

**ROYAL TETON RANCH GRAZING RESTRICTION
ENVIRONMENTAL ASSESSMENT
DECISION NOTICE**

**Montana Fish, Wildlife & Parks
Region Three, Bozeman
December 2008**

Proposed Action

Montana Fish, Wildlife & Parks (FWP) proposes to implement its part of Step 2 of the Interagency Bison Management Plan (IBMP), which would be implemented when cattle no longer graze on the Royal Teton Ranch (RTR), by: 1) entering into a 30-year grazing restriction and bison access agreement with the RTR, 2) contributing \$300,000 to the costs of the agreement, and 3) constructing and maintaining fences, cattle guards, and related structures as necessary to manage bison moving through the RTR.

The entire estimated cost of the RTR Agreement is \$1.8765 million up front followed by 19 years of payments of \$76,500. \$300,000 of this will be paid by FWP, and federal and non-government partners involved with and supportive of the IBMP will fund the remaining portion.

Obtaining this agreement is one of the wildlife management goals identified in the Bison Management Plan EIS to establish a bison-tolerant zone north of the Yellowstone National Park (YNP) boundary where bison could emigrate in the winter in search of forage. The goals of the proposed action are:

- To ensure tested and non-tested bison are appropriately segregated
- To move seronegative bison through the RTR to more suitable grazing lands on public lands north of the ranch, and
- To prevent injury or damage to persons and property.

Highlights of Responsibilities as Defined by the Agreement

RTR will not graze domestic cattle, domestic sheep, or domestic goats on the ranch during the term of the agreement. Additionally, the ranch will not be permitted to build any new structures in the corridor that might obstruct bison movement without FWP permission. If a permitted bison hunting season is established on adjacent public lands, the ranch will allow limited access to their property for licensed bison hunters to retrieve animals downed on nearby public land.

FWP will be allowed to access the RTR property in the bison corridor in order to construct and maintain fencing and related structures to manage the bison and for monitoring activities per the IBMP operating procedures. FWP is not granted access to any of the ranch's buildings. If bison carcasses or birthing materials are found on the ranch, FWP and IBMP partners will promptly and properly dispose of the remains in a location off the RTR.

The Agreement recognizes that the IMBP is subject to adaptive changes. In fact, the IBMP cooperating agencies (U.S. Forest Service, National Park Service, Montana Department of Livestock, FWP, and U.S. Department of Agriculture) are currently in the process of considering such adaptations. Any adaptive change agreed to by the partners that affect the grazing right must also be subject to the approval of the RTR. Their approval will not be unreasonably withheld as per the agreement.

Details about the proposed fence

The electric fence will be only as high as necessary (approximately 48”) to keep bison out, but will allow most deer, elk and bighorn sheep to cross by jumping over the top. Only the minimum number of wires (4; 2 electrified, 2 ground) will be used to keep bison out but also allow smaller animals to cross under or through fewer wires. Spacing distance of the 4 wires from the ground (preliminary heights: 20” high, 27” high, 38” high, and 48” high) will keep bison in, but allow smaller animals (particularly antelope) to cross under or through the wires more easily. Only two wires (the second from the bottom and the top) will be electrified which will also facilitate smaller animals (antelope, small to medium sized mammals) crossing under the bottom wire. All wires will be 12.5 gauge high tensile strength smooth wires. No barbed wire will be used. The use of smooth wire greatly reduces the risk of animals accidentally catching and twisting a leg between two wires. If bison behavior within the corridor is different from what was presumed by IBMP partners and the fence design was inadequate to meet the needs of the project, the fence structure would be redesigned to meet public safety and wildlife needs.

Fence posts will be equipped with “take-down” stays over large distances or the entire fence length. The take-down feature will allow for seasonally removing (lowering) fence wires. Furthermore, the fence will only be operational (either electrified or in place) for at most 12-16 weeks (from approximately January 1 to April 15) when needed to restrict bison movements. In addition, the fence may be lowered once bison are through the RTR property depending on experience of implementing this proposal. For the remaining 36-40 weeks of the year, the power will be turned off and the wires for large selected distances or its entire length will be dropped to the ground for the benefit of wildlife movements. Fencing that transects the RTR active cultivated field will be designed so that it can be easily removed when bison are not present for the convenience of the ranch’s agricultural activities. The downed fencing is projected to pose no hazards to wildlife species that move through or frequent the RTR during the spring, summer, and fall seasons.

