



Buffalo Field Campaign

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Attn: Horse Butte Capture Facility Special Use Permit Scoping Comments

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Dear Mary C. Erickson,

Thank you for the opportunity to comment on land use decisions made by the U.S. Forest Service on the Gallatin National Forest that impact wild bison indigenous to public lands now in your care and trust for the American people.

Buffalo Field Campaign And Western Watershed Project have identified specific scoping issues that we respectfully ask be raised and addressed in a legal environmental review on the proposed decision by the U.S. Forest Service to renew a 10-year special use permit for the Montana Department of Livestock's Horse Butte bison trap on the Gallatin National Forest.

1. The U.S. Forest Service cannot rely on the Interagency Bison Management Plan's prescriptions to justify reauthorization of the Horse Butte bison trap. The elimination of cattle grazing from Horse Butte peninsula creates the opportunity for a greater tolerance of bison that migrate to the area from Yellowstone National Park to obtain the forage they need to survive.

The stated purpose of the Interagency Bison Management Plan is to "minimize the risk of brucellosis transmission from bison to cattle." U.S. National Park Service & U.S. Forest Service Record of Decision for Final EIS and Bison Management Plan for the State

of Montana and Yellowstone National Park, at 6 (Dec. 2000) ("ROD"). To this end, the interagency plan prescribes a system of spatial and temporal separation of bison and cattle. Spatial separation means "[p]revention of cattle and bison from commingling or from utilizing the same area or adjacent areas at the same time." Id. at 22. Temporal separation means "[m]aintaining a specified period between the time bison depart or are hazed from certain lands outside the Park and the time cattle move onto those lands." Id.

The original Interagency Bison Management Plan called for hazing, trapping and slaughtering bison in the Horse Butte area as part of "Zone 2" management along the west boundary of Yellowstone National Park based on the understanding that public and private cattle grazing would occur on the Munns brothers' property and allotment on the Horse Butte peninsula. See Vol. I, Final EIS, Bison Management Plan for the State of Montana and Yellowstone National Park, at 313, 315 (mapping cattle grazing areas on Horse Butte as part of baseline environmental condition for the Interagency Bison Management Plan).

However, since the Record of Decision on the Interagency Bison Management Plan was issued, the public cattle grazing allotment has been closed and the Munns brothers' private cattle grazing land has been sold to buyers who have eliminated the cattle operation and declared their property open to bison. Accordingly, there is now no basis to apply a management plan designed to ensure spatial and temporal separation of bison and cattle on the Horse Butte peninsula, because no cattle or cattle grazing areas are present or will be present in the foreseeable future due to the recent land management changes.

There are no susceptible cattle hosts on Horse Butte peninsula, and no purpose or need served by trapping wild bison where cattle do not graze. The attached statement from brucellosis expert Dr. Paul Nicoletti, (Dr. Paul Nicoletti Horse Butte scoping statement) incorporated by reference, elaborates on this point. Moreover, given that Horse Butte is surrounded to the north, west, and south by the waters of Hebgen Lake, bison movement off the peninsula to areas where cattle continue to be grazed is substantially restricted.

Given the changed circumstances on Horse Butte, there is no longer any justification for a bison trap on the peninsula. At a minimum, the U.S. Forest Service must evaluate these changed circumstances and the opportunity they present to manage the land as bison habitat on Horse Butte before deciding whether to issue another 10-year permit to the Montana Department of Livestock to trap bison on public lands.

2. When the original special use permit was issued bison were being managed under the Interim Bison Management Plan. Since 2000, bison have been managed under the Interagency Bison Management Plan. The fact that the bison trap is now being used as

part of an entirely different plan warrants reanalyzing the purpose and need and environmental impact of the Horse Butte bison trap.

3. The No Action alternative in the 12/14/1998 Horse Butte Capture Facility Environmental Assessment (“EA”) was determined to have a moderate effect on local residents due to a greater number of bison being shot in the field (EA at 17). The objective to minimize shooting of bison appears to have been a major factor in the Gallatin National Forest’s decision to issue the permit to the Montana Department of Livestock (2/1/1999 Decision Notice at 3, 4). Cattle no longer graze on public or private land on Horse Butte, thus there is no longer any justification for shooting bison in the field. This changed circumstance warrants reanalyzing the no action alternative as the justification for permitting the trap – fewer bison shot and viewed by local residents – has changed.

