

CHARLES IRESTONE, and, DANIEL BRISTER,

Plaintiffs,

v.

KEN SALAZAR, Secretary of the Interior; SUZANNE LEWIS, Park Superintendent, Yellowstone National Park; NATIONAL PARK SERVICE, an agency of the U.S. Department of Interior; LESLIE WELDON, Regional Forester, U.S. Forest Service Northern Region; UNITED STATES FOREST SERVICE, an agency of the U.S. Department of Agriculture; MARY ERICKSON, Gallatin National Forest Supervisor,

Defendants.

Defendants Ken Salazar, Secretary of the Interior; Suzanne Lewis, Park Superintendent, Yellowstone National Park; National Park Service (“the Park Service” or “NPS”), an agency of the U.S. Department of Interior; Leslie Weldon, Regional Forester, U.S. Forest Service Northern Region; United States Forest Service (“the Forest Service”), an agency of the U.S. Department of Agriculture; and Mary Erickson, Gallatin National Forest Supervisor, by their undersigned counsel, hereby Answer and assert their Affirmative Defenses to Plaintiffs’ Complaint (the “Complaint”).

I. INTRODUCTION

1. Paragraph 1 of the Complaint contains Plaintiffs' description of the case which does not require a response. To the extent a response is required, Defendants deny the allegations in paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint contains Plaintiffs' description of the case which does not require a response. To the extent a response is required, Defendants deny the allegations in paragraph 2 of the Complaint.

3. Defendants admit the Forest Service and the Park Service are signatories to and participate in the Interagency Bison Management Plan (IBMP) and authorize and take management actions with respect to bison roaming out of Yellowstone National Park ("YNP"). Defendants also admit that between 2001 and 2009 pursuant to the IBMP approximately 3200 bison which migrated to the boundary of YNP were sent to slaughter. Defendants deny the remaining allegations that are contained in Paragraph 3.

4. Defendants aver that the Gallatin National Forest ("GNF") Plan was approved in 1987 and bison did not occupy the GNF at that time. Defendants also aver that the Forest Service manages the GNF for multiple uses, including but not limited to wildlife habitat and livestock grazing, as required by the National Forest Management Act ("NFMA") and its regulations. Defendants deny the remaining allegations contained in paragraph 4 of the Complaint.

5. Defendants admit that they have approved the Adaptive Management Plan to amend the IBMP in 2008, the IBMP Operating Procedures in 2009, the Special Use Permit for the Horse Butte Bison Capture Facility in 2009, livestock grazing on the GNF, and fence construction for the Royal Teton Ranch ("RTR") Lease, but deny that they have failed to comply

with the National Forest Management Act (“NFMA”) as alleged in paragraph 5 of the Complaint.

6. Defendants admit that bison were once a widely ranging native species and that wild, free-ranging bison are now almost exclusively limited to the Greater Yellowstone Ecosystem (“GYE”). Defendants deny that bison are a keystone species in forests in the GYE. Defendants admit that the GNF Forest Plan omits reference to bison, however Defendants aver that when the GNF Forest Plan was approved in 1987 bison did not occupy the forest. Defendants deny the remaining allegations in paragraph 6 of the Complaint.

7. Defendants deny the allegations in paragraph 7 of the Complaint except that they admit that sage grouse populations in many areas are declining. Defendants aver that the GYE is the only ecosystem in the continental United States recognized to have the complete complement of species present as were present before European habitation.

8. Defendants deny the allegations in the first sentence of paragraph 8 and aver that the Forest Service does not have a policy to exclude bison from GNF lands. Defendants deny the second and third sentences of paragraph 8 and aver that sage grouse populations on the GNF are limited by a lack of suitable wintering habitat due to deep snow and other factors unrelated to bison.

9. Defendants admit that the Park Service oversaw and carried out the slaughter of bison in the winter/spring of 2007/2008 and that approximately one third of the Yellowstone bison population was subject to removal. In regard to the allegations contained in the second sentence of paragraph 9 of the Complaint, Defendants deny that the actions of the Forest Service

or Park Service with respect to bison management inside or outside the YNP are in violation of applicable federal law.

10. Defendants admit that the Park Service has participated in a program to manage bison and that since 2000 hundreds of bison have been captured inside YNP, with many of those captured sent to slaughter. Defendants deny the remaining allegations contained in paragraph 10 of the Complaint.

11. Defendants deny the allegations in Paragraph 11. A viable bison population exists within the GYE, which includes use of habitat on National Forest lands and other suitable habitats outside of YNP. Defendants aver that increasing the number of bison and the evolution of a substantially larger bison conservation area outside of YNP is the prerogative of the states in the greater Yellowstone area (Idaho, Montana, Wyoming), not the NPS or the Forest Service. The State of Montana has primary management responsibilities for livestock disease and wildlife on GNF as well as private lands surrounding YNP.

12. Defendants deny the allegations in the first sentence of paragraph 12 suggesting they have not conducted legally required environmental analyses, and Defendants deny the allegations of the second sentence of that paragraph.

13. Defendants admit they have not completed new or supplemental analysis pursuant to the National Environmental Policy Act (“NEPA”) related to the 2005 5-year Status Review of the IBMP, the IBMP Adaptive Management amendments, or the revised Operating Procedures but deny that any such analysis was required; Defendants aver they have analyzed new information and circumstances, and have made changes to the IBMP based on new information; Defendants deny that they have failed to comply with NEPA requirements as alleged.

14. Defendants deny that they have failed to comply with NEPA and NFMA as alleged in the first two sentences of paragraph 14 of the Complaint and deny the allegations in the third sentence of paragraph 14.

15. The allegations set forth in paragraph 15 consist of legal conclusions that require no response. To the extent that a response is required, Defendants deny the allegations.

