternatives violates NEPA

“The purpose of an EIS is to apprise decision makers of the disruptive environmental effects that may flow from their decisions at a time when they ‘retain a maximum range of options’ to avoid environmental harms” (Connor v. Burford, 848 F.2d 1441, 1446 (9th Cir. 1988) quoting Sierra Club v. Peterson, 717 F.2d 1409, 1414 (D.C. Cir. 1983)). NEPA mandates that the Forest Service provide a detailed statement regarding the alternatives to a proposed action (42 U.S.C. § 4332(2)(C)(iii)). Its implementing regulations also require the Forest Service to “[r]igorously explore and objectively evaluate all reasonable alternatives” (40 C.F.R. § 1502.14) (also quoted at DEIS:22). The agency must satisfy its “obligation to consider every significant aspect of the environmental impact of a proposed action” and “inform the public that it has indeed considered environmental concerns in its decisionmaking process” (Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, 462, U.S. 87, 97 (1983)). In fact, a thorough and objective analysis of alternatives is so essential to reasoned and informed decision making that discussion of alternatives is considered the “heart of the environmental impact statement” 40 CFR at § 1502.14(a).

NEPA requires agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources” 42 U.S.C. § 4332(E); 40 C.F.R. 1508.9(b). Moreover, the BTNF “shall” “to the fullest extent possible …use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(e) (emphasis added).

The DEIS considers only three alternatives: 1) the legally required “no action” alternative which would eliminate feedgrounds on National Forest land but would result, as the BTNF explains, in a continuation of elk feeding and related actions on other jurisdictions, some of which are “unknown”; 2) the “No change” alternative which would reauthorize permits for six elk feedgrounds currently operating on USFS lands; and, 3) an additional action alternative which would reauthorize existing feedgrounds and activities, expand the affected acreage on two of them (Muddy Creek and Fish Creek) and institute a new feedground and related facilities on USFS lands north and southwest of the state land Patrol Cabin Feedground in the Gros Ventre Valley. By choosing to analyze what essentially amounts to one action alternative (given the similarities between Alternatives 2 and 3) (DEIS:Table 4) the Forest Service failed to consider a reasonable range of alternatives.

Courts’ interpretation of NEPA’s requirements are clear: “[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency’s action…[as] the EIS would become a foreordained formality” Citizens Against Burlington, 938 F.2d at 196. The BTNF has defined the purpose of this EIS as, authorizing “the WGFC to continue to use and occupy their facilities and structures on NFS lands for their winter elk management programs”
(DEIS:9). This definition of purpose is the narrowest imaginable and may suit the proponent (the WGFC), but does not comply with legal directives under which the USFS is required to operate; nor does it serve the public interest by putting forth a reasonable range of alternatives that may benefit the public through the protection of the largest amount of public lands, waters, and wildlife possible for the longest amount of time.

No other National Forest permits elk feedgrounds. The BTNF is well aware that 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. The elk herds in the southern reaches of the Wyoming Range, the southern reaches of the Salt River Range, Commissary Ridge, and the Tunp Range, all within the BTNF, do not require feedgrounds. Nor do other big game species such as moose, bighorn sheep, mule deer, pronghorn antelope, mountain goats, or white-tailed deer throughout the BTNF. There are other methods of managing habitat and wildlife on and near the BTNF, and analysis of such methods under this EIS is reasonable, as well as legally mandated.

In the September 17, 2007 scoping comments from Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, and the Wyoming Outdoor Council several reasonable alternative components were suggested for inclusion by the BTNF. We offer that section again here to help inform what we deem is a necessary Supplemental DEIS on this issue:

**Some components needed in alternatives**

When analyzing a range of alternatives to elk feedlots, the BTNF must include analyses of elk transitioning to completely using natural forage on big game winter ranges to survive the winters. Maps of big game winter ranges designated by the USFS, NPS, FWS, BLM, and WGFD can be obtained from the WGFD: the winter ranges consist of many tens of thousands of acres and may spread across USFS, NPS, FWS, BLM, State and other lands. Winter ranges adjacent to current feedlot sites as well as winter ranges at reasonable distances from feedlot sites must be considered, as should the feasibility of the elk to access those ranges. The BTNF must assess the amount of forage on designated winter ranges left after the growing season that may be used by big game during winter. They must calculate the tonnage of forage using scientifically valid production plots, or use available information that may be applied to similar slopes, elevations, snow pack, and vegetation types as exist on the various winter ranges. Most importantly, the USFS should calculate the ability of that amount of forage to sustain the estimated number of elk using the range (i.e., carrying capacity).

If any of those winter ranges are included in summer livestock grazing allotments, the BTNF must assess whether adjustments to livestock grazing management may allow for more forage left for wintering big game on the winter range portions of those allotments. For any unoccupied, vacant, or closed livestock
allotments the BTNF must analyze how much of an increase of winter forage is available for wintering big game due to the absence of livestock use.

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.

It is important when considering elk-proof fencing that consideration be given to not impeding trans-landscape movement of big game. Therefore, a minimum amount of fencing is desirable, and fencing as close to the livestock feeding and haystack areas as possible to be effective would ameliorate this issue.

The BTNF should also do a cost analysis for phasing out specific feedlots or several at a time if they are near one another, compared with the costs of maintaining the elk feedlots. Included in that cost analysis should be the elimination of vaccinating elk against brucellosis which would no longer be needed. It is a cost savings to phase out the feedlots, even considering initial costs such as fencing, rather than maintaining feeding and vaccinating at elk feedlots in the long term (see Brucellosis Solution 2005). The costs of maintaining brucellosis to various stakeholders such as livestock producers, the WGFD, and others should also be quantified as best as possible 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. This will greatly assist the BTNF in analyzing reasonable alternatives to artificially feeding elk at state operated feedlots. A wide range of alternatives is necessary in order for the public and decision makers to draw informed conclusions.

The BTNF could have developed and analyzed one or more alternatives that carefully transition elk from artificial feeding to reliance on native range, while protecting hunting, outfitting, and ranching interests. Because the Forest Service failed to analyze a true range of alternatives, the record of decision risks becoming a foreordained formality. Either the Forest Service chooses the no action alternative, or it chooses one of the very similar action alternatives. Neither action alternative differs from the other in any meaningful way (with the exception of adding the facilities and lands in the Gros Ventre Valley described above) so as to “insure a fully informed and well-considered decision.”
Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978). The entire range of alternatives is tied to the paradigm of maintaining the artificial winter feeding of elk. This leaves many viable alternatives unexplored by only changing one variable across the board. The unreasonableness of considering such a paltry range of alternatives is a violation of NEPA. This failure must be remedied by a full and thorough consideration of alternatives that differ substantially from the current action alternatives so as to allow the Forest Service the opportunity to adequately review a true array of options.

8. Failure to analyze disease, including CWD as a significant issue is arbitrary and capricious and violates NEPA

The BTNF fails in its duty to recognize significant issues by arbitrarily omitting from the list of significant issues (DEIS:9-10) the specter of Chronic Wasting Disease (CWD) and the potential for infectious agents known as prions infecting elk, other cervid species, and habitat on USFS lands via the operation of elk feedgrounds. In fact, in this nearly inexplicable act of omission, the July 23, 2007 Notice in the Federal Register, Vol. 72, p. 40112, makes no mention of disease as one of the three Preliminary Issues associated with this proposed action.

The original 3 issues described in this Federal Register posting as “Preliminary issues associated with the proposed action”, are: 1) heavy browsing of shrubs; 2) impact to soils due to trampling; and, 3) noxious weeds from hay. In this DEIS those 3 Preliminary issues became 4 “significant” issues. Noxious weeds and soil compaction were dropped, and the 4 significant issues became: 1) browsing and trampling by concentrated elk can change vegetation; 2) concentrated elk can affect stream bank stability and hydrology; 3) other wildlife species could be affected by habitat changes due to concentrated elk; and, 4) concentrated elk increase the risk of brucellosis transmission among elk. Chronic Wasting Disease is neither included nor analyzed as a significant issue in this DEIS despite being identified by public interest groups in scoping comments submitted to the BTNF September 17, 2007 as significant. We insert here the relevant section from our scoping comments to remind the BTNF not only of the level of significance of this issue, but also of the relevant literature submitted in support of its inclusion in the NEPA analysis:

Of even greater concern, the unnatural elk concentrations on western Wyoming’s feedgrounds present a grave risk of a chronic wasting disease (“CWD”) epidemic among the fed elk populations. This highly contagious disease is the elk form of “mad cow disease,” an affliction that is spread by abnormal proteins known as
“prions” and that results in brain lesions and ultimately death for infected animals. While CWD has not yet been documented in western Wyoming’s elk herds, an expert evaluation of this disease threat prepared for the recently completed planning process for the Jackson elk refuge states that “[i]n the professional opinion of disease experts from state and federal agencies, it is just a matter of time until [CWD] becomes established in the Jackson elk herd.” (Don DeLong, Potential Effects of Management Alternatives of the Bison and Elk Management Planning Document/EIS on the Ability of the U.S. Fish and Wildlife Service and National Park Service to Fulfill Legal Directives, at 39, July 2004) (Exhibit 5). As further explained in the Smith report:

The most likely routes by which CWD may enter the Jackson elk herd are from the east from the Dubois area, or from the Green River basin to the south. Diseased animals would likely first appear in the Gros Ventre drainage, the eastern and southern hydrographic divides of which serve as migratory pathways. The most recently detected expansion to Worland and then Thermopolis, Wyoming, puts CWD at the foot of the Owl Creek and Absaroka Mountains, ranges that rise to the west toward the Continental Divide and support large populations of deer and elk contiguous with the Jackson elk.

Smith, supra, at 14. In sum, CWD is moving north and west in Wyoming, overlapping seasonal wildlife ranges and migratory pathways connect known CWD areas with western Wyoming’s fed elk populations, and CWD’s entry into the western Wyoming herds appears to be inevitable. Indeed, the map included with the Forest Service’s scoping notice makes it plain that the feedgrounds being considered for analysis are situated such that they are likely to facilitate the spread of CWD from the east and south into the Greater Yellowstone area. The fact is all elk feedgrounds in western Wyoming are situated similarly, and thus there is the need to consider impacts collectively in one analysis.

Once established among western Wyoming’s fed elk populations, CWD threatens to spread rapidly among the densely clustered feedground elk, with disastrous consequences. Dr. Markus Peterson, an associate professor specializing in wildlife disease ecology in the Department of Wildlife and Fisheries Sciences at Texas A&M University, recently summarized this grim threat:

Feedground elk in the GYA [Greater Yellowstone Area] are highly vulnerable to a CWD outbreak. Elk densities associated with the National Elk Refuge and other Greater Yellowstone Area (GYA) feedgrounds are far higher than in free-roaming elk populations in the Colorado–Wyoming endemic area where CWD prevalence is 1–3%. Instead, functional densities are at least as high as observed in captive elk herds where CWD prevalence was 17.4 to 58.8%. These are nearly ideal conditions for CWD transmission among free-roaming elk. … Based on what is known about CWD in elk, prevalence in a
chronically infected feedground herd could exceed 50% if feeding programs remained unchanged and the disease was allowed to take its course.

Markus J. Peterson, Chronic Wasting Disease and the Greater Yellowstone Area, at 7 (Nov. 2005) (emphases added, citation omitted) (Exhibit 6).

Given that “[d]eath is inevitable once clinical signs develop,” id. at 3, even a CWD prevalence rate of 17.4 percent among the 13,000 elk fed on WGFD feedgrounds would mean the loss of 2,262 elk from the disease; a more likely prevalence rate approaching 50 percent would be even more catastrophic. The threat is particularly grave because the incubation period for CWD is 12 to 34 months in elk, see id., meaning that CWD could spread widely throughout elk populations congregated on feedgrounds before the first physical signs are detected. Moreover, this threat is not limited to elk in western Wyoming. As Smith has explained,

should a disease as virulent and transmissible as CWD or bovine tuberculosis become established within the GYA, the number of infected herds of susceptible species could rapidly expand. Twenty-five elk herds alone, totaling 120,000 elk, winter in the GYA (Toman et al. 1997). Because distributions of adjacent herds overlap, disease could ultimately spread across the 18 million acre area.

Smith, supra, at 16.

Not only does CWD threaten a lethal epidemic in western Wyoming’s fed elk populations that could spread across the Greater Yellowstone Ecosystem, but it also threatens severe environmental contamination at the feedgrounds where elk concentrate.

[CWD] is of particular concern because the prions are extremely resistant, and it appears that the prions can persist in the environment for long periods and that ungulates can be infected by prions in the environment. Hence, if an ungulate population that annually concentrates on the same piece of ground for long periods becomes infected with chronic wasting disease, this behavior could increase the potential for spread of the disease in the population. High infection rates could result in a high level environmental contamination that can last for many years.

DeLong, supra, at 88 (citations omitted). Smith echoes these concerns:

Environmental contamination with the infectious agent is a particularly insidious characteristic of CWD where cervids are crowded. It would serve as a perennial source of CWD exposure as elk return to feedgrounds each winter. … The agent is extremely resistant to chemical disinfectants as well as to physical methods of inactivation. It is still not known whether environments contaminated with TSE agents can ever be completely disinfected.
Smith, supra, at 19 (citations omitted); see also Peterson, supra, at 4 (“CWD can be transmitted via environmental contamination as well as directly among animals, and ... contaminated materials can remain infectious for prolonged periods”).

Recent research indicates that certain soils enhance the oral transmission of the CWD prion. See Christopher J. Johnson, et al., Oral Transmission of Prion Disease is Enhanced by Binding to Soil Particles, 3 PLoS Pathogens 874 (2007) (Exhibit 7); see also Marilyn Stone, CWD Revisited, Wyoming Wildlife (May 2007), at 7 (discussing research regarding the environmental persistence of CWD prions) (Exhibit 8).

Consistent with these predictions and research results, WGFD has observed 26 percent mortality from CWD among healthy, free-ranging elk that were captured and held for 46 months in pens contaminated with the CWD prion. See WGFD, Chronic Wasting Disease Management Plan, at 7-8 (Feb. 17, 2006) (Exhibit 9). Thus, a CWD outbreak threatens not only to kill many thousands of western Wyoming’s prized elk, but to convert the feedgrounds themselves into contaminated environments that spread and perpetuate this devastating disease. Given these severe potential consequences, application of a detailed environmental review is required.

In this DEIS, rather than appropriately analyzing the issue of CWD moving into any of the elk herds or onto the USFS lands at or near the elk feedgrounds at issue here and posing a risk to other cervid species, the BTNF refers to the WGFD 2006 Chronic Wasting Disease Management Plan on the WGFD website as providing, “supplemental information concerning the prevalence, risks and consequences” of CWD (DEIS:12). The BTNF appears to deflect its duties under NEPA onto the WGFD; but the WGFD is not bound by the requirements of NEPA nor does the WGFD need to meet any standard of analysis or accuracy in its reports. The WGFD CWD Plan makes clear that the WGFD intends to continue with winter elk feedgrounds even if CWD is discovered thereon. The WGFD is not bound by any regulations to maintain the health of federal lands other than to follow the conditions of permits issued by the USFS, and has stated clearly in its CWD Plan that even if CWD-infected elk are discovered on feedgrounds, it will continue to operate feedgrounds on those very USFS lands that may be contaminated with CWD prions. The duty to protect those USFS lands, however, lies with the USFS. The USFS may not allow reckless use of its lands such that contaminants are likely to affect the health of the habitat and wildlife. Whether or not the WGFD intends to conduct elk feedgrounds on other jurisdictions if the USFS denies it permits, such possibilities cannot relieve the USFS of its duties to protect the lands under its stewardship, nor can such possibilities serve as excuses for the USFS to knowingly allow a continued high risk of habitat contamination on USFS jurisdiction. To continue to permit feedgrounds and maintain such a risk when alternatives are available is negligent.

The federal USDA-APHIS, which is in the same department of the federal government, the Department of Agriculture, as the Forest Service, considers CWD a serious disease and allocates significant financial and educational resources in order to
control it. Yet by permitting elk feedgrounds, the BTNF promotes conditions that would exacerbate the effects of CWD when it occurs on or near elk feedgrounds. The following sample excerpts from the USDA-APHIS website indicate that the disease merits far more consideration in analyses of potential alternatives and impacts than the BTNF accords it in the DEIS:

In September 2001, the Secretary of Agriculture released Commodity Credit Corporation emergency funds allowing USDA to begin implementation of a program to eradicate CWD among farmed elk populations. The program has since been amended to include susceptible deer species as well. The program involves enhanced surveillance to detect CWD-positive herds and response to CWD-positive herds and trace animals, including the purchase and humane euthanasia of positive and exposed animals and the ancillary expenses associated with these activities. Receipt of line item funding in FY2003 allowed the continuation of these efforts. Also, with receipt of line item funding, APHIS began larger scale support of surveillance in wild, free-ranging deer and elk providing CWD testing for more than 90,000 samples collected nationwide during the 2002/2003 hunting season.


While APHIS’ primary focus is on farmed animals, they are concerned about protecting the health of wild animals as well. Because the health of wild cervids can impact the alternative livestock industry and vice versa, APHIS has assisted and will continue to assist with CWD surveillance in wild animals. State wildlife management agencies and in some cases, Federal Land Management agencies, have regulatory authority over wild cervids and, as such, take the lead in decisions regarding surveillance of the animals under their stewardship.

….. APHIS has supported State surveillance for CWD in free-ranging cervids since 1997. This support has increased annually.


The simple fact that no other jurisdictions outside western Wyoming support the annual concentrating and artificial feeding of wild elk speaks volumes about the importance of avoiding such practices. The following excerpts from the Montana Fish, Wildlife, and Parks website has some simple guidelines that the BTNF would do well to heed:

Prevention measures now being implemented include:

- prohibiting all baiting and feeding of wild game animals;

Research in other states has demonstrated that the CWD prion that causes the infection may remain viable in the soil for years.

"The longer CWD exists in an area, the more potential there is for exposing more animals and expanding the area of infection."

fwp.mt.gov/news/article_4907.aspx (underline added)
It is known that soils may be contaminated for many years with the infectious agents of CWD, prions (see above reference to WGFD 2006: 7-8). The BTNF must consider and adequately analyze the effects of contaminated soils on the environment, including the potential effects- including costs- of excluding cervids from contaminated sites, the effects of infecting other vulnerable cervids including white-tailed deer, mule deer, moose, and other elk, the effects on predator populations if prey became infected, and the effects and costs of removal of contaminated soils in order to cleanse the affected site(s) of infectious prions.

The BTNF is and has been well aware of the important issue of disease impacts since in the 12-22-06 Decision Memos for four of the very same feedgrounds at issue here, signed by the BTNF Forest Supervisor Kniffy Hamilton, there is very plain language revealing that, "The majority of (1800) public (scoping) comments expressed concern about the potential for disease transmission among elk when the elk are congregated in feed grounds" (parentheses added). In light of this evidence, it is disingenuous for the BTNF to dismiss disease as an unimportant issue when their own supervisor and documents testify to their awareness of its significance.

The DEIS dismisses the significance of CWD: "Resource specialists determined that the potential effects of this project are predictable and well documented with no significant uncertainties or risks associated with this proposal" (DEIS:25). This conclusion is arbitrary and prevents the BTNF from complying with the provisions of NFMA and their own Forest Plan to protect National Forest habitat from actual and imminent harm caused by elk feedgrounds.

A DEIS that is compliant should adequately analyze the potential impacts of CWD. This DEIS is deficient as described above, but does offer one valid statement as to the importance of analyzing and making decisions that appropriately consider the severity of the CWD threat: “if chronic wasting disease (CWD) became established in the Jackson Hole or Sublette County areas, . . . 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. Soil on the feedgrounds could become a reservoir of CWD that would continue to infect animals many years into the future. This is considered an irretrievable loss (loss for a period of time) rather than an irreversible loss (cannot ever be reversed) because it is not known how long contamination of the environment would persist. Decontamination methods on game farms and research facilities have been unsuccessful and animals introduced to these facilities years after a chronic wasting disease outbreak and depopulation have subsequently become infected.” (DEIS:88)

The BTNF would do well to heed its own cautionary words. Furthermore, its determination of what constitutes “an irreversible loss” begs more detailed analysis, since the CWD-infected sites alluded to above have never been determined to be safe for susceptible species post-contamination.
9. Analysis of elk-proof fences to prevent commingling and protect private property is essential and required

Despite being given information by public interest groups during the scoping period on the value of elk-proof fences for inclusion in an analysis of reasonable alternatives to elk feedgrounds, the BTNF failed to incorporate such information into this DEIS. The BTNF must be aware of the existence of elk-proof fences built and maintained to alter elk movements and behavior and to protect private property and other resources since such fences may be found along the perimeter of the National Elk Refuge near the Bridger-Teton Forest Supervisors and Jackson Ranger District offices and facilities complex in the Town of Jackson. The purpose of this fence is to prevent elk from wandering into the residential and commercial developments in the Town of Jackson, and to keep elk from being a human safety hazard by preventing collisions on the roads.

Other elk-proof fences that the BTNF is well aware of and which are built partially or entirely on USFS lands are the 11-plus mile Stewart Creek Elk Fence east of the Nordic Ranches subdivision along the USFS boundary (WGFD 2006 Afton Elk BMAP:17) and the approximately 25-mile long elk fence associated with the Soda Lake Elk Feedground north of Pinedale (WGFD 2006 Upper Green Elk BMAP:37).

The BTNF also has constructed a fence at the Muddy Creek Elk Feedground southeast of Pinedale. In the Decision Memo (DM) for Muddy Elk Fence, dated May 31, 2005 and signed by Pinedale District Ranger Craig Trulock, the DM states, “I have decided to implement the construction of an elk proof fence along the Bridger-Teton National Forest boundary in the Muddy Creek drainage on the Pinedale Ranger District. . . . This fence will help to reduce the risk of commingling between elk and cattle . . . and reduce depredation of stored hay crops on private land. . . ” The DEIS also states that “Approximately 1/2 mile of elk fence was erected on NFS lands across Muddy Creek Canyon to prevent elk from moving onto private lands” (DEIS:6).

The Jackson District of the BTNF has suggested constructing a new fence in order to manage livestock grazing in the Jackson District of the BTNF. During a conversation with public interest groups and the Jackson District Ranger on February 21, 2008, the draft plan by the BTNF to construct a new drift fence east of Alkali Creek across the main Gros Ventre Road for the purpose of controlling cattle movement and behavior was displayed on a GIS map. This proposed new fence also incorporated a cattle guard across the road. While this is not intended to be elk-proof, it shows that the BTNF realizes that it has the authority to locate and authorize construction of fences on USFS lands.

As stated above, the minimum amount of fencing is desirable to prevent elk-livestock commingling, elk damage of private property, and translandscape movement of wildlife. These examples show without a doubt that the BTNF can implement the construction of strategic fencing to mitigate commingling and depredation and to protect USFS resources, and that such fences are reasonable and should be incorporated into reasonable alternatives analyzed in a new SDEIS.
10. Failure to protect habitat from the effects of elk feedgrounds violates the National Forest Management Act (NFMA), the BTN Forest Management Plan (LRMP or Forest Plan), and the National Wilderness System Preservation Act (aka the Wilderness Act)

“The National Forest Management Act directs the Forest Service to develop Land and Resource Management Plans (‘Forest Plans’) by which to manage each National Forest under principles of ‘multiple use’ and ‘sustained yield.’” Colorado Envtl. Coalition v. Dombeck, 185 F.3d 1162, 1167 (10th Cir. 1999) (quoting 16 U.S.C. § 1604). Among other things, such Forest Plans must “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.” Id. at 1168 (quoting 16 U.S.C. § 1604(g)(3)(B)). All permits, contracts “and other instruments for the use and occupancy of National Forest System lands” (such as contracts permitting elk feedgrounds and associated activities) “shall be consistent” with the Forest Plans. 16 U.S.C. § 1604(i) (parenthesis added).

NFMA also requires the Forest Service to adopt regulations “specifying guidelines” for the Forest Plans. Id. § 1604(g)(3), (h). Those NFMA regulations are codified at 36 C.F.R. § 219.


Listed here are the existing feedgrounds and one proposed feedground at issue in this analysis and their locations respective to the BTN LRMP DFC’s:

- Alkali feedground is likely in DFC 3, and is immediately adjacent to DFC 6B and 6C, the Gros Ventre Wilderness (LRMP, and BTN Visitor Map 1987).
- Yellowjacket Flat, the site for a proposed new elk feedground in DEIS Alternative 3, is also in DFC 3 and immediately adjacent to the Gros Ventre Wilderness (Ibid). Coal Mine Draw, the other new site proposed for elk feeding purposes, is in DFC 12.
- Fish Creek Feedground is located within DFC 12 and within approximately 1-mile of the Gros Ventre Wilderness. (Ibid)
- Dog Creek Feedground is in DFC 12 and within approximately one-mile of the Palisades WSA. (Ibid)
- The Upper Green Feedground is possibly in DFC 3, and either immediately adjacent to DFC 10 to the south, and DFC 12 to the north, or partially within both those DFC’s as well. (Ibid)
- Fall Creek Feedground is in DFC 12. (Ibid)
- Muddy Creek Feedground is in DFC 12. (Ibid)

“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 (DEIS:40, emphasis and brackets added).
Assessments of vegetative impacts from winter elk management in the Project Area and in the Analysis Area suggest that where elk are fed, vegetation species richness and diversity are reduced, and occurrence and production of exotic grass species . . . is increased. . . When present, shrubs . . . and trees . . . of greater palatability are often stunted or killed from intense browsing and trampling. . . (DEIS:36) “Continued heavy browsing by elk in the wintertime,” on USFS lands at feedgrounds and within the 1-mile buffer Analysis Area would suppress the healthy growth of woody shrubs and aspen and cottonwood, and convert shrublands to grasslands due to elk and livestock use (DEIS:42). These impacts occur within the Gros Ventre Wilderness adjacent to Alkali Creek Feedground and near Fish Creek feedground. These conditions would occur or would be exacerbated if they currently occur adjacent to Yellowjacket Flat within the Gros Ventre Wilderness.

The following prescriptions for the DFC’s where elk feedgrounds are located, or are adjacent to, are at issue:

- DFC 12: “Theme: An area managed for high-quality wildlife habitat and escape cover, big-game hunting opportunities, and dispersed recreation activities.” (LRMP:241) “Habitat will be managed to help meet the game populations . . . identified by the Wyoming Game and Fish Department and agreed to by the Forest Service.” (Ibid:243, emphasis added)

- Wildernesses: “Wilderness-wide Prescriptions, Standards, and Guidelines apply to all resources within Wilderness.” (LRMP:186) “The Wilderness shows you the natural processes of plants and animals living and dying.” (Ibid: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.” (Ibid:188) “Human Influence Standard- Natural agents of ecological change will be allowed to operate freely in the Wilderness.” (Ibid:190)

- DFC 6B: “Management emphasis is to provide for the protection and perpetuation of natural biophysical conditions . . .” (LRMP:192) “Animal populations and distribution are affected by natural processes.” (Ibid:193)

- 6C: “Management emphasis is to provide for the protection and perpetuation of essentially natural biophysical conditions.” (LRMP:193) “Animal populations and distribution are affected by natural processes.” (Ibid: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:195) “Animal populations and distribution are affected by natural processes. Management of habitat is not permitted except [for recovery of T&E species].” (Ibid 195, emphasis and brackets added)

The effects on vegetation and on wildlife of maintaining elk feedgrounds - whether the wildlife are elk that are concentrated on or near feedgrounds and affected by brucellosis and other diseases as a result of feedgrounds, or wildlife that are dependent on vegetation types that are heavily browsed or harmed by dense concentrations of elk - described above and in the DEIS are not in compliance with LRMP prescriptions for DFC 12 and DFC 6 areas. The BTNF has the affirmative responsibility to protect forest resources. Yet, as stated for DFC 12, and repeatedly shown in the DEIS, elk feedgrounds are not “high quality wildlife habitat” (see Table 4, DEIS:23; Alt 2 “Maintains current amount [of] degraded habitat . . .”, and Alt 3 “Increases amount of degraded habitat . . .” [emphasis added]).