4. In four of the last nine years the Interagency Bison Management Plan (IBMP) has been successfully implemented, according to the partner agencies, without the use of the Horse Butte bison trap. The Montana Department of Livestock (DOL) has used a bison trap located on private land at Duck Creek, and a trap on an already impacted site located on state lands at the West Yellowstone Airport. Operation of the bison trap was determined to “likely to adversely affect” bald eagles on Horse Butte (Biological Assessment for the Horse Butte Bison Capture Facility – Site A2 (“BA”), at 25). The fact that the Horse Butte bison trap is not necessary for implementing the IBMP warrants U.S. Forest Service reconsideration to not reissue a 10-year permit for DOL to trap bison based on its adverse harm to Bald Eagles and their habitat.

5. The amount of development on the private land portions of Horse Butte has increased in the past 10 years; this has made the public land portions of Horse Butte even more critical as wildlife habitat. Upcoming development on the Yellowstone Ranch Preserve on the north side of Horse Butte is likely going to include constructing a new house within half a mile of the Narrows Bald Eagle nest. This new, increased impact on Bald Eagles warrants reassessing mitigation measures necessary for preserving the nesting Bald Eagles and their habitat on Horse Butte.

6. The amount of vehicle traffic associated with forcefully hazing bison off habitat and trapping them in pens is far higher than predicted and analyzed in the Biological Assessment for the Horse Butte Bison Capture Facility. Two to three vehicles per day were predicted (BA, at 3), but the actual vehicle traffic has been far higher. On March 11, 2008 there were three U.S. Forest Service law enforcement vehicles, one Gallatin County sheriff vehicle, three Department of Livestock trucks, two with trailers, and five snowmobiles.

7. The EA asserts that there will be no impact to sandhill cranes because sandhill cranes do not use the Horse Butte area until June (EA, at 12). Buffalo Field Campaign volunteers have recorded daily wildlife sightings incidental to bison monitoring for the

last 7 years. These records show that sandhill cranes are present in the Horse Butte area as early as April 1 (see Appendix a, Sandhill Sighting Report). Thus, the U.S. Forest Service should re-analyze impacts to migratory birds including sandhill cranes and their habitat.

8. In order to mitigate impacts on soil and vegetation the permit requires the DOL to perform soil reclamation activities, including deep plowing and seeding of native grasses (EA, at 14). These environmental remediation activities have not happened, and the site does not support much vegetation due to soil compaction. This lack of compliance with the original permit requirement precludes the possibility of renewing the permit by categorical exclusion, as the DOL is in violation of their permit terms and conditions.

9. The Decision Notice calls for the DOL to submit for U.S. Forest Service approval an annual plan of operations, this has not happened for each year of operations. This lack of compliance to have an approved plan of operations undermines the intent of the Decision Notice and precludes renewing the permit by categorical exclusion, as the DOL is in violation of their permit terms and conditions.

10. Mitigation measures to protect the Horse Butte bald eagle nests are regularly violated. The eagle closure on the south face of Horse Butte sees snowmobile incursions on an almost daily basis throughout the winter and spring. This has led to a greater than anticipated cumulative impact on bald eagles and their habitat. The cumulative impact and necessary mitigation measures to protect bald eagles and their habitat needs to be revisited in a formal environmental consultation with the U.S. Fish & Wildlife Service.

11. The U.S. Forest Service's "principal role" in the Interagency Bison Management Plan is to "provide habitat for bison". Renewing the Department of Livestock's bison trap on Gallatin National Forest lands diminishes available bison habitat, disrupts the bison's natural migration, and unnecessarily harms wild bison migrating to public lands on the Gallatin National Forest.

In 2002, a US District Court ruling vacated the Horse Butte cattle grazing permit and enjoined the Gallatin National Forest from reissuing the allotment without proper National Environmental Policy Act review (Greater Yellowstone Coalition et al v. Dale Bosworth et al. 2002) No valid cattle grazing permit remains in use on the 24,000 acre Horse Butte peninsula. With this changed circumstance, Buffalo Field Campaign recommends the Horse Butte grazing permit be permanently closed, and that the Gallatin National Forest adhere to its "principal role" in the interagency plan and "provide habitat for bison" by managing this closed allotment for migrating bison.