16. The allegations set forth in paragraph 16 characterize the relief sought by Plaintiffs to which no response is required. Defendants deny that Plaintiffs are entitled to any relief whatsoever.

17. The allegations set forth in paragraph 17 characterize the relief sought by Plaintiffs to which no response is required. Defendants deny that Plaintiffs are entitled to any relief whatsoever.

18. The allegations set forth in paragraph 18 characterize the relief sought by Plaintiffs to which no response is required. Defendants deny that Plaintiffs are entitled to any relief whatsoever.

II. JURISDICTION

19. Defendants admit the allegations in the first sentence paragraph 19 of the Complaint. The second sentence of paragraph 19 contains statements of jurisdiction that require no response.

20. The first sentence of paragraph 20 contains a statement of jurisdiction to which no response is required. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph 20 and therefore they are denied.

21. Defendants deny the allegations in the first and second sentences of paragraph 21. The third and fourth sentences in paragraph 21 contain statements of jurisdiction to which no response is required. To the extent that a response is required, Defendants deny the allegations.

22. Defendants admit the portion of the first sentence of paragraph 22 alleging that Plaintiffs have participated in agency decision making public participation opportunities but deny that Plaintiffs have exhaust all administrative remedies afforded them under the law. Defendants admit the allegations in the second sentence of paragraph 22. The third sentence contains statements of jurisdiction to which no response is required.

III. VENUE

23. The first three sentences of paragraph 23 of the Complaint contain statements regarding venue to which no response is required. Defendants admit that Leslie Weldon is a Regional Forester of the Forest Service with offices in Missoula, Montana. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the fourth and fifth sentences of paragraph 23 and therefore they are denied.

IV. THE PARTIES

24. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 24 of the Complaint and therefore they are denied.

25. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 25 of the Complaint and therefore they are denied.

26. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 26 of the Complaint and therefore they are denied.

27. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 27 of the Complaint and therefore they are denied.

28. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 28 of the Complaint and therefore they are denied.

29. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 29 of the Complaint and therefore they are denied.

30. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 30 of the Complaint and therefore they are denied.

31. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 31 of the Complaint and therefore they are denied.

32. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 32 of the Complaint and therefore they are denied.

33. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 33 of the Complaint and therefore they are denied.

34. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 34 of the Complaint and therefore they are denied.

35. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 35 of the Complaint and therefore they are denied.

36. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first and second sentences of paragraph 36 of the Complaint and therefore they are denied. Defendants admit that Native Ecosystems Council has

participated in proposed plans and activities on the GNF but Defendants deny that any such proposed plans or activities were environmentally damaging.

37. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 37 of the Complaint and therefore they are denied.

38. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in paragraph 38 of the Complaint and therefore they are denied.

39. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first five sentences of paragraph 39 of the Complaint and therefore they are denied. Defendants deny the allegations in the sixth sentence in paragraph 39.

40. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the first eight sentences of paragraph 40 of the Complaint and therefore they are denied. Defendants deny the allegations in the ninth sentence in paragraph 40.

41. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint and therefore they are denied. Defendants deny that Plaintiff's interests in wild bison are injured by Defendants' management of the Yellowstone bison and deny that such management threatens the future integrity of bison populations in the GYE.

42. Defendants admit the allegations contained in paragraph 42 of the Complaint.

43. Defendants admit the allegations contained in paragraph 43 of the Complaint.

44. Defendants admit the allegations contained in paragraph 44 of the Complaint.

45. Defendants admit the allegations contained in paragraph 45 of the Complaint.

46. Defendants admit the allegations contained in paragraph 46 of the Complaint.

47. Defendants admit the allegations contained in paragraph 47 of the Complaint.

V. BACKGROUND: LEGAL AND PROCEDURAL FRAMEWORK

48. The allegations in paragraph 48 of the Complaint characterize provisions of the National Park Service Organic Act (the “NPS Organic Act”), 16 U.S.C. § 1a-1. The statute speaks for itself and provides the best evidence of its contents. Defendants deny any allegation contrary to its plain language and meaning.

49. The allegations in paragraph 49 characterize The General Authorities Act of 1970, 16 U.S.C. § 1a-1. The statute speaks for itself and provides the best evidence of its contents. Defendants deny any allegation contrary to its plain language and meaning.

50. Defendants admit the first sentence in paragraph 50 of the Complaint except Defendants aver that the NPS finalized its interpretation of its no-impairment and conservation mandates in its 2006 Management policies. The remainder of paragraph 50 of the Complaint is Plaintiffs’ characterization of NPS management policies and the case Greater Yellowstone Coalition v. Kempthorne, 577 F. Supp.2d 183 (D.D.C. 2008), which speak for themselves and are the best evidence of their contents. Defendants deny that the NPS Management Policies are enforceable.

51. The allegations in paragraph 51 characterize various NPS Management Policies. The Management Policies speak for themselves and are the best evidence of their contents. Defendants deny any allegation contrary to their plain language and meaning.

52. The allegations contained in paragraph 52 characterize NPS Management Policies and 16 U.S.C. § 3. The Management Policies and the statutory provision speak for themselves and are the best evidence of their contents. Defendants deny any allegation contrary to their plain language and meaning.

53. The allegations contained in paragraph 53 characterize NPS Management Policies and 16 U.S.C. § 1a-1. The Management Policies and the statutory provision speak for themselves and are the best evidence of their contents. Defendants deny any allegation contrary to their plain language and meaning.

54. The allegations in paragraph 54 characterize various NPS Management Policies. The Management Policies speak for themselves and are the best evidence of their contents. Defendants deny any allegation contrary to their plain language and meaning.

55. The allegations in paragraph 55 characterize a NPS Management Policy. The Management Policy speaks for itself and is the best evidence of its contents. Defendants deny any allegation contrary to its plain language and meaning.