The BTNF also has the affirmative responsibility to protect forest resources within designated Wilderness and Wilderness Study Areas. Section 4(b) of The Wilderness Act mandates that the USFS protect the wilderness character of Wilderness. As for DFC 6B, C, and D, the BTNF may not permit elk feedgrounds or facilities on USFS land adjacent to or in proximity to Wilderness or Wilderness Study Areas that adversely affect the Wilderness qualities in those Wilderness areas as expressed in the Wilderness Act and the LRMP. Courts have shown that Congressional intent and requirements for protection of Wilderness qualities is not intended to be discretionary as to allow the USFS to pick and choose whether to fulfill their duties or not. Unnaturally dense concentrations of elk - many of which are diseased as a result of congregating on feedgrounds - and harmed vegetation and communities do not “protect or perpetuate natural biophysical conditions” as is required in the Forest Plan. Unnaturally dense concentrations of brucellosis-exposed or –infected elk associated with and caused by feedgrounds are not representative of natural population levels and distributions “affected by natural processes” as is mandated in the Forest Plan for DFC 6. Hundreds or thousands of elk loafing or milling about in dense groups on USFS lands after being fed baled hay are not examples of “Natural agents of ecological change operating freely,” nor are aspen stands that have been “over-browsed and debarked” to death. This all occurs within the Gros Ventre Wilderness and will occur to a greater extent if Yellowjacket Flat is turned into an elk feedground. Prescriptions, Standards, and Guidelines, for some areas of the BTNF may not be the same as those mandated for Wilderness; but Congress has been clear that designated Wilderness shall be managed to certain standards. The Wilderness Act requires the Forest Service to administer Wilderness Areas so they are “unimpaired for future use and enjoyment as wilderness.” 16 U.S.C. § 1131(a). If degraded conditions arising from elk feedgrounds exist in the Palisades WSA, the same protective Prescriptions, Standards, and Guidelines apply for the Gros Ventre Wilderness and the BTNF may not permit any feedground that causes noncompliances with the LRMP or other legal directives.

The BTNF Forest Plan is also clear that certain standards that perpetuate “natural biophysical conditions” are required for Wilderness. It is also clear that actions that “tend to alter the natural behavior of wildlife” are prohibited by visitors and presumably by agencies as well. Therefore the BTNF may not continue to permit the Alkali elk feedground, or any elk feedground, nor may it permit a new elk feedground at Yellowjacket Flat, whose operations would cause management of forest resources- including wildlife and habitat- to fall short of the Wilderness Standards, Guidelines, and Prescriptions.
These Prescriptions, Standards, and Guidelines apply throughout the BTNF in each DFC area, and therefore the BTNF may not permit elk feedgrounds, nor agree to elk population levels, distributions, management, or impacts that result in noncompliance with the LRMP and other applicable legal directives.

11. Legal directives do not mandate maintaining unnatural elk populations or densities

The Wyoming Game and Fish department has admitted that the population of elk in Wyoming is 102,281, which is 23% over the statewide objective of 83,169 elk set by the Game and Fish Commission (WGFD 2007 Annual Report:A-2). And this population of 102,281 elk consists of just 28 of the 35 elk herds (Ibid) and therefore the actual population of elk is larger. Yet an average of only 13,000 elk are fed annually on all Wyoming state feedgrounds combined (WGFD 2004:4); another 7-8,000 are fed annually at the Elk Refuge. No other state maintains such expansive elk feedgrounds, and yet all of the other Northern Rocky Mountain states have higher elk populations than Wyoming (Smith 2001), and Wyoming only has 20% of its elk on artificial winter feed (all feedgrounds combined, including the Elk Refuge). Because of regional- and national-based conservation efforts over the past century, such as transplanting elk to areas where they once were extirpated, enforcement of game laws, and protection of critical habitats, elk populations are high and elk winter feedgrounds are no longer needed to maintain abundant elk populations in Wyoming or any other state.

The BTNF Forest Plan states that “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” (LRMP:243 and elsewhere, emphasis added). While the population objectives for elk herds associated with the feedgrounds at issue here have been identified by the WGFD and Commission, in many areas the elk populations have not been managed to comply with those objectives. Actual numbers for the Jackson Elk Herd, most of which is fed on the state-run Fish Creek, Patrol Cabin, and Alkali feedgrounds and the USFWS National Elk Refuge, have been far above objective for 18 years (WGFD JCR Annual Herd Unit Reports 2006). The Fall Creek Elk Herd, most of which is fed on Dog Creek and South Park feedgrounds, has been over objective for 11 years (Ibid). The Pinedale Elk herd, most of which is fed at Fall Creek, Scab Creek, and Muddy Creek feedgrounds, has been over objective for 6 years (Ibid). If the BTNF has the right to “agree” with objectives set by the state wildlife department and commission, it then also has the right to disagree. The only manner in which an informed agreement - or disagreement - may occur is for the BTNF to conduct its own analysis of what level of elk population best enables it to meet the prevailing legal directives contained in its LRMP and elsewhere, such as in the Wilderness Act. Elk population levels that the BTNF determines would allow it to comply with its legal directives may be the same as those set by the state wildlife agency, or may not be. If the BTNF finds that a given elk population’s numbers and distribution do not allow it to comply with its prevailing legal directives, it must not allow current elk population numbers to persist through artificial means and must only enable management for elk population numbers and distribution that allow it to better comply with its legal directives. The damaged vegetation and riparian communities within and outside Wilderness areas - in DFC 6 and DFC 12 - on the BTNF are evidence that current high elk populations and unnaturally high densities and distributions of elk do not allow the BTNF to comply with its legal directives.

Even if the elk population objectives as identified by WGFD and agreed to by the BTNF allowed the BTNF to meet its legal directives (and no analysis has been done to determine this), the elk population numbers are currently over those agreed upon levels. Since the Jackson Elk Herd population has been over objective for 18 years - and the Fall Creek Elk Herd for 11 years - it is arbitrary and unlawful for the BTNF to permit elk management by the WGFD in the form of winter feedgrounds which perpetuate noncompliance with agreed upon objectives. Since this noncompliance has been going on for so many years (as many as 18), it is clearly unreasonable. It is also unreasonable, arbitrary, and not in compliance with legal directives for the BTNF to offer only alternatives in this DEIS that maintain the status quo, or worse.

A good example of how the BTNF may proactively affect wildlife behavior, distribution, and abundance is the MOU recently signed by the BTNF Forest Supervisor, Grand Teton National Park Superintendent, and the National Elk Refuge Manager to work for the designation and protection of a pronghorn migration corridor. Such a designation would require a Forest Plan amendment, which emphasizes the extent to which the BTNF is willing and able to promote healthy, free-ranging wildlife populations on and outside of its jurisdiction when its actions are not being directed by another agency.

12. Elk feedgrounds cannot be the “solution” to the brucellosis dilemma

The DEIS errs when it concludes that “elk feedgrounds are both the cause and solution to the brucellosia dilemma, maintaining the disease in elk while limiting elk-to-cattle transmission at the same time” (DEIS:76). We disagree with this conclusion; a cause that simultaneously serves as a solution results in a self-sustaining situation, which we believe to be untenable in the case of brucellosia persistence in feedground elk. Drawing such a conclusion is unreasonable, arbitrary, and cannot lawfully be used as a justifiable basis upon which to make a decision.
The USDA Animal and Plant Health Inspection Service (APHIS) has administered the Brucellosis Eradication Program since its inception in the 1930s (Toweill 2002: 356). As part of the program’s mission, APHIS has stated it “intends (to) cooperate with other state and federal livestock and wildlife agencies to work towards the development of a plan to eliminate brucellosis from the bison and elk in the GYA (Ragan 2002: 14). Several big game and disease experts have stated that there is a “clear relationship between feedgrounds and high prevalence of brucellosis” among elk (NA Elk:356); “over time, elk would not serve as reservoirs for brucellosis in the absence of elk feeding grounds (Cheville 1998: 37); and “elk do not seem to be capable of sufficient intraspecific transmission of brucellosis to maintain the disease in the population when not concentrated on feeding grounds” (Ibid: 38 citing Thorne and Herriges 1992).

It is unreasonable for the public to be forced to accept that one branch of the USDA, APHIS, conducts a program to eradicate or eliminate brucellosis from wildlife and livestock, while another branch, USFS, permits activities – feedgrounds – that irrevocably promote conditions that maintain the disease among elk and put nearby cattle and horses at risk. It is disingenuous to claim that feedgrounds are the “solution” to the brucellosis dilemma in elk and livestock when the clear solution to the problem of brucellosis affecting elk and livestock is the abolition of elk feedgrounds and the concomitant protection against commingling of elk and livestock through the use of less deleterious measures such as strategic elk-proof fences. This DEIS is deficient under NEPA because it does not appropriately consider and analyze a reasonable alternative that phases out feedgrounds and protects nearby livestock.

13. S-19 brucellosis vaccinations for elk are ineffective, promote disease transmission, and should cease

Markus Peterson, Ph.D., a wildlife disease expert at Texas A&M University, explains the deficiencies in the WGFD’s program to vaccinate elk on feedgrounds with Strain 19. “There is no obvious difference in B. abortus seroprevalence . . . between feedgrounds where S 19 vaccination was long standing and those where it did not occur” (Peterson 2003:33).

The DEIS admits the same: “A 2-tailed paired sample t-test reveals mean seroprevalence at Dell Creek compared with all vaccinated feedgrounds is not significant (P=0.27).” This after nearly 20 years of vaccinating elk at some state elk feedgrounds and maintaining an unvaccinated feedground, Dell Creek, as a control (DEIS Appendix Elk Feedgrounds in Wyoming, WGFD, 2004:16). While the WGFD attempts to discount the importance of comparisons of seroprevalence between their own selected control feedground, Dell Creek, and others, the conclusion that vaccination of feedground elk does not result in the reduction in seroprevalence among adult female elk is undeniable. Strain 19 vaccination for elk, as administered by the WGFD, has not demonstrated effectiveness at reducing seroprevalence for exposure to brucellosis among adult cow elk that frequent elk feedgrounds.

In a June 1998 assessment, requested by the USFWS, of the S19 vaccination program, Edward O. Garton, Ph.D., of the Fish and Wildlife Department of the University of Idaho, Moscow, states, “The material reviewed provides very weak support for the wide-scale application of brucellosis vaccination strain 19 to prevent abortions in elk . . . It appears to me that the vaccination program of elk in Wyoming has been carried out on the basis primarily of hope and faith that it will lead to increased calf survival rather than on the basis of solid evidence that such vaccinations will reduce fetal losses among Wyoming elk
populations . . . (S)uch a program has been instituted for political reasons. . . .” (Garton 1998)

We recommend that the S19 vaccination program for elk on feedgrounds on USFS land cease immediately and no vaccinations be considered for use for elk until effective and nonintrusive vaccines for protection against brucellosis are developed and an environmental analysis on vaccinations is conducted with full public participation.

Elk feedgrounds promulgate brucellosis infections among elk due to high densities of elk and maintain brucellosis in the ecosystem. The USFS has the discretion to not permit feedgrounds and also to prohibit certain acts for the purposes of disease prevention such as the S-19 vaccination program which requires clustering elk together, thereby actually increasing the risk of brucellosis transmission. (36 CFR sec 261.70 (a) (2)).

14. The BTN must conduct an SEIS on Test and Slaughter of elk

“During winter 2005-2006, a 5-year experimental pilot project was initiated at (Muddy Creek feedground) to measure the potential for reducing brucellosis exposure rates in elk. Trapped elk are tested for brucellosis and infected elk are removed. A large, portable trap was erected on NFS lands for this project and approximately 150 yards of Forest Service Road #869 is plowed to allow trucks and trailers into the feedground during winter months. Additionally, approximately 1/2 mile of elk fence was erected on NFS lands across Muddy Creek Canyon to prevent elk from moving onto private lands” (DEIS:6). The test and removal of elk and the facilities and actions involved in this program are significant and controversial (40 CFR 1508.27), and collectively are a connected action arising from permitting elk feedgrounds. The BTN violated NEPA and acted arbitrarily and capriciously by not analyzing the impacts associated with facilities and operations for the test and removal (aka, test and slaughter) program that the WGFC operates on USFS lands. The USFS must analyze not only the effects of the facilities and activities but also the direct, indirect, and cumulative effects of such actions. Such connected actions may not be improperly segmented into smaller portions to avoid conducting a NEPA analysis.

The USFS has the discretion to not permit feedgrounds and also to prohibit certain acts for the purposes of disease prevention, such as the test and slaughter of elk, which depends on the feedgrounds attracting large numbers of brucellosis-exposed elk. The USFS may prohibit test and slaughter activities on USFS lands because implementing such a practice actually increases the risk of brucellosis transmission because it concentrates elk. (36 CFR sec 261.70 (a) (2)).

15. The BTN is not required to issue elk feedground permits

For the WGFD to operate elk feedgrounds on USFS lands, vaccinate elk, maintain the facilities, test elk and ship seropositive animals to slaughter, and undertake the variety of actions inherent in elk feedgrounds, there is no denying that a permit is required. “Forest Service regulations require authorization for use and occupancy of NFS lands”
However, nowhere is it mandated that the BTNF issue permits for elk feedgrounds. While it may be permissible under the regulations for the BTNF to issue permits for elk feedgrounds, it is conditionally permissible. Given the detrimental effects of the elk feedgrounds on vegetation and natural biophysical conditions, and detrimental impacts on elk behavior and health, the desired conditions and the BTNF’s legal directives are not being met. And even if all legal directives were met, it still is not required of the BTNF to issue the permits. In this singular sense the No Action Alternative 1 in the DEIS is reasonable. Whereas the DEIS does not contain a reasonable range of alternatives, this alternative alone is reasonable to the extent that it best protects the resources under the stewardship of the USFS. Yet, the BTNF does not give this alternative due consideration.

Therefore, as has already been pointed out in the DEIS, there are alternatives to the BTNF permitting the six existing elk feedgrounds at issue here and one new feedground. The first readily available alternative is for the BTNF to not permit the feedgrounds. Choosing this alternative relieves the BTNF from engaging in overt actions that result in noncompliance with the legal directives outlined above (e.g., noncompliance with Prescriptions, Standards, and Guidelines of the Forest Plan, The Wilderness Act, and others). Selection of the No Action alternative also relieves the USDA of attempting to implement conflicting policies within its agency by simultaneously having APHIS work to eradicate brucellosis and control CWD, while having the USFS permit elk feedgrounds that cause brucellosis to persist in elk populations and be transmitted to other species throughout the GYA, and promote conditions that would exacerbate the effects of CWD among elk and other wildlife.

As discussed above and described in scoping comments previously, another alternative that the BTNF should consider is for a careful phase-out of feedgrounds to be planned and implemented by all stakeholders; such a plan would include strategically sited elk-proof fences that prevent commingling of elk and livestock. Each feedground might require its own phase-out plan, which would be reasonable under the provisions of NEPA.

Another possible component of plans to phase out elk feedgrounds might be to establish the limited infrastructure and necessary steps to institute emergency winter feeding when needed. The USFS could permit storage buildings to store alfalfa pellets or hay, with room inside for snowcats, at various locations on designated USFS big game winter ranges; the locations could be on existing elk feedgrounds. Emergency feeding protocol would be established by a stakeholder group and the agencies through public involvement and open meetings. During unusual late winter conditions, if emergency feeding were necessary by agreement of the stakeholders group, the WGFC, and the BTNF, feeding of alfalfa pellets or hay to elk for a limited time using tractors on those winter ranges could take place by order of the Forest Supervisor. The BTNF could permit emergency feeding of elk in the same manner that they permit other one-time uses or brief periods of use of USFS lands for research or rescue purposes.

We suggest that the BTNF issue one-year permits to the WGFC for the feedgrounds already in place, and not issue permits for expanded areas at Fish Creek, Coal Mine Draw, or Yellowjacket Flat. The BTNF should notify the WGFC that it intends to
issue no more than 5 one-year permits for these feedgrounds beginning in 2008, and that elk feeding operations on USFS lands will cease after expiration of the fifth permit after the winter of 2012-2013.

The BTNF should not permit the construction of test-and-removal facilities on any elk feedground on USFS land beginning immediately. Nor should the BTNF allow the vaccination of elk against brucellosis on USFS land using intrusive methods—such as biobullets—beginning immediately. The BTNF should also revisit the elk herd objectives identified by the WGFD and conduct its own analysis regarding the impacts of the elevated numbers of elk on USFS lands and, as a comparison, analyze the anticipated impacts caused by the agreed-upon elk populations. The BTNF should also determine the population levels and distributions of elk that allow the BTNF to comply with its legal directives and should convey these findings to the WGFD. The BTNF should not agree to any elk population numbers or distributions that do not allow them to comply with their legal directives.

16. Elk feedgrounds may adversely affect wolf management

The operation of elk feedgrounds does not promote appropriate conservation of any species, including wolves. Feedgrounds act as artificial attractants for wolves and wolves have already been killed due to their association with elk feedgrounds. The 3-27-08 Sublette Examiner quotes Cottonwood Creek cattle rancher, Merrill Dana, speaking about the nearby wolf pack: "They're pretty much staying on the (Jewitt elk) feedground" (Sublette Examiner, March 27 Sublette Examiner, "Eyes on Wolves" story by Joy Ufford, pages 3 & 40). Two days after the article appeared in the Examiner, 3 of the 5 wolves detected near the feedground were killed. The WGFD has drafted regulations that would “allow wildlife managers to kill (wolves) for elk conflicts on State feedgrounds (DEIS:81).” It is clear that the presiding sentiment of the WGFD is that wolves are considered a problem on and around elk feedgrounds and some wolves have already been killed because of it.

In discussing wolves and elk feedgrounds, Ed Bangs, USFWS Wolf Recovery Coordinator, has commented that “the problem isn’t wolves, the problem is feedgrounds” (JHN&G 3-7-07). Ed Bangs has also said that it’s not the wolves chasing elk off the feedgrounds and into livestock areas that increase the risk of brucellosis transmission to cattle, but the feedgrounds themselves. "Every problem on feedgrounds existed before there were wolves" Bangs said in a telephone interview from Montana. “There’s potential that wolves increase the threat of transmission to livestock a little bit. But really, the problem is a 30 to 40 percent (brucellosis) infection rate on feed grounds.”

“Wolves make that [managing elk on feedgrounds] a little more difficult, a little more complex sometimes,” Bangs continued. “They’re wild animals, both of them. I’m not sure that wolf chasing elk is a big issue to us. . . . . Wolves moving elk off the feed grounds a few times a year, that’s not the problem,” said Bangs. “If CWD [chronic wasting disease] gets into the feed grounds, that’s going to make everything 10 times worse.”

The BTNF has a duty to manage conditions on the Forest to conserve wolves. The paradigm for such conservation exists on other National Forests in the US Northern Rockies which do not allow artificial feeding of prey species on USFS lands, and which allow wolves to naturally disperse on the landscape subject to more appropriate management. The Federal Land Policy and Management Act of 1976 declares that the policy of the United States is that (USFS) lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values. Where appropriate these (USFS) lands will be preserved and protected in their natural condition. (43 U.S.C. 1701 emphasis added).

There is nothing natural about elk feedgrounds and the BTNF must comply with the NFMA by not permitting the artificial densities of prey on elk feedgrounds, which act as attractants to wolves and which increase the likelihood of wolves being killed.

The DEIS states that “since all alternative(s) assume the continued use of
feedgrounds as a winter elk management program by the state, the risk of this (lethal take of wolves) would not vary by alternative” (DEIS:81). This statement is further evidence that the DEIS is deficient because it does not analyze and consider a reasonable range of alternatives, nor does the DEIS seriously consider phasing out elk feedgrounds in order to allow for more appropriate management of wolves.

17. The DEIS must conduct a Cumulative Impacts Analysis

Part and parcel of protecting biological diversity is a need to ensure that indirect and cumulative impacts of management actions are fully considered. As previously noted, the NEPA regulations provide guidance in this regard. Cumulative impacts are the incremental impacts of actions, past, present and future, regardless of whom undertakes them. See 40 C.F.R. §1508.7. Indirect effects of an action are further removed from the action itself, but still are reasonably foreseeable. See 40 C.F.R. §1508.8. See also 40 C.F.R. §1508.25(c). The environmental analysis must take special care that these “second-order” impacts are fully considered and analyzed if the USFS is to meet its legal mandate for ecosystem management and preserving biological diversity.

We want to emphasize that consideration of cumulative impacts is distinct from and in addition to the need to address cumulative actions for purposes of defining the scope of the analysis. Compare 40 C.F.R. §§ 1508.25(a)(2) and 1501.7 with 40 C.F.R. §§ 1502.16, 1508.7, 1508.27. The DEIS is deficient at adequately describing the cumulative impacts of elk feedgrounds and other associated activities permitted by the BTNF. Some, but not all, of the deficiencies in this DEIS of failing to consider cumulative actions and impacts are: The impacts on the elk, the USFS feedgrounds, and on the larger analysis areas that result from the sudden opening May 1st of designated elk winter range and the concomitant stampede of OHV’s and other human intrusions in previously closed elk range. Nor are the cumulative effects on soils, hydrology, vegetation, and wildlife that result from the restocking in 2007 of the USFS managed winter ranges in the Gros Ventre Valley, including the USFS lands on and around feedgrounds, with hundreds of cattle during the summer and fall. Despite acknowledging the long term vegetative impacts on sites where winter elk management has occurred, there was no analysis of cumulative impacts of the alternatives (DEIS: 36). No mention is made of the costs of the disease management, education, and eradication programs within the USDA-APHIS that are undoubtedly affected by permitting and operating elk feedgrounds. As explained elsewhere in our comments, the cumulative impacts resulting from vaccinations and test and slaughter of elk are not considered, either. The impacts from these and other related actions must be analyzed, and mitigations considered, in a Supplemental Draft EIS.

18. The DEIS does not consider the best available science and violates the Administrative Procedures Act (APA) and NEPA

The Administrative Procedures Act (APA) (5 USC 706(2)(A)) prohibits an agency from acting in an arbitrary and capricious fashion. Fair and honest procedures are also an important element of complying with NEPA. (40 CFR 1502.1) To assure that a fair
discussion occurs, agencies are required to obtain high quality information, including accurate scientific analysis. (40 CFR 1500.1 (b)) The regulations are very explicit that: Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. (40 CFR 1502.24) CEQ regulations also require that: Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made. (40 CFR 1502.2 (g)).

The DEIS claims that, “The techniques and methodologies used in this analysis consider the best available science... The conclusions are based on the scientific analysis that shows a thorough review of relevant scientific information... Resource specialists determined that the potential effects of this project are predictable and well documented with no significant uncertainties or risks associated with this proposal” (DEIS:25).

The DEIS errs when it claims the above, particularly when it claims that it considers the “best available science” and that there are “no significant . . . risks associated with this proposal.” As shown above, such claims violate both the APA and NEPA. The public interest groups submitted numerous documents, references, exhibits, and reports in comments on August 14, 2007 and September 17, 2007 that appear to have been largely ignored in this DEIS. The BTNF makes the claim in the DEIS that Best Management Practices (BMPs) "are effective in protecting water quality and long term soil productivity" (DEIS:25). The DEIS may not accurately claim to protect water and soils, nor may it accurately claim that there are no significant uncertainties or risks associated with this proposal when the BTNF has received in scoping comments detailed explanations and references on the potential for contaminations from the infectious agents for CWD, prions. We offer the following as just one small excerpt previously submitted that the BTNF has ignored in this DEIS:

*Environmental contamination with the infectious agent is a particularly insidious characteristic of CWD where cervids are crowded. It would serve as a perennial source of CWD exposure as elk return to feedgrounds each winter. ... The agent is extremely resistant to chemical disinfectants as well as to physical methods of inactivation. It is still not known whether environments contaminated with TSE agents can ever be completely disinfected.*

*Smith, supra, at 19 (citations omitted); see also Peterson, supra, at 4 (“CWD can be transmitted via environmental contamination as well as directly among animals, and ... contaminated materials can remain infectious for prolonged periods”).

*Recent research indicates that certain soils enhance the oral transmission of the CWD prion. See Christopher J. Johnson, et al., Oral Transmission of Prion Disease is Enhanced by Binding to Soil Particles, 3 PLoS Pathogens 874 (2007) (Exhibit 7); see also Marilyn Stone, CWD Revisited, Wyoming Wildlife (May 2007), at 7 (discussing research regarding the environmental persistence of CWD prions) (Exhibit 8).*
Consistent with these predictions and research results, WGFD has observed 26 percent mortality from CWD among healthy, free-ranging elk that were captured and held for 46 months in pens contaminated with the CWD prion. See WGFD, Chronic Wasting Disease Management Plan, at 7-8 (Feb. 17, 2006) (Exhibit 9). Thus, a CWD outbreak threatens not only to kill many thousands of western Wyoming’s prized elk, but to convert the feedgrounds themselves into contaminated environments that spread and perpetuate this devastating disease. (from NGO scoping comments date September 17, 2007: 3-6)

While it is useful to include references and information from the proponent, the Wyoming Game and Fish Department and Commission, this DEIS has ignored many references that contain relevant scientific information when it concludes that there are no significant risks associated with this proposal. Accepting the Wyoming Game and Fish Department’s unsubstantiated claims that there is no significant risk or contamination of waters and soils from elk feedgrounds is disingenuous in the face of the vast body of scientific literature that demonstrates the enhanced transmission of disease when cervids are concentrated, the persistence of CWD prions in the environment, and the detrimental impacts to vegetation and riparian communities resulting from excessive browsing and trampling by large concentrations of elk. The BTNF must undertake an adequate EIS that truly examines the relevant science and weighs the significant risks posed by elk feedgrounds for degrading water, soils, and wildlife health.

19. Conclusion

The foremost duty of the Bridger-Teton National Forest managers is to protect the resources of USFS lands, habitats, and the wildlife that depend on them. Permitting elk feedgrounds and thereby enabling the harmful impacts resulting from feedgrounds does not accomplish this. The BTNF is not required to permit elk feedgrounds or allow vaccinations or test and slaughter of elk, and has the ability to decline permitting elk feedgrounds and to close the forest to vaccinations and test and slaughter. We recommend that the BTNF prohibit elk vaccinations and test and slaughter activities on USFS lands and either not permit elk feedgrounds on USFS lands or issue short-term temporary permits to facilitate the phasing out of elk feedgrounds.