12. Bison hunting, proposed and existing bison traps and quarantine pens on federal, state, and private lands, and permitting the grazing and fencing of domestic livestock

in bison's native habitat on National Forest lands in the Gallatin National Forest is contributing to the loss of habitat for wild bison migrating from Yellowstone National Park along the Madison River, Gallatin River and Yellowstone River valleys. The scope of this decision is properly a part of, and tied to, several decisions already made by the U.S. Department of Agriculture and U.S. Forest Service including but not limited to:

- Opening 23,000 acres in the Eagle Creek drainage to bison hunting harmed wild bison wintering on Gallatin National Forest lands on the Gardiner Ranger District.
- Permitting the Horse Butte bison trap has displaced wild bison from habitat on Horse Butte peninsula – 24,000 acres of Gallatin National Forest lands on the Hebgen Lake Ranger District that support an array of wildlife including grizzly bears, wolves, bald eagles, moose, and rare plant species like dwarf monkey flower.
- Completion of the 6,770 acre Royal Teton Ranch land conservation deal in the Gardiner basin in 1999 – which the U.S. Forest Service was party to - has failed to “provide a safe haven” for wild bison.
- The Gallatin National Forest's decision to renew for 10 years the Cache-Eldridge cattle grazing permit in the Taylor Fork in potential bison winter range according to Gallatin National Forest biologists (Jourdannais).
- The U.S. Forest Service acquisition of the 3,265 acre OTO Ranch in Cedar Creek is bison winter range (Lemke) east of the Yellowstone River in the Gardiner basin that bison are excluded from occupying in arbitrary "zone" management boundaries defined in the interagency plan.
- The U.S. Department of Agriculture's bison quarantine holding pens at Corwin Springs and Slip N Slide east of the Yellowstone River in the Gardiner basin have effectively displaced bison and harmed bison winter range (Lemke).

13. On the Gallatin National Forest, the Hebgen Lake Ranger District and Gardiner Ranger District encompass the upper reaches of the Madison River, Gallatin River, and Yellowstone River valleys, the primary corridors for wild bison migrating from the Yellowstone plateau.

Over 105,000 acres of Gallatin National Forest lands are permitted for grazing private livestock on the Hebgen Lake and Gardiner Ranger Districts. Actual and potential bison habitat exists on Gallatin National Forest lands surrounding Yellowstone National Park. Permitting private cattle grazing, particularly cow/calf pairs, and fencing off native wildlife habitat precludes wild bison from inhabiting Gallatin National Forest lands on a seasonal and year-round basis.

The cumulative effect of the U.S. Forest Service's grazing program and decisions on land use on National Forests is in direct conflict with the principal role prescribed for it, “to provide habitat for bison” and the Gallatin National Forest must, at some point, manage the land for this indigenous wildlife species.

14. On October 28, 2004 the Dwarf Purple Monkey Flower (*mimulus nanus*) was added to the U.S. Forest Service Northern Region Sensitive Plant List. The Dwarf Purple Monkey Flower is also considered a sensitive species by the state of Montana. When the original permit for DOL to trap bison on Horse Butte was issued the Dwarf Purple Monkey Flower was not considered a sensitive species and thus was not analyzed in the Biological Assessment. The Dwarf Purple Monkey Flower is known to occur on Horse Butte and likely occurs in the immediate vicinity of the trap site. The change in status on the Dwarf Purple Monkey Flower warrants conducting a new biological Assessment. Buffalo Field Campaign reserves the right to supplement these comments with results of a survey for the Dwarf Purple Monkey Flower to be conducted on Horse Butte this spring.

15. One of the stated goals of the existing Forest Plan for the Gallatin National Forest is to provide "habitat for viable populations of all indigenous wildlife species and for increasing populations of big game animals." This wildlife viability guarantee also represents a legal requirement under the 1982 National Forest Management Act regulations pursuant to which the Gallatin National Forest Land and Resource Management Plan was promulgated. The Gallatin National Forest has yet to meet this stated goal in its public land management decisions for wild bison inhabiting National Forest lands.