56. The allegations in paragraph 56 characterize various NPS Management Policies. The Management Policies speak for themselves and are the best evidence of their contents. Defendants deny any allegation contrary to their plain language and meaning.

57. The allegations in paragraph 57 characterize various NPS Management Policies. The Management Policies speak for themselves and are the best evidence of their contents. Defendants deny any allegation contrary to their plain language and meaning.

58. The allegations in paragraph 58 characterize various NPS Management Policies. The Management Policies speak for themselves and are the best evidence of their contents. Defendants deny any allegation contrary to their plain language and meaning.

59. Defendants admit that Yellowstone National Park is the nation's first national park, established in 1872. Defendants deny the allegations contained in the second sentence of paragraph 59. Defendants aver that Yellowstone was "set apart as a public park or pleasuring ground for the benefit and enjoyment of the people." 16 U.S.C.A. § 21. The remaining allegations contained in paragraph 59 characterize provisions of the Yellowstone National Park Organic Act (the "Yellowstone Organic Act") which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

60. The allegations contained in paragraph 60 characterize a provision of the Yellowstone Organic Act, 16 U.S.C. § 26, which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

61. The allegations contained in paragraph 61 characterize 16 U.S.C. §§ 5901 et seq. and the IBMP Final Environmental Impact Statement ("FEIS") which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

62. The allegations in paragraph 62 of the Complaint characterize requirements of NFMA which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

63. The allegations in paragraph 63 of the Complaint characterize requirements of

NFMA regulations, which speak for themselves and are the best evidence of their contents.

Defendants deny any allegations contrary to their plain language and meaning. Defendants aver that the 1982 planning regulations cited in paragraph 63 have been superseded and are no longer in force.

64. The allegations in paragraph 64 of the Complaint characterize the GNF Forest Plan and NFMA planning regulations which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. Defendants admit that the GNF Forest Plan was developed pursuant to the 1982 planning regulations.

65. The allegations in paragraph 65 of the Complaint characterize the GNF Forest Plan and 1982 NFMA planning regulations which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

66. The first sentence of paragraph 66 of the Complaint characterizes the GNF Forest Plan which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants deny the second sentence of that paragraph.

67. Paragraph 67 of the Complaint characterizes the requirements of NFMA and its regulations, and purports to quote from the cited cases, which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

68. Paragraph 68 of the Complaint contains a characterization of a publication of the Office of Technology and Assessment which speaks for itself and is the best evidence of its

contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants admit that biodiversity can be used as one measure of ecosystem health but deny that it can be used as such to the exclusion of other measures. Defendants are without sufficient knowledge or information regarding to whom Plaintiffs refer when they use the term “our public” to form a belief as to the truth of the remaining allegations regarding what is of “great interest to our public” and therefore such allegations are denied.

69. Paragraph 69 of the Complaint characterizes the requirements of the Administrative Procedure Act (“APA”), as interpreted in *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726 (1998), and NFMA, which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

70. Paragraph 70 of the Complaint characterizes the requirements of NFMA, a cited provision from the Federal Register, NFMA regulations, a 2001 Interpretative Rule, and unnamed court decisions, which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. Defendants aver that the 2000 NFMA regulations allow the Forest Service to use the procedures of the 1982 NFMA regulations for preparation of Forest Plan revisions but the 2000 NFMA regulations apply to project decisions proposed by the Forest Service.

71. Defendants admit that the GNF Forest Plan was prepared using the 1982 NFMA planning regulations. The remainder of paragraph 71 of the Complaint characterizes the requirements of NFMA and its 1982 planning regulations which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

72. Defendants admit the allegations contained in the first sentence of paragraph 72. The second sentence of Paragraph 72 characterizes *Davic, R. D.*, “Linking keystone species and functional groups: a new operational definition of the keystone species concept,” *Conservation Ecology* 7(1): r11 (2003), [online] URL: <http://www.consecol.org/vol7/iss1/resp11/> which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

73. The allegations contained in paragraph 73 characterize *Van Dyke*, “Conservation Biology: Foundations, Concepts, Applications,” 2d Ed., McGraw Hill (2008), at p. 110 and *Fallon*, “The ecological importance of bison in mixed-grass prairie ecosystems” (unpublished) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. Defendants aver that the GNF, particularly in the areas where bison congregate, is not a mixed-grass prairie ecosystem.

74. The allegations contained in paragraph 74 characterize, *Van Dyke*, “Conservation Biology: Foundations, Concepts, Applications,” 2d Ed., McGraw Hill (2008), at p. 110, which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the last sentence of paragraph 74 and therefore it is denied. Defendants aver that the GNF contains dispersed patches of sagebrush and is not year round habitat to any of the species referenced in paragraph 74. Defendants also aver that prairie dogs do not occur on the GNF.

75. The allegations contained in paragraph 75 characterize publications by *Welch and Criddle* (2003) and *Connelly et al.* (2004) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

76. The allegations contained in paragraph 76 of the Complaint characterize *Peterson* (1995) and a 1998 Memorandum of Understanding between the Beaverhead Deerlodge National Forest and the Montana Department of Fish, Wildlife and Parks which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

77. The allegations contained in paragraph 77 characterize publications by *Crowley and Connelly* 1996, *Connelly and Braun* (1997), *Beck and Mitchell* (2000), *Hockett* (2002), *Schroeder et al.* (2000), and *DeLong et al.* (1995) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

78. Defendants admit that in 2000, Federal Defendants entered into the IBMP with the State of Montana and Federal Animal and Plant Health Inspection Service (“APHIS”) to address concerns about transmission of brucellosis. The remainder of paragraph 78 characterizes the development and content of the 2000 IBMP and its Record of Decision (“ROD”) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

79. The allegations contained in paragraph 79 characterize the ROD and IBMP which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

80. Defendants admit the allegations contained in paragraph 80 of the Complaint.

Note that the numbering of the paragraphs in the Complaint at this point jumps back to 76.

