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MONTANA SEVENTEENTH JUDICIAL DISTRICT COURT
BLAINE COUNTY

CITIZENS FOR BALANCED USE; SEN.
RICK RIPLEY; DUSTIN & VICKI
HOFELDT; KEN HANSEN; UNITED
PROPERTY OWNERS OF MONTANA; and
MISSOURI RIVER STEWARDS,

Plaintiffs,

vs.

JOSEPH MAURIER; MONTANA
DEPARTMENT OF FISH, WILDLIFE &
PARKS; and MONTANA FISH, WILDLIFE
& PARKS COMMISSION,

Defendants.

Case No.:

COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

COMES NOW the above-named Plaintiffs, by and through their undersigned counsel,
and for their Complaint allege as follows:

I. INTRODUCTION

1. Plaintiffs Citizens for Balanced Use, Senator Rick Ripley, Dustin & Vicki Hofeldt, Ken Hansen, United Property Owners of Montana and Missouri River Stewards respectfully request this Court to adjudge and declare the Montana Fish, Wildlife and Parks Director Joseph Maurier,

1 the Montana Fish, Wildlife & Parks Commission and the Montana Department of Fish, Wildlife
2 & Parks have violated Montana law by enacting a bison¹ translocation plan without a state-wide
3 management plan and without adequate analysis of the impacts upon the human environment in
4 accordance with Montana law.

5 2. Plaintiffs seek judicial review of a state agency decision under the Montana
6 Administrative Procedure Act, MCA 2-4-101, et. seq., the Montana Declaratory Judgments Act,
7 MCA 2-4-506, et. seq., and the Montana Environmental Policy Act, MCA 75-1-101, et. seq.

8 3. Venue is proper in Blaine County, Seventeenth Judicial District, because the suit is
9 against state agencies, the dispute in this case arose in Blaine County, and multiple plaintiffs
10 reside in Blaine County. MCA 25-2-126.

11 **II. Parties**

12 4. Plaintiff Citizens for Balanced Use (“CBU”) is a 501(c)(3) non-profit organization
13 dedicated to the responsible shared use of public lands, the protection of private property
14 interests, and enhancing multiple use of Montana’s lands and natural resources. CBU is based in
15 Gallatin Gateway, Montana, and has members and supporting organizations throughout
16 Montana. Its members include blue and white collar workers, farmers and ranchers, land
17 owners, hunters and anglers, recreationists, veterans, and people of all walks of life. CBU’s
18 executive co-chairman Kerry White submitted written testimony to the FWP Department and
19 Commission on behalf of CBU and its members against the FWP bison translocation proposal
20 during the administrative process.

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24 ¹ Some documents promulgated by the Department of Fish, Wildlife & Parks distinguish
25 between bison and buffalo as different types of animals. For the purposes of Plaintiffs, all such
animals, whether in a Tribal commercial herd or in a state quarantine program, are consistently
referred to as bison.

1 5. Plaintiff Rick Ripley is a Montana State Senator representing Senate District 9, including
2 parts of Powell, Teton, Cascade and Lewis & Clark Counties. Sen. Ripley sponsored Senate Bill
3 212 in the Sixty-Second Montana Legislature in 2011.

4 6. Plaintiffs Dustin and Vicki Hofeldt are ranchers in Blaine County, Montana. They are
5 part owners and operators of a ranch bordering the Fort Belknap Indian Reservation. The
6 Hofeldt's have suffered numerous and on-going damages to their fences, crops, livestock and
7 personal property rights due to bison escaping the Fort Belknap Reservation and intruding upon
8 their land. The Hofeldt's testified in person and submitted documents and photos to the Fish,
9 Wildlife and Parks Commission during the administrative process, in opposition to the proposed
10 bison translocation plan.

11 7. Plaintiff Kim "Ken" Hansen is a former State Senator representing Hill and Blaine
12 Counties. He is also a farmer and rancher in Blaine County, Montana. His land is next to the
13 Fort Belknap Indian Reservation. Hansen has suffered numerous and on-going damages to his
14 fences, crops, livestock and personal property rights due to bison escaping the Fort Belknap
15 Reservation and intruding upon his private land. Hansen testified orally and in writing during
16 the FWP Commission public meeting in Glasgow, Montana in opposition to the translocation
17 plan.

