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**ATTORNEYS FOR
DEFENDANT UNITED
STATES OF AMERICA**

**IN THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF
MONTANA MISSOULA DIVISION**

BUFFALO FIELD CAMPAIGN,

Plaintiff,

vs.

**UNITED STATES DEPARTMENT
OF THE INTERIOR, NATIONAL
PARK SERVICE,**

Defendant.

CV 19-165-M-DWM

**DECLARATION OF
KERRIE L. EVANS (NPS)**

DECLARATION OF KERRIE L. EVANS

I, Kerrie L. Evans, in accordance with the requirements of 28 U.S.C. § 1746, declare as follows:

1. I am a Freedom of Information Act (FOIA) Officer and Government Information Specialist in the National Park Service (NPS) at the United States Department of the Interior (Department). I joined NPS in 1998, and since 2003, I have held my position as an NPS FOIA Officer. In my capacity as an NPS FOIA Officer, I am familiar with NPS's and the Department's obligations under the FOIA, including application of the various exemptions thereunder. All information herein is based upon my personal knowledge, and/or experience and/or my personal review of Plaintiff's FOIA request and documents, as well as information furnished to me in my official capacity. I participated in processing the FOIA request that is the subject of this lawsuit, labeled as NPS-2018-00887.

Plaintiff's FOIA Request: NPS-2018-00887

2. On June 20, 2018, Darrell Geist, on behalf of Buffalo Field Campaign (Plaintiff), submitted a FOIA Request to the Office of the Superintendent of Yellowstone National Park seeking:

[A]ll records . . . concerning the following subject matter: 1. The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem. a. Exclude the bison census or population size estimates produced by Yellowstone National Park. b. Exclude

Yellowstone National Park records available on ibmp.info.

See Admin. Record, at 1 (NPS-2018-00887 FOIA Request (June 20, 2018)).

The FOIA Request included a date restriction confining the request to records from “March 1, 2017 to June 20, 2018.” *Id.* This request was put on normal processing track and assigned the tracking number NPS-2018-00887.

NPS’s Search for Documents Responsive to Plaintiff’s FOIA Request

3. I sent an initial request for records on June 20, 2018, to five NPS, Yellowstone National Park employees whom were reasonably ascertained to be the custodians of potentially responsive records given their direct connection to the underlying subject matter. These custodians included Dan Wenk (Superintendent); Rick Wallen (Biologist); Jennifer Carpenter (Chief, Yellowstone Center for Resources); P.J. White (Branch Chief, Wildlife and Aquatic Resources); and Tim Reid (Bison Program Coordinator).
4. Each custodian searched their email accounts for potentially responsive emails and attachments. The search of the custodians’ emails and attachments, for the period of March 1, 2017 to June 2018, was conducted using the following search terms:
 - i. “bison”
 - ii. “population”
 - iii. “bison population”

iv. “bison policy”

v. “population policy”

The results of that search were provided to the NPS FOIA Office on June 21-22, 2018. Additionally, I personally searched the email account of Superintendent Dan Wenk (having been delegated access to his email as his Executive Assistant), and the correspondence file in the Superintendent’s Office for responsive records.

5. Given my seventeen years (17) of experience within the NPS FOIA Office, including my knowledge of bison programs and information, I concluded that there were no other locations reasonably likely to have responsive records after exhausting all potential program files as well as a reasonable list of employees whom would have control over the relevant records in question.
6. After review and deduplication, I identified forty-eight (48) documents totaling 297 pages as responsive to NPS-2018-00887.

Legal Review of Proposed Withholdings and Awareness Review

7. On July 5, 2018, I sent all responsive documents to the Department’s Office of the Solicitor for legal review of proposed withholdings, and thereafter the production underwent Awareness Review—a process by which Presidentially Appointed, Senate Confirmed (PAS) appointees and Non-

Career Senior Executives (NCSE) are provided three (3) days to review responsive materials for the appearance of their names for their awareness only. For more information about Awareness Review, please review the Department's Memo on this topic, found at the following link:

https://www.doi.gov/sites/doi.gov/files/uploads/awareness_process_memo_2.0.pdf

Release of Responsive Records to Plaintiff

8. On July 18, 2018, I sent two letters to Plaintiff which had the effect of bifurcating the responsive documents into two productions.
9. The first letter, a Notice of Delay, provided the tracking number for Plaintiff's request—NPS-2018-00887—and notified the requester that, as to a portion of the records responsive to the request, a determination had not yet been made and was still under legal review by the Department's Office of the Solicitor. This Notice also included information regarding Plaintiff's appeal rights and available dispute resolution services through the FOIA Public Liaison and Office of Government Information Services (OGIS). *Id.* at 17-19 (Def. Notice of Delay Letter (July 18, 2018)).
10. The second letter, a Partial Response letter, delivered an initial set of nine (9) responsive documents totaling thirty-three (33) pages. These documents were released in their entirety, free of redactions. Plaintiff was also advised that their request for a fee waiver was granted. *Id.* at 20-23 (Def. Partial

Response Letter (July 18, 2018)).

