

ROBERT N. LANE
Special Assistant Attorney General
JOHN F. LYNCH
Special Assistant Attorney General
Montana Department of Fish, Wildlife and Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 444-4594

COUNSEL FOR RESPONDENTS

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

| | | |
|--|---|-------------------------|
| WESTERN WATERSHEDS PROJECT |) | Cause No. DV-10-317A |
| GALLATIN WILDLIFE ASSOCIATION |) | Judge Holly Brown |
| BUFFALO FIELD CAMPAIGN, & |) | |
| YELLOWSTONE BUFFALO |) | ANSWER TO COMPLAINT FOR |
| FOUNDATION |) | DECLARATORY AND |
| |) | INJUNCTIVE RELIEF |
| Petitioners, |) | |
| |) | |
| vs. |) | |
| |) | |
| STATE OF MONTANA, & MONTANA |) | |
| DEPARTMENT OF FISH, WILDLIFE & |) | |
| PARKS, an agency of the State of Montana |) | |
| |) | |
| Respondents. |) | |

1. Answering the allegations of paragraph 1 of the complaint, Respondents State of Montana and Montana Department of Fish, Wildlife and Parks (DFWP) admits the public trust responsibilities of the DFWP. DFWP specifically denies that it alienated public wildlife to a private party for private purposes or is obligated to prepare an EIS pursuant to the Montana Environmental Policy Act (MEPA) as a result of its actions. DFWP alleges that the 4 phase quarantine was instituted with the primary aim of saving disease free animals from slaughter. The public trust responsibility was to the species not individual animals. The evolving long-term commitment was that the best solution under the circumstances would be found. This is a

temporary relocation. It is a testament to this process that these animals have made it this far to eliminate brucellosis and yet preserve its precious DNA. These distinct bison are in excellent and safe hands at the Green Ranch where they are able to move freely in a large open range and remain healthy and protected. The managers and scientists who work for and with Green Ranch have the most cumulative and practical expertise in the conservation and handling of bison than anyone in history. This is a non-commercial agreement that will meet costs without taxpayer funding since the other alternatives fell through and at the end of the five year period the bison will be returned to DFWP which will have a permanent solution at that time. Conservation of wild bison on private land is nothing new. This type of conservation has been a part of bison restoration since the sharp decline of bison before the turn of the last century. This type of conservation efforts saved the American bison from extinction, combined with Native American inter-tribal efforts and treaties. The Green Ranch, with bison conservation at the root of its mission, and its affiliates has replaced cattle with bison on western ranch land and has made a highly successful go of it. As a result a workable model for bison conservation has been created to help propagate the existing bison population. Because of its experience the Green Ranch and its affiliates are now able to step in to help with this important non-commercial bison conservation project – and increase lands that the original stock of plains bison may roam. DFWP denies all the remaining allegations of this paragraph not specifically admitted or qualified herein.

2. Answering the allegations of paragraph 2 of the complaint DFWP incorporates by reference the preceding paragraph of its Answer and specifically denies that its action constituted an abandonment of commitments or failure to analyze alternatives resulting in alienation of public wildlife to a private party for private purposes.

3. Answering the allegations of paragraph 3 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the allegations of paragraph 3.

4. Answering the allegations of paragraph 4 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies that it delayed planning the translocation of the subject bison so as to commercialize or privatize said bison.

5. Answering the allegations of paragraphs 5 and 6 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies that it failed to identify suitable locations as alleged or changed its criteria at the eleventh hour.

6. Answering the allegations of paragraph 7 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies that DFWP Commission approval was necessary or that the DFWP acted without proper analysis.

7. Answering the allegations of paragraph 8 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits this is a final state action but denies it acted without proper analysis or removed any wild bison from public domain and converted them to private livestock.

8. DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies the allegations of paragraph 9 of the complaint.

9. Answering the allegations of paragraphs 10, 11 and 12 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and does not have knowledge or information sufficient to form a belief as to the truth of whether Western Watersheds Projects is who they say they are and therefore denies the allegations of paragraphs 10, 11 and 12 of the complaint.

10. Answering the allegations of paragraphs 13, 14, 15 and 16 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and does not have knowledge or information sufficient to form a belief as to the truth of whether Gallatin Wildlife is who they say they are and therefore denies the allegations of paragraphs 13, 14, 15 and 16 of the complaint.

11. Answering the allegations of paragraphs 17, 18 and 19 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and does not have knowledge or information sufficient to form a belief as to the truth of whether Buffalo Field Campaign is who they say they are and therefore denies the allegations of paragraphs 17, 18 and 19 of the complaint.

12. Answering the allegations of paragraph 20 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and does not have knowledge or information sufficient to form a belief as to the truth of whether Yellowstone Buffalo Foundation is who they say they are and therefore denies the allegations of paragraph 20 of the complaint.

13. Answering the allegations of paragraph 21 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and does not have knowledge or information sufficient to form a belief as to the truth of said allegations and therefore denies the allegations of paragraph 21 of the complaint.

14. DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies the allegations of paragraph 22 of the complaint.

15. Answering the allegations of paragraphs 23, 24, 25, 26 and 27 of the complaint, DFWP incorporate by reference the preceding paragraphs of its Answer and admits the allegations of paragraphs 23, 24, 25, 26 and 27 of the complaint.

16. Answering the allegations of paragraph 28 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies the allegations of paragraph 28 of the complaint.

17. Answering the allegations of paragraphs 29, 30, and 31 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the allegations of paragraphs 29, 30 and 31 of the complaint.

18. Answering the allegations of paragraph 32 of the complaint, DFWP admits that a final decision was signed transferring bison to TE1 but denies that there is a removal of 75% of offspring from public domain. DFWP incorporates by reference the previous paragraphs of the Answer and denies the remaining allegations of paragraph 32 of the complaint.