18 8. Plaintiff United Property Owners of Montana, Inc. ("UPOM") is a coalition of
19 landowners, allied businesses, and supporters dedicated to the preservation of private property
20 rights. UPOM has members in all parts of the state, and collectively represents over 1 million
21 acres of privately held property in the state. UPOM has members with property near the Fort
22 Belknap and Fort Peck Indian Reservations who will be harmed by the continued or increased
23 problem of bison escaping either of these Reservations due to the FWP bison translocation plan.
24 Rancher and co-founder of UPOM Deanna Robbins submitted written testimony on behalf of
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1 UPOM and its members to the FWP Department and Commission opposing the bison
2 translocation plan during the administrative process.

3 9. Plaintiff Missouri River Stewards is an organization of landowners, farmers, ranchers and
4 other citizens of small Montana communities in North Central and North Eastern Montana. It is
5 dedicated to educating the public and advocating policies supporting the continued success of
6 family farm and ranch operations in Montana. Missouri River Stewards has members with
7 landowners near and bordering the Ft. Belknap and Ft. Peck tribal bison ranges who will be
8 harmed by the continuation or increase in problems associated with bison escapes from the
9 Tribal bison pastures. Missouri River Stewards participated in the administrative decision-
10 making process through multiple members who attended the public meeting in Glasgow.

11 10. Defendant Joseph Maurier is the Director of the Montana Department of Fish, Wildlife &
12 Parks, MCA 2-15-3401, and has been the Director in charge of the Department's actions during
13 all of the events giving rise to this Complaint. He is the individual charged with carrying out the
14 policies directed by the Fish, Wildlife & Parks Commission and supervising the Fish, Wildlife &
15 Parks Department and employees in order to accomplish the same. MCA 87-1-401 et. seq. He is
16 sued in his official capacity.

17 11. Defendant Montana Department of Fish, Wildlife & Parks (hereinafter "FWP" or
18 "Department") is the state government agency charged with studying, planning and carrying out
19 actions associated with the plan to transport bison from the quarantine areas to other areas within
20 the State of Montana, MCA 87-1-201, -202, -216 et. seq., except for specific disease control
21 measures under the jurisdiction of non-party agency Montana Department of Livestock. FWP
22 was the agency responsible for the preparation of the state-wide conservation plan and
23 Environmental Assessment at issue here. Its principal office is in Helena, Montana.

24 12. Defendant FWP Commission (hereinafter "Commission") is the Governor-appointed
25 citizen commission pursuant to MCA 2-15-3402, that is responsible for setting policies and

1 adopting rules appropriate to managing hunting, state parks and wildlife management under the
2 authority of the State of Montana. MCA 87-1-301 et. seq. The Commission was the responsible
3 public body that directed the promulgation of an Environmental Assessment and plan to
4 translocate bison from various quarantine facilities in Southern Montana to various other cites,
5 and ultimately adopted the decision to transport quarantined bison to the Fort Peck and Fort
6 Belknap Reservations in accordance with the facts alleged herein.

7 **III. FACTUAL ALLEGATIONS**

8 13. The FWP Commission directed its staff in January, 2011 to begin analyzing locations for
9 the Department to transport bison currently contained in a brucellosis testing and quarantine
10 program to alternate locations outside of the greater Yellowstone National Park area. There are
11 currently 68 bison entering the monitoring phase of the quarantine process located at the Slip N'
12 Slide Pastures near Corwin Springs, MT. There are another 143 bison entering the second year
13 of the monitoring phase of the quarantine process at the Green Ranch, a subsidiary of Turner
14 Enterprises Inc., 20 miles west of Bozeman, MT.

15 14. The initial proposal considered four possible translocation sites: (1) the Marias River
16 Wildlife Management Area near Shelby, Montana; (2) the Spotted Dog Wildlife Management
17 Area near Deer Lodge, MT; (3) the Fort Belknap Reservation in Blaine County, MT; and (4) the
18 Fort Peck Reservation in Roosevelt County, MT.