11. On August 1, 2018, I received a response from the Department's Office of the Solicitor confirming the legal validity of the proposed redactions. On August 10, 2018, the production was sent to Charis Wilson, NPS FOIA Officer, to coordinate Awareness Review. Following Awareness Review, on August 22, 2018, Jessica McHugh, Washington D.C. Area Support Office (WASO) FOIA Liaison, authorized the release as redacted.
12. On August 22, 2018, I sent a Final Response letter and final production of responsive documents to Plaintiff. This production consisted of twenty (20) documents totaling 108 pages released in their entirety; seventeen (17) documents totaling 149 pages released with redactions made under Exemption 5 U.S.C. § 552(b)(5) Draft Deliberative Privilege (of which twenty (20) pages were released in their entirety; twenty-nine (29) pages were withheld in part; and 100 pages were withheld in their entirety); and two (2) documents totaling seven (7) pages released with redactions made under Exemption 5 U.S.C. § 552 (b)(7)(E) for law enforcement purposes (of which five (5) pages were released in their entirety and two (2) pages were withheld in part).

Plaintiff's Complaint & NPS's Assertion of 5 U.S.C. § 552 (b)(5) Withholdings

13. On October 10, 2019, Plaintiff filed its Complaint, alleging, *inter alia*,

unlawful use of Exemption 5 U.S.C. § 552 (b)(5) as applied to the seventeen (17) documents totaling 149 pages within the final production. These documents and withholdings remain at issue in litigation and are detailed in the *Vaughn* Index appended to this Declaration.

14. In order to make the withholding decisions now at issue in litigation, several subject matter experts and attorney-advisors were consulted, including Kate Williams-Shuck, Attorney, Office of the Solicitor, Rocky Mountain Region; Dan Wenk, Superintendent, Yellowstone National Park; P.J. White, Branch Chief, Wildlife and Aquatic Resources, Yellowstone National Park; Tim Reid, Bison Program Coordinator, Yellowstone National Park; Charis Wilson, Freedom of Information Act Officer, National Park Service, Washington; and Jessica McHugh, WASO FOIA Liaison.
15. After consulting with subject matter experts, I made withholding decisions under FOIA Exemption 5 U.S.C. §552(b)(5) to protect inter or intra-agency memoranda or letters that would not be available to a party other than an agency in litigation with the agency. This exemption shields from mandatory disclosure deliberative communications and communications that, if revealed, “would expose an agency’s decision-making process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions.” *Sierra Club, Inc. v. United*

States Fish & Wildlife Serv., 925 F.3d 1000, 1011 (9th Cir. 2019), *cert. granted sub nom. Fish & Wildlife Serv. v. Sierra Club, Inc.*, No. 19-547, 2020 WL 981803 (U.S. Mar. 2, 2020).

16. In this case, I applied the exemption to protect deliberative information from disclosure, including the following categories of documents:

- i. draft scientific and legal recommendations concerning NPS's management of bison;
- ii. draft recommendations and bullet points regarding formulation of policy within the Interagency Bison Management Plan;
- iii. scientific interpretations of data and draft research by NPS employees that remains under revision to date; and,
- iv. deliberative/predecisional conversations between subordinates and their supervisors.

Specifically, as shown in the *Vaughn* Index, these withholdings generally apply to the following documents appearing within the final 149-page Production: 1) draft Briefing Statements; 2) a draft scientific article written by NPS scientist P.J. White; 3) a draft Environmental Assessment; and, 4) emails. The *Vaughn* Index takes each of these documents page by page and describes the deliberative and predecisional justification behind each withholding while also describing my efforts to segregate factual

information to the greatest degree possible.

NPS's Revision of 5 U.S.C. § 552 (b)(5) Withholdings

17. On December 9, 2019, I personally re-reviewed all 149 pages under a new foreseeable harm analysis to determine if it was possible to release additional pages to Plaintiff as part of a negotiated resolution. By applying this new foreseeable-harm analysis, and thereby re-evaluating the sensitivity of certain documents as they stood in December 2019 (more than one year past the date of original production), fourteen (14) additional pages were released in their entirety. *See* Admin. Record, at 67-215 (NPS-2018-00887 Rev. Redactions (Dec. 9, 2019)). The revised withholdings and release of previously withheld pages or portions of pages were justified by the passage of time from August 22, 2018, to December 2019, during which the newly released information had either been publicly released and/or was no longer considered predecisional, draft, or deliberative.

18. See Exhibit A, NPS-2018-00887 *Vaughn* Index, for more details.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April ____, 2020.

Kerrie L. Evans
Freedom of Information Act Officer
National Park Service