19. Answering the allegations of paragraph 33 the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and denies that approval of the Commission is required and denies all other allegations in paragraph 33 of the complaint.

20. Answering the allegations of paragraphs 34, 35, 36, 37, 38, 39, 41, 42, 44, 45, 46, 47, and 48 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the same.

21. Answering the allegations of paragraph 40 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the quarantine was a management tool but denies that it was not analyzed under MEPA. DFWP incorporates by reference previous paragraphs of its answer and denies the remaining allegations of paragraph 40 of the complaint.

22. Answering the allegations of paragraph 43 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the quote in the permit but denies any other allegations in paragraph 43 of the complaint.

23. Answer the allegations of paragraph 49 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admit that an EIS was not done, assert that EAs done comply with MEPA, and denies all other allegations of paragraph 49 of the complaint.

24. Answering the allegations of paragraph 50 the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admit for the first sentence that DFWP prepared an EA for each phase of the study and deny the remaining allegations; for the second sentence, admit the allegations in the sentence but denies the remaining allegations in paragraph 50 of the complaint.

25. Answering the allegations of paragraphs 51, 52, 53, 54, and 55 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the allegations of paragraph 51, 52, 53, 54 and 55 of the complaint.

26. Answering the allegations of paragraphs 56, 57 and 58 the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and denies the allegations of paragraphs 56, 57 and 58 of the complaint.

27. Answering the allegations of paragraphs 59, 60, 61, 62, 63, 64, and 65 of the complaint, DFWP incorporate by reference the preceding paragraphs of its Answer and admits the allegations of paragraph 59, 60, 61, 62, 63, 64 and 65 of the complaint.

28. Answering the allegations of paragraphs 66 and 67 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies that the clarification was a privatization of the bison but rather a common practice to grant offspring to a

caretaker in return for maintaining the integrity of the species. All other allegations in paragraphs 66 and 67 are denied.

29. Answering the allegations of paragraph 68, of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the allegations of paragraph 68 of the complaint.

30. Answering the allegations of paragraph 69 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies that the arrangement amounted to a privatization of the species, admit that DFWP prepared a draft EA, and deny all other allegations in paragraph 69 of the complaint.

31. Answering the allegations of paragraph 70 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the allegations of paragraph 70 of the complaint.

32. Answering the allegations of paragraph 71 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and denies there is any requirement for public access during the five-year period. All other allegations in paragraph 71 are denied.

33. Answering the allegations of paragraphs 72 and 73 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the allegations of paragraphs 72 and 73 of the complaint.

34. Answering the allegations of paragraph 74 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and denies the allegations of paragraph 74 of the complaint.

35. Answering the allegations of paragraph 75 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and admits the allegations of paragraph 75 of the complaint.

36. Answering the allegations of paragraph 77 of the complaint, DFWP incorporates by reference its answers to paragraphs 1 through 76.

37. Answering the allegations of paragraph 78 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and denies that the Public Trust Doctrine prevents in all cases the alienation of wildlife to public parties for public benefit and admits the other allegations of paragraph 78 of the complaint.

38. Answering the allegations of paragraphs 76, 79, 80, 81, 82, 83, 84, and 85 of the complaint, DFWP incorporates by reference the preceding paragraphs of its Answer and denies the allegations of paragraph 76, 79, 80, 81, 82, 83, 84, and 85 of the complaint.

39. DFWP incorporates by reference the preceding paragraphs of its Answer and specifically denies all remaining allegations of the Petitioners' complaint not specifically admitted, qualified, or denied herein.

RESPONSE TO REQUEST FOR RELIEF

The remainder of Petitioners' complaint consists of Petitioners' Prayer for Relief, to which no response is required. Paragraph 2 of the Prayer for Relief is not supported by any claim for relief and DFWP denies that Petitioners are entitled to any of the relief requested in paragraphs 1 and 2 of the Prayer for Relief or to any relief whatsoever.

WHEREFORE, DFWP requests Petitioners take nothing by their complaint, that judgment be entered in favor of DFWP against Petitioners in all matters, and that DFWP be

awarded costs, including reasonable attorney's fees, and such other relief as this court deems just and appropriate.

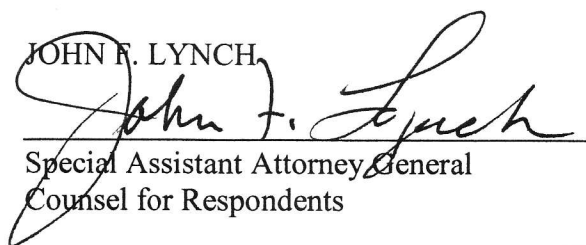
AFFIRMATIVE DEFENSES

- 1, The allegations in the complaint fail to state a claim upon which relief may be granted.
2. DFWP reserves the right to assert such affirmative defenses that may appear applicable during the course of this litigation.
3. This Court may lack subject matter jurisdiction over some of Petitioners' claims.
4. Petitioners' claims are barred by the affirmative defenses of collateral estoppel, claim preclusion and issue preclusion.

Dated this ____ day of May, 2010.

ROBERT N. LYNCH
Chief Legal Counsel
Special Assistant Attorney General
Montana Department of Fish, Wildlife and Parks

JOHN F. LYNCH



Special Assistant Attorney General
Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and accurate copy of Respondents' ANSWER TO COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, postage prepaid, by U.S. Mail, to the following:

Summer Nelson
Western Watersheds Project
P.O. Box 7681
Missoula, MT 59807

Dated: 5-5-10

By: John T. Lynch