

March 3, 2008

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Re: Bison Management on Horse Butte Peninsula

Dear Ms. Lewis, Ms. Erickson and Messrs. Zaluski and Hagener:

I am writing on behalf of the signatories to this letter regarding bison management in the Horse Butte area along the western boundary of Yellowstone National Park pursuant to the adaptive management framework established by the Interagency Bison Management Plan ("IBMP"). Recent correspondence from the Montana Department of Livestock and a recent media report indicate that your agencies may intend to conduct bison hazing, capture and slaughter operations in the Horse Butte area during the current winter season. See Letter from Marty Zaluski to Rob and Janae Galanis (Sep. 5, 2007) (Exhibit 1); Scott McMillion, Officials Expect Busy Season After Bison Hunt, Bozeman Daily Chron., Feb. 9, 2008 (Exhibit 2). I am writing to request that you cease any such operations in the Horse Butte area unless and until you have completed a supplemental environmental impact statement ("EIS") process to evaluate the impacts of, and alternatives to, such intensive bison management in light of changed circumstances on the Horse Butte peninsula.

As you may be aware, cattle grazing has been entirely eliminated on Horse Butte as a result of land management changes over the past six years. First, cattle grazing on the U.S.

Forest Service's Horse Butte livestock allotment was prohibited in 2002 pursuant to an order from the U.S. District Court for the District of Columbia in Greater Yellowstone Coalition v. Bosworth, 209 F. Supp. 2d 156 (D.D.C. 2002). As a consequence of that court ruling, the allotment permittee, the Munns brothers, agreed to a buy-out of their allotment rights and transferred their public lands cattle grazing operation to a distant allotment in the Caribou-Targhee National Forest. Second, last year the Munns brothers sold their private property on Horse Butte, which was located adjacent to the former Horse Butte allotment, to Rob and Janae Galanis. The new owners have ceased all cattle grazing on the property and declared their land a wildlife preserve that is open to bison. Accordingly, there are no cattle grazing operations remaining on the entire Horse Butte peninsula from the Yellowstone National Park boundary west to the shoreline of Hebgen Lake.

The elimination of cattle grazing from the Horse Butte peninsula creates the opportunity for a greater tolerance of bison that migrate to the area from Yellowstone National Park to obtain the forage they need to survive. The IBMP states that its purpose is to "minimize the risk of brucellosis transmission from bison to cattle." Nat'l Park Serv. & U.S. Forest Serv., Record of Decision for Final EIS and Bison Management Plan for the State of Montana and Yellowstone National Park, at 6 (Dec. 2000) ("ROD"). To this end, the IBMP prescribes a system of spatial and temporal separation of bison and cattle. Spatial separation means "[p]revention of cattle and bison from commingling or from utilizing the same area or adjacent areas at the same time." Id. at 22. Temporal separation means "[m]aintaining a specified period between the time bison depart or are hazed from certain lands outside the Park and the time cattle move onto those lands." Id. The original IBMP called for hazing, capturing and slaughtering bison in the Horse Butte area as part of "Zone 2" management along the west boundary of Yellowstone park based on the understanding that public and private cattle grazing would occur on the Munns brothers' property and allotment on the Horse Butte peninsula. See Vol. I, Final EIS, Bison Management Plan for the State of Montana and Yellowstone National Park, at 313, 315 (mapping cattle grazing areas on Horse Butte as part of baseline environmental condition for IBMP). However, there is now no basis to apply a management plan designed to ensure spatial and temporal separation of bison and cattle on the Horse Butte peninsula, because no cattle or cattle grazing areas are present or will be present in the foreseeable future due to the recent land management changes. Moreover, given that Horse Butte is surrounded to the north, west, and south by the waters of Hebgen Lake, bison movement off the peninsula to areas where cattle continue to be grazed is substantially restricted. Indeed, the federal district court in the Greater Yellowstone Coalition case observed that the closure of the Horse Butte grazing allotment alone "would significantly reduce the need for hazing and killing of bison." 209 F. Supp. 2d at 164 n.11. Now that allotment closure has been combined with changed management of the private grazing lands on Horse Butte, eliminating all cattle from the peninsula.