National Forest lands surrounding Yellowstone National Park are part of the Yellowstone bison herd's native and historic range. Local support exists for wild bison on Horse Butte. You recently received a letter from 69 local residents who support having wild bison on Horse Butte (Appendix b, Horse Butte letter to USFS et al) who were joined by over 20,300 people who sent messages to your office to voice their opinion on this issue. Most people chose to sign on to Earthjustice's statement which reads:

"The senseless and wasteful slaughter of bison on the Horse Butte peninsula must come to an end. The bison are an important part of our nation's natural heritage and spending taxpayer money to kill them unnecessarily is tragically wrong.

With the 2002 halting of cattle grazing on a National Forest grazing allotment on Horse Butte and the recent purchase of the sole remaining cattle grazing operation on the peninsula, by owners who removed the cattle and declared their property open to Yellowstone bison it is no longer necessary to slaughter bison to protect cattle from disease.

I urge you to halt the trapping and killing of the bison on Horse Butte and to undertake a new environmental impact study to assess changes to the Interagency Bison Management Plan necessary in light of changed circumstances in the area.

As a concerned citizen and supporter of Earthjustice, I urge you to take prompt action

to stop this tragedy."

Buffalo Field Campaign and Western Watersheds Project strongly encourages the U.S. Forest Service to adapt to the changed and unique circumstances that are available to it in its decision not to renew a bison trap on Horse Butte peninsula.

It is time that the land use decisions made by the Gallatin National Forest reflect the public trust value, and the cultural, historical and ecological importance of wild bison occupying its native habitat on National Forest lands in the Yellowstone ecosystem.

/s/

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Enclosed is a CD disk with PDF files of available electronic documents referenced and incorporated and submitted here as part of our public scoping comments.

Buffalo Field Campaign wildlife database: <http://wildlife.buffalofieldcampaign.org/>

Greater Yellowstone Coalition v. Bosworth, 209 F. Supp. 2d 156 (D.D.C. 2002). US District Court for the District of Columbia, Civil Action NO.: 01-1516 (RMU) (JMF) Magistrate Judge Facciola opinion, Ricardo Urbina final judgment and order, May 13, 2002.

Gallatin National Forest Land and Resource Management Plan, 1987.

Dr. Paul L. Nicolleti, College of Veterinary Medicine, University of Florida, Gainesville, Florida. Nicolleti statement, March 28, 2008.

United States Department of the Interior, National Park Service, U.S. Department of Agriculture, U.S. Forest Service, Animal and Plant Health Inspection Service, Record of Decision for Final Environmental Impact Statement and Bison Management Plan for the State of Montana and Yellowstone National Park, December 20, 2000.

State of Montana, Record of Decision, Interagency Bison Management Plan, December 22, 2000.

Final Environmental Impact Statement for the Interagency Bison Management Plan for the State of Montana and Yellowstone National Park, August 2000.

Decision Notice and FONSI for the Horse Butte Bison Capture Facility, District Ranger Gary "Stan" Benes, Hebgen Lake Ranger District, Gallatin National Forest, December 1, 1998.

Winter Range Assessment for Bison in the Upper Gallatin River Drainage: DRAFT FWP population objective for bison wintering in the Taylor Fork/Porcupine areas, Craig Jourdonnais, Wildlife Biologist, Montana Fish, Wildlife & Parks, January 20, 2006.

Bison Habitat Evaluation East of the Yellowstone River from Dome Mountain to YNP, Tom Lemke, Wildlife Biologist, Montana Fish, Wildlife & Parks, February 14, 2006.

Wildlife Habitat and Wildlife Use On and Near the Royal Teton Ranch, Tom Lemke, Wildlife Biologist, Montana Fish, Wildlife & Parks, July 7, 1997.

Status review of public lands grazing on the Gallatin National Forest Hebgen Lake and Gardiner Ranger Districts, A critique of land management decisions on National Forest lands and their impact on wild bison in Yellowstone. Geist, updated November 2007.

U.S. Forest Service, Northern Region Threatened, Endangered and Sensitive Species: <http://www.fs.fed.us/r1/projects/wwfrp/tes-index.shtml>. "The Threatened, Endangered and Sensitive (TES) Species Program is the Forest Service's dedicated initiative to conserve and recover plant and animal species that need special management attention, and depend on National Forest and Grassland habitats."

