



# Department of Environmental Quality

*To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.*



Mark Gordon, Governor

Todd Parfitt, Director

August 25, 2023

U.S. Fish and Wildlife Service MS: PRB/3W  
Attn: FWS-R6-NWRS-2023-0062  
5275 Leesburg Pike  
Falls Church, VA 22041-3803

Via: <https://www.regulations.gov/>

Re: Scoping for Updated Bison and Elk Management Plan for National Elk Refuge in Wyoming  
[FWS-R6-NWRS-2023-0062; FF06R0ZS00-FXRS12610600000-223]

Dear U.S Fish and Wildlife Service,

The Wyoming Department of Environmental Quality Water Quality Division (WDEQ/WQD) has reviewed the U.S. Fish and Wildlife Service's Notice of Intent to develop an Environmental Impact Statement (EIS) to inform updates to the Bison and Elk Management Plan (BEMP) for the National Elk Refuge (NER). The NER is approximately 24,700 acres located north of Jackson, Wyoming in the southern portion of the Greater Yellowstone Ecosystem. The BEMP, first finalized in 2007, describes the Service's proposal for the management of the Jackson bison and elk populations for a period of 15 years. The plan proposes to decrease the number of wintering bison and elk on the NER to 500 bison and 5,000 elk. In 2019, the USFWS adopted a "Step-Down Plan" to provide guidance on feeding to reduce the number of animals wintering in the NER, which will be implemented until December 2024. Currently, there are approximately 450 bison and 10,600 elk in the herds associated with the NER. A potential range of alternatives will be evaluated in the EIS. Potential management activities, either separately or in combination, include: winter feeding, hunting, disease management, and habitat conservation. For the no action alternative, the USFWS would continue the management based on the 2007 BEMP.

In accordance with Title 35, Section 11 of the Wyoming Statutes and Wyoming's Water Quality Rules, the WDEQ/WQD is responsible for the protection and restoration of the quality of waters of the state. The WQD also implements portions of the federal Clean Water Act, including development of surface water quality standards, identification of impaired waters, and development of total maximum daily loads for impaired waters under Section 303; inventorying water quality under Section 305; discharge permitting under Section 402; water quality certifications under Section 401; and addressing nonpoint sources of pollution under Section 319. As such, WDEQ/WQD is providing the following comments to help facilitate the review of potential impacts to water quality and ensure the project analysis adequately reflects and adheres to Wyoming's Water Quality Rules. The comments are not intended to be comprehensive and likely do not include all of the information necessary to evaluate potential impacts to water quality.

Therefore, WDEQ/WQD recommends the USFWS conduct additional research and coordinate with WDEQ/WQD and other cooperators to complete the water quality analysis.

WDEQ/WQD recommends the EIS identify surface and ground waters in proximity to the project area, evaluate potential impacts to the quality of those waters, and identify steps to minimize potential impacts. The EIS should also specifically explain how groundwater and surface waters will be protected from the release of chemicals, petroleum products, produced water, and any other hazardous substances, should any of these be associated with the project.

*Surface waters.* WDEQ/WQD identified Nowlin Creek, South Twin Creek, Flat Creek, and unnamed drainages within proximity to the NER. According to Wyoming Water Quality Rules, Chapter 1, Wyoming Surface Water Quality Standards, all waters within wilderness areas, including Nowlin Creek, South Twin Creek, and unnamed drainages are Class 1 waters. Class 1 waters are those surface waters where the water quality and uses that were present at the time of designation, July 17, 1979, are to be maintained and protected. The section of Flat Creek on the NER is Class 2AB and designated for drinking water, coldwater game fish, nongame fish, aquatic life other than fish, recreation, agriculture, industry, wildlife, and scenic value uses. “Adjacent wetlands,” defined by Wyoming Water Quality Rules, Chapter 1, as “wetlands that are connected by a defined channel to a surface tributary system, are within the 100-year flood plain of a river or stream or occupy the fringe of any still water body which is connected by a defined channel to a tributary system,” are classified the same as the water to which they are adjacent. Wyoming’s Water Quality Rules, Chapter 1, Surface Water Quality Standards include additional information regarding designated uses, water quality criteria, and antidegradation protections for surface waters of the state. The Wyoming Surface Water Classification List identifies designated uses assigned to waterbodies. Additional information on Wyoming Surface Water Quality Standards is available at <https://deq.wyoming.gov/waterquality/watershed-protection-2/surface-water-quality-standards/>.

