



December 4, 2018

**BY EMAIL AND FIRST-CLASS MAIL**

Brian Glaspell  
Refuge Manager  
Jackson Hole National Elk Refuge  
675 E. Broadway  
P.O. Box 510  
Jackson, WY 83001

Dear Mr. Glaspell:

I am writing on behalf of Defenders of Wildlife, the National Wildlife Refuge Association, and the Sierra Club regarding your agency's compliance with the U.S. Fish and Wildlife Service's 2007 Bison and Elk Management Plan ("BEMP") for the Jackson Hole National Elk Refuge and the National Wildlife Refuge System Improvement Act ("Improvement Act") with respect to the Refuge's supplemental feeding program. Recognizing the severe wildlife disease consequences of supplemental feeding, the BEMP called for the Service to issue a plan to phase out supplemental feeding at the Refuge within the first year of plan implementation—i.e., by 2008. Further, the U.S. Court of Appeals for the D.C. Circuit, in reviewing the validity of the BEMP under the Improvement Act, concluded in 2011 that "[t]here is no doubt that unmitigated continuation of supplemental feeding would undermine the conservation purpose of the National Wildlife Refuge System." Defs. of Wildlife v. Salazar, 651 F.3d 112, 117 (D.C. Cir. 2011).

Last winter, for the first time since the BEMP was issued—and for the first time in decades—the Service did not feed elk wintering on the Refuge. Instead, the Service allowed elk to sustain themselves on natural forage on the Refuge and other lands throughout the winter season. The result was a less densely congregated, more widely distributed Refuge elk population—despite the fact that the percentage of the Jackson elk herd over-wintering on the Refuge remained at a high level that is well above the Service's own objective. See Eric Cole, Winter Effects on the National Elk Refuge and Jackson Elk Herd in 2017 and 2018: Comparison of a Heavy-Feeding versus No-Feeding Winter, at 8-10 (Sep. 11, 2018) (Exhibit 1). Last winter's experience demonstrates the opportunity that exists to diminish the threat of wildlife disease on the Refuge through reduction or elimination of supplemental feeding, and it offers a strong foundation for the Service to build upon in implementing your agency's own BEMP direction to phase out supplemental feeding.

Nevertheless, a more ambitious management response is required to achieve a phase out of supplemental feeding that can be implemented during all winter conditions. Indeed, the

Service’s own Refuge staff have recognized that “[f]uture efforts to reduce reliance on supplemental feeding by shortening feed season length and increasing the frequency of years without feeding will require reduction in the number of elk wintering on [the Refuge] and mitigating the effects of elk and bison moving to surrounding private land.” Exhibit 1 at 11.

As recent events have demonstrated, time is of the essence to undertake such efforts. On November 21, 2018, the Wyoming Game and Fish Department confirmed detection of lethal chronic wasting disease (“CWD”) in a mule deer buck that was struck and killed by a vehicle within Grand Teton National Park. Wyoming Game & Fish Department, Chronic wasting disease in Grand Teton National Park (Nov. 21, 2018) (Exhibit 2). This detection places CWD on the doorstep of the National Elk Refuge—if it is not already present but undetected there. As discussed below, CWD threatens infection of Refuge elk, soils, and plants with a fatal and incurable disease that cannot be readily eradicated by any known treatment.

That is why it is imperative for the Service to move forward with issuance and implementation of the supplemental feeding phase-out plan that the BEMP promised would be issued in 2008. As the BEMP promised, that plan must provide a blueprint for the Service to successfully pursue a feeding phase-out program. Despite the passage of nearly 12 years since your agency issued the BEMP, the Service has not issued the required phase-out plan.

I am accordingly writing today to request that the Service take prompt action to issue and implement the phase-out plan promised in the BEMP before the ecological consequences of the Service’s supplemental feeding program become even more severe. Failing to do so would undermine the conservation purpose of the Refuge, violate the Improvement Act, and court ecological disaster by regularly encouraging high numbers and densities of wild elk to occupy the Refuge, thereby facilitating the spread of wildlife disease among the fed elk population.

In this regard, I also want to make clear that a draft plan that circulated within your agency in October 2016, and which we obtained under the Freedom of Information Act, falls far short of prescribing the steps needed to responsibly and effectively address the supplemental feeding issue, respond to the threat of wildlife disease, and bring the Service into compliance with the Improvement Act in a timely manner.