The IBMP explicitly contemplates that your agencies will alter their management practices in response to such changed conditions. A key provision of the IBMP is that "[t]he agencies may agree to modify elements of this plan based on research and/or adaptive management findings." ROD at 32. The definition of "adaptive management" under the IBMP itself notes that "future management actions could be adjusted." Id. at 22. Utilizing this adaptive management approach, your agencies have already modified the IBMP's prescriptions along the west boundary in response to changed circumstances. For example, the IBMP calls for

hazing bison exiting the park in “Zone 2” of the West Yellowstone area back into the park. See id. at 23. However, in response to the State of Montana’s inception of a bison hunt in the west boundary area in the fall of 2005, your agencies reduced hazing activities in the “Zone 2” area or ceased them altogether during the Nov. 15 to Feb. 15 hunting season. See IBMP Operating Procedures, at 9-10 (2007) (Exhibit 3); see also Letter from P. Ryan Clarke et al. to Sen. Max Baucus, at 1 (July 12, 2006) (Exhibit 4). Instead of hazing bison out of the entirety of “Zone 2,” your agencies sought to facilitate the bison hunt by establishing a new bison movement boundary at Witts Lake Road to the north and Forest Service Road 1731 to the south and allowed bison to roam freely in the intervening area. This example demonstrates the IBMP’s flexible approach to new circumstances and changed conditions.

Given the changed factual circumstances at Horse Butte and your agencies’ explicit authority and demonstrated ability to modify IBMP practices in response to new conditions, the governing federal and state law requires your agencies to prepare a supplemental environmental impacts analysis before inflicting any further adverse environmental impacts, such as bison hazing, capture and slaughter, at Horse Butte. Federal regulations implementing the National Environmental Policy Act (“NEPA”) require federal agencies to “prepare supplements to either draft or final environmental impact statements if ... [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(i). The Montana Environmental Policy Act (“MEPA”) imposes an identical requirement. See Mont. Admin. R. 12.2.440(1), 32.2.233.

Here the elimination of all cattle from the Horse Butte peninsula constitutes a significant new circumstance or information that is relevant to environmental concerns raised by the IBMP and that bears upon the IBMP and its impacts. There is no longer any spatial or temporal separation justification for persisting with intensive harassment and killing of bison on these cattle-free lands, much less any continuing justification for the substantial expenditure of taxpayer funds that is required to intensively manage bison in the Horse Butte area. Given this new reality, your agencies must undertake a supplemental EIS to re-assess the appropriate geographic scope of bison management to address the alleged threat of brucellosis transmission from bison to cattle in the west boundary area. See Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 374 (1989) (“If there remains ‘major Federal actio[n]’ to occur, and if the new information is sufficient to show that the remaining action will ‘affec[t] the quality of the human environment’ in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.”). Such a supplemental EIS should consider, as a first step and at a minimum, alternatives to allow for free bison movement across the cattle-free Horse Butte peninsula while establishing new bison movement boundaries along the margins of the peninsula to prevent bison movement toward cattle operations across Hebgen Lake and elsewhere along the west boundary. Your agencies addressed a similar set of considerations in establishing the framework for free bison movement along the west boundary to facilitate Montana’s bison hunt, and did so pursuant to a supplemental environmental analysis document. Your agencies should now devote no less attention to modifying your management policies in response to the removal of all cattle from Horse Butte and the attendant opportunity to reduce or eliminate brutal and costly bison management practices in this area. Your agencies’ attention to this matter is particularly important during the current winter, as weather patterns have created dense snow conditions that are making it difficult for bison to access the forage they need to

survive in the higher-elevation bison habitat within Yellowstone National Park. See McMillion article, supra.

In sum, I formally request that your agencies cease all bison hazing, harassment and slaughter on the Horse Butte peninsula pending your completion of a supplemental EIS process that re-examines the need for, impacts of, and alternatives to such bison management in light of the changed circumstances in the Horse Butte area. Please advise me of your response to this request as soon as possible so that I may consider with my clients what additional action may become necessary to ensure that your agencies comply with governing environmental laws.

Please call me at (406) 586-9699 to discuss any aspect of this matter.

Sincerely yours,

Timothy J. Preso