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FILED

MAY 27 2008

Bundy K. Bailey
 Clerk of Court
 By _____
 Deputy Clerk

*Attorneys for Petitioners Sitz Angus Ranch, Bill Myers
 and the Montana Stockgrowers Association, Inc.*

MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY

<p>SITZ ANGUS RANCH, BILL MYERS, and the MONTANA STOCKGROWERS ASSOCIATION, INC., on behalf of it's members,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">vs.</p> <p>MONTANA BOARD OF LIVESTOCK, MONTANA DEPARTMENT OF LIVESTOCK, an agency of the State of Montana, STATE OF MONTANA and DR. MARTIN ZALUSKI, in his capacity as Montana State Veterinarian,</p> <p style="text-align: center;">Respondents.</p>	<p>Cause No. <i>DV-29-2008-34</i></p> <p>PETITIONERS' BRIEF IN SUPPORT OF APPLICATION FOR ALTERNATIVE WRIT OF MANDATE</p> <p style="text-align: right;">Judge Assigned LOREN TUCKER</p>
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COME NOW the Petitioners, Sitz Angus Ranch, Bill Myers, and the Montana Stockergrowers Association, Inc., on behalf of it's members, by and through their undersigned counsel, and pursuant to Mont. Code Ann. §§27-26-101 *et. seq.*, submit this brief in support of their Application for an Alternative Writ of Mandate requiring the Montana Department of Livestock (hereinafter referred to as "MTDOL"), the Montana Board of Livestock (hereinafter

referred to as “MTBOL”), and Dr. Martin Zaluski (hereinafter referred to as “Dr. Zaluski”), Montana State Veterinarian (hereinafter referred to collectively as “Respondents”) to perform immediately their clear legal duty to remove all Yellowstone National Park bison currently located on public and private lands located within the State of Montana, namely to remove them from Zones 2 or 3 of the Western Boundary Area of the Interagency Bison Management Plan for State of Montana and Yellowstone National Park (hereinafter referred to as “IBMP”) or to show cause why the Court should not order the Respondents to take such action.

I. PARTIES, JURISDICTION AND VENUE

Petitioner Sitz Angus Ranch (hereinafter referred to as “Sitz”) is a Montana partnership which is headquartered in Harrison, Montana. Sitz leases lands known as the “Deep Well Ranch” from the Povah family for livestock grazing purposes. The lands leased by Sitz for grazing purposes are situated on the boundary line between what are described as Zones 2 and 3 in the Western Boundary Area under the IBMP, as dated December 22, 2000. See, Exhibit “1,” attached hereto (map of Western Boundary Bison Management Zones depicting private property within the area); Affidavit of Bob Sitz, ¶3, attached hereto as Exhibit “2.” Petitioner Bill Myers (hereinafter referred to as “Myers”) of Reedpoint, Montana is a rancher who grazes cattle within Zone 2 of the Western Boundary Area on private lands known as the “Stinnett Ranch” and “Red Creek Ranch.” See, Exhibit “1;” Affidavit of Bill Myers, ¶3, attached hereto as Exhibit “3.”

Petitioner, the Montana Stockgrowers Association, Inc. (hereinafter referred to as MSGA) is a Montana not-for-profit organization and represents more than 2500 landowners and livestock producers located throughout Montana. Certain MSGA members are livestock owners who operate ranches on private property or on federal grazing allotments in Madison, Beaverhead, and Gallatin counties either within or adjacent to Zones 2 and 3, and who depend upon proper

management by the Respondents of Yellowstone National Park bison when such animals are found within the borders of the State of Montana. See, Affidavit of Errol Rice, ¶2, attached as Exhibit “4.”

Respondent MTDOL is headquartered in Helena, Montana and is an executive branch agency of the State of Montana charged with the statutory authority to control and eradicate animal diseases, prevent the transmission of animal diseases to humans, and to protect the livestock industry from diseased animals. Respondent MTDOL has the specific statutory and regulatory authority to control bison entering Montana from Yellowstone National Park which may be exposed to or infected with brucellosis. Mont. Code. Ann. §§81-1-102, and 81-2-120. Respondent MTBOL is the Director of the MTDOL, and is responsible for the activities of MTDOL. Mont. Code Ann. §2-15-3102. By law, the MTBOL must appoint a veterinarian who is directly responsible to the Board as Administrator (“State Veterinarian”) of the laws relating to animal health in Montana. Mont. Code Ann. §81-1-301. Respondent Dr. Martin Zaluski is the Montana State Veterinarian responsible for the administration of the animal health laws of the State of Montana. Mont. Code Ann. §81-1-302. Respondent State of Montana is one of the several states of the United States which entered into the IBMP. Collectively, the Respondents are charged under Montana state law, under Administrative Rules promulgated, and under the IBMP with protecting Montana livestock, and the owners of Montana livestock, from disease threats posed by Yellowstone National Park bison which enter Montana which are infected with, or exposed to, brucellosis. As part of the applicable statutory and regulatory obligations, the Respondents must take management actions to ensure that no bison remain outside Yellowstone National Park within the Western Boundary Area after May 15 of each year. See, Mont. Code Ann §81-2-120; Admin. R. Mont. 32.3.224A (attached as Exhibit “5”); IBMP, at 7, ¶7; 8, ¶10,

and 9, ¶14 (Exhibit “6”). This action arises out of the Respondents’ failure to properly carry out their duties, namely their failure to remove bison from Montana by May 15, 2008, thereby jeopardizing both Petitioners’ property (livestock), and the animal health of the livestock industry in the State of Montana.

Venue is proper in Madison County. The proper place of trial for an action against a public officer for an act done or not done by him in virtue of his office is the county where the cause or some part thereof arose and when the action is brought by a resident of Montana against the State, the county of the Petitioner’s residence is a proper place of trial. See, Mont. Code Ann. §§25-2-125 and 25-2-126. Here, Petitioner Sitz has its principle place of business in Madison County, and this action arises in part out of the Respondents’ failure to carry out their clear legal duties to manage bison found within the State of Montana to protect Sitz’s livestock situated within Madison County, Montana. Venue is further proper in Madison County, as the interests of Petitioner MSGA on behalf of its members, include MSGA members situated in Madison County, whose property and livestock health interests are placed at risk by Respondents failure to follow the law.

Jurisdiction is proper in this Court pursuant to Mont. Code Ann. §27-26-102, and the general original jurisdiction of this Court under Mont. Code Ann. §3-5-302.

II. BACKGROUND

1. In 2000, Montana issued a Record of Decision on the IBMP (Dec. 22, 2000). (attached hereto as Exhibit “6”.)
2. The IBMP is the State of Montana’s approved management plan governing management activities for bison situated in the State of Montana which enter the state from Yellowstone National Park. The IBMP implements the Respondents’ statutory responsibilities to

manage bison under Mont. Code Ann. §81-2-120. See, IBMP at 3-4.

3. The IBMP is the governing plan for the management of Yellowstone bison which enter Montana in the Western Boundary Area, to ensure domestic cattle in portions of Montana adjacent to Yellowstone National Park are protected from the threats associated with the disease Brucellosis, which bison are exposed to or infected with, and which poses a threat to animal and human health in the State of Montana. See, IBMP at 1.

4. Brucellosis is a contagious bacterial disease, caused by various species of the genus, *Brucella*, that infects domestic animals, wildlife, and humans. The species of concern in the Yellowstone Park region is *Brucella abortus*, whose hosts are bison and elk. There is no cure for brucellosis. Cattle infected with brucellosis characteristically abort after the fifth month of gestation. See, Draft Environmental Impact Statement (hereinafter referred to as “EIS”) for the Interagency Bison Management Plan for Montana and Yellowstone National Park at 8 (excerpts of which are attached hereto as Exhibit “7”). The presence of Brucellosis in Yellowstone National Park bison which enter Montana also subjects the Montana livestock industry to animal health related sanctions from other animal health authorities.

5. The IBMP was approved by both the State of Montana and the Governor of Montana in 2000. The Plan’s mandate to reduce the risk of transmission between bison and Montana cattle located in areas neighboring Yellowstone Park is carried out by the Respondents. See, Mont. Code Ann. §81-2-120; IBMP at 1-2.

6. The IBMP dictates management of bison into various zones and areas. One of the management areas is the Western Boundary Area, where bison migrate out of Yellowstone National Park into Montana. See, Map of West Boundary Management Zones (Exhibit “1”). No cattle are grazed in this area during winter. See, Draft EIS at 47. However, beginning in late

spring, and throughout the summer into early fall, cattle graze on private lands within Zone 2 and on public and private lands in Zone 3 adjacent to Zone 2. As the IBMP directs, by May 15, bison in the Western Boundary Area are to be moved back into the park or otherwise removed from Zone 2, so that cattle are allowed onto grazing allotments or private lands for grazing and to ensure temporal and spatial separation between bison and cattle as provided for in the IBMP.

See, IBMP at 7, ¶7.

7. Beginning in early June of each year, Petitioner Sitz grazes cattle on private property leased from the Povah family and public lands adjacent to Zone 2 of the Western Boundary Area. See, Affidavit of Bob Sitz at ¶4.

8. Beginning in early June of each year, Petitioner Myers grazes cattle on private land located within Zone 2 of the Western Boundary Area on ranches known as the “Stinnett Ranch” and “Red Creek Ranch.” Petitioner Myers has a federal/state approved herd plan so that Myers can graze in the West Yellowstone area as well. See, Affidavit of Myers at ¶8. Under this plan, bison are to be out of the area by May 15th of each year. Id.

9. Beginning in the spring and early summer of each year, members of Petitioner MGSA also graze cattle on private and public lands in the vicinity of Zone 2 (within Zone 3) in Madison County, Montana, or otherwise graze cattle on private lands in the areas throughout the year. See, Affidavit of Rice at ¶¶2, 4.

10. As provided by the IBMP and Montana law, Respondents are required: (1) to keep all bison outside Yellowstone National Park in the Western Boundary Area away from private lands after April 1 of each year, and (2) to haze or otherwise remove bison located in this area back into the park no later than May 15 of each year. See, IBMP at 7, ¶7; 8 ¶¶10(a),(b).

11. As of the date of this Application and Brief, and in contravention of the May 15

mandate, the Respondents have allowed bison to remain within Zone 2 on private property outside of Yellowstone National Park.

12. Specifically, in the past several weeks, Respondents have allowed approximately 75 head of untested bison to reside on private property in the Western Boundary Area, formerly known as the “Munns Ranch.” See, Exhibit “1.” Bison situated on the former Munns Ranch property have been allowed to remain outside of Yellowstone National Park in the Western Boundary Area in contradiction of specific management directives provided for in the IBMP and in contradiction of Montana law. These bison have been untested (meaning the seroprevalance for brucellosis is unknown) in contradiction of the IBMP, and include pregnant female bison which have calved, and or are calving within Montana also in contradiction of the IBMP. The failure of the Respondents to remove these animals or otherwise comply with the requirements of the IBMP and Montana law threaten the economic, property and animal health interests of the Petitioners herein. See, Affidavits of Sitz, at ¶10; Myers at ¶8; and Rice at ¶6.

13. The Respondents’ failure to remove bison in the Western Boundary Area after May 15 significantly increases the risk of disease transmission, namely brucellosis, between livestock and bison, as *brucella* organisms which may be shed by bison may persist in the environment thereby exposing Montana cattle to additional risk of Brucellosis transmission from bison to cattle in direct contradiction of Respondents’ clear legal duties.

14. The Respondents’ failure to manage bison located outside Yellowstone National Park in the Western Boundary Area in conformance with the terms of the IBMP, and to completely remove bison from Zone 2 in the Western Boundary Area by May 15 of each year is an ongoing violation of the law. Respondents have also failed to adhere to the May 15 mandate, as well as other specific management directives called for in the IBMP, in the years of 2006,

2007 and 2008. See, Affidavits of Rice at ¶8; Myers at ¶9.

15. As noted, the IBMP is specifically intended to prevent contact between domestic livestock and Brucellosis-exposed Yellowstone bison, thereby preventing transmission of the disease.

16. The State of Montana has been officially Brucellosis Class-Free since 1985. See, Affidavit of Rice at ¶6. In addition under the IBMP, USDA APHIS will not threaten Montana's Brucellosis Class Free status due to the presence of Yellowstone National Park bison being within Montana provided the State of Montana is complying with the provisions of the IBMP.

17. In May of 2007, a brucellosis affected cattle herd was discovered near Bridger, Montana. According to current regulations, when a brucellosis affected herd is disclosed in a Class-Free state such as Montana, the state can retain its Class-Free status only if the entire herd is sold to slaughter, an epidemiologic investigation is completed within 60 days, and there has been no evidence of spread. If a second brucellosis exposed herd is discovered within two years of the first exposed herd, Montana will regress to brucellosis Class A status. Such a reduction in status would adversely affect all Petitioners and Montana cattle producers statewide. See, Affidavit of Rice at ¶¶6-7.

18. In 2007, Montana was able to maintain its Brucellosis Class-Free status after the disclosure of the herd in May, but only after the Montana ranchers whose herd was exposed suffered a total loss of their stock and significant out-of-pocket losses. *Id.* at ¶7.

19. The location of the lands where Petitioners' livestock are schedule to graze in the near future are either within Zone 2, or adjacent to Zone 2. The presence of bison in the Western Boundary Area in contravention of the IBMP places Petitioners' cattle at a higher risk for brucellosis exposure as a result of Respondents' failure to implement their clear legal duties.

See, Affidavits of Myers at ¶8; Sitz at ¶8.

20. In addition, the continued presence of exposed Yellowstone Bison within the boundaries of the State of Montana at a time when the bison are calving, and at a time when the risk of transmission of brucellosis from bison to Montana domestic cattle is high due to the transportation of shed fetuses by predators and scavengers further places the Petitioners at risk. Consequently, there exists an increased risk that Montana will experience another domestic herd with a brucellosis reactor unless Respondents are ordered to implement their clear legal duties. Should another reactor be discovered, Montana will lose its Brucellosis Class-Free status and Petitioners and the entire Montana cattle industry will suffer injury.

21. In light of the importance of compliance with the IBMP and Montana law, Petitioners have repeatedly requested that the Respondents comply with their statutory and regulatory directives to implement the management measures of the IBMP and remove bison remaining within the boundaries of the State of Montana per the time limits contained in the IBMP. However, the Respondents have failed to haze, capture, or otherwise remove bison from the Western Boundary Area in the manner directed under the IBMP. See, Affidavit of Rice at ¶8.

22. Without immediate action taken by either the Respondents or this Court to order the removal of Yellowstone National Park bison still remaining within the boundaries of the State of Montana, particularly those bison within Zone 2 of the Western Boundary Area of the IBMP which are present after the May 15 deadline, Petitioners are concerned that they individually and/or their members will suffer significant and irreparable harm.

23. Because of Respondents failure to perform their clear legal duties, Petitioners are required to seek from this Court mandamus relief directing the Respondents to remove bison.

Given the significance of the potential harm, and because of the repeated violations of law by Respondents, Petitioners have no speedy or adequate remedy available at law.

III. ARGUMENT

A. Standards for Writ of Mandate

Under Montana law, a two-part test applies to the issuance of a Writ of Mandate. Mont. Code Ann. §27-26-102. A Writ of Mandate is an appropriate remedy where: (1) the party seeking the writ is entitled to the performance of a clear legal duty by the party against whom the writ is sought; and (2) if there is a clear legal duty, the party seeking the writ has, no plain, speedy, and adequate remedy available in the ordinary course of law. See, e.g., Common Cause of Montana v. Argenbright, 276 Mont. 382, 917 P.2d 425, 430 (1996); State ex rel. Intake Water Co. v. Board of Nat. Resources & Conservation, 197 Mont. 482, 645 P.2d 383, 386 (1982). In this matter, both requirements are satisfied. Therefore, a writ should be issued.

1. There exists a clear legal duty to remove all bison remaining outside Yellowstone National Park after May 15 of each year

- a. The Respondents have a clear legal duty to remove all remaining bison after May 15 from Montana in the Western Boundary Area under the IBMP and MTDOL regulations.

Under Mont. Code Ann. §81-2-120, Admin. R. Mont. 32.3.224A, and the IBMP, the Respondents have a clear legal duty to remove Yellowstone National Park bison from both private and public Montana land located within Zone 2 of the Western Boundary Area no later than May 15 of each year.

Under Mont. Code Ann. §81-2-120, whenever a publicly-owned bison from a herd that is infected with a dangerous disease, such as brucellosis, enters the state of Montana on public or private land and when that disease may spread to persons or livestock or whenever the presence of such bison may “jeopardize Montana’s compliance with other state-administered or federally

administered livestock disease control programs,” the Respondents may, under a plan approved by the Governor, take management actions to protect the Montana livestock industry and human health in Montana, Mont. Code Ann. §81-2-120(1). The 2000 IBMP is the statutorily authorized plan for bison management. See, State Record of Decision (hereinafter referred to as “ROD”), Exhibit “6” at p. 3. As provided for herein, the IBMP contains specific directives in the management and removal of bison from the Western Boundary Area. In addition, specific administrative rules of the Respondents provide that brucellosis-exposed bison be either physically removed from the State of Montana, or be destroyed by firearms if removal is not possible. Admin. R. Mont. 32.3.224A. Under either the IBMP or administrative rule, the Respondents have the clear legal duty to remove all bison from Montana by May 15 of any year. Respondents have failed to comply with that duty.

i. Duty under the IBMP.