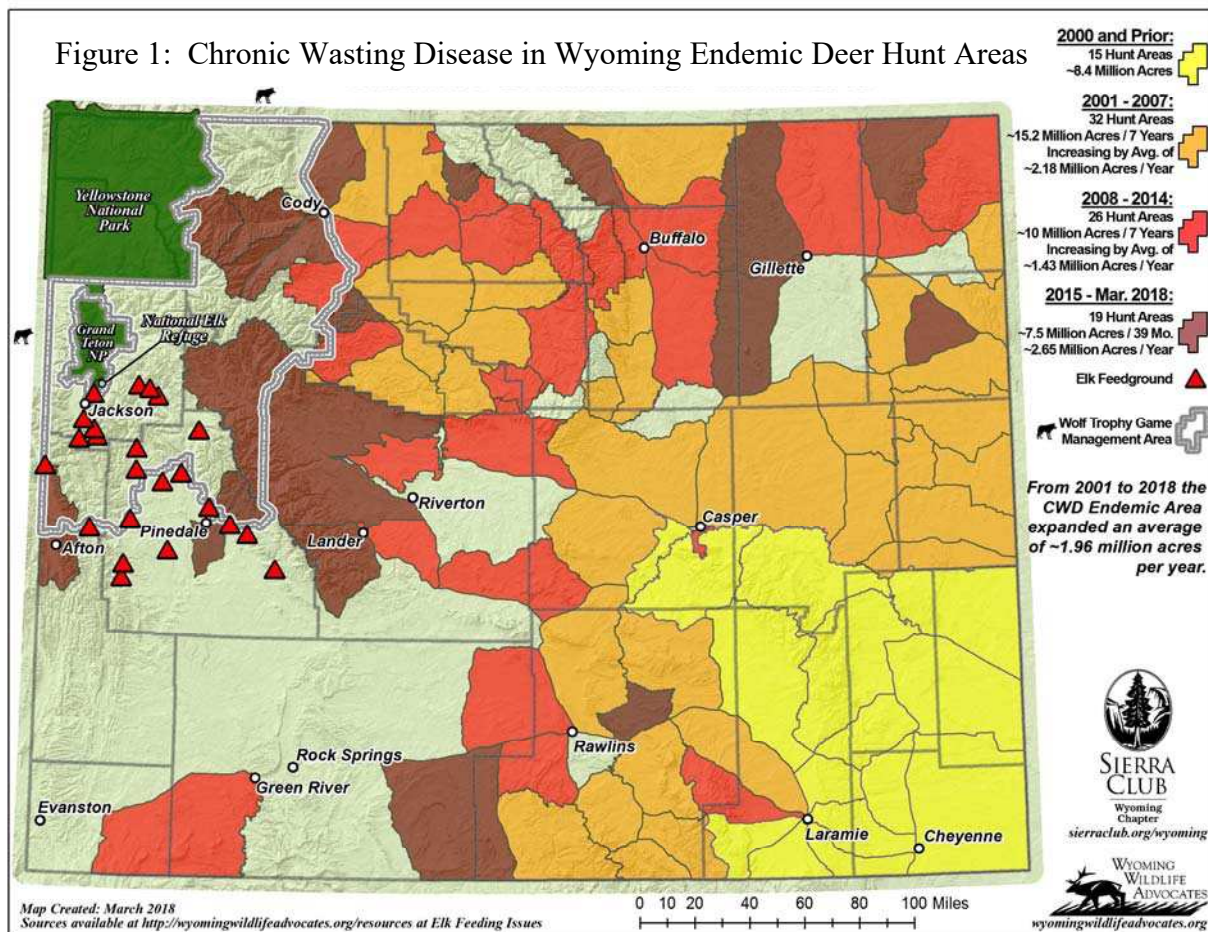
## I. SUPPLEMENTAL FEEDING THREATENS WILDLIFE DISEASE

The Service has fed elk wintering on the National Elk Refuge near Jackson, Wyoming, since the beginning of the 20th century. Defs. of Wildlife, 651 F.3d at 113. As originally conceived, feeding was intended to prevent excessive starvation among one of the last remaining large elk herds in North America and reduce conflicts between elk and local ranchers; elk wintering in the Jackson area might otherwise raid ranches for hay and other food. But the experience of more recent decades demonstrates that supplemental feeding also causes elk to congregate unnaturally in large numbers in the area where feeding occurs, facilitating the spread of diseases such as brucellosis, hoof rot, parasites, and—as now imminently threatened—chronic wasting disease. Id. at 113-14.