*Assessed Waters.* WDEQ/WQD’s Assessment Program evaluates whether surface waters of the state meet applicable Surface Water Quality Standards in Wyoming Water Quality Rules, Chapter 1. As directed by Sections 305(b) and 303(d) of the federal Clean Water Act, the results of the water quality evaluation are compiled on a biennial basis into Wyoming’s Integrated 305(b) and 303(d) Report and submitted to the United States Environmental Protection Agency. Waters that have been assessed as not meeting at least one designated use are included in the 303(d) List of impaired waters and are prioritized for restoration planning. WDEQ/WQD has identified, from the 2020 Integrated Report, a 11.1-mile segment on Flat Creek, from the confluence with Cache Creek to the confluence with the Snake River, a quarter mile south of the NER, as impaired for physical substrate habitat alterations (i.e., sedimentation). A number of nonpoint source projects have been implemented on the 11.1-mile segment to decrease sedimentation and restore the aquatic habitat within Flat Creek. WDEQ/WQD is also working alongside the Teton Conservation District to monitor and restore Flat Creek. More information about the current management plan for Flat Creek can be found at <https://www.tetonconservation.org/flat-creek-watershed-management-plan> and <https://deq.wyoming.gov/water-quality/watershed-protection/water-quality-assessment/>.

*Surface Water Quality Data.* WDEQ/WQD has collected data for Flat Creek and can provide this data upon request should the data be useful to the analysis. WDEQ/WQD is also aware of other partners, including Teton Conservation District and the United States Geological Survey, that have conducted monitoring of surface waters in the project area. These entities may also be able to provide their data should it be useful to the analysis.

*WYPDES Outfall.* DEQ/WQD has identified a Wyoming Pollution Discharge Elimination System (WYPDES) permitted outfall (permit number WY0000019) on Flat Creek for the Jackson Fish Hatchery within proximity to the NER. This information could be useful when discussing water resources in the EIS.

*Public Water Supplies and Source Water Protection Area.* WDEQ/WQD's evaluation indicates the project is in proximity to public water supply (PWS) wells and associated source water protection area. WDEQ/WQD recommends the project sponsor coordinate directly with the PWS regarding potential impacts. WDEQ/WQD also recommends the analysis identify the PWS and source water protection area, evaluate potential impacts to the PWS and source water protection area, and identify specific actions that will be implemented to protect the PWS and the source water protection area.

*Priority Aquifers.* WDEQ/WQD's evaluation indicates that a priority aquifer is located in the project area. As such, WDEQ/WQD recommends that the analysis identify and minimize potential impacts to groundwater such as implementation of best management practices (BMPs) that will prevent spills during construction activities. Additional information is available at <http://deq.wyoming.gov/waterquality/groundwater>.

*Sole Source Aquifers.* WDEQ/WQD's evaluation also indicates that the project area overlays the Elk Mountain Sole Source Aquifer designated by the Environmental Protection Agency (EPA). Additional information about sole source aquifers can be reviewed at <https://www.epa.gov/dwssa>. Sole source aquifers should be protected from contamination, and, if the project will be federally funded and has the potential to contaminate the aquifer, a review by EPA may be required. WDEQ/WQD recommends contacting EPA Region 8 for more information to determine if this project requires such a review: <https://www.epa.gov/dwssa/sole-source-aquifer-contacts-epas-regional-offices>.

*Nonpoint Sources of Pollution.* WDEQ/WQD encourages project sponsors minimize potential impacts to surface and ground water quality by implementing BMPs for activities that do not require WDEQ-issued permits. These include, but are not limited to, practices associated with stream and lakeshore restoration; road construction and maintenance; rangeland management; wildland fire; silviculture; recreation management; and vegetation and mineral management. The analysis can identify the BMPs associated with elk and bison management that will be used to minimize nonpoint sources of pollution. Additional information on nonpoint source pollution and recommended BMPs are available at <http://deq.wyoming.gov/wqd/non-point-source/>.

WDEQ/WQD appreciates the opportunity to participate in the scoping process for the updated Bison and Elk Management Plan. WDEQ/WQD looks forward to reviewing and providing input on the EIS and management plan. Should you have any questions regarding our comments please contact Tori Nye at [tori.nye@wyo.gov](mailto:tori.nye@wyo.gov) or 307-777-7050.

Sincerely,



Jennifer Zygmunt  
Water Quality Division Administrator

cc: Keith Guille, Outreach Manager