19 15. The Fort Belknap Reservation has an existing herd of over 450 commercial bison that it
20 manages on multiple grazing units in a pasture with total combined acreage of 22,000 acres. The
21 proposal calls for the Tribal authorities to establish a separate 800 acre pasture to receive some of
22 the translocated bison, with the intention of growing the transplanted quarantine herd and
23 liquidating the commercial herd after 3 years. The 800 acre pasture intended for the transplanted
24 bison is on the Western edge of the Fort Belknap Reservation and bison pasture, and borders
25 private land on the West. Environmental Assessment for Interim Translocation of Bison

(hereinafter “EA”), MT Dept. Fish, Wildlife & Parks, Map 7 at 35

<<http://fwp.mt.gov/hunting/bison.html>> (accessed Jan. 8, 2012).

16. The Fort Peck Reservation has an existing herd of approximately 200 bison known as Turtle Mound Bison. These animals are kept approximately 4 miles away from the proposed location for the transplanted quarantined bison. The proposed pasture for the transplanted bison is 4,800 acres in size. The Tribe intends to allow the transplanted bison herd to grow to at least 150 head.

17. In response to a state-wide outcry over the Commission’s proposed bison transport plan, Plaintiff Sen. Rick Ripley sponsored and the Sixty-Second Montana Legislature passed Senate Bill 212 in its 2011 Regular Session. SB 212 was codified as part of MCA 87-1-216, with an effective date of May 12, 2011, the day Governor Brian Schweitzer signed it.

18. SB 212 required the Commission and Department to “develop and adopt a management plan before any wild buffalo or bison under the department’s jurisdiction may be released or transplanted onto private or public land in Montana.” MCA 87-1-216(5). There is no exception for “interim” bison movements or transportation for study or quarantine purposes, such as the Commission’s EA. EA at 5.

19. The specific requirements under SB 212 for the bison management plan are:

(a) measures to comply with any applicable animal health protocol required under Title 81, under subsection (2)(b), or by the state veterinarian;

(b) any animal identification and tracking protocol required by the department of livestock to identify the origin and track the movement of wild buffalo or bison for the purposes of subsections (2)(b) and (5)(c);

(c) animal containment measures that ensure that any animal transplanted or released on private or public land will be contained in designated areas. Containment measures must include but are not limited to:

(i) any fencing required;

(ii) contingency plans to expeditiously relocate wild buffalo or bison that enter private or public property where the presence of the animals is not authorized by the private or public owner;

(iii) contingency plans to expeditiously fund and construct more effective containment measures in the event of an escape; and

(iv) contingency plans to eliminate or decrease the size of designated areas, including the

expeditious relocation of wild buffalo or bison if the department is unable to effectively manage or contain the wild buffalo or bison.

(d) a reasonable means of protecting public safety and emergency measures to be implemented if public safety may be threatened;

(e) a reasonable maximum carrying capacity for any proposed designated area using sound management principles, including but not limited to forage-based carrying capacity, and methods for not exceeding that carrying capacity; and

(f) identification of long-term, stable funding sources that would be dedicated to implementing the provisions of the management plan for each designated area.

20. During 2011, the Commission and Department held public meetings on its proposed bison transfer plan near all of the projected translocations. These meetings were heavily attended by the public, and the comments to the Commission were overwhelmingly against the bison transfer plan. Members of the public commented on the danger of brucellosis transmission to livestock and wildlife; the danger the bison pose to the public due to their large size and wild nature; the potential damage to fences, crops and livestock; opposition to this plan as a first step toward replacing farms and ranches with a “buffalo common” or other free-ranging bison herd on large portions of the Montana plains; and the uncertainty about the bison status as wildlife or livestock, in addition to many other concerns.