Chronic wasting disease is always fatal in elk and other cervids; there is no known effective vaccine or treatment. Healthy animals contract the disease through exposure to prions, abnormal proteins that are carried and shed by infected animals. (Mad cow disease, or bovine

spongiform encephalopathy, infects animals through a similar mechanism.) Once prions enter the soil—which may occur when infected animals shed saliva or other body fluids into the environment, or die and decompose—the proteins may be taken up by plants, then spread to deer and elk that consume the contaminated plants. CWD prions are extremely difficult to remove from the environment; they may persist in soil and plants for years after they are first introduced to an area.

Although chronic wasting disease has not yet been confirmed on the Refuge, the November 2018 confirmation of CWD in a mule deer in Grand Teton National Park is only the most recent in a string of CWD detections in Wyoming that have marched ever closer to the Refuge boundary. Eric Cole, 20 January 2017 National Elk Refuge Biological Update, at 2 (Exhibit 3); see also Figure 1. As a Refuge biologist wrote in January 2017: “Although the exact time frame is unclear, introduction of CWD into the Jackson elk herd appears inevitable and could occur at any time.” Exhibit 3 at 3.



Supplemental feeding, which tends to concentrate elk in unnatural numbers on the Refuge, threatens to exacerbate the spread of CWD among Refuge elk and, when infected elk disperse at the end of the winter, throughout the Greater Yellowstone region. According to the Refuge biologist:

Elk are fed on the same 5,000 acres of NER each year, and given the persistence of CWD prions in the environment, these areas will likely become heavily contaminated with the CWD prion over time if status quo management continues. 60-80% of the Jackson elk herd use NER feedgrounds each winter, which will regularly expose these elk to CWD prions at these sites. Various elk migration studies and research on another disease prevalent on NER, (brucellosis), suggest that the current feeding regime and its associated high concentrations of elk could be a source of CWD infection for cervids throughout the Greater Yellowstone Ecosystem.

Exhibit 3 at 3; Exhibit 1 at 10 (“Higher prevalence of [wildlife] diseases in feedground situations implies greater potential for significant negative population-level impacts when chronic wasting disease arrives in western Wyoming elk herds.”) (citation omitted).

## II. THE IMPROVEMENT ACT DEMANDS ACTION TO PHASE OUT FEEDING

Because of its wildlife disease consequences, supplemental feeding is inconsistent with the Improvement Act’s requirement that the National Elk Refuge be managed to promote the conservation of the elk. The Service, as steward of the nation’s wildlife refuges, is required under the Improvement Act to “provide for the conservation of fish, wildlife, and plants, and their habitats within the [National Wildlife Refuge] System” by “sustain[ing] and, where appropriate, restor[ing] and enhanc[ing], healthy populations of fish, wildlife, and plants.” 16 U.S.C. §§ 668dd(a)(4)(A), 668ee(4). Consistent with this mandate, the Service is further obligated to “ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans.” 16 U.S.C. § 668dd(a)(4)(B).

Supplemental feeding, which promotes the spread of dangerous diseases among the very elk that the Refuge was created to protect and threatens to contaminate the Refuge itself with contagious disease materials (including chronic wasting disease prions), violates this mandate to ensure the health and integrity of the elk and their environment. As the D.C. Circuit concluded in addressing this issue:

[T]he whole point of a National Elk Refuge is to provide a sanctuary in which populations of healthy, reproducing elk can be sustained. See 16 U.S.C. § 673a (creating a “refuge” for the elk). 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.

Defs. of Wildlife, 651 F.3d at 116.

Defenders of Wildlife addressed the validity of the Bison and Elk Management Plan, which promised a 15-year program designed to “create conditions that would allow the elk and bison to survive the winter without supplemental feeding and, in the meantime, manage the risk of contagion until the practice ended.” Id. at 114. Specifically, the BEMP provided, in relevant part:

By year one, develop a structured framework, in collaboration with the Wyoming Game and Fish Department, of adaptive management criteria and actions for transitioning from intensive supplemental winter feeding of bison and elk herds to greater reliance on natural forage on the refuge. Establish objective criteria for when supplemental feeding will begin and end in years when needed on the refuge.

BEMP at 135 (emphasis added). Because the Service issued the BEMP in 2007, the BEMP's promise of a feeding phase-out plan in "year one" indicated action to be taken by the Service in 2008. See id.