Details about the proposed cattle guards and gates

FWP proposes to install nine cattle guards (including one in Yankee Jim Canyon) and six metal gates at various locations throughout the bison corridor, primarily at intersections along the Old Yellowstone Trail Road where access to RTR residences and ranch buildings is required. The cattle guards are expected to allow normal vehicle traffic through the ranch and deter the bison from moving out of the designated bison corridor. Like the cattle guards, the gates will allow ranch employees access to all areas of the RTR property while discouraging bison movements from the corridor.

Alternative Considered to the Proposed Action

FWP would not sign the grazing agreement with the RTR, no financial resources would be dedicated, and Step 1 of the IBMP would continue to be implemented in the RTR areas thus preventing bison from migrating onto and through the ranch to reach winter range on adjacent public land.

During Step 1 in the IBMP, cattle would still be allowed to use ranch property and bison movement would be restricted to areas south of Reese Creek. Bison moving past Reese Creek would be hazed back into YNP per IBMP procedures.

Montana Environmental Policy Act

Montana Fish, Wildlife & Parks is required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of its proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision to proceed or not with the project.

Prior to the publishing of the Environmental Assessment (EA), FWP in cooperation with the U.S.D.A Forest Service (Gallatin National Forest Office) hosted a scoping meeting on July 30, 2008 in Gardiner, MT. Announcements of the meeting were published in the *Bozeman Chronicle* and *Livingston Enterprise*. Twelve individuals attended the meeting. Comments from the public were accepted until August 5, 2008. Four written comments were received during that period and that feedback was considered during the preparation of the EA.

In compliance with MEPA, an EA was completed on the proposed action by FWP and released for public comment October 6, 2008. The original public comment period was for 26 days with a deadline of 5:00 pm October 31, 2008. However the period was extended until November 21, 2008, giving interested parties a total of 47 days to submit their comments to the Department.

Legal notices announcing the availability of the EA were published in the *Bozeman Chronicle*, *Helena Independent Record*, and *Livingston Enterprise*. In addition to the announcement, the EA was posted on FWP's webpage - http://fwp.mt.gov/publicnotices/notice_1895.aspx. The EA was mailed to 65 interested individuals and groups and emailed to one additional party.

Summary of Public Comments

394 comments were received via email and regular mail during the public comment period on the proposed action. Public participation is a mechanism for agencies to consider substantive comments on a proposal. The following is a synopsis of the feedback and FWP's response to those comments and questions.

1. The original comment period was too short.

FWP Response: Because so many comments received prior to the original public comment deadline of October 31st noted the comment period was too short, the

Department extended the public comment period until November 21, 2008. FWP published announcements in the Bozeman Chronicle, Livingston Enterprise, and Helena Independent Record informing the public of this extension. Additionally, FWP sent an email announcement of the extension to interested parties originally contacted when the environmental assessment was released in the beginning of October.

2. The proposed action is a federal action requiring National Environmental Policy Act (NEPA) analysis, as well as MEPA analysis, and requires the completion of an Environmental Impact Statement (EIS).

FWP Response: The U.S. Forest Service, Gallatin National Forest Office, is completing their own analysis to investigate if, under the requirements of NEPA, an EA or EIS is warranted. The Forest Service determined that the proposed action could be excluded from documentation in an environmental assessment or an environmental impact statement. Their decision was based upon the following criteria:

- *Forest Service Handbook 1909.15 [31.2(9)] – Implementation or modification of minor management practices to improve allotment condition or animal distribution when Allotment Management Plan is not yet in place.*

3. The proposed action threatens to influence previous contractual agreements.

FWP Response: Current and future actions will be consistent with the Devil's Slide Conservation Easement. Furthermore as part of the Devil's Slide Conservation Easement, the RTR and Forest Service were required to work with the State of Montana to develop a RTR Bison Management Plan, which has been completed as part of the proposed RTR Grazing Restriction Agreement.

4. The proposed action threatens to restrict the adaptive management of the Interagency Bison Management Plan (IBMP) and inappropriately relies on the approval of a private party.

FWP Response: There is a provision in the proposed Royal Teton Ranch (RTR) Agreement that allows for change that could occur through the IBMP's adaptive management strategies. The relationship with the RTR and the proposed action were specifically identified in the IBMP and the implementation of the Agreement simply achieves this step of the IBMP.