For clarity Defendants' Answer assigns an "A" to the repeated paragraph numbers and then follows the numbering of the Complaint from there on.

76A. Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations contained in paragraph 76A and therefore they are denied.

77A. Defendants admit that recent documented instances of brucellosis transmission to domestic livestock in the states surrounding Yellowstone National Park are known not to have been due to bison, and are thought to be due to either elk or other cattle. Defendants deny the remaining allegations contained in paragraph 77A.

78A. Defendants admit the allegations contained in the first sentence of paragraph 78A; Defendants aver that the placental tissues and birth fluids associated with newborn calves can be infectious, making live births a potentially important transmission source. Defendants admit the allegations contained in the second sentence of paragraph 78A; Defendants aver that *Brucella* has the capacity to survive and persist in the environment under suitable conditions.

79A. Defendants admit the allegations contained in paragraph 79A; Defendants aver that little opportunity exists for the precise series of time and place events necessary for brucellosis transmission from bison to cattle to occur because of active management of bison to prevent any transmission of disease from bison to cattle.

80A. Paragraph 80A characterizes an Associated Press article by Susan Gallagher which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

81. Defendants deny the allegations contained in paragraph 81; Defendants aver that bison infected with *Brucella abortus* that causes brucellosis could potentially transmit the bacteria to cattle based on studies in paddocks.

82. Defendants deny the allegations in the first sentence of paragraph 82. In addition, the allegations contained in the first and second sentence of paragraph 82 characterize publications by *Kilpatrick (2009)*, *Keiter (1997)*, and *Hamlin and Cunningham (2009)* which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. Defendants admit that brucellosis in the GYE cannot be contained solely by managing bison but aver that managing bison does eliminate one risk factor.

83. Defendants deny the allegations contained in paragraph 83 of the Complaint.

84. The allegations contained in paragraph 84 characterize the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

85. The allegations contained in the first sentence of paragraph 85 characterize the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants admit the allegations in the second sentence of paragraph 85.

86. The allegations contained in paragraph 86 characterize the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

87. The allegations contained in paragraph 87 characterize the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

88. The allegations contained in paragraph 88 characterize the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

89. The allegations contained in the first sentence of paragraph 89 characterize the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants admit the second and third sentences in paragraph 89. Defendants aver that the Royal Teton Ranch land conservation project was jointly developed by the Rocky Mountain Elk Foundation, the Forest Service and the Church Universal and Triumphant, Inc. The focus of the project was to protect key winter ranges and migration corridors for a multitude of resident and migrating wildlife species, including native bighorn sheep, elk, grizzly bear, pronghorn, mule deer and bison. Any allegations in the last sentence of paragraph 89 that are inconsistent with the previous sentence are denied.

90. The allegations contained in the first sentence of paragraph 90 characterize the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants deny the allegations contained in the second sentence of paragraph 90. The third and fourth sentences of paragraph 90 characterize the RTR Lease which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants admit

NPS committed to pay \$1 million or more of the RTR lease; Defendants aver that the NPS provided \$1.5 million to the Montana Department of Fish, Wildlife, and Parks (“MFWP”) to implement the initial payment for the 30-year livestock grazing agreement and bison access agreement that should allow progressively increasing numbers of bison to use habitats north of the park boundary, including portions of the RTR and the Gallatin National Forest.

91. The allegations contained in paragraph 91 characterize the RTR Lease which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

92. Defendants deny the allegations contained in the first sentence of paragraph 92. Defendants aver that the 2000 FEIS for the IBMP anticipated and analyzed the removal of cattle from the RTR ranch. Defendants admit the allegations in the second and third sentences of paragraph 92. Defendants aver that the 2000 FEIS for the IBMP mentions the “15-year life of the plan” several times, with a planning period of 2000 to 2015. Defendants deny that the relevancy of the analysis would end 15 years from the IBMP’s adoption. Defendants deny the allegations contained in the fifth sentence of Paragraph 92.

93. Defendants admit the Forest Service issued a Special Use Permit to the MFWP for construction of a fence to support the RTR Lease. The remaining allegations contained in paragraph 93 characterize the Gallatin National Forest Schedule of Proposed Actions and RTR Fencing Decision Memo which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

94. Defendants admit the allegations in the first sentence of paragraph 94. The remaining allegations contained in paragraph 94 characterize the Horse Butte Special Use Permit

and Decision Memo which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

95. The allegations contained in paragraph 95 characterize the 2008 Adaptive Management amendment to the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

96. Defendants admit the first sentence of paragraph 96 and that the IBMP Operating Procedures were updated February 5, 2009. The remaining allegations contained in paragraph 96 characterize the IBMP Operating Procedures which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

97. The allegations contained in paragraph 97 characterize the IBMP and Operating Procedures which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

98. Defendants admit the allegations contained in the first sentence of paragraph 98. The remaining allegations in paragraph 98 characterize the Operating Procedures which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

99. The allegations contained in paragraph 99 characterize the IBMP and Operating Procedures which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

100. Defendants deny the allegations contained in paragraph 100.

101. Defendants deny the allegations contained in Paragraph 101. Defendants aver

that in winter 2008 approximately 1,288 bison were captured near the north boundary of YNP by the NPS and sent to slaughter, while approximately 160 bison were captured near the west boundary of the park by the State of Montana and sent to slaughter. The defendants admit that additional bison have been captured and sent to slaughter in other winters during implementation of the IBMP.