As we have demonstrated, this DEIS is deficient in many ways and the likely resulting Record of Decision arising from this analysis will not allow the BTNF to comply with legal directives. All ongoing wildlife and habitat management projects and actions must comply with legal directives and also conserve wildlife species and habitats on the BTNF. To address the inadequacies that we have highlighted in these comments, we urge the BTNF to issue a Supplemental DEIS that includes but is not limited to the following:

a) A wider range of alternatives including carefully phasing out feedgrounds while instituting protections for livestock and hunting interests. Specifically, we recommend the analysis of at least two other actions to be considered in additional alternatives. The first would authorize the issuance of short-term permits to facilitate
the phasing-out of feedgrounds on USFS lands. The USFS would issue a maximum of five one-year permits to the WGFC for existing feedgrounds and simultaneously notify the WGFC that it would not issue any more such permits beyond winter 2012-2013. During this time period, the use of elk feedgrounds on forest service lands would be phased-out. The second action would be similar to the first, but additionally would authorize the establishment of emergency-only feeding facilities and plans. The second action would involve permitting the construction of storage facilities holding baled hay and/or alfalfa pellets and snowcats to distribute the feed when necessary, to be located in areas of natural winter ranges, and would necessitate collaboration with the WGFD and a stakeholders group to help define an emergency-only winter feeding program for elk that would replace the current feedgrounds.

b) An analysis of the impacts of wildlife diseases, particularly Chronic Wasting Disease, which should be considered a significant issue and analyzed accordingly. Also, an evaluation of reasonable actions in response to CWD arriving on or near the elk feedgrounds.

c) An analysis of the impacts of elk vaccinations and test and slaughter of elk using the best available science.

d) An analysis of elk-proof fences that would mitigate elk/livestock commingling concerns and enable phasing-out the feedgrounds.

e) A determination of the population numbers and distribution of elk that would allow the BTNF to comply with all legal directives. (Currently, elk feedgrounds maintain elk numbers at a level that exceeds WGFD herd objectives and prevents the USFS from meeting its legal obligations as public land stewards).

f) A full analysis of the effects of elk feedgrounds on the conservation of gray wolves.

g) The BTNF must not permit new facilities or elk feeding at Yellowjacket Flat or Coal Mine Draw without initiating a new analysis for this proposal that would allow for full disclosure during public scoping and in the Federal Register posting that these USFS lands are not currently permitted for elk feedgrounds.

Finally, the BTNF must not move forward with any feedground permits partially or entirely described in the DEIS without first ensuring compliance with NEPA, 42 U.S.C. sec 4321 et seq., the National Wilderness System Preservation Act 16 U.S.C. 1131, the National Forest Management Act, 16 U.S.C. 1604, the Administrative Procedures Act 5 USC 706, and the BTNF Forest Plan. NEPA instructs agencies to allow opportunities for meaningful public participation, consider a full range of reasonable alternatives and to take a “hard look” at resources that may be impacted by the project.
We thank you for this opportunity to comment on this DEIS, and we look forward to continuing the dialogue with the USFS on this and related issues. Please notify us at once of your actions on this and related issues.

Respectfully submitted,

Lloyd Dorsey  
Wyoming Representative  
Greater Yellowstone Coalition  
POB 4857  Jackson, WY 83001  307-734-6004  
ldorsey@greateryellowstone.org

Louise Lasley  
Public Lands Director  
Jackson Hole Conservation Alliance  
POB 2728 Jackson, WY 83001  307-733-9417  
louise@jhalliance.org

Sophie Osborn  
Wildlife Program Director  
Wyoming Outdoor Council  
108 Antelope Ridge, Laramie, WY 82072  307-760-8546  
sophie@wyomingoutdoorcouncil.org

George Nickas  
Executive Director  
Wilderness Watch  
POB 9175 Missoula, MT 59807  406-542-2048  
gnickas@wildernesswatch.org

Cc:

Earthjustice  
National Elk Refuge  
Grand Teton National Park

References/Bibliography:
Bienen, Leslie & Tabor, Gary. 2006. Applying an ecosystem approach to brucellosis control: can an old conflict between wildlife and agriculture be successfully managed?, 4 Frontiers in Ecol. & the Envt. 319, 321-22


Disease and Winter Feeding of Elk and Bison: A Review and Recommendations Pertinent to the Jackson Bison and Elk Management Plan and Environmental Impact Statement. (Smith 2005, 6)


--------. 2003. Teton Division Landscape Scale Assessment.

Western EcoSystems Technology, Inc. 2004. Summary of Elk Feedgrounds Operated by the WGFD.

Wyoming Game & Fish Department. March 26, 1999. Memorandum Regarding Alternatives to the current Dog Creek Feedground Site.

-------- 2006. Pinedale Elk Herd Unit Test and Removal Pilot Project, Year One: Muddy Creek Feedground 2006.

--------. 2006. Job Completion Reports, Annual Herd Unit Reports.


undated. Muddy Creek Feedground Management Plan.
Dear Supervisor Buchanan:

On behalf of our 26,000 members and supporters please accept these comments from the Greater Yellowstone Coalition (GYC) in response to the Bridger-Teton National Forest’s scoping notice for a Supplemental Environmental Impact Statement for Elk Feedgrounds.

The Greater Yellowstone Coalition is a 501(c)(3) non-profit organization begun in 1983 dedicated to protecting the wildlands, wildlife, and other outstanding natural resources of the twenty-million-acre Greater Yellowstone Ecosystem. GYC has offices in Idaho, Wyoming, and Montana with more than 26,000 members and supporters nationwide.

GYC’s members regularly use and enjoy the lands and waters of the Bridger-Teton National Forest for a variety of activities such as fishing, hiking, hunting, camping, wildlife viewing, spiritual renewal, photography, and other pursuits. The Jackson District of the BTNFW, including the Alkali Creek area and the Gros Ventre Valley, is integral to the ecological connectivity and economic health of the GYE and as such is valued by GYC’s members.

1. Introduction

"A thing is right when it tends to preserve the integrity, stability and beauty of the biotic community. It is wrong when it tends otherwise.” (Aldo Leopold)
In July 2008 the BTNF chose—despite the overwhelming scientific evidence and public comments advocating otherwise—to permit five Wyoming Game and Fish Department winter elk feedgrounds on USFS land for 20 years. The BTNF did not consider options that would have led to healthy, sustainable elk herds and healthy habitat. No decision was made at that time for Alkali Creek.

For decades GYC has been involved in advocacy seeking better solutions than harmful, disease-ridden feedgrounds for managing elk and other resources in this area of the Bridger-Teton National Forest. We have requested and advised the BTNF to undertake appropriate environmental analyses of the impacts of elk feedgrounds rather than merely permitting them ad hoc as had previously been done. GYC has undertaken science-based sampling and calculations of natural forage production in the Gros Ventre Valley in order to estimate the carrying capacity of the native range for big game to overwinter without artificial feeding during the winter months with very encouraging determinations: there is plenty of natural forage for elk and other big game to survive without artificial feeding. (GYC 2005, Bardenett 2007 and others) We have presented proposals to the Wyoming Governor’s Brucellosis Coordination Team to undertake elk feedground phase out pilot projects for the Wyoming Game and Fish operated Fish Creek, Patrol Cabin and Alkali Creek feedgrounds in order to achieve healthier, free-ranging elk herds while protecting livestock operations through fencing, and sustaining the tradition of hunting. (GYC, et al 2005) We have informed and encouraged the public and other conservation groups to participate in the NEPA process for elk feedgrounds on the BTNF in 2007 - 2008, and we did the same for the Bison and Elk Management Plan EIS for Grand Teton Park and the National Elk Refuge from 2000 to 2007. We have contracted for expert opinions to inform the needed and practical progression from winter feeding to a free-ranging paradigm for elk management, and we have litigated in court when necessary to ensure lawful solutions to these issues. Some of these materials and information are posted on our website at: www.greateryellowstone.org/issues/wildlife

In these comments we borrow some sections from comments previously submitted to the BTNF. (GYC et al 2007, 2008) All comments herein are germane to whether the BTNF complies with modern wildlife ecology, complies with legal directives, considers the best available science, protects Forest resources, and whether the BTNF should permit an elk feedground or not. We recommend that the BTNF not rely on a deficient EIS completed in July 2008 that failed to consider an adequate range of alternatives and which resulted in permits for five elk feedgrounds for 20 years. In these comments we offer recommendations that are still needed when considering proposed actions such as elk feedgrounds and are still needed to comply with legal directives, protect Forest resources and manage healthy habitat and wildlife.
2. Feedgrounds are not necessary to manage elk

The Gros Ventre Valley, where Alkali Creek exists, is surrounded by a contiguous expanse of federal public land including portions of the Shoshone Forest, the Bridger-Teton Forest, Grand Teton National Park, the National Elk Refuge and Yellowstone Park to the north. These hundreds of thousands of acres are in the heart of the Greater Yellowstone Ecosystem that totals some 20 million contiguous acres, the largest intact temperate ecosystem on the North American continent. The Bridger-Teton Forest, the Shoshone Forest, Grand Teton Park and the National Elk Refuge are inside the boundaries of the least populated state in our nation, Wyoming. Wyoming is about the same size as Colorado, but Colorado contains 9 times larger human population as Wyoming. Colorado also has nearly 3 times the amount of elk as Wyoming. Despite the large human population, and twice as many cattle in Colorado as Wyoming, Colorado doesn’t find it necessary to feed elk during winter. Nor does Montana or most any other jurisdiction in the Rocky Mountains. Rocky Mountain elk do not need artificial feed to thrive in Rocky Mountain winters, free-ranging elk can coexist in areas with livestock, feedgrounds are actually very harmful to elk and to habitat, and the BTNF should not permit elk feedgrounds. Better solutions to conflicts and better management methods for elk clearly exist.

As we explained in our 2008 comments, “The BTNF is well aware that 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. The elk herds in the southern reaches of the Wyoming Range, the southern reaches of the Salt River Range, Commissary Ridge, and the Tunp Range, all within the BTNF, do not require feedgrounds. Nor do other big game species such as moose, bighorn sheep, mule deer, pronghorn antelope,
In 2005 the Greater Yellowstone Coalition calculated how many elk could winter in the Gros Ventre Valley: “Using some conservative assumptions such as dry-year production values, and estimating forage production, consumption by elk, and availability of forage during winter, it appears that between 4,419 – 6,628 elk can winter naturally on 33% - 50% of winter range while consuming only 60% - 64% of the palatable and accessible forage without supplemental feeding.” (GYC 2005)

In 2006 the Wyoming Game and Fish Department responded to this proposal: “Based on the three carrying capacity estimates calculated in this assessment for mean and above average precipitation years, to some degree historic accounts of elk numbers and starvation events, and the need to prevent added competition for forage with bighorn sheep and moose wintering in the Gros Ventre valley, it appears there may be adequate forage available most winters for an elk herd closer to 3,000 than the current 4,000-4,500.” (WGFD 2006:25)

The number of elk counted in the Gros Ventre Valley during February 2012 by the WGFD is approximately 3,300. (Doug Brimeyer, personal communication and handout March 2012) Elk numbered approximately 4,000 – 4,500 around the time of the WGFD response to the NGO’s proposal to phase out winter feeding. (WGFD 2006, Figure 1) So, elk numbers have decreased by around 1,000 which achieves one of WGFD’s qualifiers to attempt phasing out winter feeding. 3,300 is also well below the carrying capacity determined by the NGO’s. We will discuss throughout these comments the very few (only 2 or 3) livestock and haystack fencing opportunities in the Gros Ventre that would prevent commingling of elk and livestock. There are only around 80 mother cows and approximately 150 or so horses that could easily be held behind elk-proof fences. Despite feedgrounds operating each winter, conflicts with elk continue to occur at these ranches year after year. So, without fences it’s a failed policy all around; elk keep getting into livestock and feedlines and elk keep getting sick on feedgrounds. Better solutions, such as elk-proof fencing at
the private property boundaries of those few ranches in the Gros Ventre Valley, need to be assessed in an EIS and implemented.

The Gros Ventre Valley within the Bridger-Teton National Forest is situated in between the CWD endemic area west of Thermopolis, Wyoming, and Grand Teton National Park and the Elk Refuge. (GYC 2009 CWD map) Deer and elk are known to travel back and forth among these areas. (Smith 2005, WGFD 2009) The worst thing that the BTNFSF can do for the wildlife of Grand Teton National Park and the National Elk Refuge is to permit and maintain elk feedgrounds that would, according to experts, amplify the prevalence of deadly CWD and potentially cause a catastrophic outbreak among the elk and other cervids of Grand Teton National Park and the Elk Refuge (Smith 2005, Peterson 2005). Conversely, one of the best things the BTNFSF can do is not permit elk feedgrounds and allow big game to traverse those same landscapes in accordance with their natural behaviors. The responsibility is on the shoulders of the BTNFSF and the best way forward is clear: determine where the most effective locations are for elk-proof fences, and do not permit feedgrounds.

3. Jackson Elk Herd ranges across vast multijurisdictional landscape

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. (Smith 2005, WGFD 2009) These multijurisdictional bureaucratic and ecological realities present challenges and opportunities. Perhaps the best news all around is that winter feedgrounds aren’t necessary to maintain thousands of elk on healthy habitat in this large tri-basin area because there’s plenty of available and accessible public lands big game winter range throughout. More good news is this vast area is well connected ecologically and elk and other wildlife can easily travel from one area to another in response to natural influences (e.g., weather, forage, predators) and learned behavior. From Hoback Canyon south of Jackson north to Yellowstone Lake, encompassing more than 2 million acres of mostly
public lands, there are only 2 paved roads of any significance: Highway 189 passing through Jackson north to Yellowstone Park, and the other is Highway 287 from Moran east through Dubois. (BLM 1991) Neither of these roads appears to inhibit wildlife migrations. This area is the geographic center of the 20 million-acre Greater Yellowstone Ecosystem and the resource management agencies including the BTNF should take advantage of that enormous natural capital of native biota in abundance, healthy watersheds and protected winter ranges by protecting natural free-ranging behaviors of wildlife rather than cluster thousands of elk together onto feedlots and feed them hay during winter. It’s not practical or sensible to put elk on feedgrounds in the midst of all this bounty.

4. Consider U.S. Court of Appeals ruling

In an analysis of elk feedgrounds including alternatives which actually protect elk and other natural resources on USFS jurisdiction, the BTNF must consider the August 3, 2011 ruling from the U.S. Court of Appeals, D.C., concerning the Bison and Elk Management Plan for Grand Teton Park and the National Elk Refuge, adjacent jurisdictions to the BTNF: "Part of this plan includes ending the longstanding agency practice of feeding these animals during the winter." (US Court of Appeals Ruling 2011:2) "The Refuge can hardly provide such a sanctuary if, every winter, elk and bison are drawn by the siren song of human-provided food to what becomes, through the act of gathering, a miasmic zone of life-threatening diseases." (Ibid:9) "It is highly significant and indeed dispositive to us, as it was to the district court, that the agencies are committed to ending supplemental feeding." (Ibid:11) "We take the Secretary (of Interior) at his word that Wyoming has no veto over the Secretary’s duty to end a practice that is concededly at odds with the long-term health of the elk and bison on the Refuge." (Ibid:12)

Therefore, in accordance with the direction from the Court, the US Fish and Wildlife Service must end winter feeding of elk and bison on the National Elk Refuge. GYC believes that such action should occur in the next couple of years. Since the elk in the Gros Ventre Valley around Alkali Creek and the elk on the National Elk Refuge are all part of the Jackson Elk Herd, the BTNF must consider this ruling as a connected action. The judges ruled in this manner to protect the health of the elk and the USFS should not make a decision, which goes in the opposite direction. If the BTNF has a different opinion of the legal ramifications of the US Court of Appeals decision alluded to above, they have a duty to disclose that opinion to the public in this analysis.

Now is an excellent time, when the circumstances connected to and including Alkali Creek are being analyzed, for the Forest Service to exhibit leadership and take steps to phase out artificial feeding of elk and manage for healthy elk and healthy habitat on USFS lands and beyond. Since Alkali Creek is only about 12 miles away from the National Elk Refuge and elk readily travel back and forth, the BTNF should take the initiative and end feeding at Alkali Creek. This is a good opportunity for all wildlife and resource management agencies to take advantage of all that land and natural capital encompassed in the geography of the Jackson elk herd and break the disease cycle engendered by artificial feedgrounds.
5. Winter range enhancements and protections

For decades, the BTNF has undertaken prescribed fire and managed wildfire to enhance big game winter range in the Gros Ventre Valley. These enhancements would benefit elk using that valley including elk that have been at Alkali Creek in the past and elk that would use the area surrounding Alkali Creek in the future. These burns have undoubtedly resulted in increased palatable forage for wildlife including cured forbs after the summers’ growing seasons and improved leader growth on shrubs on designated winter ranges. While both GYC’s 2005 and the WGFD’s 2006 estimates for available forage on Gros Ventre Valley USFS winter ranges indicated enough forage for approximately the same or even more elk and big game than now exist, the BTNF must calculate the amount of forage now available with the added benefit of recent burns in the Ditch Creek, Atherton Creek, Horsetail Creek, Red Cliffs, Lavender Hills, Slate Creek, Gray Cliffs and Red Rock areas. All these areas are easily available for elk that have used Alkali Creek and surrounding lands in past winter and for elk that may use Alkali Creek and surrounding lands in the future.

The BTNF should also consider the benefit of residual forage left from livestock not using winter ranges on the south facing slopes on the north side of the Gros Ventre Valley as a result of grazing allotment buyouts in 2007. Not having hundreds or thousands of cattle consuming forage as they trail off the former Fish Creek and Bacon Creek allotments will increase the forage available for wintering big game.

These improvements coupled with protections from human disturbance on those winter ranges through the implementation and enforcement of restricted snowmobile routes and restrictions from human hikers and skiers during winter make the Gros Ventre Valley an excellent natural wintering area for big game including elk. It makes no sense to artificially concentrate and feed elk each winter in this valley and the BTNF must consider other alternatives such as those suggested in these comments.

Gros Ventre Valley, BTNF, aerial view east from above Alkali Creek. F. Camenzind
6. Public process

The Bridger-Teton National Forest is part of the United States Department of Agriculture and is in the Executive Branch of the federal government. The January 21, 2009 memorandum from President Barack Obama, *Transparency and Open Government*, contains excellent direction for Departments and Agencies of the Executive Branch of government. In this memorandum the President notes that, “*Government should be transparent. Transparency promotes accountability and provides information for citizens about what their Government is doing.*”

Another Presidential Memorandum for the Heads of Executive Departments and Agencies dated March 9, 2009, is titled, “*Scientific Integrity*”. The President notes, “*The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public.*” The memorandum goes on to call for, “the highest level of integrity in all aspects of the executive branch’s involvement with scientific and technological processes.”

In light of the above directives, this environmental analysis process must not be a mere paper exercise to the BTNF, cavalierly prepared to enable an outcome already decided upon. The BTNF must be forthcoming to the public with all relevant information and must not suppress science. Besides the Presidential directives, the Council on Environmental Quality (CEQ) regulations require that Environmental Impact Statements shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made. (40C.F.R. 1502.2 (g)) If there is any indication that the proposed actions in this scoping notice are predetermined or foregone conclusions then that information must be made public.

7. Purpose and Need

By choosing a statement that defines the project from the narrow perspective of the project proponent, the Wyoming Game and Fish Commission (WGFC), the Forest Service forecloses on a range of diverse alternatives, some of which had repeatedly been suggested by conservation groups during scoping for the 2008 Winter Elk Management
Describing and giving careful consideration to such alternatives would have enabled (and can still enable if the BTNFR considers the alternatives) the forest to move toward healthier habitat (less soil compaction, no overbrowsed vegetation, no eroded streambanks, no infectious prions in the soil and water) and healthier wildlife (lower potential for disease transmission, more natural movements and foraging, elimination of heavy-handed management through vaccination and test-and-slaughter programs) and no adverse effects on Wilderness.

Courts’ interpretation of NEPA’s requirements are clear: “[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency's action…[as] the EIS would become a foreordained formality” Citizens Against Burlington, 938 F.2d at 196. The BTNFR defined the purpose of the 2008 EIS as authorizing “the WGFC to continue to use and occupy their facilities and structures on NFS lands for their winter elk management programs” (DEIS 2008:9) and for this SEIS, “whether or not to authorize WGFC to use NFS lands at Alkali Creek Feedground for corrals, sheds, one hay stack-yard containing two haysheds, a water facility and feeding grounds associated with their ongoing elk feeding and management programs. (BTNFR 4-24-12 Scoping Notice) This definition of purpose is the narrowest imaginable and may suit the proponent (the WGFC), but does not comply with legal directives under which the USFS is required to operate; nor does it serve the public interest by putting forth a reasonable range of alternatives that may benefit the public through the protection of the largest amount of public lands, waters, and wildlife possible befitting the most people and natural resources for the longest amount of time. The obvious fact that the BTNFR refers to this location as “NFS lands at Alkali Creek Feedground” indicates the matter is, in the minds of the BTNFR, a foregone conclusion. The BTNFR apparently believes that this area of USFS lands is an artificial feedground, nothing else.

Because the stated purpose and need for a federal action determines the range of alternatives, it is essential that the Forest Service clearly articulates the project’s purpose and need from the USFS’ perspective and not simply adopt the WGFC objectives for the project as its own. (40 C.F.R. § 1502.13). As courts have cautioned, “One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.’)” Davis v. Mineta, 302 F.3d 1104, 1119 (10th Cir. 2002) (quoting Simmons v. United States Army Corps of Eng’rs, 120 F.3d 664, 669 (7th Cir. 1997).

The duty of the BTNFR is to enable healthy wildlife on healthy habitat, not to enable an artificial feedground regardless of the consequences. A better Purpose and Need could be: To Ensure Healthy Wildlife and Habitat in the Gros Ventre Valley. As we have explained above and in other submissions to the BTNFR, the need for an elk feedground, per se, does not exist for the Forest Service. The Wyoming Game and Fish Commission, who may want an elk feedground, is not held to the same legal or ecological standards as the federal USFS. And the WGFC does not control the land where they are requesting the feedground, the USFS does. Enabling free-ranging elk would be cheaper and less labor
intensive and will serve the elk and other wildlife and natural resources far better than promulgating expensive and harmful feedground conditions. It will be healthier all around and meet the legal directives of the USFS for the BTNF to phase out elk feedgrounds on USFS land.

8. Range of Alternatives

“The purpose of an EIS is to apprise decision makers of the disruptive environmental effects that may flow from their decisions at a time when they ‘retain a maximum range of options’ to avoid environmental harms” (Connor v. Burford, 848 F.2d 1441, 1446 (9th Cir. 1988) quoting Sierra Club v. Peterson, 717 F.2d 1409, 1414 (D.C. Cir. 1983)). NEPA mandates that the Forest Service provide a detailed statement regarding the alternatives to a proposed action (42 U.S.C. § 4332(2)(C)(iii)). Its implementing regulations also require the Forest Service to “[r]igorously explore and objectively evaluate all reasonable alternatives” (40 C.F.R. § 1502.14) (also quoted at DEIS:22). The agency must satisfy its “obligation to consider every significant aspect of the environmental impact of a proposed action” and “inform the public that it has indeed considered environmental concerns in its decisionmaking process” (Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, 462, U.S. 87, 97 (1983)). In fact, a thorough and objective analysis of alternatives is so essential to reasoned and informed decision making that discussion of alternatives is considered the “heart of the environmental impact statement” 40 CFR at § 1502.14(a).

NEPA requires agencies to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources” 42 U.S.C. § 4332(E); 40 C.F.R. 1508.9(b). Moreover, the BTNF “shall” “to the fullest extent possible …use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.” 40 C.F.R. § 1500.2(e) (emphasis added). The BTNF must identify at least one Alternative that avoids or minimizes the adverse effects of elk feedgrounds and analyze it using the best science and other pertinent materials that would inform such an analysis and help the public gain the best information to make informed comments. Several of such materials are listed in the References section at the end of these comments.

No other National Forest in Wyoming permits elk feedgrounds despite there being thousands of elk wintering near thousands of livestock throughout Wyoming. As mentioned above, the BTNF is well aware that 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. The elk herds in the southern reaches of the Wyoming Range, the southern reaches of the Salt River Range, Commissary Ridge, and the Tunp Range, all roaming USFS and other jurisdictions, do not require feedgrounds despite livestock being in the lower elevations during winter. Nor do
other big game species such as moose, bighorn sheep, mule deer, pronghorn antelope, mountain goats, or white-tailed deer require winter feeding anywhere throughout the BTNF. There are other methods of managing habitat and wildlife on and near the BTNF, and analyses of such methods under this EIS is reasonable, as well as legally required.

Whether healthy, harmful, or benign activities occur on adjacent, nearby, or distant lands does not diminish the responsibilities and duties held by the USFS through acts of Congress. Nor do such activities, like the State of Wyoming elk feedgrounds, allow the USFS to deflect the responsibilities assigned to it by Congress onto other parties, such as the WGFC. If the mere existence of - or the threat of - harmful activities off USFS lands was justification or impetus for the USFS to permit such activities on USFS lands, it would open the door to any number of harmful activities occurring on USFS lands merely upon threat, coercion, implementation of such acts on other lands, or insinuation of intent to do so by any proponent. This would effectively remove the assurance to the American public that the USFS acts as stewards of these public lands. Therefore the BTNF must not be swayed by the WGFD’s inclination and tradition of maintaining elk feedgrounds in western Wyoming. The BTNF has more important and binding directives to comply with.

9. Additional Alternative: Phase out elk feeding and fence in livestock

Since the issuance of permits is entirely under the discretion of the BTNF, “Under 36 CFR 251.50, authorization is required for all uses of NFS land" (2008 DEIS:8). This Supplemental EIS is an opportunity to analyze an Alternative that uses fences to achieve separation between elk and livestock on the few ranches in the Gros Ventre Valley, thus allowing elk that may use the Alkali Creek area to range free on existing and healthy USFS winter range. The Gros Ventre Valley is good winter range - let the elk use it.

The truth is the WGFD feeds between 2500-3000 elk on feedgrounds in the Gros Ventre Valley every winter to keep them away from 80 or so cows and 150 or so horses on only two or three private properties in the Valley. Commingling of elk with livestock (aka, “conflicts”, or “damage”) can be prevented by the use of elk-proof fences around the livestock or moving the livestock to other locations away from elk. Such mitigation of elk-
to-livestock infection risk may best be achieved by a combination of actions, some enacted solely by the USFS and some with partnering agencies and stakeholders. A variety of funding sources are available including the Wyoming Wildlife and Natural Resources Trust which can fund projects for the “mitigation of conflicts and reduction of potential disease transmission between wildlife and domestic livestock.” (WWNRT 2012) The circumstances in the Gros Ventre Valley where there are vast stretches of healthy protected USFS big game winter ranges and only 3 winter livestock operations is perfect for such projects and funding.

The BTNF is no stranger to elk-proof fences. Indeed it has the authority to permit fences, and does so for such fences on USFS land at Muddy Creek feedground, near Soda Lake feedground, east of Etna, Wyoming near Nordic Ranches subdivision, South Park feedground and elsewhere. A minimum amount of such fences to contain haystacks and wintering livestock in the Gros Ventre Valley, whether on private lands with permission of the landowner or on public lands adjacent to such conflict locations would be cheaper in the long term and serve the public interest far better than feedgrounds.

Expeditious phasing out of the feedgrounds, while managing the elk herds to balance at or below the carrying capacity of the native range, maintaining elk-proof fencing around wintering livestock where necessary, and moving some livestock herds to other locations with permission of the owners would all work far better than the current feedground system that perpetuates damage to habitat on USFS jurisdiction, continues conflicts on private lands, and maintains disease prevalence among elk. It would best serve the American public and clearly better protect USFS resources for the BTNF to determine the way out of permitting WGFC elk feedgrounds entirely. It would save money all around and make for a healthier paradigm for habitat and wildlife management forever. Indeed, that is the paradigm on all other USFS lands except the northern BTNF. This analysis and subsequent decision is an opportunity for leadership and beneficial change.