5. The proposed action may reduce the ecological benefits of having bison on the landscape, including their role in restoring ecosystem function and health of grasslands.

FWP Response: The Bison Management Plan EIS did examine the historical and more recent ecological impacts of bison on grassland ecosystems. As noted in that document, bison consume large quantities of grasses and sedges and may contribute to new plant growth by distribution of seeds, breaking up soil surfaces, and fertilizing by recycling nutrients through their waste products. Those influences to the natural environment were considered when the interagency partners drafted the IBMP. Those same impacts are

likely to occur if the proposed action were implemented. As a result of this project, bison are allowed to expand at least seasonally into areas that were previously off limits to them. Thusly, the vegetation within the bison corridor and public lands, where the bison will linger on during the winter, are expected to experience those ecological benefits of the bison. This change may represent a minor positive increase in the ecological impacts bison would have on an expanded landscape.

6. Will local residences be required to open and close a gate to travel south on the Old Yellowstone Trail Road or at the Corwin Bridge?

FWP Response: No, there will be cattle guards along the road to allow for freedom of vehicle movement but will restrict the bison from traveling in unwanted directions.

7. Where is the location of the fence in relation to 592 Old Yellowstone Trail Road South?

FWP Response: The proposed fence will be installed on the western side of the road, placed around the residence at 593 Old Yellowstone Trail South Road, which is across the street.

8. Will elk and other large wildlife still be able to cross the fence and access the Yellowstone River?

FWP Response: FWP believes the fence's design will allow for ungulate movement to the river. The preliminary fence design calls for the height of the fence to be 48" and the lowest fence wire at 20". Antelope, small animals, and juvenile ungulates are expected to be able to move under the wire without difficulty, where as most elk and deer species will be able to jump over the top wire with ease. Safe passage of elk and other large wildlife is facilitated through the type of wire used (smooth versus barbed), number of wires employed (4 strands), total height (48"), spacing of wires (bottom wire 20" high), and non-electrification of two wires (bottom and second from top). Based on field experience in other areas, elk and other large wildlife can and do cross this type of fencing. In this case, the electric fence will also be turned off and dropped to the ground over much, if not all of its length, for 38-40 weeks (75%) of the year from approximately April 15 -January 1 and when bison are not actively moving through the corridor, allowing all transient and resident wildlife barrier free access to the river.

9. Will the fence be operational this winter?

FWP Response: If a decision is made to move forward with the Agreement, FWP will make every effort to have the construction of the fence and installation of the cattle guards completed in order to accommodate the movement of bison through the RTR this winter. The completion of these tasks are dependent upon timing of this MEPA process, FWP Commission approval, State Land Board approval, and hiring of fencing contractor, as well as, weather conditions when the construction is attempted.

If the construction of the fence and cattle guards can not be completed in time for this winter season, the RTR and IBMP partners will work together to explore other options in allowing for a limited number (up to 25) of bison out of YNP in ways that would not pose an increased risk to personal/private property and to agricultural interests. The determination of the number of bison allowed to move north onto public lands and the ranch's property will be based upon the behavior and movement of the bison and the on-the-ground oversight of the bison required by IBMP staff. This option would still meet the goals of the IBMP, the objectives of the proposed RTR Agreement, and would not require additional analysis beyond this EA.

FWP will facilitate the installation of the fences and cattle guards during the summer and fall of 2009 to accommodate bison movements through the RTR during the winter of 2010.

10. Containment structure north of the RTR is not currently warranted.

FWP Response: FWP agrees and the need for such a structure will be evaluated based on the experience of bison movement in the corridor gained by the IBMP partners during the implementation of the proposed Agreement.

11. Keep fence up only as necessary to accommodate bison movement.

FWP Response: FWP agrees, that is why the option was considered.

12. The Agreement should anticipate and accommodate changes so that a greater number of bison can be permitted movement in the corridor.

FWP Response: There is currently language in the RTR Agreement for adaptive management process changes to the initial plan parameters. Any changes to the Agreement, in the case of increasing the number of bison permitted through the corridor, will be initiated by the IBMP partners and subject to the review and approval of the RTR. Approval will not be unreasonably withheld via the Agreement.