102. The allegations contained in paragraph 102 characterize a 2008 report by the Government Accountability Office to Congress (“2008 GAO Report”) which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

103. The allegations in paragraph 103 characterize the 2008 GAO Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

104. The allegations in paragraph 104 characterize the 2008 GAO Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

105. The allegations in paragraph 105 characterize the 2008 GAO Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

106. Defendants deny the allegations contained in paragraph 106 and deny that they failed to comply with applicable NEPA requirements.

107. Defendants deny the allegations contained in paragraph 107.

108. Defendants admit that the 2000 IBMP originally anticipated that the agencies would progress to step two of the management program by 2002-2003 but deny the remaining allegations contained in the first and second sentences of paragraph 108. The allegations contained in the third sentence of Paragraph 108 characterize the 2008 GAO Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

109. The allegations in paragraph 109 characterize the 2008 GAO Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain meaning.

110. The allegations contained in paragraph 110 characterize the 2008 GAO Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

111. The allegations contained in the first sentence of paragraph 111 characterize the 2008 GAO Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants deny the allegations contained in the second sentence of paragraph 111.

112. Defendants admit information has developed since the IBMP was finalized in 2000. Defendants deny the remaining allegations contained in paragraph 112.

113. Defendants deny the allegations contained in paragraph 113 and deny that the Forest Service is under any statutory mandate to ensure viability of wildlife and other resources.

114. The allegations contained in paragraph 114 characterize NEPA regulations which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

115. Defendants admit that they have not prepared a new or supplemental NEPA analysis concerning the IBMP but deny that any such new or supplemental analysis was required; Defendants aver that the agencies did examine new information and changed circumstances and that these analyses and findings were disclosed during presentations at public meetings of the IBMP agencies during 2008 and 2009.

116. Defendants admit the allegations contained in the first sentence of paragraph 116. The remainder of paragraph 116 characterizes the 2005 Status Review, which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants admit the third sentence of paragraph 116 but deny that any new or supplemental NEPA analysis was required.

117. Defendants admit that the Plaintiffs and others formally requested federal defendants to supplement the 2000 FEIS for the IBMP. The remaining allegations contained in the first sentence of paragraph 117 are characterizations of Plaintiffs' requests which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. Defendants admit the allegations in the second sentence of paragraph 117.

VI. FURTHER FACTUAL ALLEGATIONS

A. Bison in the GYE and Impacts of IBMP Management on Bison, Other Species, and the Ecosystem

118. Defendants admit the allegations contained in paragraph 118.

119. Defendants admit the allegations contained in paragraph 119.

120. Defendants admit the allegations contained in the first sentence of paragraph 120. Defendants deny the allegations contained in the second sentence of paragraph 120; Defendants aver that approximately 5,000 bison were counted in the YNP population during the summer of 2005.

121. The allegations contained in paragraph 121 characterize publications by *Boyd and Gates* (2006), *Freese et al.* (2007), *McCleneghan et al.* (1990), *Stormont* (1993), *Wilson and Stroebeck* (1999) and *Halbert* (2003) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

122. The allegations contained in paragraph 122 characterize publications by *Allendorf and Leary* (1986), *Meffe and Carroll* (1994), *Chambers* (1998), *Ballou and Ralls* (1982), *Mitton and Grant* (1984) and *Berger and Cunningham* (1994) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

123. The allegations contained in paragraph 123 characterize a publication by *Freese et al.* (2007) which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

124. The allegations contained in paragraph 124 characterize publications by *Allendorf* (1986), *Amos and Balmford* (2001), *Petit et al.* (1998) and *Gross et al.* (2006) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

125. The allegations contained in paragraph 125 characterize publications by *Traill et*

al. (2007) and (2009) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

126. The allegations contained in the first sentence of paragraph 126 characterize the publication by *Freese et al.* (2007) which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in the second sentence of paragraph 126 and therefore they are denied.

127. Defendants admit the allegations contained in paragraph 127.

128. Defendants admit the allegations contained in the first sentence of paragraph 128. Defendants admit that YNP bison are also unique and important as the only population of plains bison that has continuously occupied a portion of its original range in a relatively wild, free-roaming state; Defendants aver, however, that Yellowstone bison have continually occupied only a small portion of their historic range during the last century. Defendants deny any allegations in paragraph 128 inconsistent with the previous sentences.

129. The allegations contained in the first and third sentences of paragraph 129 characterize the 2000 IBMP ROD and FEIS which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. Defendants deny the allegations contained in the second sentence of paragraph 129.

130. Defendants deny the allegations contained in paragraph 130.

131. Defendants admit the allegations in the first two sentences of paragraph 131. Defendants deny the remaining allegations contained in paragraph 131. Defendants aver that Yellowstone bison can be characterized as a single population with two genetically

distinguishable breeding groups or subpopulations. Defendants also aver that the Jackson bison population in the southern portion of the GYE is separate and genetically distinguishable from the Yellowstone bison population.

132. Defendants admit new information has become available since the 2000 IBMP was finalized; Defendants aver the IBMP agencies formally agreed to several short- and long-term adaptive management adjustments in 2005, 2006, 2008 and 2009 in response to new information. Defendants deny the remaining allegations contained in paragraph 132.

133. The allegations contained in the first sentence of Paragraph 133 characterize the 2000 IBMP FEIS, and publications by *Halbert* (2003), *Gardipee* (2007), *Christianson et al.* (2005), *Olexa and Gogan* (2005), *Gogan et al.* (2005) which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. The second sentence of paragraph 133 characterizes the 2000 IBMP and its FEIS which speak for themselves and are the best evidence of their contents. Defendants deny allegations contrary to their plain language and meaning.