The temporal and spatial separation between Yellowstone bison and cattle in the Western Boundary Area of Montana is governed by the IBMP. See, IBMP at 7, ¶7. That plan delineates when and how the Respondents are to manage and control Yellowstone bison coming into Montana, including those bison located within Zone 2 of the IBMP’s Western Boundary Area. Under the IBMP, Bison found within Zone 2 during the *winter* will be managed by the Respondents to: 1) maintain spatial and temporal separation from livestock; 2) to protect private property by undertaking lethal removal; 3) allow for the presence of certain bison by allowing up to 100 seronegative bison in a designated area; and 4) to address bison population size. See, IBMP, at 8, ¶10b. After April 1, all bison outside the Park and found within the Western Boundary Area are to be kept away from *private lands* a sufficient distance to manage the risk of disease transmission. *Id.* at 8, ¶12. By May 15 of each year, the Plan specifically mandates that

the Respondents “ensure” that *no* bison remain outside of the Park “in the western boundary area”. *Id.* at 7, ¶7. While the form of action taken to keep bison away from private lands after April 1 and to remove all bison by May 15 of each year is generally discretionary (hazing, capturing, or shooting), the Respondents are *required* to either haze, capture or shoot bison remaining outside Yellowstone National Park after May 15 to ensure the spatial and temporal separation requirement is satisfied. *Id.*

Even in the face of the express requirements of the IBMP, and specific to remove Yellowstone Bison from Zone 2 of the IBMP’s Western Boundary Area, by May 15, and the specific regulations to remove bison present in Montana, the Respondents have failed to do so in compliance with the legal requirements. Such failure is ongoing at the time this pleading is filed, and has been ongoing for the past several management sessions indicating Petitioners have no speedy or adequate remedy available at law.

Specifically, Admin. R. Mont. 32.3.224A applies to all bison “present within the State of Montana” and is unambiguous and non-discretionary. Likewise, the IBMP is unambiguous and non-discretionary in its directives for Zone 2 in the Western Boundary Area that no Yellowstone National Park bison remain in Montana after May 15. The Respondents have a clear legal duty to remove the bison which are currently in Zone 2 in the Western Boundary Area. The Montana Administrative rule applicable here unambiguously requires that brucellosis-exposed bison in Montana like those in controversy in this action be either physically removed or shot. *Id.* The IBMP similarly requires removal of bison from both private and public land after May 15. See, IBMP, at 7, ¶7. Admin. R. Mont. 32.3.224A and the IBMP provisions speak in terms of “will” when setting forth the Respondents’ duties to remove bison. This term is not a permissive and/or discretionary term. See e.g., *Harris v. Smartt*, 2002 MT 239, ¶101, 311 Mont. 507, 528, 57 P.3d

58, 71-72 (Terms like “must” and “shall” are mandatory rather than permissive); *Gaustad v. City of Columbus* (1994), 265 Mont. 379, 381-82, 877 P.2d 470, 471. The term “will” is a mandatory term and interpretation of the language should be given the plain and ordinary meaning of the word used. See e.g., *Lyng v. Payne*, 476 U.S. 926, 950, 107 S.Ct. 11 (1986)(J. Stevens dissenting on other grounds)(Those duly promulgated requirements unequivocally stated a mandatory obligation: “State Directors and County Supervisors will inform the news media including newspapers, radio and television in the affected counties of the provisions of P.L. 93-237”).

- b. The Montana State Veterinarian also has a clear legal duty to ensure that bison are removed from the State of Montana by May 15.

Under the IBMP and Admin. R. Mont. 32.3.224A, Respondent Dr. Martin Zaluski has a clear legal duty also to ensure the removal of Yellowstone National Park bison from both private and public Montana land located within Zone 2 of the Western Boundary Area *by* May 15 of each year. The Montana State Veterinarian is charged with administering laws related to animal health in Montana (including those related to control of brucellosis) and is directly responsible for the administration of such laws. See, Mont. Code Ann. §81-1-301. As the Montana State Veterinarian, Respondent Dr. Zaluski acts for and performs the duties by law when the MTBOL is not in session. *Id.* at §81-1-302.

Given his obligation to administer the animal health laws of Montana, including those related to bison control and management, Dr. Zaluski has a clear legal duty to ensure the MTDOL and the MTBOL comply with the laws and regulations of Montana. See, Mont. Code Ann. §81-2-120; IBMP; Admin. R. Mont. 32.3.224A. This duty includes ensuring that the MTDOL acts to remove all bison remaining in Zone 2 of the Western Boundary Area by May 15 of each year.

In light of the fact that the Montana State Veterinarian is the Chief Administrator of animal health laws in Montana, Respondent Dr. Zaluski has the responsibility to ensure that Montana law and the IBMP provisions regarding bison removal by May 15 are followed. As administrator of animal health laws, Dr. Zaluski is responsible for carrying out the requirements of the IBMP to limit the risk of brucellosis transmission from bison to cattle through area-specific strategies to maintain temporal and spatial separation. The May 15 date is clear and unambiguous and directs that Respondent Dr. Zaluski has a clear legal duty to take action to remove any remaining bison from Zone 2 by May 15 whether such bison are located on private or public land, and to ensure that the MTBOL and/or the MTDOL undertake such action.

c. Summary.

The Respondents have a clear legal duty to remove all bison from Zone 2 of the Western Boundary Area in Montana by May 15 of any year. The Respondents have no authority to grant themselves an indefinite extension of time to perform their duties in the face of specific statutorily directed decisions and regulations relating to Yellowstone National Park bison and brucellosis. As explained below, Petitioners have no speedy or adequate remedy at law available given the past and ongoing violations of law by the Respondents. Ordering the MTDOL, MTBOL and the State Veterinarian to carry out the mandate to remove the bison as is required by law and regulation will have the direct benefit of reducing the risk of brucellosis exposure and/or transmission which threaten Petitioners and the Montana livestock industry.

2. Petitioners have no plain, speedy and adequate remedy.

As stated in the Petitioners' affidavits, the Petitioners and/or Petitioners' ranching members have the right to graze cattle in areas in around the Western Boundary Area. However, due to the continued presence of Yellowstone bison in and around Zone 2 of the IBMP's

Western Boundary Area in contravention of the IBMP, Petitioners face additional unnecessary risks associated with brucellosis diseased or exposed bison threatening their livestock due to the failure of Respondents to comply with their legal obligations.

Under the IBMP, Yellowstone Bison are not to be within Zone 2 after May 15. When these animals are found within the borders of the State of Montana they are to be managed by the Respondents under the directives of the IBMP. Such management is to be done pursuant to Montana state law, regulation and under the auspices of the 2000 Interagency Bison Management Plan Record of Decision and Management Plan. The approved management plan and Montana law do not allow for Yellowstone bison to remain outside of Yellowstone National Park or within the Western Boundary Area after May 15. Rather, Montana law and the IBMP specifically provides that bison that have not been captured and/or hazed back into the Park by May 15 and that, therefore, remain outside of the Park past that date, are to be subject to immediate capture or subject to lethal removal. This authority to capture or remove extends to bison located on both private and public lands. See, IBMP at 1.

Neither state law nor the IBMP allow a private individual or organization to capture or kill bison remaining outside the Park without the Respondents' approval. The Petitioners only relief is to seek action from the Respondents. Petitioners have sought such relief to no avail. See, Affidavits of Myers at ¶9; Rice at ¶5. However, despite repeated requests by the Petitioners to have Respondents implement their clear legal duties to remove the bison, and to allow the Petitioners to graze their cattle without the additional risk of exposure to brucellosis, the Respondents have not acted on the authority granted them to manage the Yellowstone bison herd and to minimize the risk of transmission of brucellosis from bison to Montana domestic cattle. This failure by the Respondents has the direct effect of nullifying and repealing, through

inaction, the specific time limits imposed by the IBMP for removal from Montana of bison that have migrated outside the Park during the winter. This lack of action is directly contrary to the purpose and mandates of the IBMP, which was enacted for the express purpose of protecting the “economic interest and viability of the livestock industry in Montana”. IBMP at 1.

As stated, the Petitioners are presently unable to graze their cattle in areas where they are entitled without facing a higher risk of brucellosis exposure or transmission due to the continued presence of Yellowstone bison in areas where they graze cattle. Because Petitioners are unable to remedy these harms through their own actions, they must seek outside relief either from the Respondents or from this Court. Because the Respondents have failed to act as directed by law, the Petitioners have no plain, speedy and adequate remedy except to request a writ from this Court mandating that the Respondents carry out their clear legal duty to ensure that no bison remain outside the Park either on private or public property located within Zone 2 of the Western Boundary Area after May 15 of each year. Once a clear legal duty has been established, the trial court must issue a writ of mandate if no speedy and adequate remedy exists. *See, Smith v. County of Missoula*, 1999 MT 330, ¶ 28, 297 Mont. 368, ¶ 28, 992 P.2d 834, ¶ 28. As provided for herein, such a writ is necessary.

V. CONCLUSION

The Petitioners have met both tests for issuance of a writ of mandate. Pursuant to Montana statutory law, Montana regulations, and pursuant to the IBMP, the Respondents have a clear legal duty to ensure that no Yellowstone bison remain outside the Park in the Western Boundary Area after May 15 of each year. Bison must be removed from the Western Boundary Area by this date. Because the bison are publicly-owned animals and are located on the private lands of another, the Petitioner has no plain, speedy and adequate remedy except to request a writ

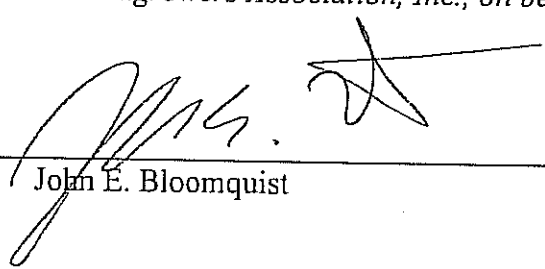
from this Court directing Respondents to perform their clear legal duties. This Court should issue an alternative writ to the Respondents to immediately remove all Yellowstone bison found outside the Park, namely those found within Zone 2 of the IBMP's Western Boundary Area, or appear, and show cause, why it should not be ordered to do so. If a hearing is necessary, upon its conclusion, the Court should issue a peremptory writ ordering the Respondents to remove the bison and ordering Respondents to pay reasonable attorney's fees and costs incurred in prosecution of this action.

In addition, because the Respondents have failed to comply with the mandate to remove all bison from Zone 2 of the IBMP's Western Boundary Area every year since 2005, the Petitioners request that the Court issue a writ ordering the Respondents to comply with the May 15 removal deadline henceforth or appear, and show cause, why it should not be ordered to do so.

Respectfully submitted this 27th day of May, 2008.

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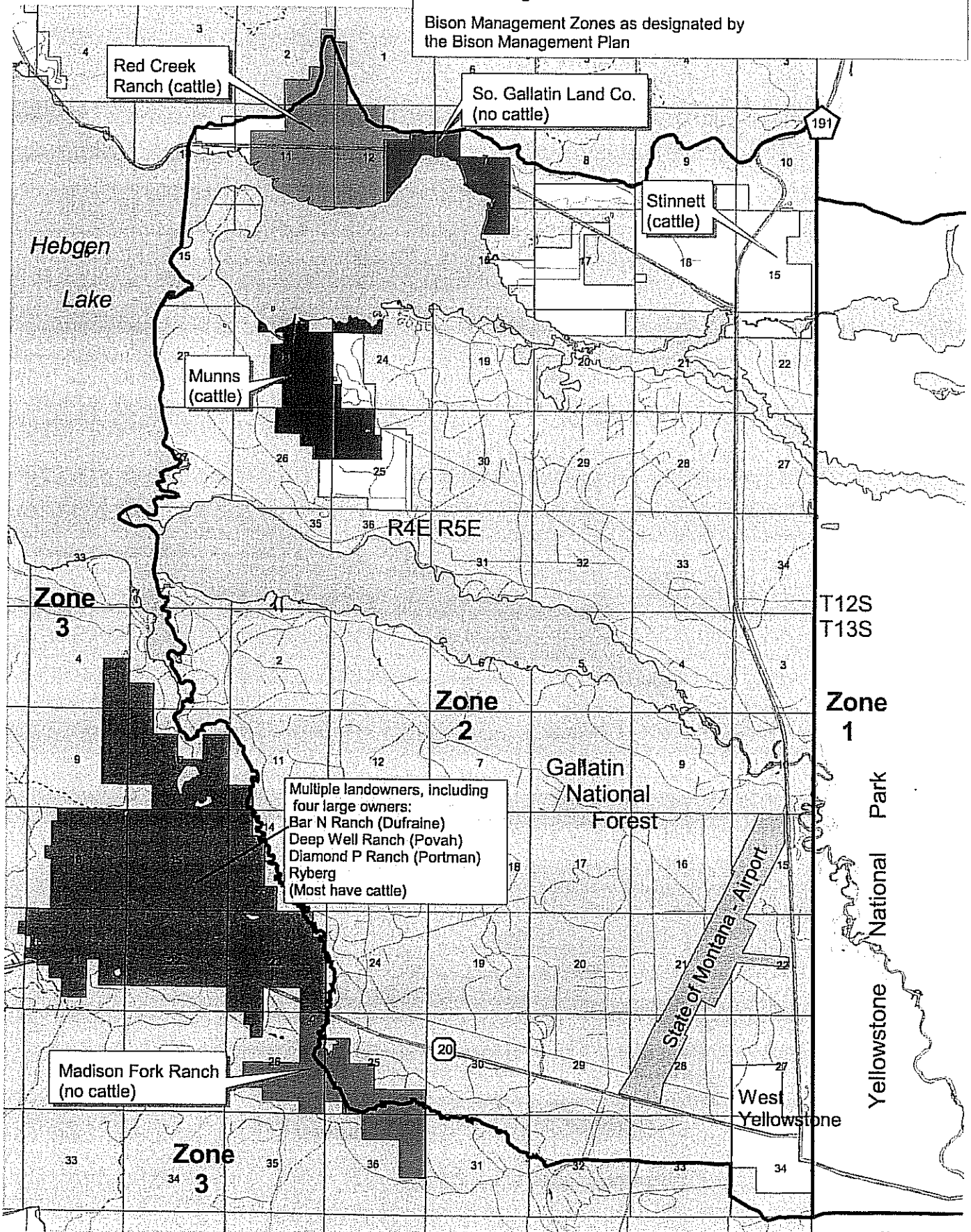
*Attorneys for Petitioners Sitz Angus Ranch, Bill Myers and the
Montana Stockgrowers Association, Inc., on behalf of it's members*

By: 

John E. Bloomquist

West Boundary Bison Management Zones and Large Private Landowners

Bison Management Zones as designated by the Bison Management Plan



September 8, 2005
jsr



(Private land ownership boundaries are approximations.)



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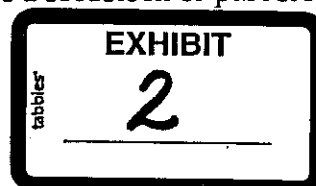
*Attorneys for Petitioners Sitz Angus Ranch, Bill Myers
and the Montana Stockgrowers Association, Inc.*

MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY

<p>SITZ ANGUS RANCH, BILL MYERS, and the MONTANA STOCKGROWERS ASSOCIATION, INC., on behalf of it's members,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">vs.</p> <p>MONTANA BOARD OF LIVESTOCK, MONTANA DEPARTMENT OF LIVESTOCK, an agency of the State of Montana, STATE OF MONTANA and DR. MARTIN ZALUSKI, in his capacity as Montana State Veterinarian,</p> <p style="text-align: center;">Respondents.</p>	<p>Cause No.</p> <p>AFFIDAVIT OF BOB SITZ</p>
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BOB SITZ, being first duly sworn, does hereby depose and state as follows:

1. I am of legal age and reside in Harrison, Montana. I am a partner in Sitz Angus Ranch, which is headquartered at P.O. Box 67, Harrison, Montana 59735.
2. Sitz Angus Ranch is a third generation family owned and operated Registered Angus cattle ranch which has operated from its Harrison, Montana headquarters since my grandparents purchased the ranch in 1959. The Sitz Angus Ranch is a seedstock or purebred



ranch which sells replacement heifers and yearling heifers throughout the country and world-wide.

3. Sitz Angus Ranch leases private property known as the "Deep Well Ranch" owned by the Povah family on the boundary between Zones 2 and 3 in the Western Boundary Area as established under the 2000 Interagency Bison Management Plan (hereinafter referred to as "IBMP"). The private lands owned by the Povah family provide grazing lands to Sitz Angus Ranch for about 300 pair. Sitz Angus Ranch has grazed these lands in the late-spring and summer months for over thirty (30) years.

4. Typically, Sitz Angus Ranch begins grazing on the private lands owned by Povahs adjacent to Zone 2 beginning about June 9 of each year. Generally, Sitz Angus Ranch cattle are removed from the area on or about late-October to early November.

5. I am aware that presently there are at least 75 head of bison outside of Yellowstone National Park in the Western Boundary Area. It is my understanding these bison are calving in the area. All bison entering Montana from Yellowstone National Park are either infected with or exposed to brucellosis.

6. The presence of bison in the Western Boundary Area interferes with the ability of Sitz Angus Ranch to graze on the Povah family lands which are leased. Because Yellowstone National Park bison carry brucellosis, or are exposed to brucellosis, the presence of these animals in Zone 2 at this time may prevent Sitz Angus Ranch from grazing on lands we lease given the animal health threat the bison pose, or significantly delay when our cattle could go on these private lands.

7. In past years, the Montana Department of Livestock would remove all bison from the Western Boundary Area in a timely manner to protect livestock owned by Sitz Angus Ranch

and other producers who also graze on lands within Zone 2, or adjacent to this area. In at least the past 3 years, Montana Department of Livestock has allowed bison to remain outside Yellowstone National Park in the Western Boundary Area later into the spring season. In fact, in the past 2 years, bison have been allowed to calve in the Western Boundary Area in significant numbers thereby increasing risk of exposure or infection to cattle which graze on lands adjacent to Yellowstone National Park.