13. The project's goals are too narrow and should be revised to the following because they are more in keeping with the scope of the Agreement, what it will provide for bison, brucellosis risk management: 1) remove the risk of disease transmission between bison and RTR livestock, 2) create a corridor for bison through RTR so bison will have access to winter range and north to Yankee Jim Canyon, 3) ensure no development occurs that will block the bison corridor, and 4) to prevent injury or damage to persons and property.

FWP Response: FWP sees the suggested revised goals as desired outcomes of the project through the installation of fences, cattle guards, and through the Agreement's RTR and FWP responsibilities. In FWP's opinion, the suggested revised goals are met by those stated in the EA, which are: 1) to ensure tested and non-tested bison are appropriately segregated, 2) to move seronegative bison through the RTR to more suitable grazing lands on public lands north of the ranch; and 3) to prevent injury or damage to persons and property.

14. The northern boundary should be extended to Yankee Jim Lake. Additionally, the Zone 2 boundary is not in keeping with topographical feature of the landscape.

FWP Response: The boundary will be reviewed through the adaptive management process of the IBMP partners. The boundary that reflects how the bison actually use the landscape will be reflected in the proposed RTR Agreement, which will potentially follow more closely the topography of the landscape.

15. Identify the non-government organizations financial support of the proposed project.

FWP Response: Those primary organizations committed to the proposed RTR Agreement are the Greater Yellowstone Coalition, National Parks Conservation Association, and the National Wildlife Federation.

16. Does not support bison hunting north of the Royal Teton Ranch (RTR) until partners have gained experience with the project.

FWP Response: FWP agrees. No public bison hunting will be permitted until after the first year of the project is completed. However, it should be noted that the bison that are allowed to migrate through the RTR will occur on National Forest lands that are legally open to and accessible to native American bison hunters under existing treaty rights. At this time, it is not entirely clear if tribal bison hunters will choose to hunt in this area.

17. Since there are no cattle on the RTR, bison moving in the corridor should not be hazed, captured, and tested as they leave Yellowstone National Park (YNP).

FWP Response: The IBMP guides the terms of the proposed Agreement and the processing of bison to be allowed through the corridor. The agreement is designed to be consistent with the terms of the original IBMP and provides flexibility to accommodate adaptive change to that plan.

18. Considers the Agreement a baby step in progress of bison management.

FWP Response: So noted.

19. Too much taxpayer money toward project.

FWP Response: Comment noted. The State of Montana, U.S. Department of Interior (National Park Service), and U.S. Department of Agriculture (Forest Service) believe the proposed project is in the best interest of the bison to warrant the expenditure of their funds. The same project proposed in 1999 was appraised at a similar value but was for a permanent grazing restriction. No appraisal was completed this time due to its expense and it was found unnecessary by the funding partners and RTR. Since the time of that original project, the RTR property has substantially gained in value.

20. The impacts the fence may have to wildlife, including perching birds, were not fully considered.

FWP Response: The fence is designed to allow yearlong passage of transient and resident wildlife while providing a seasonal directional barrier to the movements of bison. Bison instinctively want to migrate north, which the proposed fence does not impede or prohibit. The fence's height and location was designed to provide an adequate east/west deterrent to bison where deemed necessary by the RTR, while providing a low enough height for most ungulates to pass through or over. As with other electric fences, birds can safely perch on any of the fence wires. In order for birds, or any other animal (including humans), to receive an electric shock from an electric fence, they have to simultaneously be in contact with a "hot wire" and the ground or a "hot wire" and a "ground wire". Thousands of miles of electric fencing are used by livestock producers in Montana and elsewhere every year. The accidental electrocution of birds does not appear to be a major wildlife issue with this type of electric fencing. The EA considered local wildlife species that may potentially have issues with crossing the proposed fence. There are numerous other wildlife species for which the fence is not an issue.

21. The Environmental Assessment (EA) failed to consider other reasonable and more economic alternatives. How about using money to buy a different winter range for the bison next to Yellowstone National Park (YNP). Why not truck bison to the public lands north of the RTR? This option would be less expensive than the proposed project.

FWP Response: The focus of the EA was to come to a decision to embark upon the implementation of the grazing restriction agreement with the RTR because it was specifically identified in the IBMP. The purpose of the EA was not to consider all reasonable and feasible alternatives to use the same amount of money for a different easement or purchase of winter range for bison, such as purchasing grazing leases in areas surrounding YNP for bison.

The alternative of trucking the bison was considered but was dismissed because this management method was considered too forceful and less reliant on the natural movement by the bison.