10. Consider effects of CWD including new information

Chronic Wasting Disease (CWD) is an infectious prion disease of the central nervous system that affects deer, elk and moose and is always fatal. It is transmissible between species such as deer to elk. (Peterson 2003) In recent years CWD has been detected in deer in the foothills of the Owl Creek Mountains and the Absaroka Range west of Thermopolis, Wyoming. It appears that this disease is spreading westward across Wyoming. (Smith 2005)

Some elk from the Jackson Elk Herd range east as far as the Inberg-Roy Wildlife Habitat Management Area east of Dubois, Wyoming, which is only 14 miles from the CWD endemic area
west of Thermopolis. (WGFD 2009) It is known that some deer and elk from the herds west of Thermopolis and some deer and elk from the Upper Wild River Valley and some deer and elk from the Jackson Elk Herd commingle and even exchange individuals during various times of the year on both summer and winter range. Smith 2005, WGFD 2009) This behavior and geography is the likeliest pathway of transmission of CWD into the Gros Ventre Valley and Jackson Hole. (Smith 2005) Experts believe that the occurrence of this disease in densely concentrated elk on winter feedgrounds would be a catastrophe because a large percentage of the herd could become infected with CWD and transmit the disease to other elk in the ecosystem. Again, all animals affected with this disease die.

Bruce Smith writes in his 2005 report for GYC:

_The most likely routes by which CWD may enter the Jackson elk herd are from the east from the Dubois area, or from the Green River basin to the south. Diseased animals would likely first appear in the Gros Ventre drainage, the eastern and southern hydrographic divides of which serve as migratory pathways. The most recently detected expansion to Worland and then Thermopolis, Wyoming, puts CWD at the foot of the Owl Creek and Absaroka Mountains, ranges that rise to the west toward the Continental Divide and support large populations of deer and elk contiguous with the Jackson elk_

As related above, CWD has been detected even farther west in recent years. (WGFD 2010)
Dr. Markus Peterson, an associate professor specializing in wildlife disease ecology in the Department of Wildlife and Fisheries Sciences at Texas A&M University, summarized this grim threat:

Feedground elk in the GYA [Greater Yellowstone Area] are highly vulnerable to a CWD outbreak. Elk densities associated with the National Elk Refuge and other Greater Yellowstone Area (GYA) feedgrounds are far higher than in free-roaming elk populations in the Colorado–Wyoming endemic area where CWD prevalence is 1–3%. Instead, functional densities are at least as high as observed in captive elk herds where CWD prevalence was 17.4 to 58.8%. These are nearly ideal conditions for CWD transmission among free-roaming elk. … Based on what is known about CWD in elk, prevalence in a chronically infected feedground herd could exceed 50% if feeding programs remained unchanged and the disease was allowed to take its course. (Peterson 2005 emphases added, citation omitted)

This threat is not limited to elk in western Wyoming. As Smith (2005) has explained,

“should a disease as virulent and transmissible as CWD or bovine tuberculosis become established within the GYA, the number of infected herds of susceptible species could rapidly expand. Twenty-five elk herds alone, totaling 120,000 elk, winter in the GYA (Toman et al. 1997). Because distributions of adjacent herds overlap, disease could ultimately spread across the 18 million acre area.”

It is known that soils may be contaminated for many years with the infectious agents of CWD, prions. The BTNF must consider and adequately analyze the effects of contaminated soils on the environment, including the potential effects- including costs- of excluding cervids from contaminated sites, the effects of infecting other vulnerable cervids including white-tailed deer, mule deer, moose, and other elk, the effects on predator populations if prey populations became infected and subsequently crashed, and the effects and costs of removal or treatment of contaminated soils in order to decontaminate the affected site(s) of infectious prions.
The duty to protect USFS lands lies with the USFS. The USFS may not allow uses of its lands that are likely to harm the health of the habitat and wildlife. Whether or not the WGFD intends to conduct elk feedgrounds on other jurisdictions if the USFS denies issuing feedground permits, such possibilities cannot relieve the USFS of its duties to protect the lands directly under its stewardship, nor can such possibilities of feedgrounds elsewhere serve as excuses for the USFS to knowingly allow a continued high risk of habitat contamination on USFS jurisdiction. **To continue to permit feedgrounds and maintain such a risk when alternatives are available is negligent.**

The 2008 DEIS does offer one valid statement as to the importance of analyzing and making decisions that appropriately consider and avoid the severity of the CWD threat: “if chronic wasting disease (CWD) became established in the Jackson Hole or Sublette County areas, . . . 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. Soil on the feedgrounds could become a reservoir of CWD that would continue to infect animals many years into the future. This is considered an irretrievable loss (loss for a period of time) rather than an irreversible loss (cannot ever be reversed) because it is not known how long contamination of the environment would persist. Decontamination methods on game farms and research facilities have been unsuccessful and animals introduced to these facilities years after a chronic wasting disease outbreak and depopulation have subsequently become infected.” (DEIS:88) We hope the BTNF heeds these words and acts in a manner that does not enable the dire outcome described above.

The federal USDA-APHIS (Animal and Plant Health Inspection Service), which is in the same department of the federal government, the US Department of Agriculture, as 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. (USDA 2012) Yet by permitting elk feedgrounds, the BTNF promotes conditions that would exacerbate the effects of CWD when it occurs on or near elk feedgrounds.

It would better serve the public good for these two agencies within the US Department of Agriculture, APHIS and the USFS, to get on the same page as far as the best course forward to control diseases in elk and deer. **The BTNF needs to consider and reconcile this dichotomy in the SEIS.**

11. **The BTNF must comply with National Forest Management Act, the Forest Plan, and the Wilderness Acts**

The Forest Service must address consistency of a permitted action with the current BTNF Forest Plan including objectives, standards, and guidelines for all affected resources. Alkali feedground is likely in DFC 3, and is immediately adjacent to DFC 12 (“an area managed for high quality wildlife habitat” LRMP:241), DFC 6B and 6C, the Gros Ventre Wilderness (BTNF LRMP:272).
With regard to impacts from dense concentrations of elk by baiting them into feedgrounds year after year the 2008 DEIS states 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 (DEIS:40, emphasis added).

“Assessments of vegetative impacts from winter elk management in the Project Area and in the Analysis Area suggest that where elk are fed, vegetation species richness and diversity are reduced, and occurrence and production of exotic grass species . . . is increased . . . When present, shrubs . . . and trees . . . of greater palatability are often stunted or killed from intense browsing and trampling . . . (DEIS:36). “(C)ontinued heavy browsing by elk in the winters,” on USFS lands at feedgrounds and within the 1-mile buffer Analysis Area would suppress the healthy growth of woody shrubs and aspen and cottonwood, and convert shrublands to grasslands due to elk and livestock use (DEIS:42).

This level of adverse impacts does not comply with “high quality wildlife habitat” required in DFC 12. Even though in the 1990 Forest Plan elk feedgrounds were permissible, such permission was, and is, conditional for meeting standards and guidelines. Feedgrounds are not required in or near DFC 12, healthy habitat is required. Twenty-two years has passed since the Forest Plan was adopted and the science has become much clearer on the impacts and risks of winter elk feedgrounds. Thus, feedgrounds are not compatible with prescriptions for healthy habitat and should not be permitted on the B-TNF.

It is clear from visual observation and from accounts included in the 2008 DEIS that these impacts to plant communities arising from excessive herbivory associated with elk feedgrounds occur within the Gros Ventre Wilderness adjacent to Alkali Creek Feedground in violation of the Forest Plan and the Wilderness Act. The BTNF has the affirmative responsibility to protect forest resources within designated Wilderness and Wilderness Study Areas. The Wilderness Act requires the Forest Service to administer Wilderness Areas so they are “unimpaired for future use and enjoyment as wilderness.” 16 U.S.C. § 1131(a).

Congress has been clear that designated Wilderness shall be managed to certain standards. Section 4(b) of The Wilderness Act mandates that the USFS protect the wilderness character of Wilderness. Per Forest Plan DFC 6B, C, and D, the BTNF may not permit elk feedgrounds or facilities on USFS land adjacent to or in proximity to Wilderness or Wilderness Study Areas that adversely affect the Wilderness qualities in those Wilderness areas as expressed in the Wilderness Act and the BTNF LRMP. Courts have shown that Congressional intent and requirements for protection of Wilderness qualities is not intended to be discretionary as to allow the USFS to pick and choose whether to fulfill their duties or not. (U.S. District Court, 2006) Actions which result in
unnaturally dense concentrations of elk - many of which are diseased as a result of congregating on feedgrounds – along with harmed plant communities do not “protect or perpetuate natural biophysical conditions” in Wilderness as is required in the Forest Plan. Unnaturally dense concentrations of brucellosis-exposed or –infected elk associated with and caused by feedgrounds are not representative of natural population levels and distributions “affected by natural processes” as is mandated in the Forest Plan for DFC 6. Hundreds or thousands of elk loafing or milling about in dense groups on USFS lands after being fed baled hay are not examples of “Natural agents of ecological change operating freely,” nor are aspen stands that have been “over-browsed and debarked” to death. Nor would densely concentrated feedground elk affected by CWD, staggering about, shedding infectious prions, infecting other deer and elk, and prematurely succumbing to this insidious disease qualify as “natural agents of ecological change operating freely.”

The BTNF Forest Plan is also clear that certain standards that perpetuate “natural biophysical conditions” are required for Wilderness. It is also clear that actions that “tend to alter the natural behavior of wildlife” are prohibited by visitors and presumably by agencies as well. Therefore the BTNF may not continue to permit an Alkali Creek elk feedground, or any elk feedground, whose operations would cause management of forest resources- including wildlife and habitat- to fall short of the Wilderness Standards, Guidelines, and Prescriptions as prescribed in and required by the Forest Plan.

12. Effects to aspen, and Management Indicator Species

The Resource Management Plan (LRMP) and regulations implementing the National Forest Management Act (NFMA) both mandate the designation and population monitoring of “management indicator species,” or “MIS,” to serve as bellwethers for the purpose of ascertaining the impact of forest development activities on wildlife populations. The Bridger-Teton Forest selected aspen as the MIS for the aspen community type. (Ecological Indicators—Forest Plan Update (June 26, 2005).

“Aspen communities provide some of the most biologically diverse habitats in the intermountain West, where they help support an array of vascular plants in the understory as well as insects, birds, and mammals (Stohlgren et al 2002). In particular, native ungulates use aspen as preferred forage and for shade and concealment.” (NPS 2010) “Aspen forests are small in area but a vital resource in the West because of their high diversity and aesthetic appeal.” (Ibid) “Declining stands (of aspen) in the West are associated with fire suppression, conifer encroachment, increased herbivory from elk, fungal infection, and sustained drought (Kashian et al 2007).” (Ibid) Excessive herbivory from ungulates may play a larger role in suppressing recruitment of aspen than climate change (Binkley 2008). (Ibid) “Understanding and managing
aspen in these areas (Rocky Mountains and Upper Columbia Basin) will require consideration of the role of fire and elk browsing (Hessl 2002).” (Ibid).

The DEIS states; Effects on aspen stands in the feedgrounds’ vicinities consist of over-browsed and debarked trees. . . . Stands closest to the winter elk management areas would eventually be lost due to excessive use by elk. . . . local impacts (individual stands) are severe (.).” (DEIS:40) While aspen may persist on other areas of the forest, the BTNF may not permit abusive and harmful activities on USFS land that affect MIS species, especially when other options exist, such as ending feedgrounds and allowing elk to range free. Allowing elk to disperse across the landscape in winter and not concentrate on feedgrounds which harms, and even eliminates, nearby aspen stands is the action which best serves to conserve important species like aspen.

Elk are a harvest MIS on the BTNF and the BTNF should take a more active role in seeing that this important species and its habitat are appropriately managed. The WGFD prefers the elk feedground paradigm for elk management in western Wyoming rather than the free-ranging elk model implemented in most other jurisdictions, much to the detriment of elk on the Bridger-Teton Forest. For several decades now on the BTNF elk are clustered together through the lure of hay, plus hazing and fences, forced to eat unnatural food, forced to undertake unnatural behaviors, and they contract diseases as a result. Elk are put at grave risk of succumbing to diseases such as, but not limited to, pasteurella, necrotic stomatitis and hoofrot, and put at risk for CWD. The BTNF should not be a passive bystander and permit the WGFD to mismanage a renowned species native to the Gros Ventre Valley. The BTNF has a responsibility to ensure the health of natural resources, and the existence of elk feedgrounds do not allow that to occur. The best way forward is to carefully but expeditiously phase out elk feedgrounds.
13. Path of the Pronghorn

An example of how the BTNF may proactively benefit wildlife behavior, distribution, and abundance is the January 2008 MOU supporting the Path of the Pronghorn signed by the BTNF Forest Supervisor, Grand Teton National Park Superintendent, and the National Elk Refuge Manager to “help ensure its protection for the benefit of the area’s ecology and enjoyment by current and future generations.” The subsequent Forest Plan Amendment signed on May 31, 2008, by Supervisor Kniffy Hamilton of the BTNF designating the Path of the Pronghorn is further evidence that the BTNF may take actions to protect natural ecological behavior of wildlife on its jurisdiction that has wide ranging benefits. With or without a Forest Plan Amendment, the BTNF may take actions to protect such behavior for elk. The BTNF merely needs to cease issuing winter elk feedground permits which would do much to allow natural elk behavior such as migrations to- and use of- available winter ranges.

14. Canada lynx

The rare medium-sized carnivore, Canada lynx, was listed as a threatened species in 2000 under the Endangered Species Act and remains in that status. The 1990 BTNF Forest Plan was amended to the extent that Canada lynx are now managed according to the Northern Rockies Lynx Management Direction, based on recommendations set forth in the Canada Lynx Conservation Assessment and Strategy. In 2009 the USFWS designated critical habitat for Canada Lynx including the Gros Ventre Valley area of the BTNF (USFWS 2009). The public is determined to see that this unique and beautiful animal has the opportunity, as required by law, to remain and prosper in this region. The USFS shares in the responsibility for the well being of lynx and lynx habitat and must analyze proposed actions for impacts to lynx and lynx habitat.

The Forest Service must prepare a Biological Assessment to determine if the proposed action may affect the protected species. The BTNF must also conduct formal consultation with the USFWS concerning the potential impacts of this plan on Canada lynx.

15. Grizzly bear

Grizzlies were relisted in 2009 and the USFWS reinstated protections for GYE grizzly populations in 2010 (FR14496). Thus grizzlies are protected as a federally listed species for which the consultation requirements apply. As the first step in determining whether consultation is necessary, the Forest Service must prepare a Biological Assessment to determine if the plan “may affect” any listed species. If the Forest Service determines that the action “may affect” listed species, the agency must consult with the Fish and Wildlife Service. Section 7 of the Endangered Species Act requires that an
agency “consult with the Secretary of the Interior (FWS) or Commerce if it has reason to believe that its action may affect an endangered or threatened species.” A principle philosophy guiding Section 7 work is “The biology comes first. Know the facts; state the case; and provide supporting documentation. Keep in mind the FWS’s ecosystem approach to conservation of endangered and threatened species [59 FR 34273-34274 (July 1, 1994)].”

Despite a winter-specific practice being considered, there are other elements of elk feedground operations that occur in other seasons. Therefore it is crucial that the BTNF enforce food and trash storage requirements when applicable and that all personnel operating at a permitted USFS site are educated on “bear aware” practices and implement them when applicable.

Elk feedgrounds do affect a key food source for grizzly bears, elk. “Although grizzly bears have widely varied diets, in Yellowstone they feed heavily on four key foods: whitebark pine, Yellowstone cutthroat trout, Army cutworm moths, and ungulates.” (Craighead, et al, 2005, p.8) “Elk make up a portion of the prey base for grizzly bears and bald eagles on the BTNF. If a new disease (e.g., bovine paratuberculosis, or chronic wasting disease) is introduced and reduces elk by a moderate or major amount, grizzly bears and bald eagles could benefit in the short term due to a more vulnerable prey and more carcasses available for scavenging. In the long term, grizzly bears and bald eagles could be negatively impacted due to a decrease in the numbers of available prey or carrion.” (DEIS:82)

It is crucial that the BTNF analyze the threat of disease implications and potential reductions in elk populations impacting this key food sources for grizzly bears. As we have demonstrated in several places in these comments there is suitable habitat to support healthy free-ranging ungulate herds in the Gros Ventre Valley, and this alternative would also continue to support further conservation of the grizzly bear.

16. Gray Wolves

The BTNF has a duty to manage conditions on the Forest to conserve and allow wolves to naturally disperse on the landscape. The Federal Land Policy and Management Act of 1976 declares that the policy of the United States is that (USFS) lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values. Where appropriate these (USFS) lands will be preserved and protected in their natural condition. (43 U.S.C. 1701 emphasis added). There is nothing natural about elk feedgrounds and the BTNF permitting of elk feedgrounds creates long-term risk of catastrophic disease harming the primary prey source of this keystone species.

Wolves play an important role in elk ecology as well as a natural buffer to disease, crowding, over-browsing, and other negative impacts of elk feedgrounds. By reducing prey numbers, dispersing these animals on the landscape, and removing sick animals, wolves may reduce the transmission and prevalence of wildlife diseases such as chronic wasting
disease and brucellosis (Smith 2005) Recent research has modeled how the presence of wolves may be considered an effective measure for controlling CWD. The authors of a recent paper published in Journal of Wildlife Diseases concluded that wolf predation may be a useful tool for management of CWD and that the absence of large predators presents an amplification risk factor for establishment of CWD. (Wild et al 2011)

Even more concerning is that the BTNF would consider permitting elk feedgrounds and their associated management activities carte blanche. The Wyoming Game and Fish Department has direction per their Final Gray Wolf Management Plan (http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/WOLF_MANAGEMENT_PLAN_FINAL0000348.pdf Page(s): 32-39) and Wyoming State Statutes to lethally control wolves for the interactions that occur at winter elk feedgrounds.

Wyoming’s Chapter 11 regulations state:

(c) Gray wolves may be lethally removed when the Department determines that gray wolf predation is causing having an unacceptable impact on a wild ungulate population or herd or when gray wolf-wild ungulate conflict has occurred is occurring at any State operated elk feedground.

(i) A gray wolf-wild ungulate conflict has occurred at a state operated elk feedground when a gray wolf or wolves displace elk from a feedground and it results in one of the following conflicts:

(A) Damage to private stored crops by displaced elk; or,

(B) Elk co-mingling with domestic livestock; or,

(C) Displacement of elk from a feedground onto a highway right of way causing human safety concerns.

Further WGFD specifically cites Alkali feedground as a location that there will be anticipated conflicts with wolves causing elk damage to stored hay or cattle feedlines and brucellosis transmission to livestock, as well as elk crowding, brucellosis, (and) hay supply issues (WGFD 2011, page 37). These conflicts would allow the WGFD, per their management plan, to lethally remove wolves through agency control efforts which may be precipitated through contract with Wildlife Services, involving helicopter gunning or other means.

A consequence of elk feeding is the indirect actions that will result in the lethal removal of a keystone species. Further these activities will impair wilderness character, Forest Plan standards, and Wild and Scenic values of forest lands as described elsewhere in these comments. The BTNF must disclose and analyze what permitted actions associated with elk feedgrounds would be allowed and fully analyze the impacts of wolf control actions on elk feedgrounds and surrounding winter-range closures.
The Alkali Creek Feedground area is close (~0.4 mile) to the Gros Ventre River. The Gros Ventre River was designated as a Scenic River under the Wild and Scenic Rivers Act by an act of Congress in 2009 in the Craig Thomas Snake Headwaters Legacy Act. Many of the proposed actions in this scoping notice are within the corridor of this Scenic River or will impact the Outstandingly Remarkable Values (ORV’s) of the river itself. A Scenic River is defined as: *free of impoundments, with shorelines or watersheds still largely primitive or shorelines largely undeveloped but accessible in places by roads.*

As yet, there is no Comprehensive River Management Plan (CRMP) for the Scenic Gros Ventre River. Therefore, it is unknown what river values the final CRMP may contain, which permitting of the Alkali Creek feedground could affect. In preparation of the CRMP, the BTNF proposed recognition of scenic, recreational, cultural, ecological/wildlife, fish, and geologic values for this portion of the Gros Ventre River.

A cultural value that GYC has supported in public comments to the BTNF in development of the CRMP is the recognition of the valley as a crucial big game winter range. In 1906 Wyoming’s chief game warden, D.C. Nowlin, recommended protection of the area for wintering ungulates and the first recognition of critical winter habitat (Nowlin 1906); the exclusion of grazing occurred here ca 1919 by the USFS and is a theme that should be incorporated into the CRMP.

Perhaps the greatest threat to the ecological ORV within the Gros Ventre Valley is the artificial manipulation and excessively large densities of elk on and around the winter elk feedgrounds. The harm to the riparian and deciduous plant communities stems from the artificial feeding of elk on the feedgrounds and subsequent impacts of excessive herbivory by the elk that radiate outward. We’ve also commented to the BTNF that listing elk feedgrounds within the ORV’s is incompatible with the ecological importance of the Gros Ventre. Any management activity conducted within the corridor is subject to analysis of the effects on the river’s outstandingly remarkable values.

Some, but not all of the Gros Ventre River Scenic River’s ecological/wildlife ORV’s proposed in the BTNF draft ORV report were:

“This river segment has many wildlife resources and habitats that are exceptional for the Yellowstone Ecosystem and that are rare at the regional and national scale. The river corridor supports a diverse array of aquatic birds, mammals, and amphibians—many federally endangered or sensitive—that rely on the unique habitats which have developed in association with the area’s many landslides, slumps, and waterways impounded by unstable topography, including the Upper Slide Lake. The steep cliffs (near Lower Slide Lake; Lavender, Red, and Grey Hills) provide nesting habitat for several raptor species (including falcons, buteos and osprey) which depend on the river corridor for crucial foraging habitat. The braided waterways (Yellowjacket Flats), broad riparian zones (near the lakes cited above), and the upper section of the Gros Ventre river provide excellent breeding habitat for shorebirds, waterfowl and passerine birds including both year-round residents and seasonal, and neotropical migrants. Similarly to the wild section of the Gros Ventre River, this river segment is an important bird and mammal migratory corridor.
between the Snake and Green River drainages and also provides important stop-over sites for migrant birds including common loon, white-faced ibis, many species of duck, and trumpeter swan. In addition, trumpeter swans have nested for many years on Upper Slide Lake and subadult swans summer on Lower Slide and the broader reaches of the river. Much of the river segment encompasses the National Pronghorn Migration Corridor, an important travel route and summer breeding ground for a small (< 200) population of pronghorn. Moose winter range is found along the river, and bighorn sheep will move down to these elevations for the winter as well. Taller browse shrub species, such as mountain sagebrush, bitterbrush, and willow (Salix spp), provide critical winter benefits. The corridor also supports a small number (< 100) of Upland Sage Grouse, a species recently identified as a candidate for endangered status under the Endangered Species Act. These birds are unique among members of this species because they occupy sagebrush habitats at the interface with conifer forests at high (> 7500 feet) elevations. Many of the habitats used by the grouse are within the river corridor. The strong diversity and abundance of fauna along the river, coupled with the pristine and diverse wildlife habitat, constitute an outstandingly remarkable ecological and wildlife value.”

As mentioned in a previous section above, “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.” (DEIS:40, emphasis and brackets added) Since the Alkali Feedground is very close to the Designated Scenic Gros Ventre River, the impacts that the proposed action will have in degrading the recommended ORV’s for this scenic stretch of river must be considered.

18. Sage-grouse

The USFWS will make a final determination whether the greater sage-grouse warrants listing under the Endangered Species Act by the end of 2015. Currently the species is considered warranted for listing. Sustaining healthy populations of sage-grouse by protecting the sagebrush habitat on which the species depends—even outside designated core sage-grouse areas—is of great importance to citizens who value and deserve healthy populations of native wildlife.

The BTNF must include a discussion of sagebrush habitat and lek presence within or near the Alkali Creek area in the Gros Ventre Valley. This analysis should consider the effects on sage-grouse from predators that may be maintained at higher densities as a result of carrion or prey available due to artificially high elk populations on or around an elk feedground. It should also consider the effects of changes in plant communities by large numbers of elk on or around feedgrounds that may affect sage-grouse or sage-grouse habitat.
Maintaining and even enhancing the area’s sagebrush habitats and current sage-grouse populations within and outside core areas is important, particularly in the face of climate change, energy development, regional drought, West Nile virus, habitat loss and conversion, intensive grazing practices, and a host of other stressors affecting Wyoming’s sage-grouse. Wyoming cannot afford to sacrifice even non-core area grouse populations given the ongoing declines in many of the state’s core area populations.

19. Winter Range Closures

Protected and available winter range is of utmost importance to sustain healthy migratory big game like elk. As the game wardens in Wyoming noted in the early 1900’s thousands of elk naturally wintered on the hillsides in the Gros Ventre Valley. (Nowlin 1906) Today, more than a century later, those same Gros Ventre Valley hills where elk wintered in 1906 are available to elk and other big game which makes artificially feeding the elk entirely unneeded. Tens of thousands of contiguous acres of the BTNF are designated important winter range by the USFS and the WGFD in the Gros Ventre Valley on both the north and south sides of the river. (GYC 2005, Brucellosis solution) Through the Jackson Interagency Habitat Initiative (JIHI), and even long before this collaborative partnership, the agencies have ignited prescribed burns and managed wildfire to regenerate healthy plant communities that benefit wintering big game (WGFD 2007:102). Historical observation, and modern agency and NGO studies prove that there is plenty of natural forage in the Gros Ventre Valley to provide for thousands of big game over winter (GYC 2005). The natural predators of elk are present in the Gros Ventre Valley and can help distribute elk throughout the range, cull the sick and weak and sustain the health of the herds. Motorized and non-motorized human travel restrictions are an important component to protecting winter range for big game, and such winter time restrictions are in place throughout the Gros Ventre Watershed. The BTNF must not relax the winter time protections and travel restrictions in the Gros Ventre that are key to the protection of critical habitats for elk and other big game.

There are only a few conflicts with private property and livestock and elk during winter in the Gros Ventre Valley and those can easily be remedied with small elk-proof enclosures for livestock paid for at least partially with public funds such as the Wyoming Wildlife and Natural Resources Trust, Teton County Natural Resource District, WGFD or other monies. The locations are on Crystal Creek, the Red Hills and at Lower Slide Lake and comprise some haystacks, some stubble hayfields, and winter feedlines for maybe 150 or so horses and 75 mother cows. Conflicts would be easily remedied with fences or other means.

The protected and healthy winter ranges in the Gros Ventre comprise amazing natural capital that the BTNF must take advantage of for the health of the elk. The BTNF must analyze an Alternative(s) that recognizes and utilizes the obvious opportunity to allow the elk to free range and not be lured into unhealthy winter feedgrounds.
20. Fire Management

As mentioned above, the BTNF has collaborated on prescribed burns and has managed wild fires in the Gros Ventre Valley for decades that helps regenerate healthy plant communities to benefit wildlife including wintering big game (WGFD 2007). Managing prescribed burns and wildfire whether to protect structures or direct the pattern of the fire can be expensive. If the BTNF allows haybarns, corrals, equipment sheds and other structures associated with elk feedgrounds then those structures may necessitate expensive protection in the advent of a fire. In this EIS the BTNF must offer the public a cost comparison of protecting the feedgrounds from fire or allowing fire to burn through the landscape in question. Undoubtedly it’s cheaper and safer to allow the fire to burn through.

21. Climate Change

Wyoming is experiencing significant climate change in the form of unusually warm years since 1978. “The frequent warm years coincide with a reduction in the frequency of extremely low (<-20 degrees C) January temperatures . . . “ (Shuman 2011) It’s clear that climate change is affecting the natural ecosystems in Wyoming.