21. During public meetings at Glasgow and an additional small meeting in Chinook, area landowners, including Plaintiffs Dustin & Vicki Hofeldt and Ken Hansen, testified and submitted written testimony describing the current inadequacy of the bison fence efforts on the Fort Belknap and Fort Peck Reservations. The Commission and Department staff received numerous personal stories, written testimony, photos and other evidence of wide-spread and continuous problems with bison escapes from the Reservations, particularly the Fort Belknap Reservation. Plaintiffs and other landowners and local officials told the Commission and Department staff that the Tribal fencing and bison control efforts must be improved dramatically in order to prevent further damage to private landowners and neighborly relations.

22. Plaintiffs Hofeldt’s have suffered numerous bison intrusions upon their ranch, resulting in damaged fences, damaged and depleted haystacks, and other damages. There were ten reported

1 incidents of bison escapes from the Reservation pasture in the month of January, 2011, alone.
2 Despite repeated phone calls to Tribal authorities and the Blaine County Sheriff, the local
3 authorities have been slow to respond, and have failed to adequately compensate the Hofeldt's
4 for bison damages, or to prevent the recurrence of these intrusions.

5 23. In 2004, Plaintiff Dustin Hofeldt shot two stray Fort Belknap bison that were on his ranch
6 and intermingled with his cattle in the hay feeding grounds, after repeated and unsuccessful
7 attempts to get Tribal and local law enforcement assistance in rounding up and fencing in Tribal
8 bison.

9 24. Plaintiffs Hofeldt's submitted bills for compensation in the spring of 2011 to the Fort
10 Belknap Tribal Council for damage to fences, hay depletion and other costs in excess of \$20,000.
11 The Fort Belknap Tribal Council has failed to pay these bills.

12 25. Plaintiff Ken Hansen suffered extensive fence damage due to bison wandering from the
13 Fort Belknap Reservation onto his property in the winter of 2010-2011. Hansen sent a fence
14 repair bill of \$4,430 to the Fort Belknap Tribal Council on July 23, 2011 for this damage. The
15 Fort Belknap Tribal Council has not yet paid the bill or even responded to Hansen's
16 communication.

17 26. The EA describes the bison containment fences at the Fort Belknap bison pasture as:

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19 The existing bison pastures are currently surrounded by a 6 foot, 6 or 7 strand barb wire fence capable of
20 holding buffalo under normal circumstances. The fence consists of eight foot treated wooden brace posts
21 2.5 foot into the ground at 15 foot intervals with 7.5 foot steel T-posts in between and placed at 15 foot
intervals. The lowest wire is 18 inches off the ground to allow for wildlife passage. The fence boundary is
continually being improved when it is taken down due to snowdrifts or after a bison escapes. EA at 36.

22 27. The Fort Belknap bison fences do not comply with the standard stated in the EA in all
23 areas. They are in need of repair in numerous locations. The wire is often lying on the ground.
24 The fence posts are often loose. In many places, the wire is inadequate strength or gauge for the
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1 pressure of the contained animals. Tribal fence repair efforts are slow and often inadequate,
2 exacerbating the problem of bison escapes.

3 28. The Commission and Department released the Draft Environmental Assessment for the
4 bison translocation plan in September, 2011, with public comment beginning on September 15.
5 The Draft EA proposed to transfer some or all of the bison at the Slip N' Slide Pasture and Green
6 Ranch to the Spotted Dog WMA, the Marias River WMA, the Fort Belknap Reservation, and the
7 Fort Peck Reservation.

8 29. The Draft EA specifically noted it intended to transfer the bison before completing a
9 state-wide bison management plan, EA at 5, 12, 14, 98. The EA anticipates the state-wide bison
10 management plan will not be complete until 2015. The EA claims that the analysis and the
11 Department's steps to prepare the WMA's to hold bison meet the requirements of SB 212, EA at
12 19, 89. The EA does not acknowledge or analyze SB 212's bison management plan
13 requirements for placement of bison on Tribal grazing lands.