22. The proposed project subjects bison to unnecessary hazing, testing, implants, and procedures.

FWP Response: The methods of testing, monitoring, and managing bison movements beyond YNP were set by the IBMP and agreed upon by the IBMP's partners. These procedures and processes were considered as necessary tools in order to manage the risk of potential transmission of brucellosis from bison to livestock on boundary ranches and to decrease the potential for personal and private property damage.

23. The affected land was previously sold to RTR for bison to use, which was a \$13 million deal.

FWP Response: The transaction in question was completed in 1999 between the ranch and the Rocky Mountain Elk Foundation, who subsequently, assigned and sold the easement to USDA Forest Service. This deal did not include the purchase of the ranch's grazing rights and until May of 2008, the ranch still grazed cattle on its property. As per the IBMP, no bison would have been allowed on the RTR until all cattle were removed. Obviously, some bison did migrate onto the ranch and were hazed back to the National Park boundary.

24. The Interagency Bison Management Plan (IBMP) is skewed in favor of cattle interests.

FWP Response: So noted. The intent of this EA was not to evaluate the orientation of the IBMP.

25. Save bison and treat them humanely. Keep family units together.

FWP Response: The proposed project is designed to conserve bison by allowing a portion of them to migrate to winter forage areas. Any management action towards bison will be conducted as a humanely as possible. We will do our best to keep the family groups together given the requirements of the IBMP.

26. Exhibits to the EA and proposed Agreement were incomplete.

FWP Response: Yes, we are aware that the vegetative baseline survey was not included with the Agreement. The Agreement's attachment D will be updated to include a methodology of how and when the vegetative baseline will be completed.

27. Bison should not be slaughtered.

FWP Response: So noted. The proposed project should lead to a slight decrease in the number of bison slaughtered during the winter.

28. The EA fails to provide rationale for high cost of purchasing so little.

FWP Response: As stated previously, the IBMP partners are obligated under the IBMP to complete the proposed agreement. The costs were previously addressed in response #19.

29. The EA and proposed Agreement set precedents of management of public wildlife on private lands.

FWP Response: FWP is not paying for bison to cross the RTR. We are paying the RTR for the ranch's grazing rights for cattle and mitigating for personal and private property

damage through fencing to provide the opportunity for bison to move through that landscape.

30. EA fails to disclose all costs of implementation.

FWP Response: Fencing and cattle guard costs were not listed. Based on an estimate from an experienced bison fencer, the installation of the cattle guards (large and small), a cover for the cattle guard at the northern bison corridor boundary, and the construction of the fence would be estimated at \$100,000. An estimate of the costs for lowering and raising the fence wires twice during the period the bison will be using the corridor is unknown at this time. IBMP or funding partners will pay all implementation costs for the agreement.

31. Maps included in the EA are misleading.

FWP Response: The use of 'bison use corridor' versus 'bison area corridor' is noted. Bison area corridor is a term used in earlier bison management discussions. The correct terms for this document are 'bison use corridor'. The original maps included with the EA have been revised to show additional detail. Please refer to the attached modified EA.

32. The EA failed to engage a cultural resource survey for the affected area.

FWP Response: FWP believes it completed its' due diligence in investigating the Department's responsibility to complete a cultural resource survey for the proposed project. The Forest Service did complete a supplemental cultural resources review on October 24, 2008 for the RTR bison corridor's fence path, following the county road's right-of way. This cultural survey noted there were no sensitive sites within the fence's proposed path. As a part of the agreement with the fencing contractor, FWP will request that if any objects that are found during the installation of the fence be reported to the Department so that they may be investigated for historical and cultural significance.

33. FWP failed in the stewardship of the species (bison).

FWP Response: FWP understands your opinion.

34. Bison are unlikely to obey the fencing restrictions.

FWP Response: FWP understands your opinion and anticipates the need to observe the behavior of the bison using the corridor and if necessary make adjustments to the fence's design and/position to provide bison safe passage to public lands north of the RTR.

35. The IBMP needs changing.

FWP Response: Comment noted and this decision was not focused on the validity of the IBMP. Such a discussion is beyond the scope of this EA.

36. Science shows brucellosis is transmitted from elk not bison. The lease makes no mention of evidence that bison transmit brucellosis to cattle and that elk carry that disease.

FWP Response: Comment noted, but is beyond the scope of this EA and the proposed action. The proposed purchase is a step identified in the IBMP. That plan describes the possibility that there is a bison to cattle transmission. It is true elk can transmit diseases.