8. The failure of the Montana Board of Livestock, and the Montana Department of Livestock, to remove Yellowstone National Park bison places Sitz Angus Ranch cattle at greater risk and also interferes with Sitz Angus Ranch from enjoying the grazing lands we lease from the Povah family:

9. It is my understanding that Montana Department of Livestock is required to remove all bison from the Western Boundary Area no later than May 15. In the past 3 years, Montana Department of Livestock has not complied with that date as bison have been allowed outside Yellowstone National Park in the Western Boundary Area later than that date.

10. The viability of Sitz Angus Ranch's livestock operations provides for the economic and social stability of 5 families. The economic and social interests of these families depend on necessary grazing lands being available for livestock grazing. The economic and social interests of these families also depend on our cattle remaining brucellosis free, as well as the State of Montana maintaining its Brucellosis Class-Free status. These interests are directly placed at risk by Montana Department of Livestock's failure to remove bison in a timely manner from Zone 2 in the Western Boundary Area or otherwise complying with the provisions of

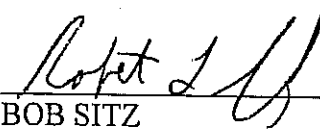
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Montana law regarding brucellosis and Yellowstone National Park bison.

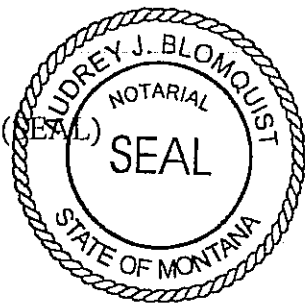
Further your Affiant sayeth not.

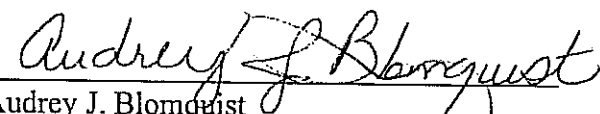
Dated this 27th day of May, 2008.



BOB SITZ

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public for the State of Montana, this 27th day of May, 2008.





Audrey J. Blomquist
Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires: November 1, 2008



John E. Bloomquist
James L. Shuler
James E. Brown
DONEY CROWLEY BLOOMQUIST PAYNE UDA P.C.
Diamond Block, Suite 200
44 West Sixth Avenue
P.O. Box 1185
Helena, MT 59624-1185
Telephone: (406) 443-2211
Facsimile: (406) 449-8443

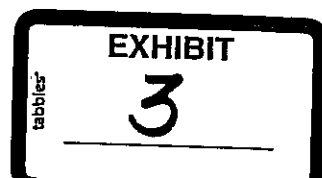
*Attorneys for Petitioners Sitz Angus Ranch, Bill Myers
and the Montana Stockgrowers Association, Inc.*

MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY

<p>SITZ ANGUS RANCH, BILL MYERS, and the MONTANA STOCKGROWERS ASSOCIATION, INC., on behalf of it's members,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">vs.</p> <p>MONTANA BOARD OF LIVESTOCK, MONTANA DEPARTMENT OF LIVESTOCK, an agency of the State of Montana, STATE OF MONTANA and DR. MARTIN ZALUSKI, in his capacity as Montana State Veterinarian,</p> <p style="text-align: center;">Respondents.</p>	<p>Cause No.</p> <p>AFFIDAVIT OF BILL MYERS</p>
---	--

BILL MYERS, being first duly sworn, does hereby depose and state as follows:

1. I am of legal age and reside at 1106 Springtime Road, Reedpoint, Montana 59069.
2. I am a fourth generation Montana rancher who owns and operates a attle ranch in Montana. My cattle operation is a commercial cow/calf operation and consists of grazing



cow/calf pairs on both deeded and leased lands.

3. I lease private property known as the “Stinnett Ranch” and the “Red Creek Ranch” which are located within Zone 2 in the Western Boundary Area as that area is recognized in the 2000 Interagency Bison Management Plan (hereinafter referred to as “IBMP”). The private lands owned by the “Stinnett Ranch” and “Red Creek Ranch” provide grazing lands for approximately 200 cow/calf pairs. I have grazed these lands in the late-spring and summer months since the year 1999.

4. Typically, I begin grazing on the private lands adjacent to Zone 2 beginning about June 1 of each year. Generally, my cattle are removed from the area on or about October 15 – November 1.

5. I am aware that presently there are at least 75 head of bison outside of Yellowstone National Park in the Western Boundary Area situated on private lands formerly owned by the Munns family. It is my understanding these bison on the former Munns property are calving in the area. All bison entering Montana from Yellowstone National Park are either infected with or exposed to brucellosis.

6. The presence of bison in the Western Boundary Area at this time of the year will interfere with grazing on the “Stinnett Ranch” and “Red Creek Ranch” lands which are leased. Because Yellowstone National Park bison carry brucellosis, or are exposed to brucellosis, the presence of these animals in Zone 2 at this time increase the risk to my cattle grazing on lands we lease given the animal health threat the bison pose.

7. Prior to about 2005, the Montana Department of Livestock would remove all bison from the Western Boundary Area in a timely manner to protect livestock which would graze on adjacent lands, including the lands I lease. In the past 3 years, Montana Department

of Livestock has allowed bison to remain outside Yellowstone National Park in the Western Boundary Area later into the spring season. In fact, in the past 2 years, bison have been allowed to calve in the Western Boundary Area outside of Yellowstone National Park after May 15.

8. The failure of the Montana Board of Livestock, the Montana Department of Livestock, and the Montana State Veterinarian to remove Yellowstone National Park bison by May 15 from the Western Boundary Area places my cattle at greater risk to be exposed to brucellosis and also interferes with the use and enjoyment of the grazing lands I lease. If my cattle become exposed to or infected with brucellosis, my entire ranching operation would be placed at risk. I presently operate under a federal and state-approved herd plan for the cattle I graze on the leased lands adjacent to Yellowstone National Park which requires vaccination of my cattle to reduce the risk of brucellosis as well as annual testing when I leave the leased premises with my cattle. Under the herd plan, all bison are to be back into YNP by May 15.

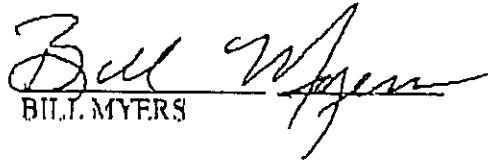
9. It is my understanding that Montana Department of Livestock is required to remove all bison from the Western Boundary Area no later than May 15. In the past 3 years, the Montana Department of Livestock and the State of Montana have not complied with that date as bison have been allowed outside Yellowstone National Park in the Western Boundary Area later than that date. I have, through my attorney, notified the Board of Livestock that bison have been situated on private lands I lease in violation of the IBMP. I have also previously contacted the Board requesting the Department fully implement the terms of the IBMP. See, attached Exhibit "A."

10. The viability of my livestock operations provides for the economic stability and well-being of me and my family. The interests of my family to continue our ranching

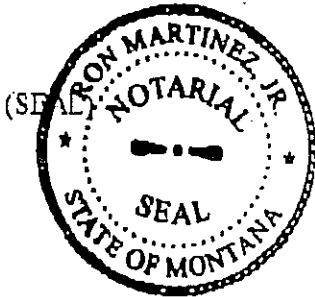
operation requires access to the lands I lease. These interests are directly placed at risk by Montana Department of Livestock's failure to remove bison in a timely manner from Zone 2 in the Western Boundary Area.


Further your Affiant sayeth not.

Dated this 27th day of May, 2008.


BILL MYERS

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public for the State of Montana, this 27th day of May, 2008.




Print Name: Ron Martinez, Jr.
Notary Public for the State of Montana
Residing at: Columbus
My Commission expires: May 2, 2012

ATTORNEYS AT LAW

Ted J. Doney (1942-1994)
Frank C. Crowley, MS
John E. Bloomquist
Michael J. Uda, MS
R. Allan Payne, RGP, MS

Offices in Helena and Dillon, Montana
sender's email: jbloomquist@doneylaw.com

Patti L. Rowland
Susan Callaghan
Suzanne Taylor
David R. Stewart, LL.M.
Thomas E. Davis
Abigail J. St. Lawrence

February 28, 2006

Bill Headstrom, Chairman
Montana Board of Livestock
P.O. Box 202001
Helena, MT 59620-2020

RE: Bison Management

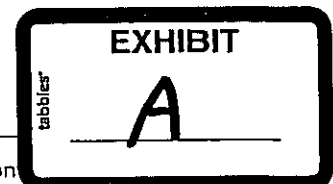
Dear Chairman Headstrom:

On behalf of the landowners of the Red Creek Ranch, and the lessee of this property, and other property in the area, Bill Myers, I am writing you as Chairman of the Montana Board of Livestock, to address concerns regarding Yellowstone National Park ("YNP") bison which are situated on private property, or within close proximity to these lands. While the landowners and Mr. Myers greatly appreciate the past management by the Department of Livestock of bison leaving YNP, it has come to their attention that YNP bison are presently situated on these landowners' private property without their consent, and without any management actions being taken by state or federal agencies to prevent such an occurrence.

Because cattle will be grazing these private lands in the near future, I am writing you on behalf of the landowners and Mr. Myers to request the Department of Livestock to remove all bison within the area as soon as possible. Given the known viability of B. abortus bacteria in the environment, and the known distances which shed fetuses may be transported by predators and scavengers, it is critical that all bison be removed from the area.

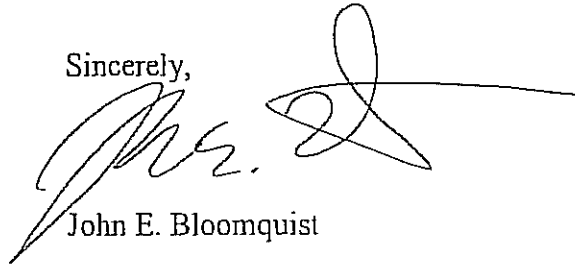
Provisions of the Interagency Bison Management Plan ("IBMP") dictate that management actions be taken. I am aware of no amendments or modifications to the IBMP which have been proposed or legally implemented. As such, the IBMP remains the legal responsibility of all agencies named in the Plan.

In addition, given the Board of Livestock's specific and general statutory and regulatory responsibilities to the livestock industry, I would ask that immediate action be taken to implement the management prescriptions set forth in the IBMP. Absent such action, not only are the landowners and Mr. Myers being placed at risk, but also the entire Montana livestock industry.



I appreciate your attention to this matter. If either you or the Board want to discuss this request, I would be happy to meet with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Bloomquist", with a long horizontal flourish extending to the right.

John E. Bloomquist

cc. Hal Harper, Governor's Office
Mark Bridges, Executive Officer DOL
Dr. Thomas Linfield, State Veterinarian
Bill Myers
Red Creek Ranch, Ltd.

John E. Bloomquist
James L. Shuler
James E. Brown
DONEY CROWLEY BLOOMQUIST PAYNE UDA P.C.
Diamond Block, Suite 200
44 West Sixth Avenue
P.O. Box 1185
Helena, MT 59624-1185
Telephone: (406) 443-2211
Facsimile: (406) 449-8443

*Attorneys for Petitioners Sitz Angus Ranch, Bill Myers
and the Montana Stockgrowers Association, Inc.*

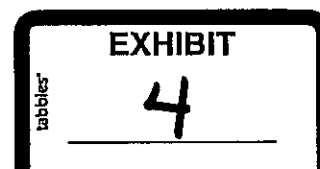
MONTANA FIFTH JUDICIAL DISTRICT COURT, MADISON COUNTY

<p>SITZ ANGUS RANCH, BILL MYERS, and the MONTANA STOCKGROWERS ASSOCIATION, INC., on behalf of it's members,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;">vs.</p> <p>MONTANA BOARD OF LIVESTOCK, MONTANA DEPARTMENT OF LIVESTOCK, an agency of the State of Montana, STATE OF MONTANA and DR. MARTIN ZALUSKI, in his capacity as Montana State Veterinarian,</p> <p style="text-align: center;">Respondents.</p>	<p>Cause No.</p> <p>AFFIDAVIT OF ERROL RICE, EXECUTIVE VICE PRESIDENT OF THE MONTANA STOCKGROWERS ASSOCIATION, INC.</p>
---	--

ERROL RICE, after being duly sworn upon oath, deposes and states:

1. I am of legal age and reside in Helena, Montana. I am the Executive Vice President of the Montana Stockgrowers Association, Inc. (hereinafter referred to as "MSGA"), which is headquartered at 401 North California, Helena, Montana 59601. The facts as stated in this Affidavit are based on information I have acquired personally as the Executive Vice President of the MSGA.

2. MSGA is a non-profit corporation organized to protect and promote the social,



members located throughout Montana who are actively involved in livestock ranching. MSGA members are ranchers and livestock owners who operate ranches that are directly impacted by the proper management of healthy livestock populations, and specifically the management publicly-owned, brucellosis-exposed bison, and the removal or the destruction of those bison presently found in the State of Montana, namely located in Zone 2 of the Interagency Bison Management Plan for State of Montana and Yellowstone National Park (hereinafter referred to as "IBMP"). MSGA members depend upon the proper management of brucellosis exposed or infected bison which enter Montana from Yellowstone National Park by the Montana Department of Livestock so that the health and well being of their livestock will be protected from the threat these bison pose.

3. I have been informed by the Montana Department of Livestock officials that presently there are at least 75 head of bison outside of Yellowstone National Park in the Western Boundary Area situated on private lands. As well, I am of the understanding that these bison are calving in the area. All bison entering Montana from Yellowstone National Park are either infected with or exposed to brucellosis.

4. The presence of bison in the Western Boundary Area directly threaten MSGA members who graze livestock adjacent to Yellowstone National Park. MSGA members, Sitz Angus Ranch and Bill Myers are directly impacted as they are prevented from accessing grazing lands they lease, and the health of their cattle herds are at risk by Yellowstone National Park bison being present in the Western Boundary Area. Because Yellowstone National Park bison carry brucellosis, or are exposed to brucellosis, the presence of these animals in Zone 2 at this time also threaten other MSGA members whose livestock graze other private or federal lands in the vicinity. Given the persistence of *brucella* organisms in the environment if shed by bison, or if she and transported by scavengers or predators over greater distances, the presence of Yellowstone Bison in the Western Boundary Area poses a risk to other producers as well.

5. In at least the past 3 years, the Montana Department of Livestock has allowed bison to remain outside Yellowstone National Park in the Western Boundary Area later into the spring season. In fact, in the past 2 years, bison have been allowed to calve in the Western Boundary Area. MSGA has on several occasions, notified the Montana Board of Livestock, and the Montana Governor's Office of our members concerns with the failure of the Department of Livestock and Board of Livestock to implement the bison management measures called for in the IBMP. See, attached Exhibits "A" and "B." MSGA and its members have also appeared before the Board of Livestock at meetings requesting the Board follow the measures provided in the IBMP to reduce the risk of brucellosis transmission to the Montana cattle industry.

6. The failure of the Montana Board of Livestock, and the Montana Department of Livestock, to remove Yellowstone National Park bison and implement the terms of the IBMP places MSGA members' cattle at greater risk and also threatens Montana's Brucellosis Class-Free status. Montana obtained its Brucellosis Class-Free status in 1985. In 1994, Montana's Class-Free status was threatened by USDA-APHIS due to the presence of Yellowstone National Park bison being within Montana as well as sanctions being imposed by other state animal health authorities. As a result, of Montana's 1995 litigation against APHIS and the Park Service, the 2000 IBMP Record of Decision and Management Plan was entered by the State of Montana and the federal agencies. Under the IBMP, Montana's Class-Free status will be maintained in spite of the presence of Yellowstone National Park bison being in Montana if Montana complies with the provisions of the IBMP.

7. In 2007, Montana discovered a brucellosis infected/exposed cattle herd in the Bridger, Montana area. As a result of this event, Montana must not have another brucellosis positive animal in its cow herd statewide for 24 months or the state will lose its Brucellosis Class-Free status which will adversely affect Montana cattle producers statewide.

8. Under the IBMP, the Montana Department of Livestock is required to remove all bison from the Western Boundary Area no later than May 15. In the past 3 years, Montana Department of Livestock has not complied with that date as bison have been allowed outside Yellowstone National Park in the Western Boundary Area later than that date. The failure of the Department of Livestock, the Board of Livestock, and the State Veterinarian to implement all management actions called for in the IBMP increases the risk of brucellosis transmission or exposure to the Montana cattle industry.

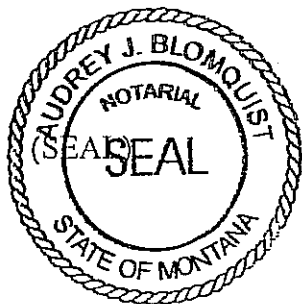
9. The viability of livestock operations of MSGA members provides for the economic and social stability of much of Montana. The economic health of the industry is placed directly at risk by the failure of the Department of Livestock, Board of Livestock, and the State Veterinarian in failing to comply with the IBMP and other Montana animal health regulations addressing bison and brucellosis.

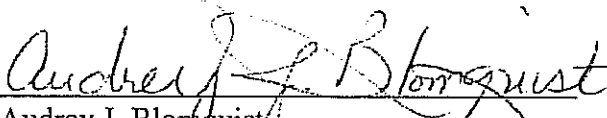
Further your Affiant sayeth not.

Dated this 27 day of May, 2008.


Errol Rice

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned Notary Public for the State of Montana, this 27th day of May, 2008.