Based on the promise of this 15-year program, the D.C. Circuit rejected a challenge seeking imposition of a firm deadline for the end of winter elk feeding. See Defs. of Wildlife, 651 F.3d at 117-18. Given the plan's stated commitment to "ending the practice over time while maintaining the flexibility needed to respond to facts on the ground," the court held that it was not arbitrary and capricious for the Service to set no deadline for terminating winter feeding. See id. at 117. Nevertheless, as discussed, the court left "no doubt that unmitigated continuation of supplemental feeding would undermine the conservation purpose of the National Wildlife Refuge System." Id. And, the court said, "[i]t is highly significant and indeed dispositive to us ... that the agencies are committed to ending supplemental feeding." Id. Indeed, the court cautioned, "the plan might well have been unreasonable had the agencies categorically refused to phase out the winter feeding program in spite of all the evidence in the record about the dangers of supplemental feeding." Id. (quotation and citation omitted). Further, the court directed that the Service "must proceed in a manner that is consistent with the science and accounts for the risks posed by supplemental feeding." Id.

### III. THE SERVICE SHOULD ISSUE THE PROMISED PHASE-OUT PLAN

In the nearly twelve years since adoption of the BEMP and more than seven years since the D.C. Circuit's decision, the Service has "failed to meet the 2007 Plan's objective to wean the herd from supplemental feed." Mayo v. Reynolds, 875 F.3d 11, 14 (D.C. Cir. 2017); see also id. at 24 ("[F]ailure to decrease supplemental feeding [on the Refuge] obviously is not in keeping with one of the goals of the [BEMP]."). The Service has not even developed a plan to do so. Specifically, the Service has not issued the supplemental feeding phase-out plan that the BEMP promised for issuance in 2008.

Meanwhile, the number of elk on feedlines has continued to grow: while the Refuge hosted approximately 7,000 elk on its winter feedlines when the Service issued the BEMP in 2007, the Service fed 8,296 elk on the Refuge during the winter of 2013-14. BEMP at 60; National Elk Refuge, Draft Step-Down Plan at 12 (Oct. 2016) (Exhibit 4) The count at the end of February 2017 found 8,879 elk on feedlines on the Refuge.<sup>1</sup>

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<sup>1</sup> Mike Koshmrl, Final refuge elk count: 8,880, Jackson Hole News & Guide(March 2, 2017), [http://www.jhnewsandguide.com/news/environmental/final-refuge-elk-count/article\\_94832511-8fa2-5b0c-9bea-5a18cad30a88.html](http://www.jhnewsandguide.com/news/environmental/final-refuge-elk-count/article_94832511-8fa2-5b0c-9bea-5a18cad30a88.html).

Despite the Service's inaction in implementing the BEMP, the threat of CWD and the need to end supplemental feeding on the Refuge have become even more pressing in recent years. As discussed above and depicted in Figure 1, CWD continues its spread northward and westward across Wyoming toward the Refuge, with the most recent CWD detection adjacent to the Refuge in Grand Teton National Park. Further, disease transmission among the dense congregations of feedground elk threatens to spread CWD throughout the Greater Yellowstone Ecosystem when the elk disperse to their summer ranges. In this regard, in October 2017, for the first time, CWD was discovered in a Montana mule deer near the Wyoming border.<sup>2</sup> Since then, six additional mule and white-tailed deer carrying the disease have been identified in south-central Montana.<sup>3</sup> In response to this development, the Montana Fish and Wildlife Commission sent a letter to the Wyoming Game and Fish Commission asking the Wyoming Commission to begin closing the state's elk feedgrounds because the feedgrounds encourage the spread of chronic wasting disease:

Scientists agree that, when CWD hits the feed grounds in Wyoming, the unnatural concentrations of wildlife in the feed grounds will accelerate the spread of the disease. Some of the animals that spend the winter months on the feed grounds eventually co-mingle with Montana wildlife, and this interaction becomes a disease vector for Montana's elk and deer populations.

Letter from Dan Vermillion, Chairman, Montana Fish and Wildlife Commission, to Keith Culver, President, Wyoming Game and Fish Commission, at 1 (Dec. 7, 2017) (Exhibit 5). The same concerns apply equally to supplemental feeding on the Refuge.

Accordingly, I hereby request that the Service move promptly to implement its commitments stated in the Bison and Elk Management Plan—and offered to the court in the Defenders of Wildlife case—by proceeding with issuance and implementation of its much-delayed phase out of supplemental winter feeding. Last winter's cessation of supplemental feeding offered promise for the future, but a plan for more focused management action is necessary for the Service to capitalize on that promise. That plan is needed more urgently than ever in light of the recent CWD detection in Grand Teton National Park. The Service should promptly issue the supplemental feeding phase-out plan.