37. Height of the proposed fence is an issue. Fence is too high to allow other wildlife species to cross. Wildlife concerns were expressed about the use of bison fencing adjacent to FWP's Robb Ledford WMA.

FWP Response: Bison management experts indicate that the minimum height of an effective electric bison fence is 48" high. FWP has adopted a low profile, 48" high, 4-strand, smooth wire, take down electric fence design that is commonly used and recommended by experienced bison managers. The fence design is described in the EA. Experience has shown that this fence design is effective in preventing the passage of bison while allowing other ungulates to pass over, under or through the fence as described in the EA. As indicated in the EA there are about 15 miles of bison-proof fencing along the boundary of FWP's Rob Ledford WMA. Two types of bison fencing occur along this boundary with the Snowcrest Ranch; a 48" high, 4-strand, smooth wire, electric fence and a 58" high, 6-strand, smooth wire, non-electrified fence. For wildlife crossing purposes, FWP prefers the lower profile 48" high, 4-strand fence, which has worked well in allowing wildlife passage in situations where bison movement must be controlled (personal communication, Fred King, FWP R-3 WMA Manager). For this reason FWP is recommending the use of the 48" high, 4-strand electric fence design for the RTR Easement Project.

38. The Native American tribes of Montana should be consulted on this project.

FWP Response: The tribes have had the same opportunity to submit their comments or concerns on the proposed project like any other group or individual.

39. A private party should not be involved with a federally protected species.

FWP Response: Bison are not a federally protected species. They have no designation under the Endangered Species Act.

40. The EA gives credence and support to a failing IBMP.

FWP Response: Comment noted.

41. Issues were raised about the construction of fences, cattle guards, and other structures to manage bison movements.

FWP Response: These measures are necessary to address public safety, property damage, and agricultural concerns of those adjacent to the bison corridor and to prevent

bison moving north into Zone3 which is a designated a zero-tolerance area for bison in the IBMP.

42. The proposed project threatens tourism traffic to local businesses.

FWP Response: It is FWP's opinion that the proposed corridor project may potentially enhance tourism in the area by providing a safe venue to view bison outside YNP while ensuring the public's safety.

43. Unreasonably limits on the number of bison through the RTR corridor.

FWP Response: The IBMP imposes specific limits on the number of bison allowed through the corridor. The actual number of bison allowed through the corridor could be adjusted through the adaptive management process built into the IBMP and the proposed RTR Agreement. Such changes would have to be initiated by the partners involved with the IBMP and subject to the approval of the RTR. RTR's approval cannot be unreasonably withheld.

44. The April 15th spring deadline for having the bison be returned back into YNP is not based on science but set for the benefit of local livestock operators.

FWP Response: The timeframes defined in the proposed RTR Agreement adheres to the timelines in the IBMP. The January 1st date is only an approximation and bison may begin to move north any time before or after that day. The April 15th date is a fixed date set in the IBMP. These timeframes are subject to change under the adaptive management process identified in the IBMP.

45. The EA has a predetermined outcome.

FWP Response: Comment noted.

46. The EA fails to assess the impacts of cattle guards to bison movements and their safety. Will the cattle guards be of typical size or larger?

FWP Response: Cattle guards in this project are designed and located to provide for human safety, avoid property damage, and agricultural reasons. In combination, the fencing and the cattle guards will direct bison movements to the north through the RTR and onto public land in ways that are acceptable to the RTR. Cattle guards work by taking advantage of an animal's natural fear of crossing an area that does not appear to be solid ground. Spacing 3" diameter steel pipes 3" apart over an open concrete trench, creates a walking surface that is approximately 50% solid and 50% "open air". This is typically sufficient to deter livestock and bison from crossing the cattle guard. Based on recommendations from bison management experts the cattle guards on the county road will be twice as long as usual (30' long) to reduce the likelihood of a bison attempting to jump across the cattle guard. Based on experience and input from bison managers, a 3"

gap between cattle guard pipes should deter bison from crossing the cattle guard and prevent them from pushing their hoof through a 3" opening and injuring themselves.

47. The EA fails to disclose the economic costs to the livestock industry if brucellosis is not aggressively controlled.

FWP Response: This type of analysis is beyond the scope of the project. The evaluation of the potential costs of the spread of the bacteria was discussed in the IBMP EIS.