It’s also clear that 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).” (Ibid) It is known that elk feedgrounds exacerbate the incidence of
diseases in elk. (Smith 2005, Peterson 2005) “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.” (Ibid) Therefore the practical thing to relieve or mitigate a stressor on elk is to allow them to range free on native range, rather than be lured in and confined on unhealthy feedgrounds during winter. The BTNFR should not make decisions that are in place for the next 20 years, like permitting elk feedgrounds, without considering climate change and implementing other less harmful alternatives.

The best thing that the BTNFR can do for elk and other wildlife in the face of climate change is to allow the wildlife access to needed habitats. “Species that are mobile, genetically diverse, show wide physiological tolerances, and have generalist diets will respond the most positively (to climate change).” (NPS 2010:50) The worst thing the BTNFR can do is to confine elk on to unhealthy feedgrounds during winter. The best science available indicates that free-ranging wildlife will do best in the face of climate change.

There are greenhouse gas emissions from internal combustion motorized equipment associated with feedground operations which include production of hay crops, loading, trucking and unloading of hay, transporting personnel for all phases of feedground operations including hay loading and unloading, feeding, vaccinating, trapping, transporting draft animals, and research. The BTNFR must calculate these emissions and present them to the public in a SEIS, and the BTNFR must define and consider best management practices and technologies to contain, reduce or eliminate these gases and other pollutants.

22. The BTNFR can say no

For the WGFD to operate elk feedgrounds on USFS lands, vaccinate elk, maintain the facilities, test elk and ship seropositive animals to slaughter, and undertake the variety of actions that have been inherent in elk feedgrounds, there is no denying that a permit is required. “Forest Service regulations require authorization for use and occupancy of NFS lands” (DEIS:4). However, nowhere is it mandated that the BTNFR issue permits for elk feedgrounds. While it may be permissible under the regulations for the BTNFR to issue permits for elk feedgrounds, it is conditionally permissible and, again, the BTNFR is not bound to issue permits to feedgrounds.

Given the myriad detrimental effects of the elk feedgrounds on vegetation and natural biophysical conditions, and the detrimental impacts on elk behavior and health, regardless (in this context) whether legal directives can be met, it still is not required of the BTNFR to issue the permits. The BTNFR can choose not to have elk feedgrounds on USFS land. Deciding not to permit an elk feedground relieves the USDA of attempting to implement conflicting policies within its agency by simultaneously having APHIS work to eradicate brucellosis and control CWD, while having the USFS permit elk feedgrounds that cause brucellosis to persist at elevated seroprevalence in elk populations and be
transmitted to other species throughout the GYA, and promote conditions that would exacerbate the effects of CWD among elk and other wildlife. The prudent decision would be not to permit the feedgrounds and enable a more beneficial management paradigm for elk as is practiced on virtually all other National Forests.

23. Prohibit S-19 vaccinations of elk

Strain 19 vaccinations of elk against brucellosis are not effective. The 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.

“(F)eedgrounds provide the only opportunity to effectively vaccinate elk . . . “ (DEIS 2008: Appended: Elk Feedgrounds in Wyoming [WGFD 2004] p.10). Obviously the WGFD uses the excuse- and the BTNFS has allowed them to do so- that it’s easier to vaccinate elk as one of the reasons to have feedgrounds. The elk are clustered together and easy to shoot with a biobullet. Yet, now, the WGFD admits that the Stain 19 vaccine isn’t effective. Therefore, the BTNFS should not enable a harmful practice on USFS land, densely concentrated elk feedgrounds, to take place since the reasons for feedgrounds, including keeping elk away from livestock and vaccinating elk against brucellosis are no longer purposeful. The livestock in the Gros Ventre Valley can do just fine on private lands behind elk-proof fences and the vaccination program isn’t effective. Indeed the elk contract and maintain brucellosis by being densely concentrated and have lower seroprevalence in western Wyoming when allowed to free range. Therefore feedgrounds are clearly not needed. The BTNFS must consider this information in a new SEIS and make a reasonable decision based on the best available science.
24. Impacts to water and soils

Since experts agree that CWD is a significant threat to elk on or near feedgrounds (Smith 2005, Peterson 2005), and the gathering of hundreds or thousands of elk on feedgrounds may increase the concentration of infectious materials in the soil, the Bridger-Teton National Forest must consider the best available information about Chronic Wasting Disease and the infectious agents, prions, in an EIS including a Supplemental EIS. The Third International CWD Symposium was held July 22-24, 2009, in Park City, Utah; proceedings and information presented at this symposium plus research and information released to the public by a variety of researchers in Canada, the U.S. and other countries since that time should be considered by the BTNF in an analysis. (www.cwd-info.org/Sections “Baiting and Feeding” and “Meetings & Symposia”)

“CWD –positive animals may contribute to environmental prion load via decomposing carcasses and biological materials including saliva, blood, urine and feces.” (Nichels et al 2009) An analysis by the BTNF must consider the persistence of prions (the infectious agents of CWD) in soils and water, and the long term, wide-spread impacts to interconnected populations of other cervids from the maintenance and availability of these infectious materials in the environment. It is now known that prions persist in water, including municipal water supplies in a CWD endemic area (e.g., Fort Collins, CO). (Ibid)

“The disease persists in the environment for decades, and in some cases it becomes more infectious in the environment. . . (Aiken, Canada 2011) Soil can retain prion infectivity in the environment for years.” (Pederson et al, in abstract for CWD Symposium 2009:76) In light of recent scientific information, the BTNF must undertake a legally sufficient and comprehensive analysis that truly examines the best available science and weighs the significant risks posed by elk feedgrounds that degrade water, soils, and wildlife health.

25. Costs of permitting elk feedgrounds

The USFS is able to assess fees for permitted activities on USFS lands. The BTNF must disclose the income from the WGFD for being able to build infrastructure and operate elk feedgrounds on the Bridger-Teton Forest each year. The BTNF must also disclose the costs to the USFS and the American public as a result of elk feedgrounds operating on USFS lands, including those costs such as degraded natural resources, increase risk of catastrophic diseases, and the costs of monitoring and enforcing the conditions of the permits. If no fees are assessed from the WGFD, the BTNF must disclose that and explain why.

26. Cumulative impacts from feedgrounds analysis required

Inherent in protecting biological diversity is a need to ensure that indirect and cumulative impacts of management actions are fully considered. As previously noted, the NEPA regulations provide guidance in this regard. Cumulative impacts are the
incremental impacts of actions, past, present and future, regardless of whom undertakes them. See 40 C.F.R. §1508.7. Indirect effects of an action are further removed from the action itself, but still are reasonably foreseeable. See 40 C.F.R. §1508.8. See also 40 C.F.R. §1508.25(c). The environmental analysis must take special care that these “second-order” impacts from the permitting and operation of elk feedgrounds are fully considered and analyzed if the USFS is to meet its legal mandate for ecosystem management and preserving biological diversity. Some, but not all, of the impacts to consider from permitting and operating elk feedgrounds would be the effects on elk and other species throughout the Greater Yellowstone Ecosystem when CWD gets into, through, and beyond the Gros Ventre Valley, the amplification effect on the prevalence of CWD and other diseases in elk and other cervid herds from feedgrounds, as well as the effects on wildlife-dependent pursuits of residents and visitors such as wildlife watching and hunting.

27. The SEIS must comply with the Administrative Procedures Act

The Administrative Procedures Act (APA) (5 USC 706(2)(A)) prohibits an agency from acting in an arbitrary and capricious fashion. Fair and honest procedures are also an important element of complying with NEPA. (40 CFR 1502.1) To assure that a fair discussion occurs, agencies are required to obtain high quality information, including accurate scientific analysis. (40 CFR 1500.1 (b)) The regulations are very explicit that: Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. (40 CFR 1502.24) (for example, the BTNFO must seek information on the impacts of elk feedgrounds and concomitant disease risk from more sources than the WGFD. Several sources are listed in the Reference section of these comments. Other CWD experts are listed at cwd-info.org. It is noteworthy that no personnel from WGFD are listed as experts in the cwd-info.org list.) CEQ regulations also require that: Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency action, rather than justifying decisions already made. (40 CFR 1502.2 (g)).

“(B)ecause of new knowledge about disease risks, supplemental feeding is criticized nearly universally by biologists.” (Peterson 2003, 2005 in Donahue 2010) It is thus necessary for the BTNFO to consider the accurate unbiased science and make a practical, rational and lawful decision that follows from such consideration. Hence when the BTNFO considers the opinions of experts included in these comments and the References, such as: “feeding elk is not management based on sound science related to biology and ecology.” (Roffe 2006 in Donahue 2010) “In fact, “crowding of animals is at the heart of the transmission-infection-disease perpetuation cycle.” (Smith 2005 in Donohue 2010) “Reducing animal density by banning supplemental feeding is among the experts’ top recommendations.” (Donohue 2010) “If you tried to design a system that would magnify wildlife diseases, you couldn’t do much better than what we’re doing now.”” (Kirk Johnson, NYT 2009 quoting Dr. Thomas J. Roffe in Donohue 2010), it’s impossible for the BTNFO to make a defensible decision for permitting a disease-ridden, high risk and undeniably harmful elk feedground on USFS land against the overwhelming majority of wildlife scientists’ recommendations. **Outside of the proponent, the WGFD, there is virtual**
unanimity of opinion among wildlife professionals that this practice is harmful and avoidable.

28. Additional Recommendations

“When we try to pick out anything by itself, we find it hitched to everything else in the universe.” (John Muir)

We recommend that the BTNF include in the SEIS an alternative that describes how to expeditiously phase out elk feeding at Alkali Creek and undertake fencing and other methods at specific locations in the Gros Ventre Valley to keep elk and livestock separate and allow elk to roam free on native winter ranges. The BTNF should not issue a permit to feed elk at Alkali Creek in the Gros Ventre Valley.

While not necessary in order to make a defensible decision on USFS lands, the Forest Service and the WGFD should discuss with the USFWS on the National Elk Refuge the opportunity to phase out and end feeding in the Gros Ventre Valley simultaneously with the Refuge. As explained above, the courts have determined that the Elk Refuge must stop feeding. It can easily be done to manage the Elk Refuge and the Gros Ventre Valley as a large contiguous big game wintering grounds, exactly as the elk used it generations ago in D.C. Nowlin’s time. It’s a propitious time to do it before CWD gets here.

We further recommend the staff at the BTNF read Chester Anderson’s, The Elk of Jackson Hole: A Review of Jackson Hole Elk Studies, (1958, Wyoming Game and Fish
Commission, Cheyenne, WY), and a new book, *Where Elk Roam: Conservation and Biopolitics of Our National Elk Herd*, by Bruce L. Smith, PhD (2012 Lyons Press, Guilford, CT). Both books, very easy reading, advise managing elk according to the carrying capacity of available habitat and are good resources which can help inform the BTNF in making the best decision that serves the best interests of the elk and the public. We recommend the staff at the BTNF read the References listed at the end of these comments. We volunteer to help them acquire those References not already in their possession or not available on a website.

We thank you for this opportunity to comment on this Supplemental EIS, and we look forward to continuing the dialogue with the USFS on this and related issues. Please notify us at once of your actions on this and related issues.

Respectfully submitted on behalf of our 26,000 members and supporters,

Lloyd Dorsey  
Wyoming Representative  
Greater Yellowstone Coalition  
POB 4857  Jackson, WY 83001  
307-734-6004  
ldorsey@greateryellowstone.org

References


34. Wyoming Game and Fish Department. 2006. Evaluation of a Proposal from the Wyoming Outdoor Council, Greater Yellowstone Coalition and Jackson Hole Conservation Alliance for a Phase Out of Elk Feeding in the Gros Ventre. Cheyenne, WY.

35. Wyoming Game and Fish Department. 2007. Jackson Elk Herd Unit (E102) Brucellosis Management Action Plan. Cheyenne, WY

36. Wyoming Game and Fish Department. 2009. Job Completion Reports, Jackson Elk. Cheyenne, WY.

37. Wyoming Game and Fish Department. 2010. Chronic Wasting Disease Activities for 2010. Cheyenne, WY.


Dear Ms. Bode:

On behalf of our 40,000 members and supporters please accept these comments from the Greater Yellowstone Coalition (GYC) in response to 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. In these comments we will refer to this USFS document and process as the Alkali Creek Feedground DSEIS, or DSEIS. These comments and attachments are submitted via email and also hand delivered to the BTNF office in Jackson, Wyoming.

The Greater Yellowstone Coalition is a 501(c)(3) non-profit organization begun in 1983 dedicated to protecting the wildlands, wildlife, and other outstanding natural resources of the twenty-million-acre Greater Yellowstone Ecosystem (GYE). GYC has offices in Idaho, Wyoming, and Montana with more than 40,000 members and supporters worldwide.

GYC’s members regularly use and enjoy the lands and waters of the Bridger-Teton National Forest (BTNF) for a variety of activities such as fishing, hiking, hunting, camping, wildlife viewing, spiritual renewal, photography, and other pursuits. The Jackson District of the BTNF, including the Alkali Creek area and the Gros Ventre Valley, is integral to the ecological connectivity and economic health of the GYE and as such is highly valued by GYC’s members. Our members also use and value public lands adjacent to the Bridger-Teton Forest such as Grand Teton National Park, Yellowstone Park, the National Elk Refuge and the Shoshone National Forest. Decisions made by the BTNF regarding the management and ecological health of wildlife habitat and of wildlife on the Jackson District of the BTNF affect wildlife on adjacent jurisdictions due to the functional connectivity of the jurisdictions and the nomadic and migratory nature of several wildlife populations. Since this decision about an elk feedground on the Jackson District of the BTNF unquestionably affects the health of wildlife and habitat on the Jackson District, it therefore affects wildlife on those other jurisdictions.

1. Introduction

We make note here of the excellent Vision Statement of the Bridger-Teton National Forest which is prominently displayed in the Supervisor’s Office at 340 N. Cache in Jackson, Wyoming:
“The Bridger-Teton National Forest is home to world-class headwaters, wildlife, wilderness and wildlands. Conserving these values, in concert with providing for sustainable uses, is our legacy. We are leaders committed to service, action and excellence.”

We commend the leaders and staff of the BTNF for crafting such a mission statement years ago. It is unfortunate, however, that the “excellence” criteria of the Vision Statement is not well served by the Alkali Creek Feedground DSEIS as we will explain in these comments, and have also described at length in our May 2012 scoping comments and other comment opportunities regarding the 2008 elk feedground DEIS and ROD. The environmental analyses, decision to permit and the actual operation of elk feedgrounds on USFS lands are substandard treatments of habitat and wildlife which are done almost nowhere else in North America other than in western Wyoming, several on the BTNF. The BTNF is not living up to its Vision Statement by permitting elk feedgrounds which, by their influence on other habitats and wildlife populations, are harmful to a broad swath of the BTNF. Definitely not the treatment of “world-class wildlife” the public expects and deserves. We will also address the BTNF’s Mission Statement in the context of our comments on the Alkali Creek feedground DSEIS later in these comments.

The BTNF should recognize and accept that previous submissions by GYC and our conservation partners regarding the 2008 DEIS for elk feedgrounds (both scoping comments and DEIS comments) and scoping comments for this DSEIS are part of the administrative record, along with letters and attachments to those submissions. Please also include as part of these comments and the administrative and official record, all the supporting documents and Exhibits accompanying the August 14, 2007 letter to the BTNF Supervisor from Earthjustice concerning scoping for temporary use authorizations analyzing four elk feedgrounds. Also include as part of these comments and the administrative and official record, scoping comments sent to the BTNF on September 17, 2007 for the consideration of issuing 20-year permits for the potential continuation of elk feedgrounds and related activities. Please also include in the administrative and official record any and all other additional comments, materials, references, and/or exhibits that we submit on this issue. We incorporate those comments here.

Just as we did with the March 2008 DEIS for the Wyoming Game and Fish Commission’s Winter Elk Management Programs written by the BTNF, we find that this April 2013 DSEIS which focuses on the Alkali Creek elk feedground continues to be legally deficient, prepared without incorporating adequate information, and not in compliance with the National Environmental Policy Act (NEPA), and other laws and legal directives. It is apparent in reading this DEIS that few if any of the scientific materials and reports submitted by the conservation groups were considered by the BTNF, much less recognized for their value and applied. Yet at least 9 reports from the feedground proponent, the Wyoming Game and Fish Department and/or Commission are included in the DSEIS Reference Section (R-7,8). While some of the reports from the Game and Fish do contain pertinent information, and we avail ourselves of some of their reports as well, the obvious bias of the BTNF to use the proponent’s information and not use relevant information that consists of valuable contemporary science and expert opinion suggested by the public interest groups speaks volumes about the bias and predetermination of the BTNF to favor permitting elk feedgrounds rather than transition to a healthy management paradigm without elk feedgrounds. It is readily apparent in many aspects of this DSEIS, just as in the 2008 DEIS for elk feedgrounds, that the BTNF dismisses or assigns far less importance to expert professional opinion and best available science that is contrary to the dogma of the Wyoming Game and Fish Department and Commission concerning wildlife disease and elk feedgrounds. Below we point out the apparent undue influence exerted by the WGFD by their disproportionate representation on the ID Team. The DSEIS is replete with examples where the BTNF uses rationale that parrots the opinion or
policy of the WGFD rather than expressing the overwhelming preponderance of expert opinion and science that counsels discontinuation of winter elk feedgrounds. 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 which is the case on and near the Bridger-Teton Forest. The BTNF is most definitely a high risk area for Chronic Wasting Disease to appear and conditions on elk feedgrounds would most likely 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. We have provided strong evidence of these facts in our comments and references and it is most unfortunate that the BTNF has chosen to ignore the best available science and the best scientific opinion and continues to rationalize permitting elk feedgrounds in the Gros Ventre Valley and elsewhere. Certainly not the standard of "excellence" touted by their Vision Statement.

2. Having so many of the WGFD personnel on the ID Team amounts to undue influence from the proponent

40 C.F.R. § 1506.5 Agency responsibility.

(a) Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy.

On page 153 of the DSEIS it lists by name 17 members of the ID Team. We assume that “ID” means “Interdisciplinary Team”. It also lists the agency and title of each member of the ID Team. Twelve members are employed by the USFS, and there are five members employed by the proponent, the Wyoming Game and Fish Department (WGFD). (Earlier in the DSEIS the BTNF states that it is the Wyoming Game and Fish Commission (WGFC) that is the proponent, In this context it is apparent that the WGFD is aligned with and indeed does the work of the civilian governor-appointed WGFC.) Four of the five WGFD employees are elk feedground specialists: Feedground Supervisor, Brucellosis Feedground Habitat Biologists (2), and a Brucellosis-Feedground-Habitat Supervisor. Given that the entire 2008 DEIS and this 2013 DSEIS appear to strongly favor elk feedgrounds and consistently defer to the WGFD for information favoring elk feedgrounds, disregarding other available science and information offered by GYC and others (see below and elsewhere in these comments), the ID Team and the outcome of these EIS’s are obviously and unduly influenced by the WGFD. While we are familiar with the agreement between the USFS Rocky Mountain Region and Intermountain Region and the Wyoming Game and Fish Commission, 00-MU-11020000-052, such an MOU does not have the force of law and serves only as a guideline. We recognize the value of federal agencies consulting with state agencies, in this case the USFS with the WGFD. Yet the law cited above requires that the BTNF exercise its authority and conduct the analysis independently. It is worth noting that besides BTNF employees no representatives from any other entity such as non-governmental organizations, or academic institutions, sit on the ID Team, only five employees of the proponent, the WGFD. See below our comments regarding the absence of the USFS’ own sister agency, APHIS in this analysis.

If the ID Team acts as the leaders in crafting this NEPA document which is supposed to comply with the National Environmental Policy Act, that Act requires that the decision not be a foregone conclusion and that there be a reasonable range of alternatives (see our comments below). It also requires that the Purpose and Need not be constrained so as to effectively eliminate any other outcome other than the one most desired by the proponent (see our comments
3. The BTNF’s claims of not being able to affect management of elk on USFS land is false

Time and again in this DSEIS the BTNF tries to escape their authority and responsibility to protect habitat on USFS lands by claiming that they do not have the ability to stop or affect winter feeding of elk in western Wyoming (DSEIS: iii, 8, 9, 10, 48, 96, 101, 149, 150 and elsewhere). For example, “(T)he Forest Service does not have the jurisdiction to stop elk feeding.” (Exec Summary iii)

As in the 2008 DEIS, this oft repeated assertion by the BTNF indicates to the reader and the public that no other reasonable option exists for the BTNF than to permit elk feedgrounds. This is specious reasoning and unfortunately, using exactly this sort of rationalization, the BTNF re-permitted five elk feedgrounds for 20 years each in 2008. Given the history of the BTNF conducting legally deficient environmental analyses for elk feedgrounds on USFS lands and re-permitting them without adequate consideration of input from conservation groups and the public, it strongly indicates that this DSEIS is, again, considered little more than paperwork and the outcome is, as it was in 2008, predetermined.

Additional indications that the outcome is predetermined were voiced on May 13, 2013 when NGO’s and the BTNF met in person, on video and on conference line to discuss this DSEIS. Two BTNF staff said “when” the feedground permit at Alkali Creek is issued it would only be for 15 years instead of 20. We were definitely not told “if” the permit is issued, but when.

The BTNF does indeed have the authority and jurisdiction to affect the management of wildlife and habitat on USFS land and, even more specifically, it has the authority and jurisdiction to affect whether the WGFD feeds elk on USFS lands on the BTNF. The BTNF seems to tentatively and partially acknowledge as much when it states, “Forest Service regulations require authorization for use and occupancy of National Forest System lands.” (Exec Summary i) but then repeatedly rationalizes away their ability or more likely their will to implement such authority and jurisdiction by saying it makes no difference because the WGFD will feed somewhere anyway.

The BTNF has exercised that authority and jurisdiction on USFS land, albeit in a small way, in the past (ca 2002) by preventing the WGFD from conducting its winter elk feeding operations on USFS lands adjacent to the Patrol Cabin elk feedground in the Gros Ventre Valley. The WGFD had repeatedly trespassed from State Land onto USFS land near Coalmine Draw in the Gros Ventre Valley while distributing hay from horse drawn sleighs to elk during winter feeding operations. The BTNF notified them that they were in trespass and were prevented from doing so in the future without proper authorization. The WGFD subsequently ceased unauthorized trespass. This example shows that the BTNF clearly has the authority to determine what wildlife management practices occur on USFS land within the B-T forest boundaries, has implemented such authority in the past and can do so in the future and, while not a requisite, even the WGFD understands this. And, perhaps most remarkable, the BTNF did not simply rationalize away any purpose for holding the WGFD accountable by saying the WGFD will feed anyway, so what’s the use? In that context, which is at issue here, the BTNF can, indeed, prevent feeding of elk on USFS lands.

It is a false binary argument for the BTNF to lament that feeding will occur elsewhere and allegedly affect many of the forest values nonetheless if they do not permit winter elk feedgrounds where the WGFC requests. The issue is not what the WGFC wants or will do elsewhere, the main
issue is how best to protect forest resources including wildlife and habitat. The most important issue(s) are not to be defined by the WGFD, but by the BTNF.

As we commented on the 2008 DEIS, and applies here:

“(W)hether or not the BTNF ever received a declaration from the WGFC that it intends to operate elk feedgrounds on other jurisdictions regardless of receiving SUPs from the USFS (the communication documentation was not revealed in the DEIS), it does not relieve the BTNF of its duties and responsibilities to manage the resources on USFS lands in a manner which protects the environment and mitigates impacts harmful to the environment. Whether healthy, harmful, or benign activities occur on adjacent, nearby, or distant lands does not diminish the responsibilities and duties held by the USFS through acts of Congress. Nor do such activities allow the USFS to deflect the responsibilities assigned to it by Congress onto other parties, such as the WGFC. If the mere existence of - or the threat of - harmful activities beyond USFS lands was justification or impetus for the USFS to permit such activities on USFS lands, it would open the door to any number of harmful activities occurring on USFS lands merely upon threat, coercion, implementation of such acts on other lands, or insinuation of intent to do so by any proponent. This would effectively remove the assurance to the American public that the USFS acts as stewards of these public lands. A duty clearly lacking fulfillment here.” (NGO’s 2008 comments:8)

“(T)he BTNF also has no reason to convince, enable, or solicit the WGFC to operate elk feedgrounds on USFS lands rather than on these other lands. By the BTNF’s own reasoning, not allowing these elk feedgrounds on USFS lands, “improves habitat . . .” on USFS lands, whereas allowing these elk feedgrounds and associated activities on USFS lands “maintains . . .”, or , “increases [the] amount of degraded habitat . . .” on USFS lands (DEIS:23). It would best serve the American public and clearly better protect USFS resources for the BTNF to bow out of permitting WGFC elk feedgrounds completely. (Ibid:9)

While we are aware of the Memorandum of Understanding between the USFS and the WGFC, 00-MU-11020000-052, this MOU is a two-way pledge to collaborate on areas of mutual interest and is not enforceable as prevailing law. The BTNF should not refer to it repeatedly as if were prevailing law and closes the door on discussing, analyzing, or implementing options of resource management other than status quo. This MOU does not divest the BTNF of their legal directives, duties, authority and jurisdiction. As the MOU itself states in part, it merely recognizes “areas of cooperation and coordination.”

The BTNF has, by permitting elk feedgrounds, turned a blind eye for decades to harmful actions on USFS land resulting from elk feedgrounds. If the BTNF were not to permit elk feedgrounds on USFS lands, it would position itself to better defend USFS resources against the effects of elk feedgrounds elsewhere. Just as if pollutants were being discharged onto USFS lands from a source nearby on another jurisdiction, the USFS would be expected to effectively protect the land it stewards in trust for the American people. Unfortunately, as a permitter of elk feedgrounds, the BTNF, the only forest in the Rocky Mountain area to permit this kind of wildlife program on this scale, has essentially become complicit in causing harm to soils, plant communities, and wildlife and has allowed for elevated risk to elk and other cervids from debilitating and deadly diseases for decades. This is not managing resources in the public trust for the public’s benefit, is not in compliance with law and cannot continue.
Under the Multiple Use Sustained Yield Act (Public Law 86-517) “It is the policy of the Congress that the national forests are established and shall be administered for outdoor recreation, range, timber, watershed, and wildlife and fish purposes . . . .” and “The Secretary of Agriculture is authorized and directed to develop and administer the renewable surface resources of the national forests for multiple use and sustained yield of the several products and services obtained therefrom . . . .” The Act goes on to say that Multiple Use is defined in part as “the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people,” and Sustained Yield is defined in part as ‘in perpetuity” and “without impairment of the productivity of the land.”

The US Forest Service achieved clarification of its powers and duties to protect habitat early on from the U.S. Supreme Court in 1928 in Hunt v. U.S. 278 US 96. After acting at odds with the State of Arizona by removing deer that were, by their excessive numbers promulgated by the state’s management of wildlife, injuring habitat and promoting starvation among their kind, the Supreme Court “summarily upheld the federal government’s power to govern its land.” (Freyfogle and Goble, Wildlife Law, 2009:2012) “The power of the United States to thus to protect its lands and property does not admit of doubt . . . . the game laws or any other statute of the state to the contrary notwithstanding. “ (Ibid)

The BTNF should not repeatedly convey to the public in this DSEIS (DSEIS: iii, 8, 9, 10, 48, 96, 101, 149, 150 and elsewhere), as it did in the 2008 DEIS, that it does not have the ability to significantly influence the management of wildlife and habitat on USFS lands and to steer programs, such as the State of Wyoming’s “Winter Elk Management Activities” (aka, elk feedgrounds), away from inflicting harm and perpetuating unhealthy practices on USFS lands. “In 1976, in Kleppe v. New Mexico, . . . . the U.S. Supreme Court ruled that the federal government possessed almost unlimited sovereign power to manage the lands that it owned, in addition to its powers as landowner. If it wanted, the federal government could enact its own laws governing all aspects of hunting, fishing, and wildlife management, leaving no role for state laws or agents.” (Freyfogle and Goble, Wildlife Law, 2009:206) It is disingenuous of the BTNF in their EIS to indicate to the public that the BTNF is constrained to merely continue the status quo because of the preferences, policies or threats from the WGFC. They are not.