14 30. The EA assigns the Department very little management responsibility over bison
15 transported to the Tribal lands. In fact, the EA places all responsibility and costs upon Tribal
16 officials in managing the containment and recovery of escaped bison, with the caveat: "If study
17 bison escape and exit the Reservation, FWP would work with the Tribes to immediately herd the
18 bison back onto the pasture." EA at 37. The EA does not explain how FWP will "work with" the
19 Tribes or what resources have been provided to the Department to effectuate this task. The EA is
20 silent as to the process or timeline for a FWP-Tribal bison management plan under the statutory
21 requirements of SB 212.

22 31. On October 17, 2011, the Montana Legislative Environmental Quality Council ("EQC"),
23 the interim committee charged with oversight of the Department and Commission, MCA 75-1-
24 324(10)(b), sent a unanimous letter to Director Maurier urging the Commission to post-pone a
25 decision on the bison translocation plan until a supplemental EA, a full EIS and/or a state bison

1 management plan was completed. EQC Letter to FWP Director Joseph Maurier (Oct. 17, 2011),
2 <[http://leg.mt.gov/content/Committees/Interim/2011-2012/EQC/Meeting-Documents/October-](http://leg.mt.gov/content/Committees/Interim/2011-2012/EQC/Meeting-Documents/October-2011/EQC-letter.pdf)
3 [2011/EQC-letter.pdf](http://leg.mt.gov/content/Committees/Interim/2011-2012/EQC/Meeting-Documents/October-2011/EQC-letter.pdf)> (accessed Jan. 8, 2012)(Exhibit 1). The letter noted that the EA fell short
4 of MEPA requirements in many respects, particularly in consideration of long-term impacts.

5 32. The EQC letter also informed Director Maurier that the EA did not comply with the
6 management plan requirements of SB 212. The EQC stated the EA violates the management
7 plan requirements of:

8 87-1-216(5)(c)(iii), requiring “contingency plans to expeditiously fund and construct more effective
9 containment measures in the event of an escape”;

10 87-1-216(5)(c)(iv), requiring “contingency plans to eliminate or decrease the size of designated areas,
11 including the expeditious relocation of wild buffalo or bison if the department is unable to effectively
manage or contain the wild buffalo or bison”;

12 87-1-216(5)(e), requiring “a reasonable maximum carrying capacity for any proposed designated
13 area”; and · 87-1-216(5)(f), requiring “identification of long-term, stable funding sources that would
14 be dedicated to implementing the provisions of the [bison] management plan for each designated
area.” EQC Letter at 2.

15 33. Despite the continued public outcry against the proposed bison translocation plan and the
16 EQC’s letter informing it the EA violated the law, the Commission adopted a modified proposed
17 alternative at its meeting on December 9, 2011. The Commission approved the proposal to
18 transfer 68 bison from the current Slip N’ Slide pasture quarantine facilities to the Fort Belknap
19 and Fort Peck Tribal grazing lands. FWP Commission Agenda Item: Bison Translocation to Fort
20 Belknap and Fort Peck Reservations (Dec. 9, 2011)

21 <[http://fwp.mt.gov/doingBusiness/insideFwp/commission/meetings/agenda.html?si&coversheet](http://fwp.mt.gov/doingBusiness/insideFwp/commission/meetings/agenda.html?si&coversheet&itemId=21723104)
22 [&itemId=21723104](http://fwp.mt.gov/doingBusiness/insideFwp/commission/meetings/agenda.html?si&coversheet&itemId=21723104)> (accessed Jan. 8, 2012)(Exhibit 2).

23 34. The Commission did not order a supplemental Environmental Assessment or an
24 Environmental Impact Statement to correct the short-comings of the current EA. It did not order
25 the initiation of a state-wide or even site-specific bison management plan for the Tribal grazing

1 lands pursuant to the requirements of SB 212 prior to the shipment of bison to the new locations.
2 The Commission did not commit to an additional public comment period in the formation of any
3 possible bison management plan prior to moving the transplanted bison onto Tribal lands.