134. The allegations contained in paragraph 134 characterize publications by *Gross and Wang* (2005) and *Gross et al.* (2006), which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

135. Defendants admit the allegations in the first two sentences of paragraph 135. The third and fourth sentences of paragraph 135 characterize statements made by a NPS biologist which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

136. Defendants deny the allegations contained in paragraph 136.

137. The first sentence of paragraph 137 characterizes a 2008 IBMP Report which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. With respect to the second and third sentences in paragraph 137, Defendants admit that the current movement patterns of bison are different than envisioned in the 2000 FEIS for the IBMP, with larger numbers moving to the boundary and significant movements from the park interior (central herd) to both the north and west boundaries. Defendants aver that bison move from central to northern Yellowstone along several pathways, not just along the road from Madison Junction through Norris and to Mammoth. Defendants deny any allegations in the second and third sentences of paragraph 137 contrary to the previous sentences. The fourth sentence of paragraph 137 characterizes an IBMP Briefing Statement which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants are without sufficient knowledge and information to form a belief as to the truth of the allegations in the fifth sentence of paragraph 137 and therefore they are denied.

138. Defendants deny the allegations contained in paragraph 138.

139. Defendants deny the allegations contained in the first sentence of paragraph 139. The allegations contained in the second sentence of paragraph 139 characterize the 2000 IBMP FEIS which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

140. The first sentence of paragraph 140 contains legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. Defendants deny the remaining allegations contained in paragraph 140.

141. Defendants admit participating in management activities pursuant to the IBMP, but deny that the agencies did not analyze the effects and effectiveness of these activities. Defendants admit the allegations in sentence two of paragraph 141. Defendants deny the allegations contained in the remainder of paragraph 141; Defendants aver the NPS determines the timing, location, and duration of hazing within the Park in accordance with the IBMP ROD.

142. Defendants admit the allegations contained in paragraph 142.

143. With regard to the allegations in paragraph 143 of the Complaint, Defendants admit that capture, slaughter, and hazing operations affect individual animals, but the effects on individual animals do not necessarily translate into long-term effects on population demographics and dynamics or on the ecosystem. Except as expressly admitted, Defendants deny the allegations in paragraph 143.

B. Diversity of Plants and Animals and Viability of Bison and Sage Grouse on the Gallatin National Forest

144. Defendants deny the allegations contained in paragraph 144 of the Complaint and deny that the Forest Service is required to ensure a viable population of bison or sage grouse on the GNF. Defendants also deny that the Forest Service has failed to provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple use objectives. Defendants aver that bison migrate onto the GNF in late winter and early spring every year. Defendants also aver that suitable sage grouse habitat is not found in abundance on the GNF due to altitude, climatic factors, and geography.

145. Defendants admit the allegations contained in paragraph 145.

146. The first sentence of paragraph 146 of the Complaint characterizes the 2000 IBMP and the requirements of NFMA and its now-superseded 1982 regulations, all of which

speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning. Defendants deny the allegations in the second sentence of paragraph 146.

147. Paragraph 147 of the Complaint characterizes the IBMP, the IBMP Adaptive Management amendment, and IBMP Operating Procedures, all of which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

148. Defendants deny the allegations contained in paragraph 148.

149. Defendants admit the allegations contained in the first sentence of paragraph 149 to the extent they indicate that the Forest Service's management of the GNF, including its participation in the IBMP, is governed by NFMA, the 2000 NFMA regulations' transition provision, and the GNF Forest Plan. The remainder of paragraph 149 characterizes the 2000 IBMP ROD which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

150. Paragraph 150 of the Complaint characterizes the 1987 GNF Forest Plan and its FEIS which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

151. Paragraph 151 of the Complaint characterizes the 1987 GNF Forest Plan and its FEIS which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

152. With respect to the first sentence of paragraph 152, Defendants deny that the Forest Service is required by applicable law to provide or maintain a viable population of bison

on the GNF or determine what a minimum viable population would be. Defendants deny the allegations in the second sentence of paragraph 152.

153. The first three sentences of paragraph 153 characterize the GNF Forest Plan which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the fourth sentence of paragraph 153 and therefore it is denied.

154. Defendants deny the allegations in paragraph 154 of the Complaint.

155. Defendants deny the allegations in paragraph 155 of the Complaint.

156. Defendants admit the allegations in the first sentence of paragraph 156 and deny the allegations in the second sentence of paragraph 156.

157. Defendants deny the allegations in paragraph 157 of the Complaint and deny that the Forest Service is required by applicable law to maintain a viable population of bison on the GNF. Defendants aver that the State of Montana manages bison populations in the State including on the National Forest, as it does with respect to other wildlife species. Defendants further aver that the Forest Service has maintained sufficient habitat on the GNF to support bison in the GYE. Defendants deny that the Forest Service is required to maintain a viable population of bison on the GNF.

158. Defendants deny that the Forest Service declined to analyze or disclose any impacts that it was required by law to analyze or disclose, deny that the Forest Service has deferred any obligations imposed on it by law to other agencies or the IBMP, and denies that the Forest Service is required by law to ensure the viability of bison on the GNF.

159. Defendants admit the first sentence of paragraph 159 of the Complaint. The remainder of paragraph 159 characterizes the Environmental Assessment, Decision Notice, and Finding of No Significant Impact for the Cache-Eldridge Grazing Allotment which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

160. Defendants admit the allegations in the first sentence of paragraph 160. The remaining allegations characterize the Forest Service's scoping notice for the Wapiti allotment which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

161. Paragraph 161 characterizes various unnamed publications which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning and, in the absence of any identification of such studies, deny that they are the best available science.