Audrey J. Blomquist
Notary Public for the State of Montana
Residing at Helena, Montana
My Commission expires: November 1, 2008

March 2, 2006

Bill Headstrom, Chairman
Montana Board of Livestock
P.O. Box 202001
Helena, MT 59620-2020

Dear Chairman Headstrom:

On behalf of Montana Stockgrowers Association (MSGA), Montana Farm Bureau Federation (MFBF), Montana Veterinary Medical Association (MVMA), Montana Association of Livestock Auction Markets (MALAM), and Montana Cattlemen's Association (MCA), we are writing you over concerns expressed to our organizations by several members regarding the ever present threat to the Montana livestock industry of brucellosis. Press coverage and a meeting with Governor Schweitzer have indicated interest by the Governor's Office in modifying the present Interagency Bison Management Plan (IBMP). In addition, recent actions by the State in altering management actions called for in the IBMP have caused alarm in the livestock industry over whether the State of Montana is committed to protecting Montana's brucellosis class-free status, and protecting Montana's livestock and it's citizens from the real danger posed by brucellosis exposed or infected bison entering Montana from Yellowstone National Park (YNP).

As you know, the historic problem of a lack of federal agency action or responsibility over YNP bison caused the State of Montana to sue both the National Park Service and APHIS. That litigation, and years of effort by previous administrations, culminated in the 2000 IBMP. The Plan, approved by the Federal Court, has protected the Montana livestock industry to date from the risks of brucellosis exposed/infected bison which immigrate from YNP into our State. While the Montana livestock industry does not believe these measures are a long term solution and believes more aggressive eradication measures should have been dictated in the IBMP, the Plan has proven successful in at least managing risks associated with brucellosis.

Recent inaction by the State in implementing key risk management provisions of the IBMP leave the Montana livestock industry questioning the direction being taken on bison management. As a result, our groups request that the Board of Livestock provide clear direction to the industry on whether or not the current IBMP will be followed, and if not, the specific modifications which may be contemplated. MSGA recently met with the Governor who also indicated he believed changes should be made. Because of the critical nature of this issue to the Montana livestock industry, we believe both the Board and the Governor need to be very measured in any changes to be IBMP. Any changes to the IBMP need industry input and must be associated with public notice and proper review.

As an industry, Montana cattle producers support eradication of brucellosis from YNP bison and elk as the only true solution to the problem of brucellosis within the Greater Yellowstone Area. We have supported both policy and state legislative directives which urge for the elimination of brucellosis from YNP bison and elk by USDA and the Department of Interior, with USDA APHIS designated as the lead federal agency in any eradication plan. The Montana legislature has passed similar directives as recently as the 2005 legislative session. It should be clear to all involved in this issue, including the Board, that eradication of brucellosis is the only true solution to both protecting the Montana livestock industry, and providing for a "free ranging" YNP bison population. Recent events in Idaho and Wyoming with elk to livestock transmissions only illustrate the need for a comprehensive eradication plan. The time to pursue such a plan is upon us.

However, until eradication plans are developed and fully implemented, Montana and the federal agencies must continue to actively manage YNP bison under the IBMP. We are very concerned that utilizing hunting and arbitrarily moving boundary lines or management zones may well jeopardize Montana's Brucellosis free status. Similarly, the DFWP should be required to set forth how it intends to address brucellosis in elk.

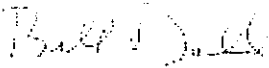


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However, until eradication plans are developed and fully implemented, Montana and the federal agencies must continue to actively manage YNP bison under the IBMP. We are very concerned that utilizing hunting and arbitrarily moving boundary lines or management zones may well jeopardize Montana's Brucellosis free status. Similarly, the DFWP should be required to set forth how it intends to address brucellosis in elk.

We all appreciate the efforts of the Board in this critical issue. We look forward to working with the Board and the Governor to assure the Montana cattle industry is protected, and to make sure all markets remain open and free from testing requirements until eradication can be achieved.

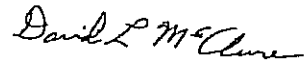
Sincerely,



Bill Donald
MSGA President



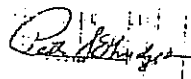
Bob Cook
MALAM President



Dave McClure
MFBF President

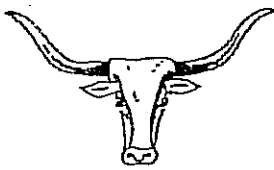


Lars Hanson
MCA Natural Resources Coordinator



Patti Ethridge
MVMA President

cc: Governor Brian Schweitzer
MSGA Board of Directors
MLMA Board of Directors
MFBF Board of Directors
MCA Board of Directors
MVMA Board of Directors



Montana Stockgrowers Association

Serving Montana's Cattle Industry Since 1884

420 N. California
Helena, MT 59601
Phone: 406/442-3420
Fax: 406/449-5105
msga@mtbvf.org

OFFICERS:

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Steve Roth
Big Sandy

First Vice President
Tom Hougen
Melstone

Second Vice President
Warry Taylor
Kirby

Exec. Vice President
Evan Rice

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Tom Lowry
Grass Range

Jack McNamee
Miles City

Eric Moore
Miles City

Bryan Mussard
Dillon

Steve Wilcox
Shepherd

May 3, 2007

Mr. William Hedstrom, Chairman
Montana Board of Livestock
P.O. Box 202001
Helena, MT 59620-2001

RE: *Yellowstone National Park Bison*

Dear Chairman Hedstrom:

On behalf of the members of the Montana Stockgrowers Association (MSGA), I am writing you to express MSGA's concerns over the lack of activity by the Board and the State of Montana in implementing the terms of the Interagency Bison Management Plan (IBMP) during the 2006-2007 season. As you recall, last February MSGA and other agricultural organizations expressed similar concerns. Recent events in the west boundary area again illustrate a lack of compliance by the State/Board in implementing the bison management prescriptions called for in the IBMP. Unfortunately, hundreds of brucellosis infected and exposed bison have been present on private and public lands this spring, and bison are actually calving in areas where livestock will soon be present. Obviously, such a circumstance raises concern to MSGA and its members.

The terms of the IBMP, and all management activities described under the Plan, must be adhered to or the livestock industry in Montana will be placed at greater risk from Yellowstone National Park bison. The Board's apparent lenience to other interpretations of the plan's provisions, indicate the Board is not willing to implement the IBMP as necessary, or as written.

As examples, in the west boundary area, the Board and the State have chosen not to trap and test bison as called for in Step 1 of the IBMP. In addition, the Board/State have allowed more than 100 seronegative bison to be present outside of Yellowstone National Park as directed by the IBMP, and have completely failed in removing any bison which have entered Montana when the late-winter/early-spring bison population is above 3000 bison. Most notably the Board/State has failed to keep bison outside the west park boundary away from private lands a sufficient distance to manage the risk of disease transmission after the prescribed April 1st date. Given that no bison outside of the west boundary have been tested this season we can only assume that nearly 50% are seropositive for brucellosis.



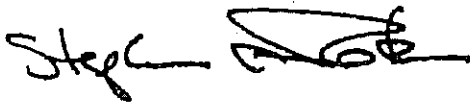
Mr. William Hedstrom
May 3, 2007
Page 2

MSGGA recognizes bison management is a controversial and difficult activity. MSGGA applauds DOL personnel who work on the ground to protect the livestock industry from the threat of brucellosis and Yellowstone National Park bison. MSGGA appreciates the difficulty the Board faces in implementing bison management activities, but until brucellosis is eradicated from the Yellowstone National Park bison population, such activities are required to protect Montana's brucellosis class-free status, the health of Montana's livestock, and protection from sanctions from other state's animal health authorities.

MSGGA would very much appreciate the Board's explanation of bison management actions or inactions which have taken place in the past two seasons.

Thank you for your service to the Montana livestock industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Roth". The signature is stylized and written in cursive.

Steve Roth, President
Montana Stockgrowers Association

Cc: Montana Board of Livestock
Montana Stockgrowers Association Board of Directors
John E. Bloomquist
Jim Hagenbarth

Rule: 32.3.224A

[Prev](#) [Up](#) [Next](#)

Rule Title: UNLAWFULLY ESTRAYED AND PUBLIC OWNED MIGRATORY BISON FROM HERDS AFFECTED WITH A DANGEROUS DISEASE

Department: [LIVESTOCK DEPARTMENT OF](#)
Chapter: [DISEASE CONTROL](#)
Subchapter: [Importation of Animals and Semen Into Montana](#)



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Latest version of the adopted rule presented in Administrative Rules of Montana (ARM):

[Printer Friendly Version](#)

32.3.224A UNLAWFULLY ESTRAYED AND PUBLIC OWNED MIGRATORY BISON FROM HERDS AFFECTED WITH A DANGEROUS DISEASE

(1) When estrayed or migratory bison exposed to or affected with brucellosis, a dangerous, contagious, zoonotic disease of man and animals, enter into or are otherwise present within the state of Montana one of the following actions will be taken:

(a) The live bison may be physically removed by the safest and most expeditious means from within the state boundaries. This means may include but not be limited to capture, trucking, hazing/aversion, or delivery to a departmentally approved slaughterhouse.

(b) If live bison cannot safely by reasonable and permanent means be removed from the state they shall be summarily destroyed where they stand by the use of firearms. If firearms cannot be used with due regard to human safety and public property bison may be relocated to such a danger free area and destroyed by firearms or by any other practicable means of euthanasia.

(c) When bison of necessity or unintentionally are killed through actions of the department, the carcass remains will be disposed of by the most economical means possible. This may include but not be limited to burying, incineration, rendering, or field dressing for delivery to a departmentally approved slaughterhouse or slaughter destination.

History: [81-2-102](#), [81-2-103](#), MCA; [IMP](#), [81-2-102](#), [81-2-103](#), MCA; [NEW](#), 1991 MAR p. 2494, Eff. 12/13/91.

Effective rule versions existed in ARM on or after March 31, 2007

MAR Notices	Effective From	Effective To	History Notes
	12/13/1991	Current	History: 81-2-102 , 81-2-103 , MCA; IMP , 81-2-102 , 81-2-103 , MCA; NEW , 1991 MAR p. 2494, Eff. 12/13/91.

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Contact: (406) 444-2055 Fax: (406) 444-4263 Email: sosarm@mt.gov



Interagency Bison Management Plan

for

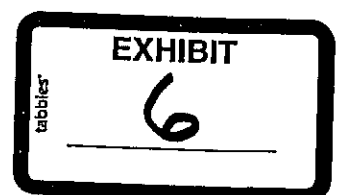
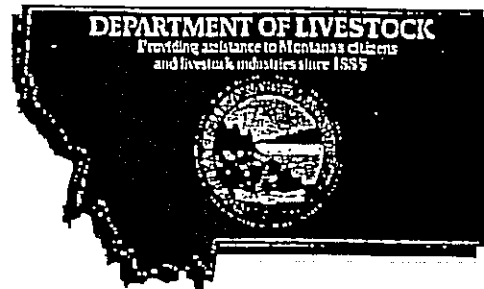
The State of Montana

and

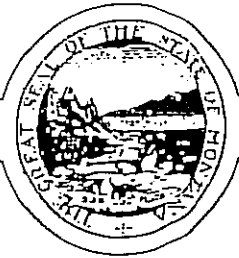
Yellowstone National park

Record of Decision

December 22, 2000



DEPARTMENT OF LIVESTOCK



MARC BRIDGES, GOVERNOR

PO BOX 302011

STATE OF MONTANA

BRANDS ENFORCEMENT DIV 406-444-2045
ANIMAL HEALTH DIV 406-444-2043
BOARD OF LIVESTOCK - CENTRALIZED SERVICES 406-444-2023
MEAT, MILK & EGG INSPECTION DIV 406-444-5202

HELENA, MONTANA 59620-2001

December 21, 2000

Dear Interested Party:

The State of Montana hereby announces its intention to implement the Interagency Bison Management Plan. This Record of Decision is the culmination of a process that began with a Notice of Intent to prepare a cooperative bison management plan and environmental impact statement which was published in the July 1990 Federal Register. The process continued with a public review of a draft EIS that began on June 12, 1998 and ended on November 3, 1998. The draft EIS was jointly prepared by U.S.D.I. National Park Service (Yellowstone National Park), U.S.D.A. Forest Service (Gallatin National Forest), and Animal Plant Health Inspection Service and the State of Montana. The federal agencies subsequently released a final EIS in August 2000. The Montana Department of Livestock (DoL) and the Montana Department of Fish, Wildlife and Parks (FWP) developed a modified preferred alternative for analysis in their final EIS, which was released on November 15, 2000. The Record of Decision is based on the analyses contained in the draft EIS, the FEIS that was prepared by the federal agencies and released in August 2000, the federal responses to comments on the Federal FEIS, the analysis contained in Montana's FEIS, and the court ordered mediation. This document satisfies DoL's and FWP's responsibility to prepare a concise public record of decision concerning a proposed action for which an EIS is required, pursuant to the requirements of the Montana Environmental Policy Act (MEPA).

Thank you for your interest in bison management.

Sincerely,

Marc Bridges
Executive Officer, Montana Department of Livestock

Patrick J. Graham
Director, Montana Department of Fish, Wildlife and Parks

STATE OF MONTANA
RECORD OF DECISION
INTERAGENCY BISON MANAGEMENT PLAN

The Montana Department of Livestock (DoL) and the Montana Department of Fish, Wildlife and Parks (FWP) have decided to implement the Interagency Bison Management Plan, as described in the attachment to this Record of Decision and approved by the Governor of the State of Montana, as the appropriate strategy for the management of bison that move from Yellowstone National Park into Montana. The Interagency Bison Management Plan is similar to the preferred alternative that was described and evaluated in the Final Environmental Impact Statement (FEIS), dated November 15, 2000, and is within the scope of that analysis. DoL and FWP will proceed to implement bison management according to the Interagency Bison Management Plan and in cooperation with the U.S.D.I. National Park Service (Yellowstone National Park), U.S.D.A. Forest Service (Gallatin National Forest), and U.S.D.A. Animal Plant Health Inspection Service. Implementation of the Interagency Bison Management Plan by DoL and FWP is contingent upon a decision by the federal agencies to implement a plan which contains the management actions described in the attached state approved plan. The effective date of the Interagency Bison Management Plan will be immediate upon issuance of the federal agencies' decision described herein.

Insofar as the Interagency Bison Management Plan and FEIS states or elaborates upon the reasons for or the methodologies used to reach this decision, those documents are incorporated into this Record of Decision by this reference.

RATIONALE FOR THE DECISION

Bison are essential to Yellowstone National Park because they contribute to the biological, ecological, cultural, and aesthetic purposes of the Park. However, Yellowstone National Park is not a self-contained ecosystem for bison and periodic movements of bison into Montana regularly occur. Some bison are infected with brucellosis and may transmit this disease to cattle if bison movements from the Park into Montana are not controlled. Transmission of brucellosis from bison to cattle would have significant adverse effects on Montana livestock operators in the Yellowstone area and on the Montana cattle industry, statewide. If the risks associated with brucellosis were not managed, the responses of officials who are responsible for regulation of livestock diseases in other states and countries also could adversely affect Montana's livestock industry. Several state and federal agencies each have limited authority for the management of bison, the management of brucellosis in bison and/or the management of lands used by bison. None of the agencies, acting alone, has sufficient authority to manage bison across all jurisdictional boundaries. Therefore, cooperation of the agencies and their shared commitment to a single management plan is essential to effectively manage bison and the risk of transmission of brucellosis from bison to domestic livestock.

Bison management has been a major public controversy and a difficult issue for the State of Montana for the past 15 years. During that time DoL and FWP have participated in the

development and implementation of several interim management plans. They also have evaluated a variety of options to protect the ecological integrity of bison in Yellowstone National Park and to prevent brucellosis transmission from bison to cattle.

The Interagency Bison Management Plan emphasizes measures to maintain temporal and spatial separation between bison and cattle. This plan also establishes population targets for the bison herd and identifies management actions if and when bison move beyond the YNP boundary. Given the current risk, the temporal and spatial separation provisions of the plan when completed with other management actions described in the plan, should prevent transmission of brucellosis from bison to cattle. Moreover, the provisions for vaccination of both bison and cattle should further reduce the level of risk over time. Of the various alternatives considered, the Interagency Bison Management Plan is the only alternative that the state agencies are able to implement in cooperation with the federal agencies. Implementation of the Interagency Bison Management Plan is a joint state/federal action which will require interagency cooperation and coordination. As set forth in the Plan, the agencies will enter into the appropriate Memorandum-of-Understanding to describe specific commitments of personnel to all management actions and delineate operation details for implementation of the Plan.

CONTEXT FOR THE DECISION

DoL and FWP have been working with U.S.D.I. National Park Service (NPS), U.S.D.A. Forest Service (USFS) and U.S.D.A. Animal and Plant Health Inspection Service (APHIS) for more than a decade to address the management of bison through development of a long-term management plan and Environmental Impact Statement (EIS). The Notice of Intent to prepare this EIS was published in the Federal Register on 11/1/89. While that plan and EIS were being prepared, the agencies agreed to cooperate in the implementation of an Interim Bison Management Operating Plan. The Interim Plan was approved in October 1990 and was revised several times thereafter. Environmental Assessments (EA) for the interim plans were prepared, in cooperation with the federal agencies, in 1990, 1992 and 1996. The Draft Environment Impact Statement (DEIS) for the Interagency Bison Management Plan for the State of Montana and Yellowstone National Park was finally released for public comment in June 1998.