The BTNF must manage the National Forest lands and natural resources for the benefit of the most people for the longest time. As the BTNF has found out from other comment opportunities, (as did the USFWS in their public comments received on the Bison and Elk Plan) far more citizens are in favor of phasing out elk feedgrounds than continuing them. “Feedgrounds like predator control policies, reflect a longstanding cultural and political bias- a bias that continues to trump science and defy common sense.” (Donahue 2010:293) That bias and absence of common sense must be turned around by the BTNF. It’s high time to pay attention to the prevailing and overwhelming body of science and law, and inject common sense to find a much better way forward. According to their Vision Statement, the BTNF is allegedly committed to “service, action and excellence”; transitioning away from the elk feedgrounds is an opportunity for them to display and implement these commendable traits.

4. Purpose and Need

At Purpose and Need for Action (SDEIS: 5) the BTNF defines the analysis from the narrow perspective of the project proponent, the Wyoming Game and Fish Commission (WGFC). As the conservation groups have repeatedly said, by framing this analysis and options only in the context of the desires of the WGFC the Forest Service forecloses on a reasonable range of diverse alternatives, some of which had repeatedly been suggested by conservation groups during scoping
for the 2008 Winter Elk Management (aka, feedground) EIS and in the same groups' comments on the 2008 DEIS and in May 2012 scoping for this SDEIS. While considering a SUP for a feedground, the BTNF could have done an environmental impact analysis titled "Healthy Elk Management in the Gros Ventre Valley". Describing and giving careful consideration to other alternatives than feedgrounds would have enabled the forest to move toward healthier habitat: less soil compaction, no overbrowsed vegetation, no eroded streambanks, far less risk of buildup of infectious prions in the soil and water by large numbers of artificially concentrated elk and healthier wildlife, lower potential for disease transmission, more natural elk movements and foraging, elimination of heavy-handed management through vaccination and test-and-slaughter programs, and no adverse effects on Wilderness. As evidenced elsewhere on the BTNF and, indeed, on all other National Forests in the Rocky Mountains, feedgrounds are not necessary to manage elk. In fact, nearly all other elk herds in the Rockies are healthier and under less risk of catastrophic diseases compared to feedground elk.

Courts' interpretation of NEPA's requirements are clear: “[A]n agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative . . . would accomplish the goals of the agency's action…[as] the EIS would become a foreordained formality” Citizens Against Burlington, 938 F.2d at 196. The BTNF has shined the narrowest light possible when they defined the range of alternatives as “whether or not to authorize WGFC to use NFS lands at Alkali Creek Feedground for corrals, sheds, one hay stack-yard containing two haysheds, a water facility and feeding grounds associated with their ongoing elk feeding and management programs.” (BTNF 4-24-12 Scoping Notice) This definition of purpose is the narrowest imaginable and may suit the proponent (the WGFC), but does not comply with legal directives under which the USFS is required to operate; nor does it serve the public interest by putting forth a reasonable range of alternatives that may benefit the public through the analysis and eventual implementation of appropriate stewardship and protection of the largest amount of public lands, waters, and wildlife possible befitting the most people and natural resources for the longest amount of time. The obvious fact that the BTNF refers to this location as “NFS lands at Alkali Creek Feedground” plainly indicates the matter is, in the minds of the BTNF, a foregone conclusion (DSEIS:6). The BTNF apparently believes that this area of USFS lands is above all else an artificial feedground.

Because the stated purpose and need for a federal action determines the range of alternatives, it is essential that the Forest Service clearly articulates the project's purpose and need from the USFS' perspective and not simply adopt the WGFC objectives for the project as its own. (40 C.F.R. § 1502.13). As courts have cautioned, “One obvious way for an agency to slip past the structures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence.)” Davis v. Mineta, 302 F.3d 1104, 1119 (10th Cir. 2002) (quoting Simmons v. United States Army Corps of Eng’rs, 120 F.3d 664, 669 (7th Cir. 1997).

As a defense of their inadequate range of alternatives and narrow Purpose and Need, the BTNF offers a history of elk management in western Wyoming: “Supplemental feeding of elk has been conducted in Wyoming since the early 1900’s.” (SDEIS: 2) It goes on to offer examples. This kind of rationale ignores the progress of science-based wildlife management in the more than 100 years since. Such rationale is also at odds with the part of the BTNF's Mission Statement (which we will address below) at, “We aim to be progressive leaders in natural resource management.” The wildlife and habitat of the Gros Ventre Valley and, indeed, of the entire BTNF deserve and require a more enlightened perspective than harkening back to frontier era methods, as well intended as they may have been for the time.
The duty of the BTNF is to enable healthy wildlife on healthy habitat, not to enable an artificial feedground regardless of the consequences. A better Purpose and Need could be: "To Ensure Healthy Wildlife and Habitat in the Gros Ventre Valley." As we have explained above and in other submissions to the BTNF, the need for an elk feedground, per se, does not exist for the Forest Service. The Wyoming Game and Fish Commission, who may want an elk feedground, is not held to the same legal or ecological standards as the federal USFS. And the WGFC does not control the land where they are requesting the feedground, the USFS does. "The state of Wyoming has spent millions of dollars on supplemental feeding, which maintains artificially high populations of elk . . . . “ (Donahue 2010:289) A 2005 proposal from three NGO’s 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 will serve the elk and other wildlife and natural resources far better than promulgating expensive and harmful feedground conditions. It will be healthier all around and meet the legal directives of the USFS for the BTNF to phase out elk feedgrounds on USFS land rather than continue to permit them.

5. Failure to develop and consider a reasonable range of Alternatives violates NEPA

This SDEIS suffers from many of the same violations of law as the 2008 EIS; this SDEIS did not analyze an adequate range of reasonable alternatives.

"The purpose of an EIS is to apprise decision makers of the disruptive environmental effects that may flow from their decisions at a time when they 'retain a maximum range of options' to avoid environmental harms" (Connor v. Burford, 848 F.2d 1441, 1446 (9th Cir. 1988) quoting Sierra Club v. Peterson, 717 F.2d 1409, 1414 (D.C. Cir. 1983)). NEPA mandates that the Forest Service provide a detailed statement regarding the alternatives to a proposed action (42 U.S.C. § 4332(2)(C)(iii)). Its implementing regulations also require the Forest Service to “[r]igorously explore and objectively evaluate all reasonable alternatives” (40 C.F.R. § 1502.14). The agency must satisfy its “obligation to consider every significant aspect of the environmental impact of a proposed action” and “inform the public that it has indeed considered environmental concerns in its decisionmaking process” (Baltimore Gas and Elec. Co. v. Natural Resources Defense Council, 462, U.S. 87, 97 (1983)). In fact, a thorough and objective analysis of alternatives is so essential to reasoned and informed decision making that discussion of alternatives is considered the "heart of the environmental impact statement" 40 CFR at § 1502.14(a).

NEPA requires agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources" 42 U.S.C. § 4332(E); 40 C.F.R. 1508.9(b). Moreover, the BTNF "shall" "to the fullest extent possible …use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e) (emphasis added).

"Section 1502.14 of NEPA requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. . . . An alternative that is outside the legal jurisdiction of the lead agency must still be analyzed in the EIS if it is reasonable." (NEPA’s 40 Most Asked Questions, at http://ceq.hss.doe.gov/nepa/regs/40/40p3.htm)
The DSEIS considers only two alternatives: the “No Action and the Proposed Action.” (DSEIS:13)

“Under the No Special Use Authorization Alternative, use of National Forest System lands for WGFC winter elk management activities would not be permitted at Alkali Creek feedground.” (Ibid: 14) “The Agency’s Preferred Alternative Under the Proposed Action alternative, a Special Use Authorization would be reissued for continuation of use of 91 acres of National Forest System lands for WGFC winter elk management activities at Alkali Creek feedground.” (Ibid) By only including 2 alternatives despite repeated and clear recommendations from conservation groups to include other alternatives, the Forest Service failed to consider a reasonable range of alternatives violating the National Environmental Policy Act.

In the September 17, 2007 scoping comments from Greater Yellowstone Coalition, Jackson Hole Conservation Alliance, and the Wyoming Outdoor Council several reasonable alternative components were suggested for inclusion by the BTNF for the 2008 DEIS concerning permits for multiple elk feedgrounds. GYC offered many of the same suggestions in our May 2012 scoping comments for this Alkali Creek SDEIS. We offer that 2007 section again here in our comments on the DSEIS to remind the BTNF what has been submitted in the past and what we deem is necessary now for the BTNF to comply with NEPA and offer a reasonable range of alternatives in any EIS dealing with elk feedgrounds:

**Some components needed in alternatives**

When analyzing a range of alternatives to elk feedlots, the BTNF must include analyses of elk transitioning to completely using natural forage on big game winter ranges to survive the winters. Maps of big game winter ranges designated by the USFS, NPS, FWS, BLM, and WGFD can be obtained from the WGFD; the winter ranges consist of many tens of thousands of acres and may spread across USFS, NPS, FWS, BLM, State and other lands. Winter ranges adjacent to current feedlot sites as well as winter ranges at reasonable distances from feedlot sites must be considered, as should the feasibility of the elk to access those ranges. The BTNF must assess the amount of forage on designated winter ranges left after the growing season that may be used by big game during winter. They must calculate the tonnage of forage using scientifically valid production plots, or use available information that may be applied to similar slopes, elevations, snow pack, and vegetation types as exist on the various winter ranges. Most importantly, the USFS should calculate the ability of that amount of forage to sustain the estimated number of elk using the range (i.e., carrying capacity).

If any of those winter ranges are included in summer livestock grazing allotments, the BTNF must assess whether adjustments to livestock grazing management may allow for more forage left for wintering big game on the winter range portions of those allotments. For any unoccupied, vacant, or closed livestock allotments the BTNF must analyze how much of an increase of winter forage is available for wintering big game due to the absence of livestock use.

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.

It is important when considering elk-proof fencing that consideration is given to not impeding trans-landscape movement of big game. Therefore, a minimum amount of fencing is desirable, and fencing as close to the livestock feeding and haystack areas as possible to be effective would ameliorate this issue.

The BTNF should also do a cost analysis for phasing out specific feedlots or several at a time if they are near one another, compared with the costs of maintaining the elk feedlots. Included in that cost analysis should be the elimination of vaccinating elk against brucellosis which would no longer be needed. It is a cost savings to phase out the feedlots, even considering initial costs such as fencing, rather than maintaining feeding and vaccinating at elk feedlots in the long term (see Brucellosis Solution 2005). The costs of maintaining brucellosis to various stakeholders such as livestock producers, the WGFD, and others should also be quantified as best as possible 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. This will greatly assist the BTNF in analyzing reasonable alternatives to artificially feeding elk at state operated feedlots. A wide range of alternatives is necessary in order for the public and decision makers to draw informed conclusions.

Regarding elk-proof fencing alluded to above, the USFS has their own 1993 report from the Pacific Northwest Research Station describing techniques to construct elk-proof fences. (USDA-FS 1993, see citation in Reference section appended to these comments.) The BTNF could have developed and analyzed one or more reasonable and practical, and common sense, alternatives that carefully transition elk from artificial feeding to reliance on native range, while protecting hunting, outfitting, and ranching interests. Because the Forest Service failed to analyze a true range of alternatives, the record of decision risks becoming a foreordained formality and violates NEPA.

Clear evidence of the inclination of the BTNF to approve a permit for the WGFD for an elk feedground without required consideration of a range of alternatives is the repeated assertion by the BTNF that if a feedground isn’t permitted by the BTNF on USFS land, “the WGFC would either continue to feed elk in the Gros Ventre only at Patrol Cabin and Fish Creek Feedgrounds or they would locate a new feedground on private or state land.” This assertion by the BTNF appears repeatedly throughout the DSEIS. But the BTNF doesn’t provide the document or method of communication of such assertion by the WGFC of the possibility of yet another site for a feedground despite requested to provide the documentation by GYC. In the DEIS and ROD in 2008 and again in the 2013 DSEIS the BTNF repeats this statement so many times there is no reason to believe that the BTNF seriously considered any other options or alternatives other than approving a Special Use Permit for feedgrounds for the WGFC. The BTNF appears to be taking the threat or assertion, if it exists, by the WGFC as effectively foreclosing on other options of managing elk and habitat in the BTNF. Despite denying it in their DEIS comment responses in 2008, the BTNF apparently sees no other options but continuing the status quo.

As we wrote in our May 2012 scoping comments:
“Whether healthy, harmful, or benign activities occur on adjacent, nearby, or distant lands does not diminish the responsibilities and duties held by the USFS through acts of Congress. Nor do such activities, like the State of Wyoming elk feedgrounds, allow the USFS to deflect the responsibilities assigned to it by Congress onto other parties, such as the WGFC. If the mere existence of - or the threat of - harmful activities off USFS lands was justification or impetus for the USFS to permit such activities on USFS lands, it would open the door to any number of harmful activities occurring on USFS lands merely upon threat, coercion, implementation of such acts on other lands, or insinuation of intent to do so by any proponent. This would effectively remove the assurance to the American public that the USFS acts as stewards of these public lands. Therefore the BTNF must not be swayed by the WGFD’s inclination and tradition of maintaining elk feedgrounds in western Wyoming. The BTNF has more important and binding directives to comply with.”

If the BTNF did not approve a SUP for elk feedgrounds, they would be in a far better position to become an advocate for healthy habitat and healthy wildlife rather than a passive bystander. They could then far better defend against any adverse effects of elk feedgrounds, of which there are many, that may cross over from elk feedgrounds on state or private land onto USFS land. Currently, by permitting elk feedground SUP’s the BTNF enables possibly the worst wildlife management program to continue. Offering a permit to feed wildlife does not move towards a solution to the problems of disease and habitat degradation, it merely perpetuates the problems. The BTNF has, so far, ignored all the suggested solutions, such as phasing out feedgrounds, offered by the public interest groups.

6. Other violations of NEPA

The BTNF offers some sections of the National Environmental Policy Act as if the B-T intends to follow through on the intent of this key environmental policy act. “NEPA requires consideration of “the relationship between short-term uses of man’s environment and the maintenance and enhancement of long-term productivity” (40 CFR 150216). As declared by the Congress, this includes using all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which people and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans (NEPA Section 101).” DSEIS:150, typo corrected in parenthesis) The BTNF continues, “Concentrating large numbers of elk on feedgrounds could affect the rate of spread of disease, such as chronic wasting disease, if it were to become established in the analysis area. The decision to be made by the Forest Service under either alternative would have no effect on whether or not chronic wasting disease arrives in the analysis area, or the potential rate of spread of the disease, since feeding would continue with or without the use of National Forest System land.”

Despite listing a description of a requirement of NEPA, the DSEIS falls far short of complying with many sections of NEPA, some of which have been listed in our comments over the years including these comments. No one could interpret the operation of and effects from elk feedgrounds on USFS lands as contributing to “long-term productivity” of the land, or promoting the “general welfare” or “harmony” between people and nature. Disease ridden elk confined en masse
on small tracts of land, eating baled hay atop layers of feces built up over decades amidst overbrowsed, stunted and dead aspen or willows is hardly the image described in NEPA and amounts to violations of law. Anyone who has ever witnessed and smelled the buildup of feces and filth of elk feedgrounds or the constant effort of the WGFD to herd elk with helicopters and snowmachines onto the feedgrounds and vaccinate them with a worthless vaccine biobullet would never in good faith use such NEPA terms as “productive harmony” to describe the reality.

Yet another error in the last paragraph quoted from page 150 in the DSEIS, is that the BTNPF appears to confuse the “spread” of a disease with a critical element when discussing diseases, 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 (with the possible exception of the WGFD or the USFWS at the Elk Refuge). Which is why, as we note in these comments when we refer to CWD experts, 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 BTNPF 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 less than forthcoming to the public. The Alkali Creek area is closer to Jackson Hole and the Elk Refuge than the other two elk feedgrounds in the Gros Ventre Valley, and is some four miles or more distant from the next elk feedground to the east. If elk are not densely concentrated at Alkali Creek, and the elk are allowed to spread out naturally, it may allow more elk to free-range in natural densities and act to suppress the prevalence of the disease in elk and other cervids in that area compared to what could happen if densely crowded feeding was maintained at Alkali Creek. Again, the DSEIS misleadingly says, “feeding would continue” but there is no evidence of the WGFD planning to operate an elk feedground anywhere else in the Alkali Creek area. Therefore not permitting a feedground at Alkali Creek may be beneficial.

7. Feedgrounds are not necessary to manage elk

As we have written in previous comments to the BTNPF about elk feedgrounds, the BTNPF should take advantage of beneficial “natural capital” and ecological and geographical circumstances and manage for healthy habitat and healthy free-ranging wildlife rather than give 20-year permits for elk feedgrounds. The obvious truth is that the Gros Ventre Valley, where Alkali Creek exists, is surrounded by a contiguous expanse of federal public land including portions of the Shoshone Forest, the Bridger-Teton Forest, Grand Teton National Park, the National Elk Refuge and Yellowstone Park to the north. These hundreds of thousands of acres are in the heart of the Greater Yellowstone Ecosystem that totals some 20 million contiguous acres, the largest intact temperate ecosystem on the North American continent. The Bridger-Teton Forest, the Shoshone Forest, Grand Teton Park and the National Elk Refuge are inside the boundaries of the least populated state in our nation, Wyoming. Wyoming is about the same size as Colorado, but Colorado contains 9 times larger human population as Wyoming. Colorado also has nearly 3 times the amount of elk as Wyoming. Despite the large human population, three times the number of
elk, and twice as many cattle in Colorado as Wyoming, Colorado doesn’t find it necessary to feed any of their 280,000 elk during winter. Nor does Montana or most any other jurisdiction in the Rocky Mountains. Rocky Mountain elk do not need artificial feed to thrive in Rocky Mountain winters, free-ranging elk can coexist in areas with livestock, feedgrounds are actually very harmful to elk and to habitat, and the BTNF should not permit elk feedgrounds. Better solutions to conflicts and better management methods for elk clearly exist. To continue the status quo on USFS lands is arbitrary and an abuse of agency discretion.

As we explained in our 2008 DEIS comments and our May 2012 DSEIS scoping comments, “The BTNF is well aware that 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. The elk herds in the southern reaches of the Wyoming Range, the southern reaches of the Salt River Range, Commissary Ridge, and the Tunk Range, all within the BTNF, do not require feedgrounds. Nor do other big game species such as moose, bighorn sheep, mule deer, pronghorn antelope, mountain goats, or white-tailed deer throughout the BTNF. There are other methods of managing habitat and wildlife on and near the BTNF, and analysis of such methods under this EIS is reasonable, as well as legally mandated.”

In this DSEIS, Table 1 List of Other Issues, p. 10, there is a critical error put forth as fact: “Much of the native winter range for elk is not located on the National Forest, and is not available due to development and agriculture . . . . There are ongoing efforts to improve habitat on the National Forest, particularly winter range, but these efforts cannot compensate for the loss of native winter range in the short term.” The BTNF knows full well that virtually ALL of the native winter range in the Gros Ventre Valley where Alkali Creek feedground is located is on USFS land and that there is approximately 100,000-acres of it. We submitted the references for this in our May 2012 SDEIS scoping comments 2. Anderson, Chester. 1958. The Elk of Jackson Hole: A Review of Jackson Hole Elk Studies. Wyoming Game and Fish Commission. Cheyenne, WY.; and, 34. Wyoming Game and Fish Department. 2006). Evaluation of a Proposal from the Wyoming Outdoor Council, Greater Yellowstone Coalition and Jackson Hole Conservation Alliance for a Phase Out of Elk Feeding in the Gros Ventre. Cheyenne, WY.) Indeed, in the BTNF’s own Winter Travel Map 12/1 – 4/30, Revised/reprint 1993, the BTNF portrays purple polygons on the map where winter travel is restricted because of “Protection of wildlife on crucial big game winter ranges.” How can the BTNF continue to deny that there is plenty of winter range for thousands of free-ranging elk, particularly in the Gros Ventre Valley where Alkali Creek is? This denial is continued throughout the SDEIS and comes to light again and again when the BTNF defers to the policy of the Game and Fish to feed elk implying that there is no other alternative. There is a readily available and healthy- and free- alternative and that is to allow elk to use their ancestral winter ranges which, in the case of the Gros Ventre Valley, literally surround the areas- are within the view of the elk- where elk are artificially clustered together during winter by putting out hay.

As Chester Anderson, 1958, and others have documented, thousands of elk wintered quite well in the Gros Ventre Valley in the early 1900’s (and probably for centuries prior) without elk feedgrounds. Those same winter ranges exist, are protected by the USFS, and can provide for thousands of elk as both GYC and the WGFD agree. Below is an excerpt from our May 2012 scoping comments:

In 2005 the Greater Yellowstone Coalition calculated how many elk could winter in the Gros Ventre Valley: “Using some conservative assumptions such as dry-year production values, and estimating forage production, consumption by elk, and availability of forage during winter, it appears that between 4,419 – 6,628 elk can winter naturally on 33% - 50% of winter range
while consuming only 60% - 64% of the palatable and accessible forage without supplemental feeding.” (GYC 2005)

In 2006 the Wyoming Game and Fish Department responded to this proposal:

“(B)ased on the three carrying capacity estimates calculated in this assessment for mean and above average precipitation years, to some degree historic accounts of elk numbers and starvation events, and the need to prevent added competition for forage with bighorn sheep and moose wintering in the Gros Ventre valley, it appears there may be adequate forage available most winters for an elk herd closer to 3,000 than the current 4,000-4,500.” (WGFD 2006:25)

The number of elk counted in the Gros Ventre Valley during February 2012 by the WGFD is approximately 3,300. (Doug Brimeyer, personal communication and handout March 2012) Elk numbered approximately 4,000 – 4,500 around the time of the WGFD response to the NGO’s proposal to phase out winter feeding. (WGFD 2006, Figure 1) So, elk numbers have decreased by around 1,000, which achieves one of WGFD’s qualifications to attempt phasing out winter feeding. 3,300 is also well below the carrying capacity determined by the NGO’s. We have submitted information in our previous comments about the very few (only 2 or 3) livestock and haystack fencing opportunities in the Gros Ventre that would prevent commingling of elk and livestock. There are only around 80 mother cows and approximately 150 or so horses that could easily be held behind elk-proof fences. Despite feedgrounds operating each winter, conflicts with elk continue to occur at these 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. Better solutions, such as elk-proof fencing at the private property boundaries of those few ranches in the Gros Ventre Valley, need to be assessed in an EIS and implemented.

The Gros Ventre Valley within the Bridger-Teton National Forest is situated in between the CWD endemic area west of Thermopolis, Wyoming, and Grand Teton National Park and the Elk Refuge. (GYC 2009 CWD map, revised May 2013) Deer and elk are known to travel back and forth among these areas. (Smith 2005, WGFD 2009) The worst thing that the BTNF can do for the wildlife of Grand Teton National Park and the National Elk Refuge is to permit and maintain elk feedgrounds that would, according to experts, amplify the prevalence of deadly CWD and potentially cause a catastrophic outbreak among the elk and other cervids of Grand Teton National Park and the Elk Refuge (Smith 2005, Peterson 2005). Conversely, one of the best things the BTNF can do is not permit elk feedgrounds and allow big game to traverse those same landscapes in accordance with their natural behaviors. The responsibility is on the shoulders of the BTNF and the best way forward is clear: determine where the most effective locations are for elk-proof fences, and do not permit feedgrounds.

8. "Unavoidable" Adverse Effects

The very sparse list of six sentences on page 150 of the DSEIS describes briefly that soils, water, wildlife and plants are harmed by the operation of elk feedgrounds. One issue briefly mentioned is especially important: “Feedgrounds increase the probability of disease and parasite transmission among elk, including brucellosis, chronic wasting disease and other diseases.” (DSEIS:150) Despite this statement being accurate, the BTNF knew this in 2008 yet, ignoring their legal directives, they issued 20-year permits to operate five other feedgrounds on USFS land in
July 2008. Alkali Creek is an opportunity for the BTNF to consider the science and make a lawful
decision not to permit an elk feedground that will harm wildlife and habitat.

Any reader of this list on page 150 of the DSEIS of Adverse Effects to forest resources from
elk feedgrounds cannot help but wonder why the BTNF has insisted over the years on approving
actions that result in such harm. The public’s interest will be better served and for much longer if
this kind of harm to USFS land is not permitted by the BTNF.

9. Irreversible and Irretrievable Commitments of Resources

This appears to be a section in the DSEIS where the BTNF actually describes some of the
stark realities of the effects of elk feedgrounds:

“Irretrievable commitments of resources are those that cannot be regained, such as the
extinction of a species or the removal of mined ore. Irretrievable commitments are those
that are lost for a period of time such as the temporary loss of timber productivity in forested
areas that are kept clear for use as a power line right-of-way or road.

“Irreversible losses could occur in willow habitat within and adjacent to feedgrounds due to
loss of root stock as continued heavy browsing by elk in the winters prevents suppressed
willow plants in wet meadow habitat from recovering to a healthy condition. Irretrievable
losses of aspen habitat could occur due to heavy browsing.

“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.” Additionally, “The potential exists for irretrievable
commitments of predator and scavenger resources to occur if CWD became established
and substantially reduced the elk population. (U.S. Fish and Wildlife Service and National
Park Service Bison and Elk Management Plan and Environmental Impact Statement
(2007)).” (DSEIS:151)

As we commented in 2008 about the above section in the DEIS, “The BTNF would do well
to heed its own cautionary words.” Furthermore, if the BTNF actually intends to implement its
Mission Statement it should not approve elk feedgrounds given the known harm, the risk, and the
public’s expectation that the BTNF will act in the public’s best interests now and for the future.

10. The USDA-USFS must reconcile differences with the USDA-APHIS

At page 153 of the DSEIS, it lists Federal, State, and Local Agencies that the USFS consulted
with in preparing the DSEIS. Under Federal agencies it lists the Forest Service, the USDOI-Grand
Teton Park, the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service and,
oddly, the Environmental Protection Agency. It appears to list the EPA twice. Nevertheless, the
list omits, and it appears the USFS did not consult with its own sister agency in the USDA, the
Animal and Plant Health Inspection Service (APHIS). This agency has disease expertise and it
is arbitrary for the USDA Forest Service not to consult with its sister agency. Unlike the WGFD, the
APHIS is not a proponent of elk feedgrounds.
As we wrote in our May 18, 2012 scoping comments, “The federal USDA-APHIS (Animal and Plant Health Inspection Service), which is in the same department of the federal government, the US Department of Agriculture, as 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. (USDA 2012) Yet, by permitting elk feedgrounds, the BTNF promotes conditions that would exacerbate the effects of CWD when it occurs on or near elk feedgrounds.” (GYC 2012 comments, p.12) Additionally, in the latest 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.” This omission by the BTNF in the DSEIS of a sister agency’s input and/or consultation- particularly an agency that counsels to move to end elk feedgrounds- emphasizes the overly narrow information stream allowed by the BTNF when they had nearly 30% of the ID Team dominated by the feedground proponent, the WGFD, and did not have on the ID Team nor consult with agencies or non-governmental organizations or academic personnel who advocate phasing out elk feedgrounds. This is arbitrary, capricious, and an abuse of discretion by the BTNF.