4 **IV. Violations of 62nd Montana Legislature’s Senate Bill 212, MCA 87-1-216.**

5 35. Count 1: The Defendants acted in concert to prepare and enact a wild bison transportation
6 plan from quarantine areas to the Fort Peck and Fort Belknap Reservations before the completion
7 of a state-wide or site-specific bison management plan, in direct violation of Senate Bill 212,
8 now codified in MCA 87-1-216. The Defendants acted with blatant and arbitrary disregard for
9 the plain meaning of the statute in question, and in contravention to the expressed will of the
10 Legislature and the Governor. The statute does not provide an exception for “interim”
11 relocations of bison, or exceptions for quarantine study and monitoring purposes; it requires a
12 complete bison management plan before a single bison can be transported.

13 36. Count 2: The Defendants violated SB 212 by failing to inform the public or the
14 Legislature how they will implement the Commission’s decision while guaranteeing public
15 participation and protection according to the bison management plan requirements of the statute,
16 prior to movement of any quarantined bison to the Tribal grazing lands.

17 **V. Violations of Montana Environmental Policy Act, MCA 75-1-101, et. seq.**

18 37. Count 3: The Defendants failed in the EA to analyze the impacts on the human
19 environment, particularly the neighboring landowners, resulting from continual bison escapes
20 from the Reservation onto private land. The Defendants demonstrated a complete disregard for
21 unequivocal evidence that current Tribal fencing arrangements do not prevent neighbor conflicts
22 or damage to land, livestock, fences and other resources bordering the Reservations. The
23 Defendants also disregarded evidence from Plaintiffs and the public that the Fort Belknap Tribe
24 does not adequately compensate landowners for damages resulting from bison depredations.
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- 1 a. The EA currently states that any bison that escape either Reservation and enter
2 neighboring private land will be herded back onto the Reservation. EA at 37, 40,
3 75. The EA states that all damage from stray bison will be fixed, and the Tribe
4 will compensate neighboring landowners according to the current policy. EA at
5 40, 75. The EA states there will be no conflicts resulting from the placement of
6 additional bison onto the Tribal range, EA at 93.
- 7 b. As alleged in more detail previously, the current Fort Belknap Tribal bison
8 containment policy is a failure. Bison are continually escaping from the
9 Reservation lands onto private lands and causing wide spread and uncompensated
10 damage to fences, haystacks, livestock herds and private property rights. The
11 current bison herd is a source of continual neighbor conflict.
- 12 c. By issuing a blanket statement that the Tribe has a zero tolerance policy for
13 escaped bison without analyzing the clear evidence that this policy does not work,
14 Tribal and other officials are uncooperative in response efforts, and these factors
15 have led to ongoing neighbor conflict, the EA has failed to examine this impact
16 upon the human environment from the proposed action. The EA has failed to
17 conduct actual analysis of the expected conflicts from the placement of more
18 bison on the range, and the failure of the Tribe to dedicate adequate personnel and
19 resources to rounding up stray bison and protecting neighboring private property.
20 The EA's failure violates the requirements of MEPA.
- 21 d. The EA has failed to analyze the conflict resulting from the current failure to
22 compensate landowners for damage. Plaintiffs Hofeldt and Hansen currently
23 have outstanding damage claims against the Fort Belknap Tribal Council that
24 have gone unpaid for months. The EA has further failed to analyze ways to
25 improve the Tribal damage compensation system or to mitigate such damage

1 efforts. By relying upon the current Tribal compensation system, the EA has
2 failed to analyze the proposed action's impacts upon the human environment and
3 violates MEPA's standards.

- 4 e. The EA has inadequately analyzed this issue by its failure to examine and
5 document the frequency of fence failures and disrepair; FWP has relied upon
6 empty assurances rather than detailed examination of the fences intended to
7 contain the transported bison. Given the evidence presented to the Commission
8 of the inadequate Fort Belknap fences, this failure to analyze this issue violates
9 MEPA's requirements.
- 10 f. The EA's failure resulted in blatantly incorrect conclusions when comparing
11 alternatives, concluding that placement of additional bison on the Fort Belknap
12 Reservation would improve relations with neighboring landowners. EA at 93.
13 This conclusion demonstrates an uninformed and arbitrary decision in conflict
14 with the evidence before the agency. The EA staff could have reached this
15 decision only by completely ignoring the vast majority of the information
16 provided by the public in response to the proposed action. The EA's failure to at
17 a minimum account for this conflicting evidence and its potential impacts upon
18 the community evidences an arbitrary and capricious decision.