While preparing responses to public comment and the Final EIS, the state and federal agencies were unable to agree on a preferred alternative. In December 1999, the federal government advised the Governor of the State of Montana of its intentions to withdraw from the Memorandum of Understanding under which the parties were preparing the EIS for the long-term bison management plan, to file a motion with the court for the dismissal of Montana's 1995 lawsuit against the federal agencies and to proceed to complete the final EIS without Montana as a co-lead. The federal agencies released a final environmental impact statement (FEIS) for Bison Management for the State of Montana and Yellowstone National Park in August 2000. DoL and FWP reviewed that document and determined that the Interagency Bison Management Plan was similar to federal preferred alternative and within the scope of the alternatives that were analyzed in the federal FEIS. DoL and FWP released their FEIS for the Interagency Bison Management Plan on November 15, 2000. In addition, DoL and FWP

reviewed the federal responses to the Federal FEIS and are in concurrence with those responses.

In response to the federal agencies' notice to withdraw from the 1992 MOU and to proceed without Montana in the preparation of the FEIS for the Interagency Bison Management Plan, Montana sought relief in U.S. District Court. Under order of the court (*Montana v. US*, Cause No. CV95-6-H-CCL) the 1992 MOU was terminated and the dispute between Montana and the federal agencies was referred to mediation. In addition, the court ordered that the federal government could proceed with preparation and completion of the FEIS. By court order, Montana and the federal agencies participated in mediation sessions, under the supervision of Judge Robert M. Holter, U.S. Magistrate, between April and November, 2000. Through that process, Montana and the federal agencies were successful in resolving the dispute and provisions in the Interagency Bison Management Plan have been agreed to by all of the state and federal agencies.

ALTERNATIVES CONSIDERED

The DEIS evaluated seven alternatives that the agencies agreed were potentially sufficient to accomplish the purpose and need for bison management. In addition, the DEIS disclosed several bison management strategies that had been suggested by the public during the scoping process; indicated that these suggestions would be precluded from further analysis; and, briefly explained the rationale for that decision. Both the federal and state FEIS disclosed and evaluated additional alternatives that were suggested during public comment to the DEIS.

EFFECTS OF THE DECISION

The most noteworthy effects of the Interagency Bison Management Plan include:

- The plan will limit bison distribution to Yellowstone National Park and, during limited periods of the year, in certain areas that are immediately adjacent to the park.
- The plan may occasionally result in the removal of substantial numbers of bison. These removals will not jeopardize the integrity of this herd. However, bison management has been a controversial issue since the mid-1980s, when removals in response to emigrations of large numbers of bison began, and public controversy likely will continue.
- The plan will manage the risk of brucellosis transmission from bison to cattle through area-specific strategies to maintain temporal and spatial separation between bison and cattle and with vaccination protocols appropriate for both bison and cattle. Implementation of the plan will not eliminate the risk of transmission because it is not a brucellosis eradication plan. However, the plan will significantly reduce the risk of brucellosis transmission from bison to domestic livestock, due to the management actions prescribed.

POLICY CONSIDERATIONS

The Interagency Bison Management Plan implements DoL's and FWP's statutory responsibilities to manage bison (81-2-120 M.C.A. and 87-1-216 M.C.A, to enter into an

agreement with Yellowstone National Park and other federal agencies for the long-term management of bison, and all other statutory obligations of the agencies.

PRACTICAL MEASURES TO MINIMIZE HARM

The Interagency Bison Management Plan includes the following practical features to minimize the potential for environmental impacts that are inconsistent with the purpose and need for bison management:

- Bison removals will only occur near or beyond the boundary of Yellowstone National Park. The removal of nomadic bison pursuant to the plan will not jeopardize the ecological integrity of the bison herd within the park.
- Capture is the preferred method for removing bison that exceed either distribution or tolerance limits. While capture is the preferred method for removal, lethal strategies are also identified.
- The protocols for bison vaccination will be consistent with the standards for vaccine safety and efficacy, as defined by the Greater Yellowstone Interagency Brucellosis Committee.
- The plan incorporates contingency strategies to be implemented in the unlikely event that transmission of brucellosis from bison to cattle occurs.
- The plan incorporates contingency strategies to reduce lethal removals of bison when large numbers of bison have been removed.

The plan incorporates the concept of adaptive management. Adaptive management is a systematic process for continually improving management policies and practices by learning from the outcomes of operational programs.

ENDANGERED SPECIES CONSIDERATIONS

On March 17, 2000, the National Park Service provided a biological assessment to the U.S. Fish and Wildlife Service pursuant to the requirements of Section 7 of the Endangered Species Act. The biological assessment concluded that the modified preferred alternative in the federal FEIS was not likely to adversely affect the following species listed under the ESA: bald eagle (*Haliaeetus leucocephalus*), grizzly bear (*Ursa horribilis*), Canada lynx (*Lynx Canadensis*), and gray wolf (*Canis lupus*). The National Park Service provided supplemental information on pending RB51 vaccine studies to FWS on July 6, 2000.

On July 20, 2000, the Acting Field Supervisor for the Montana Field Office concurred in the NPS determination of "not likely to adversely affect." The Acting Field Supervisor noted that the Interagency Grizzly Bear Study Team is evaluating whether a possible reduction in other grizzly bear food sources may make bison a more important food source for grizzly bears. The study may result in needing to reinitiate Section 7 consultation. Additionally, if the final results of the ongoing biosafety studies on RB51 vaccine show that any of the listed species may be adversely affected by indirect exposure to the vaccine, NPS and Montana will need to provide a revised biological assessment.

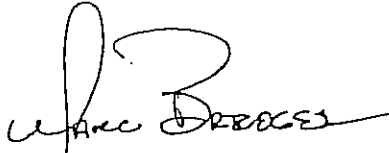
QUARANTINE FACILITY DECISION

The Interagency Bison Management Plan includes provisions to evaluate whether a quarantine facility would be an appropriate component of the plan. If so, additional NEPA/MEPA analysis would be required to determine the design, location and operation parameters for a bison quarantine facility. Therefore, this Record of Decision does not include a provision to establish a quarantine facility.

MONITORING

By its nature, a plan using adaptive management requires monitoring and adjustments as new information is obtained. The provisions of the Interagency Bison Management Plan identify the factors that the agencies will monitor to determine if the agencies are separating bison and cattle successfully, and, thus, lowering the risk of transmission of brucellosis. The agencies will meet at least twice annually to evaluate the operations of the prior winter and determine if modifications are necessary. This is also the appropriate time for the agencies to determine if the management efforts were successful and, thus, allowing the agencies to either move forward to the next step or, if at Step 3, continue at that step. DoL and FWP agree that the agencies will undertake in good faith to resolve all disputes reasonable at the local management level, elevating them only if there is an impasse. The agencies will use the best available scientific information to assist them in resolving such disputes.

INTERAGENCY BISON MANAGEMENT PLAN



Mary Bridges

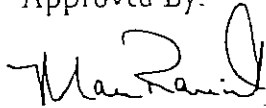
Executive Officer, Montana Department of Livestock



Patrick J. Graham

Director, Montana Department of Fish, Wildlife and Parks

Approved By:



Marc Racicot

Governor, State of Montana

Dated:

December 20, 2000

Interagency Bison Management Plan

I. Preamble

Bison are an essential component of Yellowstone National Park because they contribute to the biological, ecological, cultural, and aesthetic purposes of the Park. However, Yellowstone National Park is not a self-contained ecosystem for bison, and periodic migrations into Montana are natural events. Some bison have brucellosis and may transmit it to cattle outside the Park boundaries in Montana if bison migrating from the Park are allowed outside the Park without appropriate management measures. Transmission of brucellosis from Yellowstone bison to cattle in Montana could have not only direct effects on local livestock operators, but also on the cattle industry statewide. Because bison which leave YNP are under the management jurisdiction of the state of Montana, the cooperation of several agencies is required to fully manage the herd and the risk of transmission of brucellosis from bison to Montana domestic cattle.

The parties recognize that the cooperation to address the existence of brucellosis in the bison herd involves the management of wild bison on both private and public lands, which requires different approaches to risk and disease management than standard situations involving brucellosis in domestic cattle or bison. The parties also recognize that cattle vaccination and management of cattle on public lands is an important element of managing the risk of transmission of brucellosis from bison to cattle. The management of bison under this plan will include actions to protect private property; actions to reduce the risk of transmission of brucellosis from bison to cattle; and, actions to maintain a viable, free-ranging population of Yellowstone bison.

Objectives This plan is not intended to be a brucellosis eradication plan, but rather is a plan for the management of bison, intended to prevent the transmission of brucellosis from bison to cattle. Nevertheless, it sets forth actions to address brucellosis within the bison herd. To this end, Montana and the United States will work cooperatively towards the implementation of a Interagency Bison Management Plan. This Interagency Bison Management Plan reaffirms the principle purpose for action described in the Draft and Final Environmental Impact Statements "to maintain a wild, free-ranging population of bison and address the risk of brucellosis transmission to protect the economic interest and viability of the livestock industry in Montana." A series of three adaptive management steps are prescribed in this Interagency Bison Management Plan that will minimize the risk of transmission of brucellosis to cattle grazing on public and private lands adjacent to Yellowstone National Park and will, when all criteria are met, provide for the tolerance of a limited number of untested bison on public lands and private lands where permitted adjacent to Yellowstone National Park during winter. Implementation of the Interagency

Bison Management Plan will not cause APHIS to downgrade Montana's brucellosis class-free status.

The management actions set forth in this plan which reflect occurrence of certain actions by an expected date are the agencies anticipated time periods in which certain management steps may commence. The actual change in management from one step to another are dependent upon all criteria being met or obtained prior to the particular step being implemented.

II. Definitions

Adaptive Management: In the context of the bison management plan and the modified preferred alternative, adaptive management means testing and validating with generally accepted scientific and management principles the proposed spatial and temporal separation risk management and other management actions. Under the adaptive management approach, future management actions could be adjusted, based on feedback from implementation of the proposed risk management actions.

Temporal Separation: Separation of cattle and bison in time. Maintaining 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.

Spatial Separation: Prevention of cattle and bison from commingling or from utilizing the same area or adjacent areas at the same time.

Agencies: as used herein means the Department of the Interior - National Park Service (NPS), United States Department of Agriculture - Forest Service (USFS) and/or Animal and Plant Health Inspection Service (APHIS); and the State of Montana Departments of Livestock (MDOL), and Montana Fish Wildlife & Parks (MFWP), unless a state or Federal agency is specifically named herein.

In-Park Vaccination Program: A program for delivery of a safe and effective vaccine to vaccinate eligible bison inside Yellowstone National Park so as to decrease the risk of transmission of brucellosis and diminish the overall seroprevalence of brucellosis in Yellowstone bison. Vaccination eligible bison are expected to initially include calves and yearlings, and will include adult bison if and when the agencies deem a vaccine is safe and effective. The agencies will deem a vaccine safe and effective according to criteria established by the Greater Yellowstone Interagency Brucellosis Committee ("GYIBC"). (GYIBC Protocol attached hereto).

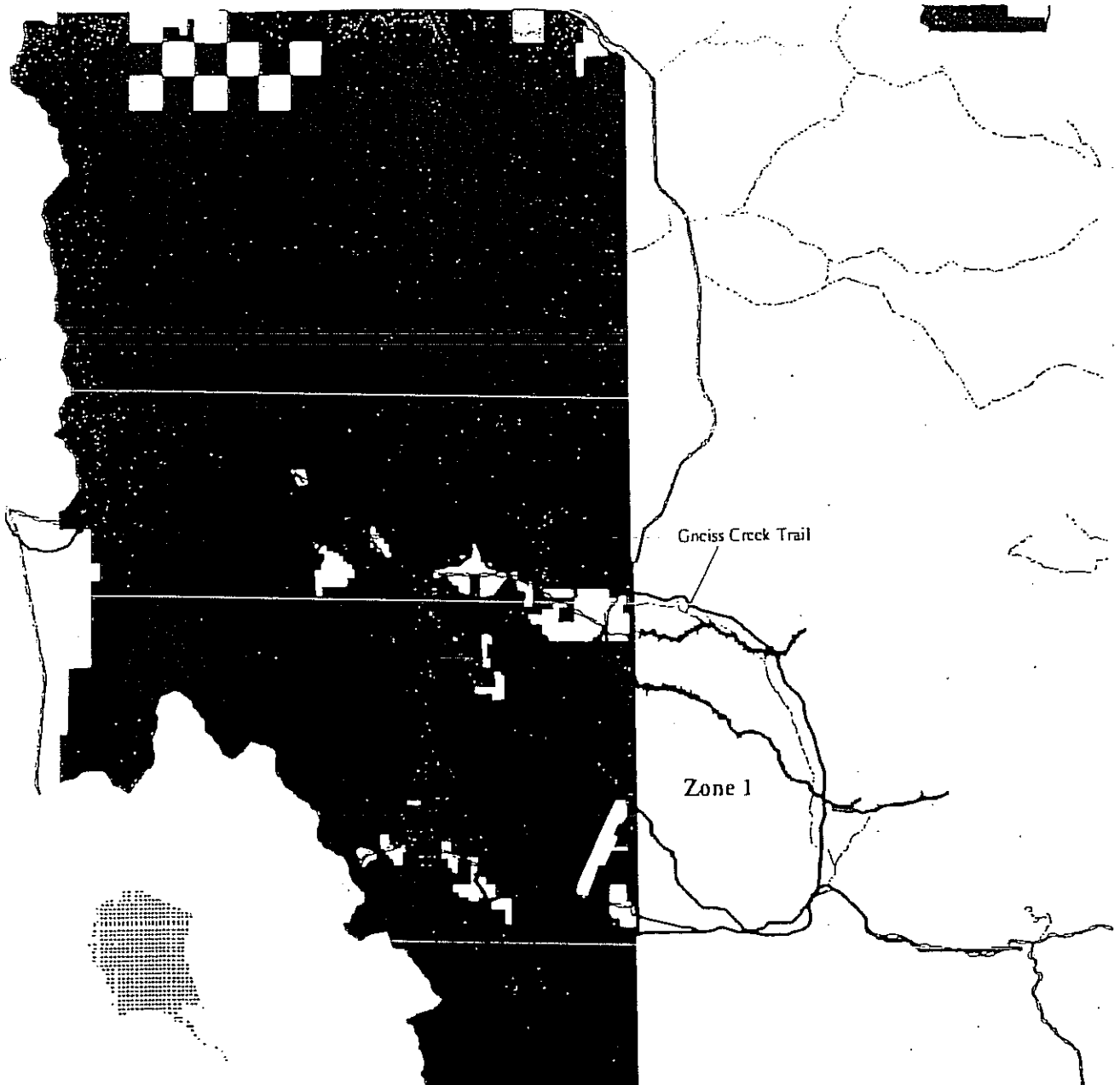
III. Adaptive Management Steps in the Western Boundary Area

The agencies agree to manage bison in the western boundary area as follows:

1. The West Yellowstone region of the western boundary area is shown on the attached map. See Map, West Boundary Management Zones (Figure 1 to this Plan).

2. In step 1 (expected winter 2000/2001 through winter 2002/2003), after cattle are removed from Zone 2 in the fall, the agencies will haze bison exiting the Park into the West Yellowstone area back into the Park. When hazing becomes ineffective, the agencies will capture bison. The agencies will test all captured bison and send seropositives to slaughter or for use in jointly approved research. All seronegatives up to a specified tolerance level (up to 100 bison) will be released. Seronegative pregnant bison will be allowed to enter Montana under the following conditions:

- a. Seronegative pregnant bison may not enter Montana until cattle are removed in Zone 2 in the fall. If cattle remain on private lands in the West Yellowstone area within Zone 2 during the fall or winter, a buffer as described in paragraph 2.e below will be maintained until the cattle are removed from those lands;
- b. Each seronegative pregnant bison moving out of the park after cattle are removed in the fall and before April 1, will receive a radiotelemetry collar or similar device and vaginal radio telemetry implant during handling at capture facilities and released to allow agencies to monitor bison locations and recapture if needed;
- c. If a telemetered seronegative bison either aborts or gives birth outside the Park, the site of the abortion or birth will be located. If the abortion / birth site contains the *B. abortus* bacteria, the site will be monitored for research purposes and/or actions will be taken to ensure all *B. abortus* bacteria are gone by the time cattle return to the area in late spring/early summer;
- d. Telemetered female bison that aborted or calved and had shed the *B. abortus* bacteria will be captured to permit further testing or otherwise removed. If it is unclear whether a telemetered female bison that aborted or calved had shed the *B. abortus* bacteria, then the bison may be captured to permit further testing or otherwise be removed as determined by the Montana State Veterinarian in consultation with APHIS;
- e. In the first year of the Interagency Plan's implementation, all seronegative pregnant bison outside of the park will be removed by the agencies by April 1 and will not be allowed outside the Park again until cattle are removed in the fall.