11. The BTNF defers to the WGFD Chronic Wasting Disease Management Plan, which violates NEPA and the Administrative Procedures Act

Unfortunately, as in the 2008 DEIS, the BTNF in this DSEIS, page 9 at 3, again defers to the WGFD CWD Management Plan to avoid having to adequately address and mitigate the effects of this deadly disease on elk herds and the environment. The BTNF also defers to the USFWS treatment of CWD in the 2007 Bison and Elk Plan (DSEIS:9 at 3). This deferral has no substance and violates the “hard look” requirement of NEPA. “The “hard look” required by NEPA is not satisfied when the agency relies “on incorrect assumptions or data in an EIS.” Native Ecosystems Council v. U.S. Forest Service, 418 F.3d953, 964 (9th Cir. 2005)” (in GYC, et al, v. Supervisors of the CTFN and BTNF, Nov 21, 2006, Honorable Judge B. Lynn Winmill. P. 16) In reality, despite a commitment in the Bison and Elk Plan to do so, the USFWS has never described their own CWD plan, themselves deferring (despite their commitment in 2007 to make it a priority to craft their own) to the State’s CWD Plan until they do so. (See 2007 BEMP: 13-14.) However, according to our discussions with USFWS Region 6 Director Noreen Walsh and her staff, as of May 9, 2013 no “step-down plan” has yet been crafted by the USFWS “to address chronic wasting disease management on the National Elk Refuge.” Therefore the BTNF in this DSEIS is deferring to analysis and action that falls very short of meeting the commitments of the agencies and falls short of complying with the best available science and scientific opinion recommending best management practices (e.g., don’t feed, bait or unnaturally concentrate cervids). See our comments below about expert recommendations for dealing with CWD among wild cervids.

Wyoming’s CWD Action Plan, quoted below, does nothing to avoid amplification of the disease if or when it is found on or adjacent to elk feedgrounds.

C. Feedground Management

If CWD is detected in elk inhabiting state feedgrounds, WGFD personnel will monitor the population intensively and remove any elk showing clinical signs of CWD. The WGFD will attempt to: 1) maximize the area of feeding to decrease animal-to-animal contact; 2) decrease days of feeding to disperse the elk; 3) take any other actions to decrease elk
concentration provided such actions are consistent with other necessary wildlife management and feedground practices. Large-scale culling of elk is not anticipated. (emphasis added) (WGFD 2007:6)

The Action Plan, in fact, declares that only such actions will be considered that “are consistent with other necessary wildlife management and feedground practices.” (WGFD 2007:6) Its plan to “maximize the area of feeding” and “decrease days of feeding” have been in place for many years as an alleged prophylaxis (or preventive medicine) against brucellosis, to no avail whatsoever. Despite admitting that deer, elk and moose “may be more at risk due to winter concentrations of elk on feedgrounds,” (Ibid:5) the WGFD evidently cannot see past their compulsion to operate elk winter feedgrounds even in the face of a deadly disease moving towards the feedground locations. The BTNF cannot fall to such dysfunctional and circular reasoning when managing the “world class” resources its Vision Statement touts. To defer to the WGFD CWD Action Plan and the WGFD assessment of CWD, and to the USFWS treatment of CWD, which are one and the same, and ignore the entire body of real expert reports is arbitrary, capricious, and an abuse of discretion by the BTNF of the highest order. (5 USC Sec 706(2) (2000)

As we commented in 2008 on the Feedground DEIS, we repeat here for the Alkali DSEIS:

“(R)ather than appropriately analyzing the issue of CWD moving into any of the elk herds or onto the USFS lands at or near the elk feedgrounds at issue here and posing a risk to other cervid species, the BTNF refers to the WGFD 2006 Chronic Wasting Disease Management Plan on the WGFD website as providing, “supplemental information concerning the prevalence, risks and consequences” of CWD (DEIS:12). The BTNF appears to deflect its duties under NEPA onto the WGFD; but the WGFD is not bound by the requirements of NEPA nor does the WGFD need to meet any standard of analysis or accuracy in its reports. The WGFD CWD Plan makes clear that the WGFD intends to continue with winter elk feedgrounds even if CWD is discovered thereon. The WGFD is not bound by any regulations to maintain the health of federal lands other than to follow the conditions of permits issued by the USFS, and has stated clearly in its CWD Plan that even if CWD-infected elk are discovered on feedgrounds, it will continue to operate feedgrounds on those very USFS lands that may be contaminated with CWD prions. The duty to protect those USFS lands, however, lies with the USFS. The USFS may not allow reckless use of its lands such that contaminants are likely to affect the health of the habitat and wildlife. Whether or not the WGFD intends to conduct elk feedgrounds on other jurisdictions if the USFS denies it permits, such possibilities cannot relieve the USFS of its duties to protect the lands under its stewardship, nor can such possibilities serve as excuses for the USFS to knowingly allow a continued high risk of habitat contamination on USFS jurisdiction. To continue to permit feedgrounds and maintain such a risk when alternatives are available is negligent.” (from NGO’s DEIS comments, p. 17)

The BTNF consistently tries to defer to treatments of disease threats and management by other agencies. What they’re deferring to does not exist. The USFWS has adopted the WGFD CWD plan which essentially does nothing different on elk feedgrounds than has been done for decades: Baiting elk onto small plots of land and holding them there for months by distributing hay bales. In the case of the Elk Refuge it is alfalfa pellets and irrigated green plots. No problem is solved and no progress is made to protect the “world class wildlife” populations.
referred to in the BTNF Vision Statement. Deferring to ineffective and CWD plans absent the best science is certainly not being the “progressive leaders in natural resource management” touted in the BTNF Mission Statement which we will list at the end of these comments. It is also arbitrary and capricious and violates agency discretion.

12. The BTNF ignores CWD experts and expert reports

As we explained above and will detail further here, in the DSEIS and previously in the 2008 DEIS and ROD, the BTNF ignored prevailing contemporary science about the relationship between feeding and concentrating cervids and Chronic Wasting Disease and other infectious diseases. The BTNF made a decision in 2008 to re-permit elk feedgrounds that was arbitrarily in opposition to the counsel of disease experts, a violation of agency discretion. Examples follow of some expert reviews and recommendations that the BTNF continues to ignore.

In the November 2002 “Review of Chronic Wasting Disease Management Policies and Programs in Colorado” report by “an external review panel”, page 11:

Implemented or proposed management strategies include:

- Regulations to prevent feeding and baiting of cervids: This is a reasonable approach for reducing contact among potentially infected and susceptible animals and the potential for environmental contamination and should be enforced. Feeding also might artificially increase population density. The Colorado Division of Wildlife or private parties should not use feeding as a management strategy in severe winters.

In the February 2003 “Chronic Wasting Disease and the Science in support of the Ban on Baiting and Feeding Deer” by Timothy R. Van Deelen, PhD, of the Wisconsin Department of Natural Resources Research it notes:

In a review of the technical literature on CWD by the top CWD specialists in the world . . . “Concentrating deer and elk in captivity or by artificial feed probably increase the likelihood of direct and indirect transmission between individuals. . . . (Williams et al. 2002, p. 557)

Several other experts who point out the higher risks of CWD in concentrated cervids are quoted by Dr. Van Deelen in his report.

In the July 2004 “Chronic Wasting Disease in Canadian Wildlife: An Expert Opinion on the Epidemiology and Risks to Wild Deer Prepared by: Expert Scientific Panel on Chronic Wasting Disease”, the experts recommend on page 21 at B: Management of free-living cervids

1. Develop and implement policies to minimize artificial aggregations of free-living cervids to reduce transmission of CWD. Actions should include:
   - Prevent access to hay stacks, salt blocks, and artificial water sources by wildlife in high risk areas.
   - Ban baiting or artificial feeding for cervids in high risk areas.

In the 2010 Boston College Environmental Affairs Law Review article, “Trampling the Public Trust” by Debra L. Donahue, she notes, “Experts agree that CWD cannot be eradicated, yet it may
be possible to slow and perhaps interrupt its spread. “Thus the emphasis should be placed on preventing (CWD) from becoming established in naïve cervid populations.” Reducing animal density by banning supplemental feeding is among the experts’ top recommendations.” (Donahue, 2010, p.285, citing Sigurdson 2008, Peterson [in quotes], 2003, Williams, et al, 2002, and Smith 2001.)

The BTNF should also know that at the section on Resources: CWD Experts on the CWD website http://www.cwd-info.org/index.php/fuseaction/resources.experts (last viewed 5-18-13) out of one dozen experts listed, no employee of the Wyoming Game and Fish Department or Commission is on the list.

Among the biggest errors and assumptions made by the BTNF in this DSEIS is to state, "(P)reliminary evidence in captive elk suggests that elk can maintain very high prevalences of CWD without a concomitant population decline if allowed to reproduce. (Kreeger, unpubl. data.)" (DSEIS:97) This one alleged study, conducted in the WGFD’s own facility, and which is unpublished by a now retired Wyoming Game and Fish Department employee is used by the BTNF to counter all the expert reports concerning actual and anticipated effects of CWD on cervids available by reputable scientists some of which reports have been supplied to the BTNF or referenced in comments submitted by the Greater Yellowstone Coalition. How is the public to access such a remarkable finding of the WGFD if it is "unpublished"? Furthermore, how is such an alleged finding applicable to wild elk? As Bruce Smith, PhD, says in his book, Where Elk Roam, "animals debilitated by CWD would quickly be culled by large carnivores- an elegant natural check on the spread of disease. . . . packs of gray wolves chase and single out disadvantaged prey, what David Mech and other wolf biologists called the "sanitation effect" of predation." (Smith, 2012: 113) However, Smith offers a sobering assessment of outcomes when elk are concentrated on feedgrounds: "For the overstuffed numbers of elk on feedgrounds, however, there may be too few wolves to keep pace with disease epizootics." (Ibid) Rather than allow the WGFD to select the science and the reports to only suit their narrow purpose, in this case to perpetuate elk feedgrounds, the BTNF must incorporate the best available science in this analysis. This EIS fails on these accounts. In the closing remarks at the 2009 International Chronic Wasting Disease Symposium in Park City, Utah, Bryan Richards of the USGS characterized Wyoming’s approach to CWD as the worst case scenario. “CWD affected wild animals have holes in their brains- how good can they take care of themselves and their offspring?” (L.Dorsey, 2009, personal notes from the Symposium)

The BTNF errs when it states, "model predictions of CWD leading to declining abundance, or even local extinction have not occurred anywhere in free-ranging cervid populations (Peterson 2005)." This information is now known not to be true. "In 2010, 48 percent of the hunter–harvested mule deer in this (Converse County) herd tested positive for CWD. While the herd has decreased by more than 50 percent over the past 10 years, CWD prevalence has continued to increase each year." (Glenrock Independent, 3-31-11, parenthesis added) See also the graph and chart below from the 2011 WGFD Casper Region Mule Deer Job Completion Report, p. 180. Smith also describes a “twenty-year population decline of deer” in a mule deer herd near Boulder, Colorado affected by CWD. (Smith, 2012: 113) Despite the BTNF’s assertion otherwise, herds of cervids have declined with high prevalence of CWD.
The BTNF concludes their discussion of CWD with, "there appears to be little that wildlife management agencies can do to prevent this." (DSEIS:97) They further err on an order of the highest magnitude imaginable when the BTNF concludes, "There are currently no empirical data to
support the contention that CWD in elk utilizing winter feedgrounds will result in catastrophic, even observable, population declines." (DSEIS:98) The BTNF errs because they ignore virtually all CWD expert reports, they ignore game farm examples, and they ignore expert opinion. All expert reports recommend to all wildlife management agencies that feeding and baiting not occur. Some of the expert panels recommend allowing predators to range where vulnerable prey range in order to keep numbers of vulnerable cervids at a healthy level and to remove compromised individuals.

Should the BTNF decide to permit any elk feedground(s) as a result of this EIS which uses the inaccurate interpretations and inappropriate reports, i.e., bad science, such an action is arbitrary and capricious. Such an action would also be mismanagement of the public's resources and a betrayal of the public's trust to manage wildlife, habitat and Forest Service lands using the best information available.

An obvious problem with the BTNF relying so heavily on the Wyoming Game and Fish Department (see our comments on the ID Team) is that the WGFD rationalizes away the science and the recommendations from renowned experts by claiming there’s no other way than winter feedgrounds to manage elk in western Wyoming for a variety of alleged ecological and political reasons that don’t really- to any third party perspective- stand up to scrutiny. For example, as we pointed out above, despite claims that sufficient winter range isn’t available to elk in western Wyoming (“Much of the native winter range for elk is not located on the National Forest, and is not available due to development and agriculture.” SDEIS:10) the BTNF should know well that there is plenty of winter range on USFS in the Gros Ventre Valley to winter thousands of big game animals because the WGFD Jackson Elk Herd Unit (E-102) Brucellosis Management Action Plan Updated April 2011 displays a map of the winter range on page 3 at Figure 2. Currently delineated seasonal elk range sand feedgrounds within the JEH. The BTNF knows that the expansive polygons on the map titled “Crucial Winter” and “Winter” are virtually entirely on USFS land. The BTNF only has to peruse other GIS maps of winter range and notice how much exist on USFS or BLM lands to realize the WGFD’s lament about a dearth of winter range is false. The designated winter range in the Gros Ventre Valley, to continue the one example, is approximately 100,000-acres. See the photo below of a sign on the BTNF in the Gros Ventre Valley announcing big game winter range.
Another canard expressed in the DSEIS is that “Habitat improvement projects cannot compensate for the loss of native winter range in the short-term and would not affect the current needs for supplemental feeding.” (DSEIS:9) Since whether to issue a feedground permit at Alkali Creek is at issue in this DSEIS, the Gros Ventre Valley is again an appropriate context in which to consider whether habitat improvement is effective at improving and maintaining elk winter range and whether there is enough forage for elk and other big game. The BTNF knows well that it has led the effort to manage wildfire for resource benefits when possible for decades in the Gros Ventre Valley, and it implements Jackson Interagency Habitat Initiative (JIHI) prescribed fires on large areas in the Gros Ventre Valley on and adjacent to elk winter range. These actions improve the forage quality on winter range. The BTNF has also implemented travel management for summer, fall and winter/spring motorized and non-motorized human travel on winter ranges in the Gros Ventre, with most of the expansive designated winter range closed to all human entry during the winter months, and summer/fall motorized travel managed so as to minimize erosion, disruption to wildlife and other harm to habitat. The BTNF participates in weed control on Gros Ventre Valley elk winter ranges. The BTNF manages cattle grazing on USFS winter ranges and, in fact, in 2007 received a permit waived back to the B-T from the permittee on the Fish Creek/Bacon Creek Allotment which vacated 178,000-acres of USFS from cattle. 59,000 acres of that very area is designated by the BTNF as a “Big Game Winter Forage Allotment”. All these management actions (fire, travel management, grazing, and weeds) affect the quality and quantity of winter range available to big game. The BTNF should know that there is plenty of winter range in the Gros Ventre Valley to roam and feed upon by thousands of elk and other big game. They err - indeed they mislead the public- in the DSEIS when they indicate on page 9 that there is still the “need() for supplemental feeding”. There is not.
Rather than mistakenly deferring to another agency, the BTNF can certainly conduct its own carrying capacity analysis for available public lands winter ranges near or reachable by wintering elk. Despite off-loading the responsibility for using or creating appropriate science far too often by referring to the Memorandum of Understanding with the WGFC, 00-MU-11020000-052, in the DSEIS, the BTNF obviously has the professional expertise among existing staff if the listing of the ID Team on page 153 is any indication. Listed are no less than 2 wildlife biologists employed the USFS, plus a Soils Scientist, a Hydrologist, a Botanist, a Natural Resource Manager-Recreation/Wilderness staffer and others with the expertise, one would assume, needed to assess the big game carrying capacity of habitat. If those personnel are not sufficient the BTNF may be able to consult with other independent or agency personnel to assist.

Fortunately, the BTNF does not have to abide by the WGFD’s rationale to maintain elk feedgrounds because the BTNF retains authority over USFS land and must manage according to law and science. The obvious exclusion by the BTNF of recognized disease experts and the astonishing de facto reliance on whatever the WGFD says, reports or wants is arbitrary on the part of the BTNF. A decision to issue to the WGFD long term permits to operate the elk feedgrounds would be “arbitrary, capacious, an abuse of discretion, or otherwise not in accordance with law” (5 USC 706(2)(A)).

13. Conservation of Aspen

Aspen are considered a Management Indicator Species (MIS) on the Bridger-Teton National Forest (Figure 10, p.42), and the BTNF is required to protect aspen.

Forest-wide Resource Management Prescriptions, Standards, and Guidelines: (LRMP: 121)
"Aspen Management 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. Priority areas for aspen treatment should be big-game winter ranges, calving areas, and stands where type loss or conversion is imminent." (BTNF 1990 LRMP: 132)

Despite the requirement to protect aspen that is listed several times in the 1990 BTNF LRMP, the operation of elk feedgrounds has harmed and virtually eliminated younger aged class aspen from a broad area.

"Shrubs . . . and trees . . . of greater palatability are often stunted or killed from intense browsing and trampling." (DSEIS:35)

"Field study indicates that there is "low regeneration (of aspen)" two kilometers and less from the Alkali Feedground area." (DSEIS: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: 45)

If no feedground is operated at Alkali Creek, "vegetation would increase in diversity and shrub densities." (DSEIS: 48) If no feeding were to occur at Alkali Creek "the elk herd would likely continue to move around the Gros Ventre area responding to wolf pressure and feeding." There would thus be an increase in elk mobility.

It is the policy of the BTNF that they are to implement "suppression of natural fire in the vicinity of feedgrounds." (DSEIS: 45) "Aspen is also in decline due in part to fire suppression in the past. " If no feeding at Alkali Creek, and the infrastructure removed, it would “increase the chances that
a naturally occurring wildfire would be allowed to run its course on National Forest System land at Alkali Creek feedground and in the area as a whole." (DSEIS: 50) Allowing a more natural fire regime would benefit aspen and other plants that evolved with fire, but how telling and unfortunate that while describing an area where feeding no longer takes place and structures removed, the BTNF still calls the area a "feedground".

"(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:51 parentheses added)

The DSEIS errs when the map on page 34, Figure 7: Distribution of Certain Vegetation Types within the Analysis Area does not indicate the aspen stands at FS Road 30400 (aka, the Gros Ventre Road) above and below where it crosses Alkali Creek. We include a photo of a portion of those aspen stands in these comments. Because of such errors, the DSEIS further errs when it lists the acreage of aspen in the corridor analysis area as only 642 acres. (Table 8, p. 43) The DSEIS says that 388 acres of aspen are affected by excessive elk browsing, but it errs by omission when it fails to describe additional acreage similarly affected outside Wilderness. For example, the aspen stands, such as remain, in the Alkali Creek bottom near the Forest Road 30400 are severely harmed by maintaining excessive numbers of elk during winter nearby, as are aspen stands both east and west of the site of the elk feedground.

Overbrowsed aspen and other plants at Alkali Creek along FS Road 30400. L. Dorsey, 5-5-13

The BTNF offers a specious argument when it makes a case for more elk feedgrounds being ecologically beneficial compared to fewer elk feedgrounds. "The concentration of elk between the three feedgrounds and the cessation or lessening of downstream migration would reduce the number of acres of aspen that are subject to elk browse." (DSEIS: 53) This is hardly true. Allowing elk to range free in accordance with the carrying capacity of the available habitat is the
healthiest model that the BTNF must ascribe to and, just as elk and aspen evolved together, allow both species to prosper. The scope of analysis and focus should not be so narrow that alleged benefits of more feedlots versus fewer is an actual standard used by the BTNF. Impacts arising from the operation of elk feedgrounds radiate outward across vast landscapes which can be very far from the actual feedlot sites. Furthermore, such a limited scope does not follow the BTNF Vision Statement nor their Mission Statement (below) to manage for "world-class wildlife" and use "progressive leadership in natural resource management". USFS management using elk feedgrounds just doesn't fit or follow from these statements.

14. Management Indicator Species

Not issuing a permit to feed elk at Alkali Creek "would have a long term "beneficial impact" on Snake River cutthroat trout (Forest Service Sensitive Species and MIS) and rainbow trout (MIS). (DSEIS:72 parentheses and emphasis in original)

After removing the structures under Alternative 1, "there is the possibility of long term cumulative very minor positive effects (on amphibians) due to no possibility of disturbing hibernating amphibians in the feedground area." (Ibid, parenthesis added)

"Alternative 1 would have a "beneficial impact" for boreal toads." (Ibid:73, emphasis in original)

"The effects of operating the Alkali Creek feedground with its associated buildings combined with no-winter activities including livestock grazing, vehicular use on roads, off road vehicle use, recreation trails, wildlife and livestock trailing, and dispersed camping have an adverse cumulative impact to amphibian habitat." (Ibid:74) Both winter elk herbivory and summer cattle herbivory reduces aspen regeneration and removes vegetative cover which adversely affects spotted, boreal and chorus frogs, and boreal toads. (Ibid:74-75 citing Patla 2001 and Barlet 2000 for boreal toad only).

To best conserve amphibians and native cutthroat trout, the BTNF must phase out the Alkali Creek feedground.

15. Wilderness

Alkali Creek Elk Feedground is directly adjacent to the Gros Ventre Wilderness and, in fact, "approximately 3,000 feet of the feedground boundary is concurrent with the Wilderness boundary." (DSEIS: 138) The operation of a feedground at Alkali Creek has unquestionably affected Wilderness qualities and characteristics in the Gros Ventre Wilderness in violation of the 1964 Wilderness Preservation System Act and the 1985 Wyoming Wilderness Act. As we wrote in 2008 we also include in these comments:

The BTNF also has the affirmative responsibility to protect forest resources within designated Wilderness and Wilderness Study Areas. Section 4(b) of The Wilderness Act mandates that the USFS protect the wilderness character of Wilderness. As for DFC 6B, C, and D, the BTNF may not permit elk feedgrounds or facilities on USFS land adjacent to or in proximity to Wilderness or Wilderness Study Areas that adversely affect the Wilderness qualities in those Wilderness areas as expressed in the Wilderness Act and the LRMP. Courts have shown that Congressional intent and requirements for protection of Wilderness qualities is not intended to be discretionary as to allow the USFS to pick and choose whether to fulfill their duties or not. Unnaturally dense concentrations of
elk - many of which are diseased as a result of congregating on feedgrounds - and harmed vegetation communities do not “protect or perpetuate natural biophysical conditions” as is required in the Forest Plan. Unnaturally dense concentrations of brucellosis-exposed or –infected elk associated with and caused by feedgrounds are not representative of natural population levels and distributions “affected by natural processes” as is mandated in the Forest Plan for DFC 6. Hundreds or thousands of elk loafing or milling about in dense groups on USFS lands after being fed baled hay are not examples of “Natural agents of ecological change operating freely,” nor are aspen stands that have been “over-browsed and debarked” to death. This all occurs within the Gros Ventre Wilderness and will occur to a greater extent if Yellowjacket Flat is turned into an elk feedground. Prescriptions, Standards, and Guidelines, for some areas of the BTNF may not be the same as those mandated for Wilderness; but Congress has been clear that designated Wilderness shall be managed to certain standards. The Wilderness Act requires the Forest Service to administer Wilderness Areas so they are “unimpaired for future use and enjoyment as wilderness.” 16 U.S.C. § 1131(a). If degraded conditions arising from elk feedgrounds exist in the Palisades WSA, the same protective Prescriptions, Standards, and Guidelines apply for the Gros Ventre Wilderness and the BTNF may not permit any feedground that causes noncompliances with the LRMP or other legal directives.

The BTNF Forest Plan is also clear that certain standards that perpetuate “natural biophysical conditions” are required for Wilderness. It is also clear that actions that “tend to alter the natural behavior of wildlife” are prohibited by visitors and presumably by agencies as well. Therefore the BTNF may not continue to permit the Alkali elk feedground, or any elk feedground, . . . . whose operations would cause management of forest resources- including wildlife and habitat- to fall short of the Wilderness Standards, Guidelines, and Prescriptions. (NGO DEIS comments 2008: 23-24; the inclusion of Yellowjacket Flat and Palisades WSA is not germane to this DSEIS)

If "a Term Special Use Permit would not be issued to the WGFC for use of the Alkali Creek feedground . . . . with the exception of the two feedgrounds in the upper Gros Ventre, elk would likely be more widely dispersed across crucial winter range and would likely spend less time in one location, thus the browsing effects on vegetation would be reduced. . . . Less browsing of herbaceous plants and aspen saplings on winter range in the Alkali Creek area would allow more aspen stems to grow to their full height potential. This would improve natural conditions in the Wilderness immediately adjacent to the feedground.” (DSEIS: 143) We agree that if no feedground were allowed at Alkali Creek it would improve conditions in the Gros Ventre Wilderness in that area.

The BTNF errs when it determines that the effects to aspen in Wilderness from decades of browsing elk "is within acceptable limits considering the overall natural quality of Wilderness." (DSEIS: 145) "Aspen is persisting as part of the plant community, even within the feedground, despite 42 years of elk browsing (WGFD 2007). How could aspen "persist" in or around the elk feedground, Wilderness or not, if it's been determined by the BTNF that there are zero new shoots of aspen to survive elk browsing within a large radius from the feedground? "Aspen are thus dying back." (DSEIS: 45) Is a "dying" plant community considered "persisting" by the BTNF and therefore these are acceptable consequences inside and outside of Wilderness of feeding elk? This is an arbitrary determination by the BTNF and does not serve the public's interest that, in the case of aspen, is better served by conserving aspen on all parts of the BTNF where they can naturally grow.
Furthermore, the standard of protection of Wilderness characteristics is determined by Congress, not the BTNF. "(T)he balancing of competing interests . . . . (is) not the governing standards under the Wyoming Wilderness Act. Instead, Congress has directed the Forest Service to maintain the 1984 wilderness character of the area. That is the primary duty of the Forest Service, and it must guide all decisions as the first and foremost standard of review for any proposed action." (GYC et al. v. CTNF and BTNF Supervisors, decision by Hon. Judge B. Lynn Winmill, Nov 21, 2006: p. 15)

Despite the fact that excessive browsing by elk promulgated by permitting and operating a winter feedground above Alkali Creek has cause the “dying back” of aspen communities inside and outside Wilderness, the BTNF concludes that that is alright because "Aspen is persisting as part of the plant community" and "there is no evidence that the presence of the feedground is altering the natural disturbance processes that shape plant communities at a landscape scale." (DSEIS: 145) The BTNF is once again using faulty reasoning to justify issuing Special Use Permits. Unfortunately, when aspen are essentially non-functional and "dying back" due to elk browsing that is certainly an interruption of natural processes at the scale of the aspen clone and the hundreds of acres radiating outward from the feeding site that are affected. This is the same creative reasoning and rationalization that was found to be faulty in the case cited above when the BTNF tried to rationalize an increase in heli-skiing in the Palisades WSA. The court disagreed that the BTNF had the choice to determine what scale permitted activities within Congressionally protected areas was appropriate; the BTNF does not have the discretion to pick and choose whether to fulfill their duties or not. Congress had already directed the USFS to maintain wilderness characteristics present upon passage of the 1984 act, and arbitrary boundaries or contexts were not available to the BTNF. Also required by the 1964 Wilderness Act is the restoration of wilderness characteristics where possible in designated Wilderness, which is very possible here.