48. Information for the second containment site and facility lacking.

FWP Response: Until the project is approved and the bison are given the opportunity to move through the corridor, FWP does not know if the second containment facility will be necessary or not. Only experience gained during the project will dictate if it will be required or not. If the second containment facility is necessary for this project, a separate environmental assessment will be prepared, which would include details about its likely location and design, its usage, and potential impacts to bison when in use.

49. The EA failed to consider aesthetic impacts of the fences and other management structures.

FWP Response: Since the proposed fence will primarily follow the same path as an existing fence or in close proximity to fences that already exist next to private residences and RTR buildings, the new fence will add nothing new to the landscape from the vantage point at either the county road or highway. Since the proposed fence will be dropped to the ground when the bison are not actively moving through the corridor, the aesthetics of the landscape will actually benefit from the new fence since the portions of the existing fence is in disrepair and the new fence would provide a clear viewshed during its' off-season.

50. Current fence design will not offer bison access to adjacent National Forest property when the animals are funneled through the corridor.

FWP Response: Incorrect. Bison moving in the corridor will have access to the majority of National Forest lands within the corridor. The corridor switches between public and private lands throughout the corridor. Bison will be fenced out of a small portion of National Forest in Section 30 based upon safety concerns expressed by the RTR along a portion of county road south of the Corwin Springs Bridge.

51. The proposed project is part of the federal government's bailout package and only allows for a limited number of bison to use the corridor.

FWP Response: Incorrect. The commitment of funding from the state and federal agencies was decided before the current economic crisis and the federal bailout plans.

52. Treat bison as wildlife not livestock.

FWP Response: This project will attempt to treat bison more like wildlife while recognizing the concerns of brucellosis transmission and public safety and private property. Currently bison originating from Yellowstone National Park are designated as a species requiring disease control (Montana Code Annotated 87-1-216) and the legislature found that a significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild bison. Through this law, FWP is responsible for the management of wild bison but must consult, coordinate, and cooperate with the Montana Department of Livestock (DoL) on the implementation of any management or wild bison. DoL has the power to adopt rules and orders that it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock (Montana Code Annotated 81-2-102), which is the reason why they are involved with bison management.

53. Prefer no fences at all.

FWP Response: Comment noted. See the responses #11 and #20 for additional discussion on the proposed fencing.

54. EA fails to discuss forage needed for existing ungulates.

FWP Response: Forage production and availability often varies dramatically from year to year depending on growing conditions (natural variation in precipitation, temperature, and length of growing season). In naturally occurring grassland habitats, resource managers have no control over annual forage production. Due to seasonal movements and the complexities of wildlife behavior and use it is difficult to quantify how much forage is needed or used by wildlife in a particular geographic area. Unlike livestock, whose numbers, location, and movements are controlled, it is impossible to accurately calculate the amount of forage required or consumed by multiple species of wildlife that are free to move across the landscape at will. However, as mentioned in the EA, removing livestock from the RTR should provide a significant increase in the quantity of forage available for all wildlife species including bison.

55. The proposed fence violates the Unlawful Inclosures Act of 1885 in restricting free-roaming bison.

FWP Response: The RTR Agreement proposes to provide a corridor by which the bison can access the public lands north of the RTR. The Unlawful Inclosures Act (UIA), 43 USCS §1061, prohibits fencing that encloses public land and restricts wildlife access to those public lands. Additionally, the fence is designed to allow other smaller wildlife to pass under or over the fence. Because the RTR fencing would provide access to public lands and allows passage through the fence, the UIA does not apply.

56. The proposed project wrongfully spends Pittman-Robertson funds (license funds).

FWP Response: No Pittman-Roberson (license) funds will be used for this project. FWP funding for this project is from the Habitat Montana Program. The Habitat Montana Program supports the preservation and restoration of habitats for fish and wildlife and to provide recreational opportunities through purchases or donations of conservation easements, purchases of lands, or through other land agreements, such as the proposed RTR Agreement.

57. Shouldn't bison be allowed to wander unobstructed between the FS's Devil's Slide Conservation Easement area and public lands north of the RTR?

FWP Response: If the fences remain up (approximately from January 1st through April 15th), the bison can wander unobstructed within the corridor. If fences come down to accommodate ungulate movements, then the bison need be confined in the northern public lands or the fences will need to be reconfigured. This decision will be made in the field based upon the behavior of the bison.