West Boundary Management Zones

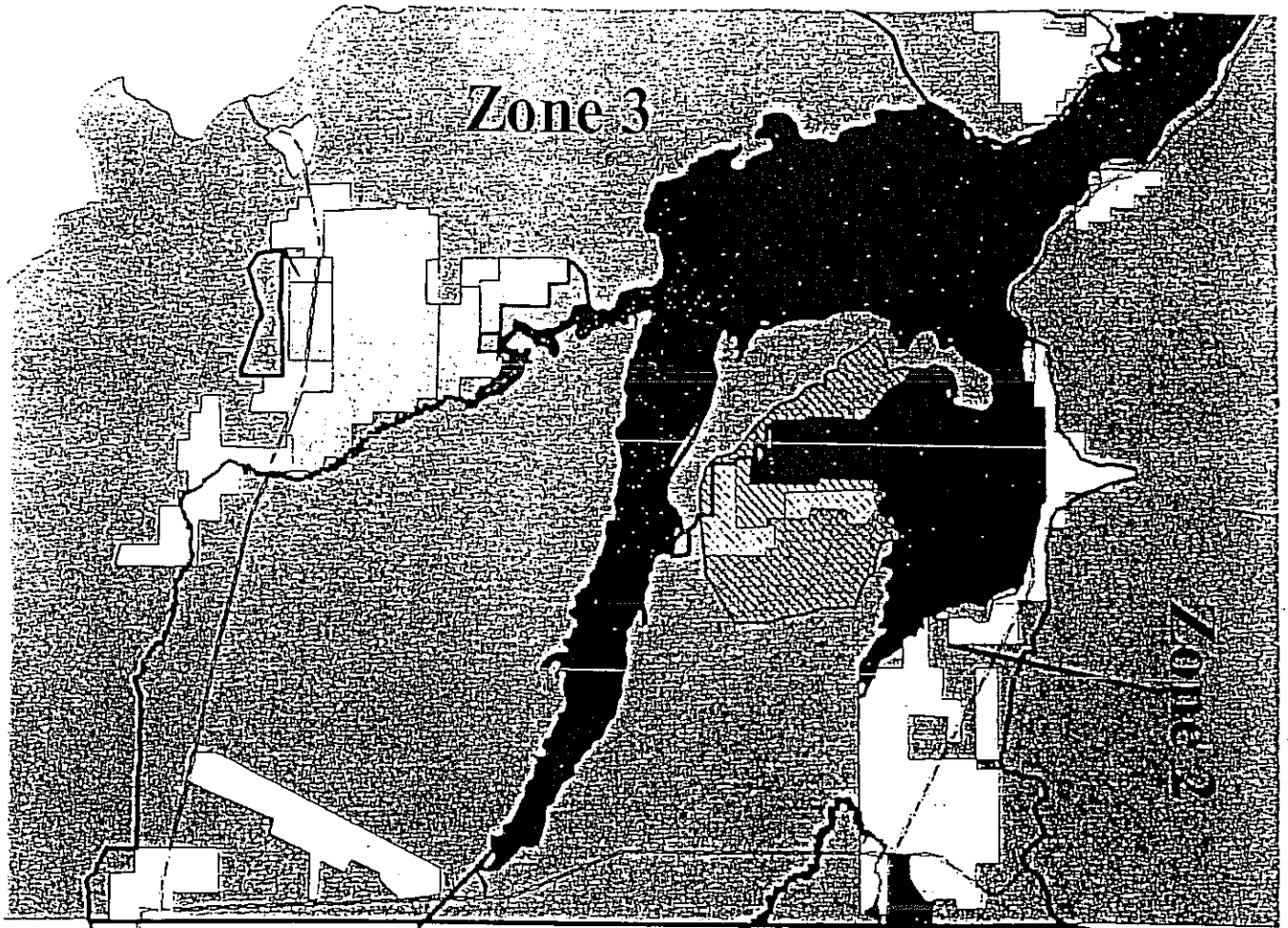
Roads	Management Area
Rivers	Grazing Unit
Private Land	
Private Land with Cattle	
State Land	
Gallatin National Forest (GNF)	
Yellowstone National Park	

Bureau of Land Management
November 15, 2000



After April 1, all bison outside the Park will be kept away from private lands which will be grazed by cattle a sufficient distance to manage the risk of disease transmission. For each area of private property with cattle, the distance will be set by the State Veterinarian in consultation with APHIS. See Map, Private Land Buffer Zones Within Zone 2, Figure 2.

- f. In the second year of the Interagency Plan's implementation, all seronegative pregnant bison outside the Park will be removed by the agencies by April 15. After April 1, all bison outside the Park will be kept away from private lands a sufficient distance (as described in paragraph 2.e) to manage the risk of disease transmission;
 - g. In the third year of the Interagency Plan's implementation, all seronegative pregnant bison outside the Park will be removed by the agencies by May 1. After April 1, all bison outside the Park will be kept away from private lands a sufficient distance (as described in paragraph 2.e) to manage the risk of disease transmission;
 - h. Both of the time periods outlined in paragraphs f and g may be modified by the joint agreement of the agencies if the persistence and viability research indicates that the dates should be adjusted.
3. During step 1, the agencies will conduct further research regarding the viability of *B. abortus* bacteria in the environment and will conduct research regarding the rate of fetal disappearance in the area, under the principles of adaptive management. The research will allow the agencies to further refine their ability to adjust the temporal separation between cattle and bison, given prevailing climatic conditions outside the park during the spring. The agencies anticipate that this research will last one to two years. The agencies will jointly determine when there is enough data to apply the findings of such research to management.
4. During Step 1, every attempt will be made to capture and test bison that leave the Park. Seronegative calves and yearlings that are captured will be vaccinated with a safe vaccine (the safety of the vaccine is determined by the agencies according to criteria established by GYIBC, as attached hereto). Bison that could not be captured but are tolerated will be permitted outside the park until May 15. After May 15, those bison that could not be captured and cannot be hazed will be subject to lethal removal. (See paragraph 13).
5. These management practices will continue in step 2 (expected winter 2002/2003). In step 2, which begins when a safe and effective remote delivery mechanism is available,



West Bounding Management Zones

- Roads
- Rivers
- Management Area
- Grazing Unit
- Private Land Buffer
- Private Land Management Areas
- Private Land
- Private Land with Cattle
- State Land
- Gallatin National Forest (GNF)
- Yellowstone National Park

Scale: 0 to 2 Miles

North Arrow: N, E

Gneiss Creek Trail

Zone 1

Zone 3

Zone 2

any untested vaccination-eligible bison allowed in the West Yellowstone area will be remotely vaccinated.

6. Step 3 (expected in the winter of 2003/2004), allowing untested bison outside the Park in the western boundary area, will begin when all the following criteria are met:
 - a. bacterial viability and fetal disappearance research described in paragraph 3 is sufficient to allow agencies to determine an adequate temporal separation period. Based upon the research, the Agencies will recommend the period of temporal separation. The final decision on the duration of temporal separation will be made by the Montana State Veterinarian;
 - b. initiation of a vaccination program of vaccination-eligible bison inside the park with an effective remote delivery system (see definition);
 - c. demonstrated ability to enforce the spatial separation during the time that it takes to satisfy criteria a and b above;
 - d. controlling the number of bison in zone 2, which shall not exceed 100 bison within Zone 2.

IV. Management of Western Boundary Area

Management actions in the western boundary area will be implemented as follows:

7. In all three steps, bison in the western boundary area will be managed in zones, using topography and progressively more intense management to ensure temporal and spatial separation between bison and cattle. Bison will be hazed back into the park in the spring by May 15, and captured or shot after May 15 to ensure none remain outside the Park in the western boundary area during the applicable temporal separation period.
8. In the western boundary area, although topography is not as restrictive to movement as it is north of the Park, bison moving toward and beyond the proposed Zone Management Areas are highly visible. However, steep terrain and heavy snow depth to the west will help keep bison from crossing onto private lands west of Hebgen Dam.
9. Three zones will be established in the western boundary area. There is an extra buffer area beyond zone 3 where no cattle are grazed in winter, yet bison are not allowed (see attached map, Figure 1.).

10. The zones and actions in each are described below:
 - a. Zone 1- YNP habitat where bison will be subject to hazing in the spring when bison are being moved from Zone 2 back into the Park before May 15. Between May 15 and when cattle are removed from the area in the fall, limited hazing of bison will occur in Zone 1 if needed to maintain spatial separation.
 - b. Zone 2- USFS winter habitat with some private property where bison will be managed for: i) spatial and temporal separation; ii) lethal removal for private property concerns; iii) bison tolerance limits (up to 100); and, iv) bison park population size (3,000). Each of these triggers for management actions is independent (e.g., removing bison to maintain the 100 bison tolerance limit does not depend on the overall bison population size). Management actions within Zone 2 could include tolerating, hazing, capturing and testing, vaccinating and lethally removing bison, or removing for use in jointly approved research as set forth in this plan.
 - c. Zone 3 is the area where bison that leave Zone 2 will be subject to lethal removal.
11. In step 3, vaccination eligible untested bison that exit the Park will be remotely vaccinated with a safe vaccine unless otherwise determined by the agencies. Vaccination eligible bison that are captured will be vaccinated with a safe vaccine.
12. Consistent with the various risk management actions regarding the tolerance and management of bison on the lands outside the Park, the agencies will maintain temporal and spatial separation of bison and cattle on public and private lands. From April 1 of each year, bison outside the Park will be kept away from private lands a sufficient distance (as defined in paragraph 2 above) to manage the risk of disease transmission.
13. In addition to the spatial separation that the zone management approach provides, the agencies will ensure temporal separation in the West Yellowstone area in all phases where it is needed as follows:
 - a. Bison will be hazed back to the park by the agencies by May 15 (see paragraph 2 and 6 regarding steps leading to application of this provision to seronegative pregnant and untested bison).
 - b. The beginning date for hazing bison back into the Park will be determined by the agencies which will consider environmental factors such as weather.

- c. The temporal separation period will commence on May 15 unless the agencies agree that the temporal separation period will commence at an earlier date.
 - d. The ultimate decision on the duration of an appropriate temporal separation period is left with the discretion of the Montana State Veterinarian.
 - e. The temporal separation period will dictate the turn-on date for cattle onto public grazing allotments.
14. To ensure temporal separation after May 15, bison in the West Yellowstone boundary area that cannot be hazed back into the park will be captured and tested. Seropositives will be sent to slaughter, and seronegatives sent to quarantine, if available, and, if not available may be sent to slaughter or be removed for jointly approved research. Bison that cannot be captured will be subject to lethal removal.

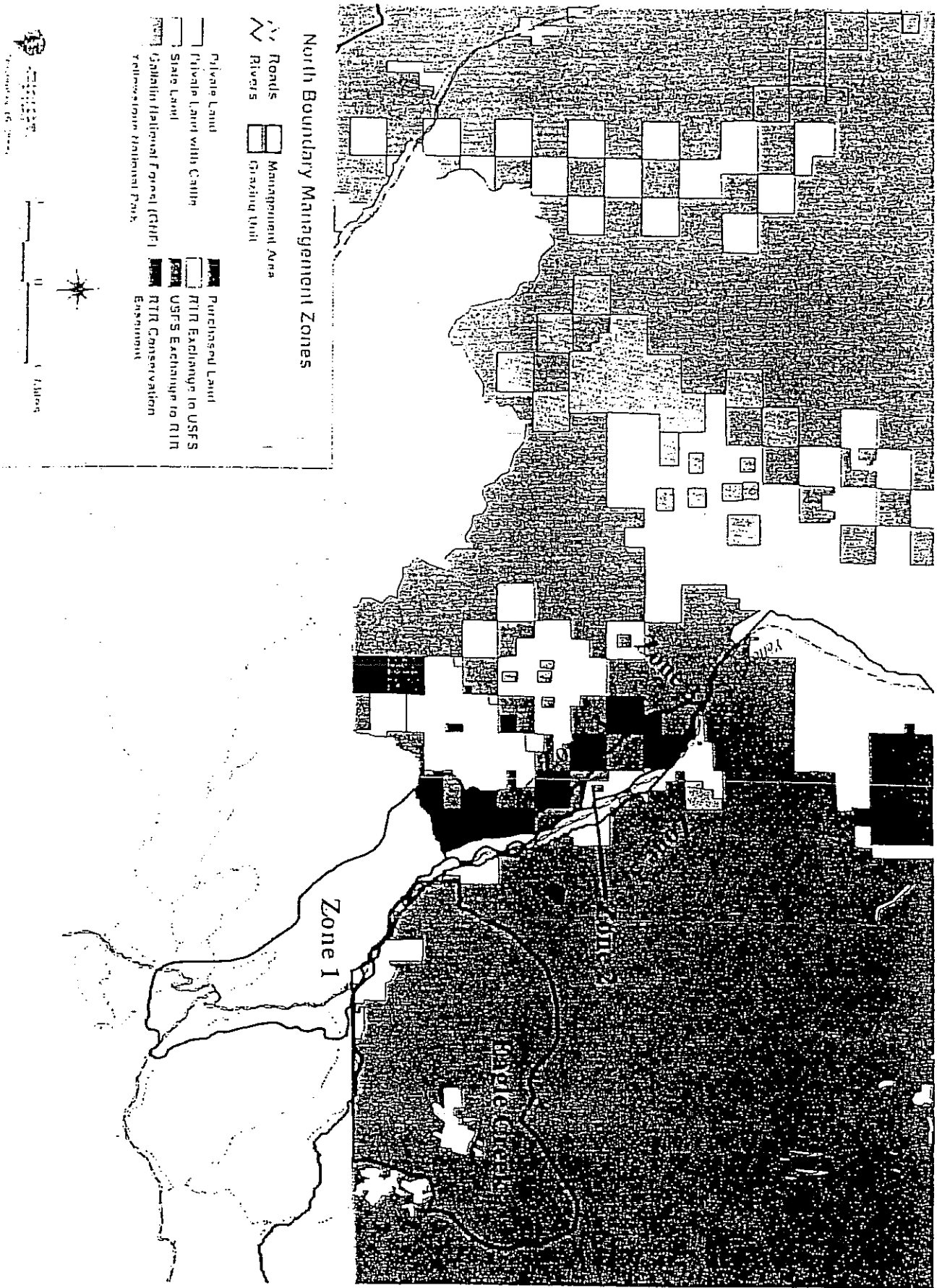
V. Maintaining the Northern Boundary - Reese Creek to Yankee Jim Canyon

15. In step 1 (expected winter 2000/2001 through winter 2001/2002), while cattle graze Royal Teton Ranch (RTR) lands under a private grazing lease, NPS would continue to monitor bison from approximately November 1 to April 30 within YNP and use hazing within YNP to prevent bison movement north onto private and public lands in the Reese Creek area. If hazing is unsuccessful, the NPS will operate the Stephens Creek capture facility and capture all bison attempting to exit the Park in the area. The agencies will test all captured bison, send seropositives to slaughter, and temporarily hold up to 125 seronegatives bison at the Stephens Creek capture facility. Vaccination eligible bison that are captured would be vaccinated with a safe vaccine. Once the capacity of the capture facility is reached, all additional bison attempting to exit YNP would be removed at the Stephens Creek facility (seropositive bison would be sent to slaughter and seronegative bison may be sent to a quarantine facility, if available, and, if not available, may be sent to slaughter or be removed for jointly approved research). The seronegative bison held at the facility will not be retested and will be released to the Park in the spring. Bison outside the Park that cannot be hazed back into the Park and evade capture would be subject to lethal removal. Every effort will be made to avoid conducting necessary lethal management actions on RTR ranch lands. The agencies, with the Forest Service as the lead agency, will initiate an evaluation of potential sites for a capture facility in Zone 2. (See Paragraph 19).
16. During Step 1, the agencies will conduct further research regarding the viability of *Brucella abortus* bacteria in the environment and will conduct research regarding the rate of fetal disappearance in the area, under the principles of adaptive management. The research will allow the agencies to further refine their ability to adjust the

temporal separation between cattle and bison, given prevailing climatic conditions outside the park during the spring. The agencies anticipate that this research will last one to two years. The agencies will jointly determine when there is enough data to apply the findings of such research to management.

17. Step 2 begins (expected winter 2002/2003) when cattle no longer graze private lands outside YNP on portions of lands known as the RTR in Zone 2 during the winter.
 - a. In Step 2, as in step 1, NPS would continue to monitor bison within YNP. Bison attempting to exit the Park in the Reese Creek area would be captured and tested at the Stephen's Creek capture facility. Seropositive bison would be sent to slaughter and a limited number of seronegative bison, including seronegative pregnant bison (see paragraph 18), will be released. Vaccination eligible bison that are captured would be vaccinated with a safe vaccine. In Step 2, all released bison must remain in Zone 2 west of the Yellowstone River and South of Yankee Jim Canyon on lands controlled by the USFS and RTR.
 - b. In Step 2, during the first year that bison move to the Reese Creek area, the number of seronegatives that will be released and will be allowed in Zone 2 will not exceed 25 bison. After gaining sufficient experience in successfully managing approximately 25 bison outside the Park in Zone 2, the agencies will tolerate up to 50 bison. Successfully managing the bison outside the Park means that the agencies are able to enforce spatial and temporal separation including near the northern end of Zone 2 at Yankee Jim Canyon as set forth in the attached map. See Map, Northern Boundary Management Zones, Figure 3. After gaining sufficient experience successfully managing approximately 50 bison outside the Park in Zone 2, the agencies will tolerate up to 100 bison. The numbers of bison outside the Park, enumerated in this paragraph, will be the maximum in Montana at any given time on the Northern boundary area. The agencies may adjust these numbers based on the experience gained during step 2.
 - c. After the applicable tolerance limit of Zone 2 is reached during Step 2, NPS will attempt to prevent further movement of bison north of YNP. If hazing becomes ineffective, the NPS will operate the Stephens Creek capture facility and capture all additional bison attempting to exit the Park in the Reese Creek area. Bison attempting to exit the Park that cannot be hazed or captured would be subject to lethal removal. The agencies will test all captured bison, send seropositives to slaughter, and temporarily hold up to 125 seronegative bison at the Stephens Creek capture facility. Vaccination eligible bison that are captured would be vaccinated with a safe vaccine. Once the capacity of the capture facility is reached, all additional bison exiting YNP would be removed at the Stephens

Map. North Boundary Management Zones. (Figure 3)



Creek facility (seropositive bison would be sent to slaughter and seronegative bison may be sent to a quarantine facility, if available, and, if not available, may be sent to slaughter or be removed for jointly approved research). The seronegative bison held at the facility will not be retested and will be released to the Park in the spring.