The evidence of elk browsing to the extent that it functionally eliminates aspen clones and other important plants across a wide swath should be evidence enough to the BTNF that their stewardship of any National Forest land and a Wilderness in particular falls far short of protecting and managing "so as to preserve its natural conditions." (DSEIS: 144 citing Sec 2a and 2b of The Wilderness Act.) In addition, thousands of elk concentrated in greater densities due to the proximity of elk feedgrounds “are not representative of natural populations levels and distributions "affected by natural processes” as is mandated by the Forest Plan for DFC 6. Hundreds or thousands of elk loafing or milling about in dense groups on USFS lands after being fed baled hay are not examples of "natural agents of ecological change operating freely," required in the Forest Plan." (NGO DEIS 2008 comments: 23-24) The operation of an elk feedground that results in such extensive damage violates the 1964 Wilderness Act, the 1984 Wilderness Act and the National Forest Management Act.

16. Wetlands

The Alkali Creek area contains wetlands (DSEIS:61) that are adversely affected by feeding elk. "If the Alkali Creek feedground was no longer authorized, an improvement in riparian vegetation would occur on a 1.2 acre portion of the site that is currently trampled during times when wetlands have bare soil exposed, (Ibid:64). "Cumulative impacts by cattle as seen in the feedground via the copious amounts of cattle feces and apparent grazing in the vicinity of remnant hay bales and around the hay barns would be reduced by implementation of the No Action alternative." (Ibid:65) "Under this alternative, WGFC would rehabilitate impacts at the Alkali Creek feedground site. (Ibid:64) Not issuing a permit to feed elk at Alkali Creek "would comply with all pertinent laws, regulations, policies, and plans described in the Hydrology Resources Specialist Report. It would protect water quality, wetlands, and riparian vegetative communities." (Ibid:66) Issuing a permit to feed elk at Alkali Creek would result in "adverse
impacts . . . . greater than under Alternative 1," because of concentrated use by elk and cattle. (Ibid:67) To protect wetlands and comply with law, the BTNF cannot issue a permit to feed elk at Alkali Creek.

The DSEIS indicates that some "rare" cattle use of the "Winter Range Forage Reserve allotment" occurs (DSEIS:65) and that if a permit to feed elk at Alkali Creek occurs, "cumulative impacts on the Winter Range Forage Reserve allotment from livestock use would be minor." (Ibid:67) The BTNF should explain to the public what temporal period, frequency, and numbers and types of livestock this use consists of. The public went to great effort and financial cost to enable the permittee to waive their grazing permit in this area back to the USFS in 2007 and, to the best of our understanding, no permitted use of this area is currently allowed.

17. Gray Wolf

The DSEIS concludes that it will be beneficial to gray wolves to permit the Alkali Creek feedground. (DSEIS: Exec Summary vii; 129 and elsewhere). We disagree. The BTNF actually tries to make the case that "stabilizing prey" and keeping elk from "traveling to the National Elk Refuge" is somehow beneficial to wolves (Ibid). Shockingly, the BTNF asserts that concentrating elk onto feedgrounds and amplifying diseases such as CWD could be beneficial to wolves in the short term: "To the extent that it contributes to the establishment and continuance of new mortality agents such as chronic wasting disease, winter management at Alkali Creek would likely carry short-term benefits to wolves by increasing prey vulnerability." It's astonishing that the BTNF could put such a management scheme in positive terms, to knowingly and purposefully increase the prevalence of a deadly disease in a prey species could be considered good for the predator. (Ibid:130) Elsewhere in our comments we question the BTNF's assertion that elk will abandon the Gros Ventre Valley in part or en masse and go to the Elk Refuge. In addition, our May 18, 2012 scoping comments pointed out that elk feedgrounds have been and may be in the future localized areas where people consistently kill wolves:

The BTNF has a duty to manage conditions on the Forest to conserve and allow wolves to naturally disperse on the landscape. The Federal Land Policy and Management Act of 1976 declares that the policy of the United States is that (USFS) lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archaeological values. Where appropriate these (USFS) lands will be preserved and protected in their natural condition. (43 U.S.C. 1701 emphasis added). There is nothing natural about elk feedgrounds and the BTNF permitting of elk feedgrounds creates long-term risk of catastrophic disease harming the primary prey source of this keystone species.

Wolves play an important role in elk ecology as well as a natural buffer to disease, crowding, over-browsing, and other negative impacts of elk feedgrounds. By reducing prey numbers, dispersing these animals on the landscape, and removing sick animals, wolves may reduce the transmission and prevalence of wildlife diseases such as chronic wasting disease and brucellosis (Smith 2005,) Recent research has modeled how the presence of wolves may be considered an effective measure for controlling CWD. The authors of a recent paper published in Journal of Wildlife Diseases concluded that wolf predation may be a useful tool for management of CWD and that the absence of large predators presents an amplification risk factor for establishment of CWD. (Wild et al 2011)
Even more concerning is that the BTNF would consider permitting elk feedgrounds and their associated management activities carte blanche. The Wyoming Game and Fish Department has direction per their Final Gray Wolf Management Plan (http://wgfd.wyo.gov/web2011/Departments/Wildlife/pdfs/WOLF_MANAGEMENT_PLAN_FINAL0000348.pdf Page(s): 32-39) and Wyoming State Statutes to lethally control wolves for the interactions that occur at winter elk feedgrounds.

Wyoming’s Chapter 11 regulations state:

(c) Gray wolves may be lethally removed when the Department determines that gray wolf predation is causing having an unacceptable impact on a wild ungulate population or herd or when gray wolf-wild ungulate conflict has occurred is occurring at any State operated elk feedground.

(i) A gray wolf-wild ungulate conflict has occurred at a state operated elk feedground when a gray wolf or wolves displace elk from a feedground and it results in one of the following conflicts:

(A) Damage to private stored crops by displaced elk; or,

(B) Elk co-mingling with domestic livestock; or,

(C) Displacement of elk from a feedground onto a highway right of way causing human safety concerns.

Further WGFD specifically cites Alkali feedground as a location that there will be anticipated conflicts with wolves causing elk damage to stored hay or cattle feedlines and brucellosis transmission to livestock, as well as elk crowding, brucellosis, (and) hay supply issues (WGFD 2011, page 37). These conflicts would allow the WGFD, per their management plan, to lethally remove wolves through agency control efforts which may be precipitated through contract with Wildlife Services, involving helicopter gunning or other means.

A consequence of elk feeding is the indirect actions that will result in the lethal removal of a keystone species. Further these activities will impair wilderness character, Forest Plan standards, and Wild and Scenic values of forest lands as described elsewhere in these comments. The BTNF must disclose and analyze what permitted actions associated with elk feedgrounds would be allowed and fully analyze the impacts of wolf control actions on elk feedgrounds and surrounding winter-range closures. (GYC 2012 Scoping comments: 16-18)

The BTNF actually admits that "Wolves would continue to be attracted to the concentration of elk at the feedgrounds." (Ibid:122) Per the reasons given above, permitting the elk feedground at Alkali Creek cannot reasonably be interpreted as being beneficial to wolves.

18. Grizzly Bear

"Although grizzly bears have widely varied diets, in Yellowstone they feed heavily on four key foods: whitebark pine, Yellowstone cutthroat trout, Army cutworm moths, and ungulates." (Craighead, et al. 2005:8) "Elk that die on the feedground serve as attractants that potentially lead bears into conflict with feedground personnel." (DSEIS:117). “Should they become established, pathogens such as chronic wasting disease could affect numbers of elk, an important food source for grizzly bears (Mattson et al. 1991) in the Gros Ventre watershed in both short-term (less than
10 years) and long-term.” (Ibid) "By concentrating animals, winter elk management at feedgrounds in the Gros Ventre watershed would contribute to new diseases such as chronic wasting disease becoming established and sustained in the Gros Ventre watershed and the region overall with the caveat that other feedgrounds would contribute to disease prevalence as well, regardless of management in the Gros Ventre watershed.” (Ibid:114) We certainly agree with most of the preceding statement that feedgrounds contribute to diseases and sustaining them, but the BTNF errs when it states that such will happen "regardless" of feedgrounds being in the Gros Ventre watershed. If the BTNF helps phase out feedgrounds, or even one feedground, in the Gros Ventre Valley that could be an important step in decreasing the elevated risk of wildlife diseases occurring and being amplified by feedgrounds in the region. The BTNF appears to dismiss the practicality, even the undeniable reality, of progressing towards a goal step by step and progressively managing for healthy natural resources. This is an arbitrary position adopted by the BTNF and does not offer the public any possible means to change or improve any management paradigm. How else do things improve other than in a step by step manner? Ending the elk feedground at Alkali Creek would have positive effects which could lead to more positive actions and effects.

Continuing to operate elk feedgrounds that increase the risk of harmful diseases among elk will result in adverse impacts to "an important food source for grizzly bears". (Ibid: 117) The BTNF can implement a far better management paradigm for predators and prey alike by not permitting a feedground at Alkali Creek.

19. Canada lynx

Canada lynx are listed as Threatened and protected under the Endangered Species Act. (DSEIS:81) "The Alkali Creek feedground occurs in the 62,534 acre Upper Gros Ventre North LAU (Lynx Analysis Unit). Mapped lynx habitat in this LAU totals 54,274 acres . . . " (Ibid, parenthesis added) Some, 27%, of the lynx habitat is unsuitable condition due to the Red Rocks and Grey Hills fires in 2011. (Ibid) The DSEIS errs on page 81 when it states "the Gros Ventre watershed provides little habitat" for Canada lynx. "Conifer and aspen stands south (upslope) of the feedground, including the analysis area, provide habitat for lynx." (Ibid:82, parenthesis in original) Furthermore, "counts of snowshoe hare fecal pellets on one square mile plots east of the Alkali Creek feedground (Upper Gros Ventre Slide and vicinity) during 2009 were moderate to high . . . " (Ibid).

The BTNF may not permit activities that harm Canada lynx or their habitats.

20. Prohibit S-19 vaccinations of elk

Our May 2012 scoping comments apply here as well.

Strain 19 vaccinations of elk against brucellosis are not effective. The 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.
“(F)eedgrounds provide the only opportunity to effectively vaccinate elk . . . “ (DEIS 2008: Appended: Elk Feedgrounds in Wyoming [WGFD 2004] p.10). Obviously the WGFD uses the excuse- and the BTNF has allowed them to do so- that it’s easier to vaccinate elk as one of the reasons to have feedgrounds. The elk are clustered together and easy to shoot with a biobullet. Yet, now, the WGFD admits that the Stain 19 vaccine isn’t effective. Therefore, the BTNF should not enable a harmful practice on USFS land, densely concentrated elk feedgrounds, to take place since the reasons for feedgrounds, including keeping elk away from livestock and vaccinating elk against brucellosis are no longer purposeful. The livestock in the Gros Ventre Valley can do just fine on private lands behind elk-proof fences and the vaccination program isn’t effective. Indeed the elk contract and maintain brucellosis by being densely concentrated and have lower seroprevalence in western Wyoming when allowed to free range. Therefore feedgrounds are clearly not needed. The BTNF must consider this information in a new SEIS and make a reasonable decision based on the best available science. (GYC Scoping comments May 2012: 22-23)

The appended 2004 WGFD Elk Feedgrounds in Wyoming claims, “The strain 19 vaccine is designed to prevent abortion, but not infection by field strain Brucella. . . . . Even though the strain 19 vaccine is not 100% effective, vaccinating all the calves over several years develops a "herd immunity", which is effectively higher than a single year's 30% efficacy." (p. 16) The WGFD is being less than forthcoming about the intended goal of their strain 19 vaccination program because the only field indicator that infectious abortions are actually reduced in feedground elk as a result of their vaccination program is to do serology on successive generations of elk over the years to see if a lowering of seroprevalence has indeed occurred and if it may be attributable to their decades-long vaccination program. As is very explicitly indicated in their own 2011 assessment of their own program above, there is no lowering of the seroprevalence for exposure to brucellosis in feedground elk vaccinated with strain 19 and therefore infectious abortions must not have been reduced. Therefore, after 27 years, the program is ineffective. Given that the S-19 Vaccination program necessitates clustering elk together for weeks, at least, during winter and shooting them with a biobullet with live infectious bacteria inside, the BTNF must not allow this program to occur on USFS land.

21. Impacts to Mule deer, Moose

The DSEIS indicates that if the BTNF permits the feedground at Alkali Creek there will be adverse impacts to mule deer and moose because permitting the elk feedground at Alkali Creek, "contributes negatively toward achieving the herd objectives because it creates less favorable habitat conditions (less woody browse) for the two species near the feedground." (DSEIS: Exec Summary vii) The BTNF should acknowledge that additional impacts of elk feedgrounds to mule deer and moose, both cervids, would also be the eventual amplification of CWD should the elk be concentrated on feedgrounds during winter, acquire the deadly CWD in greater prevalence than in wild free-ranging elk, and then spread the disease throughout the landscape in greater prevalence than by herds not concentrated for several months on winter feedgrounds.

22. Climate Change

We repeat here some of our May 2012 scoping comments about the need for the BTNF to consider Climate Change:
Wyoming is experiencing significant climate change in the form of unusually warm years since 1978. “The frequent warm years coincide with a reduction in the frequency of extremely low (<-20 degrees C) January temperatures . . . “ (Shuman 2011) It’s clear that climate change is affecting the natural ecosystems in Wyoming.

It's also clear that 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).” (Ibid) It is known that elk feedgrounds exacerbate the incidence of diseases in elk. (Smith 2005, Peterson 2005) “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.” (Ibid) Therefore the practical thing to relieve or mitigate a stressor on elk is to allow them to range free on native range, rather than be lured in and confined on unhealthy feedgrounds during winter. The BTNF should not make decisions that are in place for the next 20 years, like permitting elk feedgrounds, without considering climate change and implementing other less harmful alternatives.

The best thing that the BTNF can do for elk and other wildlife in the face of climate change is to allow the wildlife access to needed habitats. “Species that are mobile, genetically diverse, show wide physiological tolerances, and have generalist diets will respond the most positively (to climate change).” (NPS 2010:50) The worst thing the BTNF can do is to confine elk on to unhealthy feedgrounds during winter. The best science available indicates that free-ranging wildlife will do best in the face of climate change.

The BTNF admits that "winters will be shorter, spring will be wetter and summer and fall will be drier.” And that the snowpack will "recede() earlier” in the springtime. (DSEIS: 148) Yet the BTNF appears to still accept that elk should be condemned to be baited and fed on elk feedgrounds even amidst the many thousands of acres of winter range producing millions of pounds of palatable forage in the Gros Ventre and in a milder climate that will make even more acres and more forage available to elk and other big game in the future. "The same amount of elk currently fed at three feedgrounds in the Gros Ventre would be fed at the two remaining feedgrounds, Patrol Cabin and Fish Creek." (Ibid) Since the BTNF manages the land at Fish Creek along the Gros Ventre River up valley from Alkali Creek, they can decline allowing elk to be fed anywhere on USFS land, especially during such comparatively milder climactic conditions and amidst bountiful winter ranges. (see our comments above on winter range.) Winters have gotten milder in this region and the BTNF, in passing, admits that "(s)ome changes are already apparent() (Karl, et al. 2009; Harris et al 2006; Furniss et al 2010)". (Ibid) Why continue to feed?

Additionally, the BTNF admits that "the predicted warmer weather with less snow and more spring rain would improve natural forage opportunities for elk . . . ". (Ibid: 149) But the BTNF continues to use the context of elk feedgrounds by saying such conditions would result only in "a reduced season for feeding at Alkali Creek" if they issue the permit to the WGFD. (Ibid, emphasis added) This is a mistaken context and only fits the preference of the proponent, the WGFC, which favors feeding of elk in western Wyoming above all other options. Yet, climatic conditions are already milder as the BTNF admits and the science shows. The climate will get even milder in the coming decades so, in the Gros Ventre Valley amidst vast winter ranges, wintering big game may have it even easier on native ranges. So it is obvious that feedgrounds do not need to be part of the equation for managing habitat and elk in this area. If the BTNF permits elk feedgrounds in the
face of such information, such a decision would be arbitrary and capricious and a violation of agency discretion.

23. Additional concerns

The BTNFW is evidently still relying on old information when it shows no more contemporary information on the known occurrence of Chronic Wasting Disease than is represented by the map contained in the 2004 Elk Feedgrounds in Wyoming by the WGFD, on page 10, Figure 2, Deer Hunt Areas with CWD. CWD has been tracked farther west towards the elk feedgrounds and exists in many more hunt areas than is represented by this map. We will insert in these comments a newer map, below, crafted by GYC with information up through 2012. The BTNFW must use the best available information and science in order to take the hard look required by NEPA. It fails to do so concerning Chronic Wasting Disease.
It is incorrect to state that elk feedgrounds "have become an effective tool in reducing damage to haystack yards and winter pastures on private lands," (DSEIS: 2), and "feedgrounds have been very effective in preventing elk depredating private crops," (Ibid: 5) The first statement (and perhaps the second since it follows a few pages later) is attributed to the WGFD 2007 report, but it is incorrect for the Gros Ventre Valley and probably elsewhere. Numerous elk have wintered away from the elk feedgrounds in the Gros Ventre Valley over the years and, because there are still a few private lands locations where hay is spread out for horses and cattle each winter's day and there are not elk-proof fences, free-ranging elk chronically come into the winter livestock feeding lines. The WGFD is repeatedly called out to address the conflict using a variety of labor intensive methods (e.g., repeated hazing with snowmachines and cracker shell guns), but the agencies and landowner still have not erected elk-proof fences around livestock feedlines which would, indeed, solve the comingling and damage problems. Just as livestock owners have done throughout the Rocky Mountains where elk free range. Despite the feedgrounds in the Gros Ventre Valley there
are still these issues of damage and conflicts with area livestock. The BTNF has not done any analysis to determine whether there are fewer or more conflicts as a result of elk feedgrounds, nor whether a certain number of comingling events are better from a disease transmission risk than more or less than that number, therefore these statements are incorrect.

It is incorrect at DSEIS, page 5, that CWD exists in only 8 states and one Canadian province. It exists in up to 22 states and two Canadian provinces. (http://www.nwhc.usgs.gov/disease_information/chronic_wasting_disease/)

There is more current information on CWD in cervids in Wyoming than is indicated by the information on page 5 of this DSEIS. As we indicated above, as of late 2012 it is known that endemic CWD deer hunt areas are within 45 miles of elk feedgrounds in the Pavillion, Wyoming and Owl Creek Mountain areas of Wyoming. (http://gf.state.wy.us/web2011/wildlife-1000284.aspx viewed in May 2013; and GYC CWD map, revised May 2013) This disease now exists in areas where elk from feedground herds and deer from the endemic areas mix at various times of the year in the same areas. The BTNF used old no longer accurate information in this DSEIS and needs to update the information about CWD to comply with their legal directives.

The map, Existing Feedground Locations in the Vicinity of Alkali Creek, Figure 3, DSEIS: 13, shows the Gros Ventre Valley, but does not indicate a very important feature: big game winter ranges. Neither does the map, Corridor Analysis Area Boundary, DESIS: 26. Since the best alternative to elk feedgrounds is winter range (see our comments above) the BTNF curiously omits this feature on these maps. The BTNF claims there is no winter range available to elk in this area, but as our comments prove, there is ample winter range to sustain thousands of free-range elk.

The BTNF claims incorrectly, "The conclusions (in this DSEIS) are based on the scientific analysis that shows a thorough review of relevant scientific information.” (DSEIS: 27, parentheses added) As we have shown repeatedly in these comments and others we have submitted to the BTNF, the BTNF has consistently ignored relevant science. See our comments above and throughout. The DSEIS also claims, "Resource specialists determined that the potential effects of this project are predictable and well documented with no significant scientific uncertainties or risks associated with this proposal.” (Ibid) We have gone to great lengths to submit information that counters this assertion by the BTNF. See our comments above and elsewhere.

At page 36, it is incorrect that there are only 550 "animal unit months" permitted in the Upper Gros Ventre Allotment. I believe there are 550 cattle (mostly cow/calf pairs) permitted for that allotment during the summer months.

At Summary of Alternative Elements: No Action Alternative 1, DSEIS:18, the BTNF states that not permitting the feedground will result in "More elk would likely congregate on the National Elk Refuge Feedground, increasing potential for disease transmission.” How many more elk? 25? 150? If it is significant numbers of elk that the BTNF thinks would leave the Gros Ventre, why does the BTNF believe elk would leave the Gros Ventre Valley en masse and congregate on the National Elk Refuge? Since the Gros Ventre is excellent winter range- much better than the Elk Refuge- it contains everything elk need. While some wild elk normally and naturally drift from one winter range complex to another in response to a variety of natural influences, that is a natural function of wild elk in an ecosystem and to be encouraged and protected by the BTNF, not prevented. The DSEIS alludes to a "more mobile elk herd" in the absence of a permit to feed at Alkali Creek (DSEIS:49). Ecologists promote the benefits of a "mobile elk herd" and we certainly support that. The BTNF should support this important component of a functioning ecosystem.
If the BTNF believes there is an alleged "potential for disease transmission" if some elk move to or towards the Elk Refuge, increase compared to what? Fewer elk? That's not a risk assessment. It's not always necessarily numbers of elk that is the important variable in calculating risk from transmissible diseases, it can also be density of infected and vulnerable animals, rates of contact, length of contact and so forth. For most of these variables the feedgrounds in the Gros Ventre, including at Alkali Creek, maintain densities of elk that are at the extreme of any known in North America for elk. Given the numbers of elk congregating on a feedground in the Gros Ventre of less than 100 acres, there are many hundreds- possibly thousands- of elk standing, feeding, and loafing per square mile or square kilometer for weeks at a time, and longer. The Elk Refuge is 24,700-acres. Alkali Creek feedground is 91 acres. The density on the Elk Refuge may- or may not be- less elk per square mile than on a state operated feedground. The BTNF should offer the public an analysis based on quantifiable facts and current conditions, and anticipated future conditions, to assess any alleged risk attributed to elk moving around the Gros Ventre, to and from Jackson Hole, to and from the Upper Green and the Upper Wind River basins, to give an accurate assessment of effects of not permitting a feedground at Alkali Creek. In addition, any elk moving to or spending a portion of a winter on the National Elk Refuge will, according to the USFWS testimony in court, soon not find hay or alfalfa pellets. "(T)he agencies are committed to ending feeding" at the Elk Refuge. (Defenders of Wildlife, et al. v. Salazar, Decision 10-5144, decided August 3, 2011 at p. 11) The Elk Refuge should be managed as part of an interconnected complex of winter ranges in and around Jackson Hole if they end feeding as they told the Appeals Court Judges they will. Elk may move from the Elk Refuge to the Gros Ventre, and indeed have in past years. The BTNF must factor the promised paradigm change on the Elk Refuge into their cumulative effects analysis as it is a connected federal action affecting elk in the very same Jackson Elk Herd as the Gros Ventre elk.

24. Conclusion

Just as we quoted the BTNF Vision Statement at the beginning of these comments, we approach the conclusion of our comments with the Mission Statement for the BTNF:

“
The employees of the Bridger-Teton National Forest are dedicated to sound natural resource management. We care for the land by improving and maintaining healthy Forests and rangelands, clean air and water, and diverse habitat for fish and wildlife populations. We serve the people by encouraging responsible use of the resources our Forest provides.

We aim to be progressive leaders in natural resource management. We work effectively as a team, committed to timely completion of projects to meet resource and public needs. We value public comment, we foster partnerships and we are active in our communities.

Above all else, Bridger-Teton National Forest employees respect each other and the public we serve.”

While this is an excellent Mission Statement the Alkali Creek Feedground SDEIS does not exemplify the application of this Mission Statement, nor does any other elk feedground. As is shown by the science, law, and information we have continually submitted to the BTNF permitting or operating elk feedgrounds is not “sound natural resource management.” The BTNF continues to off load the responsibility of operating the feedgrounds onto the WGFD and defers to a 1990 Forest Plan that contains elk feedgrounds as a conditionally allowable special use. Despite the BTNF insinuating otherwise, elk feedgrounds are not a requirement on the BTNF or any USFS lands. Contemporary readily available science shows that this special use is archaic and not
sound and does not comply with modern wildlife management standards. Continuing to permit and operate the feedgrounds do not improve or maintain “healthy Forests” but, in fact, undeniably continue what are known to be unhealthy practices. How else can any agency or persons reasonably interpret the reality of disease ridden elk confined en masse on small tracts of land, eating baled hay atop layers of feces built up over decades amidst overbrowsed, stunted and dead aspen? There is no other way to interpret elk feedgrounds, as virtually all other wildlife managers and scientists throughout North America acknowledge and, hence, counsel to abolish feeding of big game.

We are hopeful that the BTNF does value public comment and, more importantly, applies the sound science and law included in our comments. Unfortunately the cryptic and dismissive responses in the BTNF’s Winter Elk Management Activities- Public Comments and Agency Response Revised as of 7-15-08 to our May 5, 2008 DEIS comments and the resulting ROD to re-permit 5 elk feedgrounds for another 20 years show that our comments and those of our members and supporters- and the contemporary science submitted in our comments- were not valued or heeded by the BTNF because the BTNF released a virtually identical DSEIS for Alkali Creek feedground five years later. Also, during an in person, video and conference call meeting about this Alkali DSEIS held with some BTNF staff and staff from the Sierra Club, GYC, Wyoming Outdoor Council, Biodiversity Conservation Alliance and a board member of Wilderness Watch, on Monday May 13, 2013, the Deputy Forest Supervisor made statements that indicated that public comments are not valued by the BTNF. That contradicts what your Mission Statement says.

A last point about the BTNF Mission Statement: It says quite plainly that BTNF staff “aim to be progressive leaders in natural resource management”. Not permitting elk feedgrounds and phasing out the BTNF’s involvement in an archaic unhealthy wildlife management paradigm, winter feeding of elk, would be progressive and would truly display leadership.

25. Recommendation

It is the foremost duty of the Bridger-Teton National Forest managers to protect the resources of USFS lands, habitats, and the wildlife that depend on them. Permitting elk feedgrounds and thereby enabling the harmful impacts resulting from feedgrounds does not accomplish this. The BTNF is not required to permit elk feedgrounds or allow vaccinations of elk, and also has the authority to close the USFS land to vaccinations and other harmful practices.


We recommend that no permit for a feedground at Alkali Creek be issued beyond the winter of 2013-2014 and no Strain 19 vaccination for elk be allowed.

We thank you for this opportunity to comment on this DSEIS, and we look forward to continuing the dialogue with the USFS on this and related issues. We commit ourselves to help all parties achieve a sustainable outcome and expeditiously phase out elk feedgrounds. We would be happy to help the BTNF acquire any of the cited and/or listed reference materials if they are unable to get them. Please notify us promptly of your actions on this and related issues.
References:


44. Bardenett, Sarah. 2007. Forage Production on Big Game Winter Range in the Gros Ventre Valley of Western Wyoming. For the Greater Yellowstone Coalition. Jackson, WY.


Social Effects of Artificial Feeding and Baiting of Wildlife. Canadian Cooperative Wildlife Health Centre. University of Saskatchewan. Saskatoon, Saskatchewan, Canada.


52. Greater Yellowstone Coalition. 2012. Materials (including CWD map, expert reports, forage reports, etc.) on website at Elk Feedgrounds. At www.greateryellowstone.org/issues/wildlife


74. Wyoming Game and Fish Department. 2006. Evaluation of a Proposal from the Wyoming Outdoor Council, Greater Yellowstone Coalition and Jackson Hole Conservation Alliance for a Phase Out of Elk Feeding in the Gros Ventre. Cheyenne, WY.

75. Wyoming Game and Fish Department. 2007. Jackson Elk Herd Unit (E102) Brucellosis Management Action Plan. Cheyenne, WY

76. Wyoming Game and Fish Department. 2009. Job Completion Reports, Jackson Elk. Cheyenne, WY.

78. Wyoming Game and Fish Department. 2010. Chronic Wasting Disease Activities for 2010. Cheyenne, WY.