162. Paragraph 162 of the Complaint characterizes a publication by *Connelly et al* (2004) which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

163. Paragraph 163 of the Complaint characterizes a publication by *Call and Maser* (1985) which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

164. Paragraph 164 of the Complaint characterizes a publication by *Connelly et al* (2004) which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

165. Paragraph 165 of the Complaint characterizes a publication by *Crowley and Connelly* (1996) which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

166. Paragraph 166 of the Complaint characterizes a publication by *Ketcham*, "They Shoot Buffalo, Don't They," Harper's Magazine (June 2008), which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

167. Defendants deny the allegations in the first and second sentence of paragraph 167 of the Complaint and deny that the Forest Service has violated the requirements of NFMA or NEPA. The third sentence of paragraph 167 characterizes the identified Forest Service decisions, which speak for themselves and are the best evidence of their contents. Defendants deny any allegations contrary to their plain language and meaning.

168. Defendants deny the allegations in paragraph 168 of the Complaint and deny that the Forest Service is required to ensure a viable population of bison on GNF.

169. Defendants deny the Forest Service is excluding bison from the GNF and deny it is failing to fulfill Forest Plan direction. The remainder of paragraph 169 characterizes the GNF Forest Plan which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

170. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 170, in part because the allotments referenced are not identified, and therefore the allegations are denied. Defendants also deny any violation of NFMA and NEPA.

171. Defendants admit that the allotments in the Hebgen Ranger District referenced in paragraph 171 of the Complaint are still active grazing allotments but aver that each allotment listed is not necessarily suitable for bison due to other factors and even if cattle grazing were terminated, bison would not necessarily occupy the allotments under the IBMP.

172. Defendants admit that the allotments in the Gardiner Ranger District referenced in paragraph 172 of the Complaint are still active grazing allotments but aver that each allotment listed is not necessarily suitable for bison due to other factors and even if cattle grazing were terminated, bison would not necessarily occupy the allotments under the IBMP.

173. Defendants admit that the allotments in the Livingston Ranger District referenced in paragraph 173 of the Complaint are still active grazing allotments but aver that each allotment listed is not necessarily suitable for bison due to other factors and even if cattle grazing were terminated, bison would not necessarily occupy the allotments under the IBMP.

174. Defendants admit that the allotments in the Bozeman Ranger District referenced in paragraph 174 of the Complaint are still active grazing allotments but aver that each allotment listed is not necessarily suitable for bison due to other factors and even if cattle grazing were terminated, bison would not necessarily occupy the allotments under the IBMP.

175. Defendants admit that the allotments in the Big Timber Ranger District referenced in paragraph 175 of the Complaint are still active grazing allotments but aver that each allotment listed is not necessarily suitable for bison due to other factors and even if cattle grazing were terminated, bison would not necessarily occupy the allotments under the IBMP.

176. Defendants admit the allegations in paragraph 176 of the Complaint except they deny that the Forest Service is required to maintain a viable population of bison on the GNF.

Defendants aver that the needs of bison were not considered because these allotments are far from where bison are currently managed or desired under current management direction.

177. Defendants deny the allegations in the first sentence of paragraph 177 of the Complaint. Defendants admit the allegations in the second sentence of that paragraph.

C. Additional Significant new Information and Changed Circumstances

178. Defendants deny the allegations contained in paragraph 178.

179. Defendants deny the allegations contained in the first sentence of paragraph 179. Defendants admit the allegations contained in the second, third and fourth sentences of paragraph 179.

180. The first sentence of paragraph 180 characterizes the 2000 IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants admit the allegations in the second sentence of paragraph 180 that they did not assess the actual economic costs after the states lost their brucellosis class-free status. Defendants deny the agencies have not analyzed whether bison management under the IBMP has any bearing on brucellosis transmissions and status. The allegations contained in the third sentence of Paragraph 180 characterize a publication by *Kilpatrick et al.* (2009) which speaks for itself and is the best evidence of its contents.

Defendants deny any allegations contrary to its plain language and meaning.

181. The allegations contained in the first sentence of paragraph 181 characterize an August 2008 presentation by Rick Wallen, NPS biologist, which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and

meaning. Defendants admit that some bison could clear the bacteria and “recover” from infection but deny the remaining allegations contained in paragraph 181.

182. The first sentence of paragraph 182 of the Complaint characterizes the IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants admit the allegations in the second sentence of paragraph 182.

183. Defendants admit the allegations contained in paragraph 183; Defendants aver that NPS is monitoring bison in the paddocks and is collecting data so it may assess impacts of placing bison in the paddocks.

184. Defendants deny the allegations in the first sentence of paragraph 184. Defendants aver that current movement patterns of bison are different than envisioned in the 2000 FEIS for the IBMP, with larger numbers moving to the boundary and significant movements from the Park interior (central herd) to both the north and west boundaries. Defendants aver that the agencies have analyzed the impacts of IBMP management actions. Defendants admit the allegations in the remainder of this paragraph with the following clarifications. Defendants aver that Yellowstone bison move from central to northern Yellowstone along several pathways, not just along the road from Madison Junction through Norris and to Mammoth. Defendants also aver that several genetic studies have reported a relatively high degree of genetic variation in Yellowstone bison.

185. Defendants admit the allegations contained in paragraph 185 but deny they were required to conduct the referenced analysis.

186. Defendants admit the allegations contained in paragraph 186 but deny they were

required to conduct the referenced analysis or sustain a year round population of bison outside of YNP.

187. The first sentence of paragraph 187 characterizes the 2000 IBMP which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning. Defendants deny the remaining allegations contained in paragraph 187.

188. Defendants deny the allegations contained in paragraph 188.

189. Defendants admit the allegations contained in the first sentence of paragraph 189. Defendants deny the allegations contained in the second sentence of paragraph 189.

190. Defendants deny the allegations contained in paragraph 190.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

191. Defendants incorporate their responses to paragraphs 1 through 190 (including 76A through 80A) of the Complaint as if fully restated herein.

192. Defendants deny the allegations contained in paragraph 192.

193. Defendants admit that they have declined to conduct new or supplemental analysis pursuant to NEPA for the 2000 IBMP, the 2008 Adaptive Management amendment, and the 2009 Operating Procedures but deny that that were required to do so.