- d. All bison outside YNP in Zone 2 would be hazed back into YNP no later than April 15. Those bison that cannot be hazed will be subject to lethal removal.
18. During Step 2, the following procedures will be followed for seronegative pregnant bison outside the Park in the Reese Creek area:
- a. Each seronegative pregnant bison moving out of the park after cattle are removed in the fall, will receive a radiotelemetry collar or similar device and vaginal radio telemetry implant during handling at the Stephens Creek capture facility and released to allow agencies to monitor bison locations and recapture if needed;
 - b. If a telemetered seronegative bison either aborts or gives birth outside the Park, the site of the abortion or birth will be located. If the abortion / birth site contains the *B. abortus* bacteria, the site will be monitored for research purposes and/or actions will be taken to ensure all *B. abortus* bacteria are gone by the time cattle return to the area in late spring/early summer;
 - c. Telemetered female bison that aborted or calved and had shed the *B. abortus* bacteria will be captured to permit further testing or otherwise removed. If it is unclear whether a telemetered female bison that aborted or calved had shed the *B. abortus* bacteria, then the bison may be captured to permit further testing or otherwise be removed as determined by the Montana State Veterinarian in consultation with APHIS.
19. During Step 2, the agencies will evaluate the most effective means to enforce the northern boundary between Zone 2 and Zone 3 at Yankee Jim Canyon, including considering the need, design, and location of a capture facility within Zone 2, most likely on Forest Service lands. The agencies will consult with RTR on the location of the capture facility. The purpose of such a facility in Zone 2 would be to enforce spatial separation between Zone 2 and Zone 3 when hazing or other management practices become ineffective or to capture bison over the tolerance limit (initially 25 and eventually presumed to be 100). Captured bison could be moved to Stephens Creek for holding, sent to slaughter, or to a quarantine facility, if available, or removed for jointly approved research. The agencies, with the Forest Service as the lead agency, will complete any necessary NEPA analysis for the capture facility.

20. Step 3 (expected 2005/2006), allowing untested bison outside YNP in the northern boundary area in Zone 2 would begin when the agencies have collected enough information on bison movements and behavior in Zone 2, as well as the agencies ability to monitor and manage bison in the Reese Creek area of the northern boundary area. Step 3 will begin when the following criteria are met.
- a. bacterial viability and fetal disappearance research described in ¶ 17 is sufficient to allow agencies to determine an adequate temporal separation. Based upon the research, the Agencies will recommend the period of temporal separation. The final decision on the duration of temporal separation after April 15 will be made by the Montana State Veterinarian;
 - b. initiation of a vaccination program of vaccination-eligible bison outside the park and inside the park with an effective remote delivery system;
 - c. demonstrated ability to enforce spatial separation;
 - d. demonstrated ability to control the maximum number of bison in Zone 2, which maximum number will be determined pursuant to paragraph 17.b above.
21. In Step 3, NPS would continue to monitor bison within YNP. Limited hazing may be conducted to limit the total number of bison north of YNP. Up to 100 untested bison will be allowed to move into Zone 2 of the Reese Creek area. Vaccination eligible untested bison that exit the Park will be remotely vaccinated with a safe vaccine unless otherwise determined by the agencies. NPS will capture all bison that attempt to leave YNP at the Stephens Creek facility when the tolerance limit of area Zone 2 is reached. The agencies will test all captured bison, send seropositives to slaughter, and temporarily hold up to 125 seronegative bison at the Stephens Creek capture facility. Vaccination eligible bison that are captured will be vaccinated with a safe vaccine. Once the capacity of the capture facility is reached, all additional bison exiting YNP in excess of the Zone 2 tolerance limit would be removed at the Stephens Creek facility (seropositive bison would be sent to slaughter and seronegative bison may be sent to a quarantine facility, if available, and, if not available, may be sent to slaughter or be removed for jointly approved research). The seronegative bison held at the Stephens Creek facility will not be retested and will be released to the Park in the spring.
22. In step 3, all bison outside YNP would be returned to YNP by April 15. All bison in Step 3 must remain in Zone 2 west of the Yellowstone River and South of Yankee Jim Canyon. All bison which cross the river to the east, or reach the constriction point of Yankee Jim Canyon will be subject to hazing, capture or lethal removal.

23. In the northern boundary area three zones are designated for bison management. See Map, Northern Boundary Management Zones, Figure 3. The zones and actions in each are described below:
- a. Zone 1 – YNP winter habitat in the Reese Creek vicinity that bison normally occupy. During Step 1, bison attempting to exit the Park may be subject to hazing, capture, testing and vaccination, or lethal removal. During Step 2, bison attempting to exit the Park may be subject to hazing, capture, testing and vaccination, or lethal removal after the number of seronegative bison released to occupy Zone 2 specified in paragraphs 17 above is reached. During Step 3, bison attempting to exit the Park may be subject to hazing, capture, testing and vaccination, or lethal removal after the number of untested bison in Zone 2 specified in paragraph 21 above is reached.
 - b. Zone 2 – Area north of park boundary in the Reese Creek area, West of Yellowstone River, and south of Yankee Jim Canyon where bison will be managed for: i) spatial and temporal separation; ii) lethal removal for private property concerns; iii) bison tolerance limits (up to 100); and, iv) bison park population size (3,000). Each of these triggers for management actions is independent (e.g., removing bison to maintain the 100 bison tolerance limit does not depend on the overall bison population size). Management actions within Zone 2 could include tolerating, hazing, capturing and testing, vaccinating, removing bison to quarantine, removing for use in jointly approved research and lethally removing bison as set forth in this plan. During steps 2 and 3 as bison approach Cinnabar Mountain/Corwin Springs bridge area their behavior and movements will be monitored by the agencies to assure all bison remain west of the Yellowstone River at all times. During Steps 2 and 3 as bison approach the Cutler Lake/Cutler Meadows area they will be increasingly monitored to assure all bison remain west of the Yellowstone River and south of Yankee Jim Canyon. As bison move towards Yankee Jim Canyon they may be hazed or captured to reduce the threat of movement beyond Yankee Jim Canyon. Hazing and capture may include moving bison away from the Yankee Jim Canyon area to reduce the potential for bison to leave Zone 2. See paragraph 24 for further discussion regarding RTR lands within Zone 2.
 - c. Zone 3 is the area where bison that leave Zone 2 would be subject to lethal removal.
24. RTR Lands: When bison will be allowed to be on RTR lands as set forth herein, it is agreed that active bison management including vaccination shall not routinely take

place thereon. When exigencies require management actions, the agencies shall notify RTR of the contemplated action, and seek RTR approval therefore, which shall not be unreasonably withheld. Exigencies include actions to:

- a. protect life or property;
- b. address migrations of bison inconsistent with paragraphs 15, 17-20, and 25 outside the Park in the northern boundary area.
- c. haze bison back into the Park in the spring of each year;
- d. enforce spatial and temporal separation where necessary.

Lethal removal will not be routinely accomplished on RTR lands and shall require the same permissive procedures as set forth above.

The agencies intend to have as little bison management on RTR lands as possible. Nevertheless, the agencies may be required to take management actions on RTR lands as authorized under Montana or Federal law and the provisions of this plan.

In step 1, the agencies will cooperate with RTR to develop a Bison Management Plan for the Royal Teton Ranch that is consistent with the provisions of this Interagency Bison Management Plan. Should the Interagency Bison Management Plan be altered, the agencies will cooperate with RTR to adjust the RTR Plan so that the RTR Plan will remain consistent with the Interagency Bison Management Plan. Before the RTR Plan can be implemented, the state and federal agencies must approve the RTR Plan.

VI. Management of the Northern Boundary Area - Eagle Creek / Bear Creek

25. In all steps of this plan, agencies would allow untested bison into the Eagle Creek/Bear Creek region of the northern boundary area. Bison in the Eagle Creek/Bear Creek area would be monitored twice per week during the winter. If they approach the Little Trail Creek/Maiden Basin hydrographic divide, they would be monitored daily. The agencies will maintain a boundary at the Little Trail Creek/Maiden Basin hydrographic divide by hazing. Bison crossing the hydrographic divide will be subject to lethal removal.

VII. Livestock Management Provisions

26. In addition to bison vaccination, the State of Montana will encourage voluntary vaccination of vaccination-eligible cattle that may graze in areas outside the Park that

bison may occupy in the winter. If by the fall of 2001, 100% voluntary vaccination of vaccination-eligible cattle in areas outside the Park that may be occupied by bison was not achieved, the State will make such vaccination mandatory. The federal government will reimburse the direct cost of the vaccination. The areas subject to the provisions of this paragraph are depicted as Zone 2 in both the north and western boundary areas as shown in Figures 1 and 3. Cattle on lands within two miles of Zone 2 in both the north and western boundary areas may be subject to mandatory vaccination if required by the State veterinarian in consultation with APHIS. APHIS will also provide funds for voluntary vaccination of cattle within two miles of Zone 2 in the north and western boundary areas.

27. Beyond these steps, APHIS and Montana will conduct additional monitoring of cattle herds that graze in areas that bison may occupy during the winter, which may include regular testing of test-eligible cattle and possible adult vaccination of these cattle herds. APHIS will also do the following: a. make funding available to certify individual cattle herds that graze in areas that bison may occupy in winter, as brucellosis-free; and b. pay the direct costs of any additional testing of any cattle that might be recommended by APHIS and the State Veterinarian pursuant to this Plan. Test eligible cattle within Zone 2 in both the north and western boundary areas, as shown in Figures 1 and 3, will be subject to testing. Test eligible cattle on lands within two miles of Zone 2 in both the northern and western boundary areas, or on lands in Zone 3 if bison have been present (despite the provisions of this Plan precluding bison from occupying such areas), may be subject to mandatory testing if required by the State veterinarian in consultation with APHIS. APHIS will also provide funds for voluntary testing of cattle within two miles of Zone 2 in the north and western boundary areas.

VIII. Other Management Provisions

28. The population target for the whole herd is 3,000 bison. If the late-winter/early-spring bison population is above the 3,000 target, specific management actions may be undertaken at the Stephens Creek capture facility or outside the Park in the western boundary area to reduce its size. For example, instead of hazing bison remaining in boundary areas back into the park in the spring, they may be removed to quarantine or slaughter.
29. The agencies may agree to modify elements of this plan based on research and/or adaptive management findings. Implementation of management actions by the agencies will be conducted in accordance with this Plan and any memorandum of understanding and/or procedure agreements developed by the agencies, which may

provide agency personnel with flexibility to achieve the objectives of the actions set forth in this plan.

30. Absaroka Beartooth Wilderness: Untested bison would be allowed to roam freely into the Absaroka-Beartooth Wilderness north of the park, including the upper portions of Hellroaring and Slough Creek. This is a large area with no cattle, and bison would not be monitored or managed in any way. An exception may include human safety concerns, which would be dealt with on a case by case basis. Because of the high elevation and rugged topography, no more than a few (usually solitary male) bison are expected to occupy these areas.

Cabin Creek/Lee Metcalf/Upper Gallatin: Occasionally bison move north out of the West Yellowstone Basin into the Cabin Creek Recreation and Wildlife management area, the Monument Mountain Unit of the Lee Metcalf Wilderness or into the Upper Gallatin River above the mouth of Taylor Fork. Cattle are not present on these portions of the Gallatin National Forest. There is a cattle grazing allotment in the area of the upper Taylor Fork. Bison would not be allowed on this cattle allotment within the upper Taylor Fork area and would be prevented from crossing the Sage Creek-Wapiti Creek divide. Bison movements would be periodically monitored, and bison crossing outside these areas or entering private lands could be hazed or shot. Bison may attempt to winter in these areas but are expected to return to the park in the spring. Bison may use these areas during all seasons provided they are not approaching the Taylor Fork cattle allotment when cattle are present or causing property damage.

31. Management actions outside the Park will be jointly supported operations conducted by personnel assigned by Montana DOL and MFWP, USFS, APHIS, and NPS. The in-Park vaccination program will be implemented by personnel from NPS. The agencies, and RTR ranch where appropriate, will enter into the appropriate memorandum of understanding to describe specific commitments of personnel to all management actions, delineate operation details for implementation of the plan, and describe reporting requirements for the elements described in the Plan, including those for the implementation of the vaccination program. In addition the agencies will prepare any necessary memorandum of agreement for the funding of all management actions.

IX. Contingency Measures

32. Transmission: Upon disclosure of (1) a brucellosis-affected cattle herd in a management area or (2) a brucellosis-affected cattle herd outside the management areas but for which APHIS and the Montana State Veterinarian concur that the source is

traced back to a management area, the agencies will implement modified management measures pending the completion of an investigation expected to last 60 days or less, during which Montana and APHIS animal health authorities will conduct an epidemiologic investigation to determine the source of infection. Disclosure of a brucellosis-affected herd means that an APHIS-approved Designated Brucellosis Epidemiologist has determined that an animal that is part of the herd is infected with field-strain *B. abortus*. The Management Areas for purposes of this provision is defined as Zone 2, plus 5 miles within Montana depending on terrain.

- a. Modified Management Measures During Investigation: During the post-disclosure period only seronegative non-pregnant bison will be allowed in Zone 2 up to the prevailing tolerance limit. The agencies will employ non-lethal measures whenever possible to ensure that only seronegative, nonpregnant bison remain outside the Park during the post-disclosure investigation.

Upon the initiation of the post-disclosure investigation period, the agencies will determine whether to apply the modified management measures described above in both the western boundary and Reese Creek northern management areas, or only to the area associated with the brucellosis-affected herd. As warranted by information from the investigation, the agencies can adjust the area(s) outside the park to which the modified management measures are applied. The final decision on the areas outside the park to which the modified management measures will be applied will be made by the Montana State Veterinarian, in consultation with APHIS. The agencies may agree that more or less conservative measures are necessary based on the knowledge and experience gained to date through the adaptive management framework, including but not limited to *Brucella* viability, spatial and temporal separation, and seroconversion rate(s).

- b. Investigation results: Post-investigation bison management will depend on the results of the investigation.
 - i. If the investigation finds that either cattle or elk were the source of infection or that bison were not the source of infection, the agencies will continue with the Interagency Bison Management Plan.
 - ii. If the investigation finds that the (1) Yellowstone bison were the source of the *Brucella abortus* infection or (2) eliminates cattle as a likely source but the source cannot be definitively determined (e.g. source unknown), the agencies will allow only seronegative, nonpregnant bison outside the Park in both the west and north boundary areas. The agencies may agree that the modified

management measures are required only in the western boundary area or in the Reese Creek portion of the northern boundary area. They may also agree that more or less conservative measures are required based on the knowledge and experience gained to date through the adaptive management framework, including but not limited to Brucella viability, spatial and temporal separation, and seroconversion rate(s).

- c. Continuation of Interagency Bison Management: If the parties have not agreed to replace the interim modified management measures with a modified Interagency Bison Management Plan based on risk management within two years of the disclosure, the Interagency Bison Management Plan will terminate.

33. Animal Health Authority Sanctions: In the event other jurisdictions impose sanctions on livestock from Montana as a result of the implementation of this plan the following will occur:

- a. Montana in conjunction with APHIS will consult with animal health authorities of those jurisdictions and seek removal of any sanctions;
- b. If those jurisdictions refuse to remove the sanctions imposed on the movement of livestock, Montana may, in Montana's sole discretion, implement bison management actions necessary to allow for the free marketability of livestock transported from the state;
- c. The federal agencies retain the discretion to cease endorsing and participating in activities leading to lethal control measures or other joint actions outside the Park should Montana exercise its rights under paragraph 33.b.

34. If Montana is not tolerating untested bison outside the Park in Zone 2 of the west boundary area by the winter of 2003-04 or by the initiation of a vaccination program of vaccination-eligible bison inside the park, whichever is later, the federal agencies will cease endorsing and participating in activities leading to lethal control measures and may withdraw from other joint management actions outside the Park, until Montana is tolerating untested bison outside the Park.

If Montana is not tolerating untested bison outside the Park in Zone 2 of the northern boundary area when the conditions for moving to Step 3 in the northern boundary are met, the federal agencies will cease endorsing and participating in activities leading to lethal control measures and may withdraw from other joint management actions outside the Park, until Montana is tolerating untested bison outside the Park.

If, after the in-Park vaccination program has been initiated, it is terminated or if implementation is deemed inadequate by Montana, Montana will cease tolerating untested bison outside the Park and may withdraw from other joint management actions.

Should either the Federal agencies or Montana invoke the provisions of this paragraph bison outside of YNP will be managed by Montana.

35. Should the federal agencies invoke their discretion under paragraph 33.c or 34, the federal agencies will continue to recognize in their issuance of permits or continuation of permits or other agreements that bison management actions outside the Park are under Montana's jurisdiction.
- 36.a. The agencies may agree to temporarily modify elements of this plan to mitigate total removal of bison due to exigent circumstances arising from severe winter conditions. Based on data from 1996-97, winter kill during severe winters is assumed to be approximately 10% of the early winter bison population and would be in addition to management removals described below. If the bison population declines to 2300 within a single winter, the agencies will meet to evaluate modifications to the prevailing management prescriptions that could reduce the total management removal of bison from the population. If the bison population declines below 2300 within a single winter, the agencies may, on a temporary basis for that winter, increase implementation of non-lethal management measures to provide management flexibility and reduce the total management removal of bison from the population. If the bison population declines below 2100 within a single winter, the agencies will, on a temporary basis for that winter, increase implementation of non-lethal management measures. To determine if the thresholds of 2300 bison and 2100 bison are reached, the following equation will be used: estimated early winter bison population less 10% of early winter bison population less management removals.
- 36b. If modifications to prevailing management prescriptions are implemented within a single winter according to circumstances described in 36.a., the agencies will consider all credible information about the herd status and extent of population decline to determine whether management prescriptions and mitigation measures described above in 36.a. should be continued for the subsequent year(s).