#### IV. THE PLAN SHOULD INCLUDE FIRM COMMITMENTS TO END FEEDING

Despite the Service's failure to issue the feeding phase-out plan promised in the BEMP, your agency has stated within the past few years that it is in the process of belatedly developing that plan—which it terms a Step-Down Plan. However, drafts of that Plan made available

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<sup>2</sup> Sarah Dettmer, Montana's first case of chronic wasting disease found south of Billings, Great Falls Tribune (Nov. 8, 2017), <http://www.greatfallstribune.com/story/outdoors/2017/11/08/montanas-first-case-chronic-wasting-disease-found-near-billings/845184001/>.

<sup>3</sup> Karl Puckett, Interest high in special deer hunt in Montana, Great Falls Tribune (Dec. 11, 2017), <http://www.greatfallstribune.com/story/news/2017/12/11/special-deer-hunt-montana-sells-out-minutes/941048001/>; Testing confirms Montana deer had chronic wasting disease, Great Falls Tribune (Nov. 8, 2018), <https://www.greatfallstribune.com/story/news/2018/11/08/testing-confirms-deer-had-fatal-chronic-wasting-disease/1930177002/>.

pursuant to the Freedom of Information Act indicate that the Service may be setting a course that would fall far short of its obligations under the Improvement Act, its representations in the BEMP, and its promises to the D.C. Circuit. A draft circulated within the Service in October 2016 provided only that “[d]uring the first several years of Step-Down Plan implementation, the initiation of feeding will be delayed for short durations of time (days)” and that “termination of feeding is expected to occur about a week earlier than current conditions.” Exhibit 4 at ix-x. As an independent expert who reviewed the draft noted, “there does not appear to be any firm commitment to reducing feeding as the narrative is vague with regard to the magnitude of reduction in days of feeding.” Key Items from Peer Review in advance of 12 August 2016 (Aug. 9, 2016) (comments from Bob Garrott, Montana State University) (Exhibit 6).

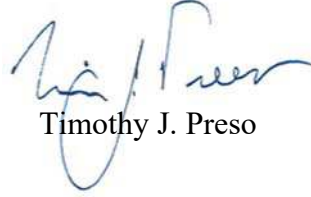
Further, the draft Step-Down Plan commits to supporting Wyoming’s objective to maintain the Jackson elk herd at 11,000 animals, despite the fact that, as the draft Plan acknowledges, this herd objective is inconsistent with the BEMP’s goal of reducing the number of elk wintering on the Refuge to 5,000. Exhibit 4 at 10, 45. According to the draft Plan, “based on current elk distribution it is no longer possible to winter 5,000 elk on [the Refuge] and maintain 11,000 elk in the overall Jackson Elk Herd.” Exhibit 4 at 10. Indeed, according to a Service official, Wyoming’s “goal of 11,000 elk in the Jackson herd ... [is] too high to sustain without supplemental feeding.” Will Meeks, National Wildlife Refuge System, Information Memorandum for the Regional Director, at 1 (Apr. 23, 2013) (Exhibit 7). Thus, by hewing to Wyoming’s elk herd population objective, the draft Plan commits the Service to continue supplemental feeding for the foreseeable future.

Accordingly, I hereby also request that the Service ensure that its long-delayed plan will provide firm commitments to implement the feeding phase out that your agency’s longstanding promises and federal law require, notwithstanding any inconsistent elk population objective set by Wyoming. Ultimately, the Service is responsible for complying with the Improvement Act regardless of any other party’s objectives. See Defs. of Wildlife, 651 F.3d at 118 (“We take the Secretary 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 in the Refuge.”).

In sum, the Service should take prompt action to issue its long-delayed plan to phase-out supplemental feeding and that plan should include firm commitments to expeditiously end the practice. As last winter’s experience showed, ending the supplemental feeding program promises a future for the Jackson Elk Herd that is less clouded by the threat of wildlife disease, including lethal chronic wasting disease. Yet time is of the essence to capitalize on last winter’s experience because chronic wasting disease is now confirmed adjacent to the Refuge in Grand Teton National Park and could appear among the Refuge elk, with severe consequences, any day. Common sense wildlife management, as well as applicable law and the Refuge’s own prior commitments, demand responsible action to address this threat as soon as possible.

We would welcome an opportunity to meet with you to discuss these issues. In the meantime, pursuant to 5 U.S.C. § 555(e), I ask that you respond to this request as soon as possible so that we may determine what further action may be necessary to ensure conservation of the Refuge and its elk as governing law requires.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Timothy J. Preso". The signature is fluid and cursive, with a large initial "T" and "P".

Timothy J. Preso

cc: Superintendent, Grand Teton National Park  
Noreen Walsh, Region 6 Director, U.S. Fish and Wildlife Service  
Will Meeks, Assistant Regional Director - Refuges, U.S. Fish and Wildlife Service