"The entire OTO Tract is currently located in Zone 3 as established in the Interagency Bison Management Plan (IBMP). As stated in the IBMP, "Zone 3 is the area where bison that leave Zone 2 would be subject to lethal removal" (pp 31, Record of Decision, Final Environmental Impact Statement (FEIS) and Bison Management Plan for the State of Montana and Yellowstone National Park, December, 2000). Under the Interagency Bison Management Plan, the migratory corridor would not be available for consideration

until conditions described through Steps 1, 2, and 3 in the Interagency Bison Plan have been met and either some tolerance of bison in Zone 3 is accepted or the Zone 2 boundary is expanded to include the OTO Tract. That decision is beyond the scope of the Northern Yellowstone Winter Range Acquisition – OTO Tract decision.” Gallatin National Forest Plan Amendment, Northern Yellowstone Winter Range Acquisition, OTO Tract, DECISION NOTICE AND FINDING OF NO SIGNIFICANT IMPACT, Appendix A, Response to Comments, Northern Yellowstone Winter Range Acquisition - OTO Tract, Environmental Assessment. Gallatin National Forest, Gardiner Ranger District, Park County, Montana, January 2006. In 1989, the U.S. Congress appropriated \$3,500,000 in funds to assist in the acquisition of the OTO Ranch.

<http://thomas.loc.gov/cgi-bin/query/z?r101:S08FEO-1042>

"If the cooperating agencies involved in the IBMP consider changes in bison management policy that favors the establishment of areas outside Yellowstone Park where bison can be allowed to migrate freely, and if one candidate area is the Taylor Fork drainage, I would have the ability to modify or cancel the grazing permit at that time to accommodate use of the Cache-Eldridge Allotment area by bison. This would also be true should the Gallatin Forest Plan be amended or revised to no longer emphasize livestock grazing in this area." CACHE-ELDRIDGE ALLOTMENT MANAGEMENT PLAN UPDATE, Decision Notice and Finding of No Significant Impact, Gallatin National Forest, Hebgen Lake Ranger District, Gallatin and Madison Counties, Montana, April 2006 DN-20.

"Whereas, the Grantor finds itself in a unique position to aid and assist in the preservation of the Yellowstone National Park bison and other wildlife by setting aside a portion of its lands, in perpetuity, thereby providing in the natural world, a safe haven for the bison; and Whereas, the Grantor's lands provide significant winter range and crucial habitat for many indigenous species including elk, bighorn sheep, mule deer, pronghorns, grizzly and black bears, mountain lions, other indigenous wildlife, and, upon completion of the Bison Management Plan, significant winter range and crucial habitat for bison;" Deed of Conservation Easement, Royal Teton Ranch, Devil's Slide Area August 30, 1999, Section VII.

In 1999, the US Department of Interior and the US Forest Service used \$13,056,503.83 in taxpayer funds appropriated by Congress to acquire and conserve land owned by the Church Universal and Triumphant west of the Yellowstone River in the Gardiner basin. The land deal included the purchase of 5,262 acres of Church lands in Cutler Meadows, North Dry Creek, Bassett Creek and Royal Teton Ranch lands between Yankee Jim Canyon and Cinnabar Mountain, near Yellowstone National Park, and a conservation easement for wildlife habitat on 1,508 acres near Devil's Slide. USFS Gallatin National Forest Briefing Paper, Royal Teton Ranch Land Conservation Project, (Current 2003); RTR Purchase Summary with Funding Breakdown January 20 2000 Updated March 6, 2000 to include Phase II closing costs.

Though the decision to hunt wild bison rests with the state of Montana, the Gallatin National Forest retains jurisdiction and authority over how public lands are managed for big game. Prior to the bison hunt, wild bison migrating to winter range on the Gallatin National Forest consistently selected habitat, and were generally tolerated, in the Eagle Creek drainage. In the Hebgen Basin, the hunting districts surround migratory corridors for bison wintering in the upper Madison valley. Consequently, there is no secure habitat for wild bison on Gallatin National Forest lands during the bison hunt. 2006 Bison Hunting Regulations, Montana Fish, Wildlife & Parks. Final Bison Hunting EA Decision Notice, Montana Fish, Wildlife & Parks, November 4, 2004. The Montana Fish, Wildlife & Parks Commission approved the bison hunt on August 3, 2006.