58. By eliminating cattle from the area removes grazing rights from tax paying residents and pushes the management problems of bison on the public.

FWP Response: This purchase involves a willing buyer and willing seller. It implements a step identified in the IBMP.

59. Clarify how much of the corridor is actually on the county right-of-way.

FWP Response: A fairly small length of the bison corridor is on the county right-of-way. One portion occurs approximately in the middle section of the corridor, north and south of Corwin Springs Bridge, and then again north of the RTR ranch.

60. Project is burdensome to FWP biologist, game wardens, and the public.

FWP Response: FWP recognizes the additional responsibilities. Once again, the proposed project is a component of the IBMP and FWP is one of the partners of that plan.

61. In the 1999 Devil's Slide Conservation Easement, the land deal stipulates that the RTR serve as a 'safe haven for bison'. The proposed deal seems redundant.

FWP Response: The Forest Service's conservation easement for the Devil's Slide area did not include the purchase of the ranch's grazing rights. In accordance with the IBMP's spatial and temporal separation guidance between bison and cattle, no bison were allowed on the ranch until the cattle were removed.

62. Exhibit F (#1) of the proposed agreement is out of synch with the EIS's Record of Decision. The Record of Decision speaks of monitoring and hazing the bison but nothing about capture.

FWP Response: That is incorrect. The Record of Decision does state that one of the methods to be used to manage the movements of bison coming out of YNP is capture.

63. How often will the fence be reviewed for impacts (positive and negative)?

FWP Response: The impacts of the fence will be observed throughout its use and adjustments will be made when and if necessary.

64. The following comments were submitted but are beyond the scope of the proposed project and the EA's analysis.

- a. The proposed project will not solve the bison population mismanagement and overgrazing in YNP.
- b. Federal regulations should change so that the entire state doesn't lose its' brucellosis free status.
- c. The elimination of brucellosis is an economic interest of ranchers not a public health issue.
- d. Eradicate brucellosis in Yellowstone National Park and then address other bison issues.
- e. Make the National Park Service and Yellowstone National Park accept responsibility for the bison problem they've created.
- f. Rather see the funds spent on education toward livestock owners about brucellosis and its' transmission and the ecological role the bison play on the landscape.
- g. Spend the funds on vaccinating cattle against brucellosis instead of harassing bison.
- h. A practical control to bison populations would be by permitted hunting.
- i. Allowing bison to roam outside Yellowstone National Park (YNP) is a de facto increase in the boundaries of a federal park. If the park's resource are insufficient within its' boundaries, Montana needs to hold YNP accountable for mismanagement.
- j. Postpone the project until after the federal administration changes because the new administration will propose a better plan that is more wildlife friendly.
- k. When the bison population in YNP gets too high, sell or give the bison to the Native American tribes.

Final Environmental Assessment for the Royal Teton Ranch Grazing Restriction

FWP concludes that the impacts associated with the proposed alternatives would not have a significant impact on the physical environment or human population in the area. In determining the significance of each impact, the criteria defined in the State of Montana's Administrative 21.2.431 was used. Although there is the potential that the specifics of the Agreement may require adaptations, either in response to the behavior of the bison or to the design of the fence, it

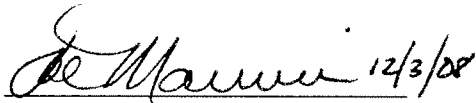
is not expected those adaptations would extend beyond the analyses found within this assessment. FWP will continue to manage bison per the guidance of the IBMP, as adopted.

This environmental assessment is therefore the appropriate level of analysis for the proposed action and an environmental impact statement is not required.

Based on the comments received and consideration of their value to improve and clarify the assessment for this project, FWP has made some modifications to the Draft Environmental Assessment narrative. The modified EA will serve as the Final Environmental Assessment for the Royal Teton Ranch Grazing Restriction Agreement. This Decision Notice and attached modified Environmental Assessment will be considered the Final EA. Both will be posted on FWP's website.

Decision

Based upon the Environmental Assessment, public comment, and the Department's desire to initiate this pilot project to expand the winter range of Yellowstone National Park bison and implement Step 2 of the Interagency Bison Management Plan, it is my decision to approve the signing and implementation of the Royal Teton Ranch Grazing Restriction Agreement.



Joe Maurier, Director
Montana Fish, Wildlife & Parks