194. Defendants deny the allegations contained in paragraph 194.

195. Defendants deny the allegations contained in paragraph 195 and deny that the NPS violated NEPA and the APA as alleged.

196. Defendants deny the allegations contained in paragraph 196 and deny that the Forest Service violated NEPA and the APA as alleged.

SECOND CLAIM FOR RELIEF

197. Defendants incorporate their responses to paragraphs 1 through 196 (including paragraphs 76A through 80A) of the Complaint as if fully restated herein.

198. Defendants deny that the NPS has failed to conduct any required analysis determining impacts or impairment would occur to bison and other Park resources as a result of IBMP management actions and related actions including the RTR Lease, and Defendants deny the NPS has in any other manner violated the National Park Organic Act, the NPS Management Policies, the Yellowstone Organic Act and its regulations, or the APA, as alleged in paragraph 198.

199. The allegations contained in paragraph 199 constitute legal conclusions to which no response is required. To the extent a response is required, Defendants deny that the NPS has failed to comply with its own Management Policies and aver that such policies are not enforceable; and Defendants deny the NPS violated the National Park Organic Act, the NPS Management Policies, the Yellowstone Organic Act and its regulations, or the APA, as alleged in paragraph 199.

THIRD CLAIM FOR RELIEF

200. Defendants incorporate their responses to paragraphs 1 through 199 (including paragraphs 76A through 80A) of the Complaint as if fully restated herein.

201. Defendants deny the allegations in paragraph 201 of the Complaint and deny that the Forest Service has violated NFMA, NEPA, or the APA as alleged in paragraph 201 and deny that Plaintiffs have properly characterized the Forest Service's obligations under the applicable statutes and regulations.

202. Defendants deny the allegations in paragraph 202 of the Complaint and deny that the Forest Service has violated NFMA, NEPA, or the APA as alleged in paragraph 202.

FOURTH CLAIM FOR RELIEF

203. Defendants incorporate their responses to paragraphs 1 through 202 (including paragraphs 76A through 80A) of the Complaint as if fully restated herein.

204. Defendants deny the allegations in paragraph 204 of the Complaint and deny that the Forest Service has violated NFMA, NEPA, or the APA as alleged in paragraph 204.

FIFTH CLAIM FOR RELIEF

205. Defendants incorporate their responses to paragraphs 1 through 204 (including 76A through 80A) of the Complaint as if fully restated herein.

206. Defendants admit the allegations in paragraph 206 and aver that the GNF does not host sage grouse populations, though sage grouse are occasionally found on the Forest in small numbers during the fall as they move to their winter range beyond the boundaries of the GNF. Defendants deny that the Forest Service has any legal obligation to monitor sage grouse and other native species, or provide management direction to ensure viable populations of such species on the GNF.

207. Defendants deny the allegations in paragraph 207 of the Complaint, deny that the Forest Service is required to ensure the viability of sage grouse on the GNF, and deny that the Forest Service has violated NFMA, NEPA, or the APA as alleged in paragraph 207.

SIXTH CLAIM FOR RELIEF

208. Paragraph 208 of the Complaint characterizes unnamed “science” which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

209. Paragraph 209 of the Complaint characterizes unnamed “science” which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

210. Defendants deny the allegations in the first sentence of paragraph 210 that the agencies are “wantonly” slaughtering bison. The second sentence of paragraph 209 of the Complaint characterizes unnamed “evidence” which speaks for itself and is the best evidence of its contents. Defendants deny any allegations contrary to its plain language and meaning.

211. Defendants deny the factual allegations contained in paragraph 211 and deny that their actions are arbitrary, capricious, or in violation of law.

REQUEST FOR RELIEF

The remainder of the Complaint constitutes Plaintiffs' request for relief, to which no response is required. To the extent a further response is required, Defendants deny that Plaintiffs are entitled to the relief requested or any relief whatsoever.

GENERAL DENIAL

Defendants deny any allegations of the Complaint, whether express or implied, that are not specifically admitted, denied, or qualified herein.

AFFIRMATIVE DEFENSES

Defendants assert the following defenses to the claims made in Plaintiffs Complaint:

1. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations.
2. Some or all of Plaintiffs' claims are barred due to their failure to exhaust administrative remedies.
3. Some or all of Plaintiffs' claims fail to state a claim upon which relief can be granted.
4. Some or all of Plaintiffs' claims are barred for failure to join a party required to be joined under Rule 19(a) of the Federal Rules of Civil Procedure if feasible.

WHEREFORE, the Defendants request that the Court dismiss the Complaint in its entirety, render judgment for the Defendants and against the Plaintiffs, and grant the Defendants such other and further relief that the nature of the case and justice requires.

DATED this 18th day of February, 2010.

Respectfully submitted,
MICHAEL COTTER
United States Attorney
MARK STEGER SMITH
Assistant U.S. Attorney
U.S. Attorney's Office
P.O. Box 1478
Billings, MT 59103
2929 Third Avenue, North, Suite 400
Billings, MT 59101
(406) 247-4667
IGNACIA S. MORENO
Assistant Attorney General
Environment and Natural Resources Division

By: /s/ Paul D. Barker, Jr.
PAUL D. BARKER, JR.
ANNA K. STIMMEL
Trial Attorneys
United States Department of Justice
Environment & Natural Resources Division
Natural Resources Section
P.O. Box 663
Washington, D.C. 20044-0663
paul.barker@usdoj.gov
anna.stimmel@usdoj.gov
(202) 305-0434
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of February, 2010, I filed a copy of this document electronically through the CM/ESF system, which caused all parties or counsel to be served by electronic means as reflected on the Notice of Electronic Filing.

/s/ Paul D. Barker, Jr.
Paul D. Barker, Jr.