19 38. Count 4: Failure to analyze the impact of a possible brucellosis transmission from the
20 quarantined bison to the existing commercial bison herd at Fort Belknap, or from the existing
21 Fort Belknap commercial herd to the quarantined bison.

- 22 a. The EA states the brucellosis status of the commercial bison herd at Fort Belknap
23 is currently unknown. EA at pp. 93. Because of the high probability that the two
24 bison herds will interact due to the proximity of the two groups and the
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1 documented inadequacy of the fence conditions, a brucellosis transmission
2 between the two groups is possible.

- 3 b. The EA completely failed to analyze this foreseeable impact of the proposed plan
4 and its greater impacts upon the success of the entire bison quarantine project and
5 the impact such a spread of brucellosis would have upon neighboring landowners
6 and cattle herds. The EA further failed to analyze the impact such a bison to
7 bison transmission would have upon the Montana-wide brucellosis free status
8 designation. For this reason, the EA is inadequate.

9 39. Count 5: Failure to conduct a full EIS, as required by the severity of impacts and the
10 Plan's egregious violation of state law. The EA wrongly concludes that because the impacts of
11 the proposed action are negligible, no EIS is required.

- 12 a. The impacts upon the human environment alone require the promulgation of a full
13 EIS, due to the severity of the Tribe's bison containment system failure in its
14 current form. The reality of broken fences and uncompensated landowners is
15 divorced from the façade of cooperation presented in the EA. Only a serious and
16 thorough examination of the current problems with the Tribal bison containment
17 system will be adequate to properly inform and mandate an effective bison
18 management plan for any future placement at Fort Belknap. The EA's
19 justification for failing to conduct an EIS because of "negligible or neutral" (EA
20 at 95) impacts is completely inaccurate and at odds with the record before the
21 Department.

- 22 b. The EA completely ignores the Defendants' violation of applicable state laws,
23 embodied in SB 212, that require the creation of a bison management plan prior to
24 movement of the quarantined bison. The EA fails to even mention this statute
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when it considers any possible legal violations (EA at 96) and throughout as applied to transporting bison to Tribal grazing lands.

VI. Prayer for Relief

WHEREFORE, Plaintiffs pray for the following relief:

40. Enjoin Defendants Maurier, the Department and the Commission from carrying out their December 9, 2011 Decision to translocate bison, or entering Memorandums of Understanding or similar agreements with Tribal entities or any other private or public entity to receive transferred bison from Yellowstone National Park, the Slid N' Slide Pasture, the Green Ranch, or other possible source of quarantined or wild bison until the Defendants complete a state-wide or site-specific bison management plan pursuant to the requirements of the 2011 Legislature's Senate Bill 212, codified in MCA 87-1-216, and other current applicable Montana law.

41. Require any such state-wide management plan to protect and assure compensation to private property owners who suffer monetary or other damages due to bison escaping from Tribal, public or private land holding areas under a FWP-sponsored transport program. Further require the plan to provide remedies for private landowner against any Tribal, local or state government agency that fails to so protect and compensate private landowners.

42. Adjudge and declare the Defendants' Interim Translocation of Bison Environmental Assessment to be legally inadequate, as an arbitrary and capricious decision, and not in accordance with the Montana Environmental Policy Act.

43. Direct Defendants to complete a full Environmental Impact Statement or supplemental Environmental Assessment to fully analyze the impacts on the human environment, including fence and compensation conflicts between the Tribes and neighboring landowners; impacts upon wildlife and livestock, including possible bison-to-bison brucellosis transmission; and any other matters adjudged to be incomplete or inadequate in the current Department EA.

44. Award Plaintiffs costs and attorney's fees as allowed by law.

1 45. Award such other relief as the Court may deem just.

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3 Respectfully submitted and DATED this 11th day of January, 2012.

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5 //S// Cory J. Swanson

6 CORY J. SWANSON
7 Attorney for Plaintiffs
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