Protocol for Evaluating Safety and Efficacy of a Wildlife Vaccine against Brucellosis in the GYA

Prepared for the Greater Yellowstone Interagency Brucellosis Committee

The purpose of this protocol is to establish guidelines for the development and evaluation of new brucellosis vaccines to be used in free-ranging elk (*Cervus elaphus*) and bison (*Bison bison*) inhabiting the Greater Yellowstone Area. This protocol is not intended to evaluate current vaccination programs being applied to these species. The recommendations for the following criteria regarding efficacy and safety are based on the assumption that any brucellosis vaccine evaluated by these criteria would have defined dosage, route of administration, and age restrictions for any application of the vaccine. The vaccine strain will demonstrate stable characteristics following in vitro and in vivo passage. Efficacy evaluations within the principal species should include animals of minimal recommended age, at the minimally recommended dosage and administered in accordance with recommendations. For safety evaluations within the principal species, animals should be of minimal recommended age, at the maximal recommended dosage, and administered in accordance with recommendations. The assumption is also made that the criteria for approval of a vaccine as safe will be the same in both male and female animals in the targeted population. For the purposes of this paper, the definition of a calf will be a bison or elk of less than 12 months of age. Restrictions on use (e.g., sex, age) may be applied without rejection of the vaccine in total. For example, limit use to females because of adverse reactions in males.

Calfhood Vaccination

Safety

To be defined as safe, a vaccine would not have any clinical effects that would increase predation or decrease survivability. However, adverse clinical effects, such as listlessness, anorexia, depression, and arthritis, that are transient and minimal with no long-term effects on survival may be acceptable. There should be no statistical difference between vaccinates and controls on these factors.

A safe calfhood vaccine will not be shed from a vaccinate prior to parturition. The vaccine strain will not persist to the first calving in 95% or greater of the vaccinated individuals, or persistence of the vaccine strain will not be associated with a significant reduction in the survivability (i.e., no pathology) or the reproductive potential of the individual (i.e. repeated fetal loss, infected calves, or decreased fertility). There should be no statistical difference between vaccinates and controls on these factors.

Efficacy

To be defined as efficacious in females, a vaccine must induce statistically greater protection against fetal loss, infected calves, or infection in pregnant vaccinates after

experimental challenge when compared to non-vaccinated animals in the same experiment. Infection is defined as either number of colony-forming units (CFU) per gram of tissue and/or number of infected tissues.

Use of model predictions must indicate that the vaccine, when used alone without other management influence, will reduce the prevalence of brucellosis in the targeted wildlife population.

Experiments will need to be conducted to evaluate the duration of immunity of the vaccine but these experiments will not be required for initiation of use of the vaccine if all other safety and efficacy criteria are met. A vaccine should provide long-term immunity and/or be able to be safely boosted during the life of the animal.

Adult Vaccination

Safety

A safe vaccine will not induce significant reductions in survivability or reproductive efficiency as statistically demonstrated in clinical trials.

A safe vaccine will not cause a significant reduction in recruitment in the population of the target species.

Efficacy

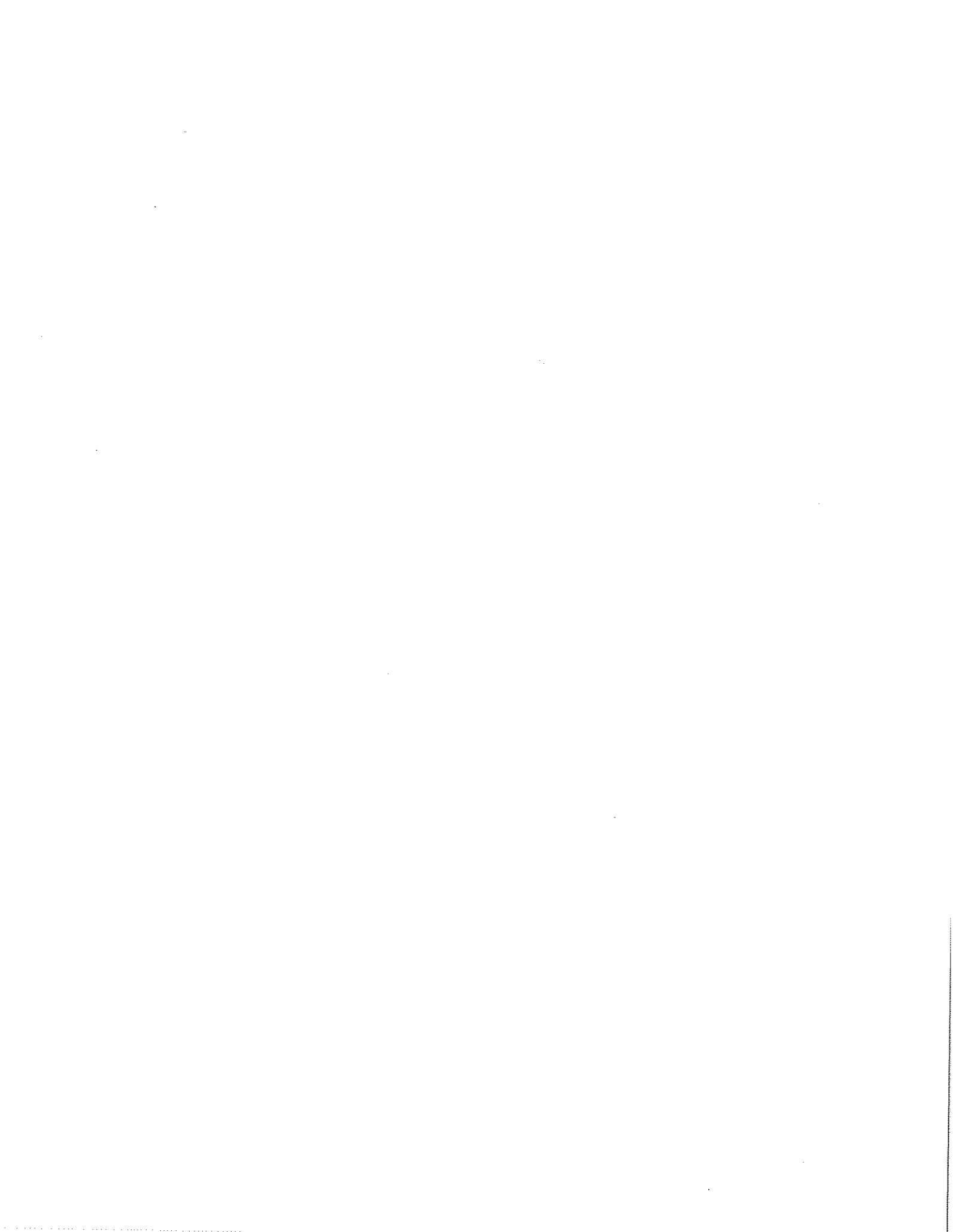
A vaccine will be determined to be efficacious if it induces statistically greater protection in vaccinates against fetal loss, infected calves, or infection after experimental challenge when compared to non-vaccinated animals in the same experiment. In addition, modeling must indicate that the vaccine, when used alone without other management influence, will reduce the prevalence of brucellosis in the targeted wildlife population.

Other

A major advantage of any vaccine would be the ability to differentiate vaccinates from animals infected with *Brucella* field strains either by a serologic test or by alternative methods.

Nontarget Species

A vaccine candidate cannot cause deleterious effects on the short-term survivability of representative ungulates, rodents, carnivores or avian species under experimental conditions. Candidate species that should be strongly considered for evaluation include: moose, bighorn sheep, antelope, mule deer, coyotes, wolves, ravens, microtus, peromyscus, and ground squirrels. Other species could be added if scientific data supports their inclusion.



I N T E R N A L
R E V I E W
D R A F T

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**Draft Environmental
Impact Statement
For the Interagency Bison
Management Plan For
Montana and Yellowstone
National Park**

tabbies
EXHIBIT
7

BACKGROUND

THE YELLOWSTONE AREA BISON HERD

Bison are native to the Greater Yellowstone Area, and were observed there by early travelers both before and after the creation of Yellowstone National Park in 1872 (see Historic Bison Range map). In the 1870s and 1880s, the North American bison was driven nearly extinct by industrial market hunting. In 1880, after a decade of intensive market hunting (for elk, bison, and other large mammals) in the park, the superintendent reported three herds totaling about 600 animals (Schullery and Whittlesey 1992). During the next 15 years, this number was substantially reduced by poaching, but improved policing of the park by the U.S. Army (after 1886), combined with strengthened legal protection (after 1894) prevented complete elimination of park bison (Meagher 1973).

When the Yellowstone herd size dropped to about 25 animals in 1902, park managers fearful the small wild herd might vanish introduced 18 cows from the Pablor-Allard herd in Montana and 3 bulls from the Goodnight herd in Texas (Meyer and Meagher 1994). The remaining wild herd eventually interbred with the introduced plains bison in around 1915. The population thrived and numbers increased to over 1,000 by 1930 (Keiter and Forelicher 1993).

The park established the "Buffalo Ranch" operation in the Lamar Valley in 1907. Here, bison were raised as semidomestic livestock, and were fenced, fed, vaccinated, and separated for shipment to slaughter. In the 1930s, the National Park Service gradually began efforts to restore the bison to a more natural distribution (Meagher 1973). However, artificial feeding of the Lamar Valley herd, herd reductions to achieve range management goals and other manipulation of the population continued from the 1920s until the late 1960s, and were often quite intensive. The highest reported bison count during this period was 1,477 in 1954, well

below what wildlife managers now believe the park can support based on ecological data.

The first known case of brucellosis in the bison herd was reported in 1917. Cattle were grazed inside Yellowstone National Park from 1886 to this time, and included beef and dairy herds run by concessioners in support of restaurants and hotels or tent operations (Whittlesey 1994; Meagher and Meyer 1994). Permits were granted to pasture cattle at seven different locations around the park, many in the same location as bison, particularly those on Buffalo Ranch. In addition, bison calves from the wild population were captured and fed cows milk around the turn of the century. It is generally agreed that the transmission of brucellosis to the Yellowstone bison herd was from cattle, and occurred either through contact (see section on "Brucellosis in Cattle and Bison" below) or infected cows milk fed to captive bison calves.

In 1967, when human population controls ceased, 397 bison were counted in the park. At that time, as part of a larger redirection of park policies, ungulate herd reductions ceased. Bison, elk, and other animals were allowed to reach population levels dictated by environmental conditions. As the population has grown since the late 1960s, more bison have attempted to move to ranges outside the park, particularly in harsh winters. Bison may also be migrating in larger numbers because access is easier, or they may be reestablishing earlier migration routes to prehistoric winter ranges (Meagher 1989).

In 1968, in response to livestock industry concerns over the disease brucellosis, the National Park Service proposed a program to control bison at the boundary of the park. The program relied on shooting bison that approached or passed beyond park boundaries and could not be deterred from leaving the park.

As early as the winter of 1975-76, National Park Service and Montana Department of Fish,

Wildlife and Parks personnel experimented with hazing, herding, baiting, physical barriers, and scare devices in order to discourage bison from leaving the park. Such methods have not been successful most of the time; bison are very determined migrants, and quickly learn to overcome barriers and harassment.

Shooting of bison had been regarded as a last resort in management, but became more necessary as time passed. Three bulls were shot in 1974, and one in 1978. In 1978, the Department of the Interior rescinded approval for park personnel to shoot bison inside park boundaries, unless human safety was threatened (Meagher 1989).

In 1984, Montana wardens killed 88 bison outside the park, and in 1985 the Montana Legislature classified wild bison as a big game animal. In the next three winters, 99 bison were killed after leaving the park, mostly by hunters. In the winter of 1988–89, a much larger migration out of the park occurred, resulting in the removal of 569 bison, most killed by hunters and the rest taken by wardens. In 1991, because of public criticism and media attention to the hunt, the Montana Legislature removed wild bison from their list of big game animals.

The population grew to a peak population of more than 4,200 animals (as of July 1994). In 1996–97, a particularly harsh winter sent hundreds of bison toward park boundaries, seeking additional forage at lower elevations. With capture, slaughter, and other agency-maintained boundary control measures in place, the migration meant the slaughter or shooting of 1,083 bison in the five months between November 14, 1996, and April 15, 1997. Another 1,000 or so died of starvation or other natural causes inside the park, bring the total population down to an estimated 1,500 animals.

BRUCELLOSIS IN CATTLE AND BISON

Brucellosis is a contagious bacterial disease, caused by various species of the genus, *Brucella*, that infects domestic animals, wildlife,

and humans worldwide. The species of concern in Yellowstone National Park, is *Brucella abortus*, whose hosts are cattle, bison, and, to a much lesser extent, humans. There is no cure for brucellosis. Vaccines developed so far are not 100% effective, and are less effective with bison than with cattle (see "Brucellosis in Bison" section in the "Affected Environment").

Antibiotics are ineffective in cattle or bison, as the bacteria exists inside the cells. After an extended period, some animals may develop immunity and never have additional signs of the disease, although they may continue to be a source of infection.

In cattle and bison, the organism is shed in aborted tissues, reproductive tissues, milk, and discharges, especially just before, during, or soon after abortion or live birth. It may also be shed in milk for variable lengths of time. In cattle, transmission occurs when susceptible animals come into direct contact with contaminated aborted fetuses, birth membranes, uterine fluids, or discharges from infectious animals. Ingestion of contaminated material is the primary route of infection. Cows infected with brucellosis characteristically abort after the fifth month of gestation. Fetuses are infected and have various lesions. Several weeks after the abortion, the bacteria usually localize in the lymph nodes surrounding the reproductive organs and the udder. The disease may become active during subsequent pregnancies. Cows may show reduced fertility or be altogether infertile as a result of the disease. They may also have reduced milk production and retained placenta.

Bulls may also be infected, and may show outward signs of the disease as genital lesions and inflammation. Infected bulls rarely contribute to transmission during natural breeding (Nicoletti and Gilsdorf 1994). Seropositive livestock are slaughtered, and entire herds may be killed to prevent transmission.

Less is known about the disease in bison, particularly free-ranging bison. Although aborted fetuses have been reported in free-

Eagle Creek/Bear Creek

About 23,000 acres of potential bison winter habitat are located on USFS lands in the Eagle Creek/Bear Creek area abutting Yellowstone National Park to the east of Gardiner. Bison are able to occupy portions of these lands during the winter (and summer, although most migrate back into the park in May and June), but occasionally follow the Little Trail Creek/Maiden Basin drainage into the Gardiner area. In this alternative, agency personnel maintain a second northern border at the Little Trail Creek/Maiden Basin divide by hazing or shooting bison which cross it. Fewer than 20 bison were shot at this boundary in the winter of 1996-97, yet this was an unusually large migration. Normally, no bison approach this boundary.

WESTERN BOUNDARY

Bison migrate out of Yellowstone National Park along the Madison River corridor, traveling along groomed roads inside the park and feeding at riverbanks and pools warmed by thermal features. They also leave by way of Duck and Cougar Creeks to the north of the Madison River and travel west to lower elevation USFS lands in the 24,000-acre Horse Butte area. Some of these lands are forested, but the bison prefer those in the open areas where they can find forage under the snow. The public land is intermixed with private holdings, and bison may be shot at any time on private land under the conditions described in the "Actions Common to All Alternatives." No cattle are grazed in this area in the winter, and bison are hazed back into park boundaries well before cattle appear in the summer. Bison are hazed back into the park in May, and cattle are not allowed into the allotments until 30-60 days following their removal, or upon the approval of the state veterinarian.

Two smaller capture facilities are also operated November 1 to April 30 outside park boundaries in the west. One is located on private land in the Duck Creek area, about 100 yards from the park

boundary. The second is near the Madison River on USFS land. Both facilities currently primarily rely on "opportunistic" methods of capturing bison, e.g., baiting with hay. Both facilities are about the same size. Each occupies approximately 1 acre, and has three pens for sorting, as well as a capture pen and hydraulic chutes. Captured bison are blood tested for exposure *B. abortus*. All seropositive bison are shipped to slaughter. Seronegative nonpregnant females and all seronegative males are identified with an electronic marker and an unobtrusive visual marker, and are shipped to and released on public lands in the West Yellowstone area. Seronegative, pregnant females are shipped to slaughter. All bison evading capture on public lands are shot. Those evading capture on private lands are shot at the request of or with permission of the landowner. In the winter of 1996-97, 113 bison were captured in facilities on the west side; 48 of these were sent to slaughter and 65 released. Another 310 were shot. Capture facilities may be relocated under this alternative using criteria in the "Actions Common to All Alternatives."

Bison are able to occupy the Cabin Creek Recreation and Wildlife Management Area and Lee Metcalf Wilderness on the west side of Yellowstone National Park without interference from the agencies, as these are public lands free of cattle. These areas are north of the Horse Butte lands (north of Grayling Creek/Fir Ridge), and topography limits the number of bison that actually use them. Bison are shot by agencies if they leave these brucellosis management areas to the north. For practical purposes, bison are only able to travel west of the Horse Butte area on public lands via a narrow corridor east of Hebgen Lake Dam, and south through private lands.

BRUCELLOSIS MANAGEMENT AREAS

In this alternative, brucellosis management areas include the Eagle Creek/Bear Creek area up to the Little Trail Creek/Maiden Basin Divide, Hellroaring and Slough Creek drainages, and the portion of West Yellowstone shown on the