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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

<p>WESTERN WATERSHEDS PROJECT, GALLATIN WILDLIFE ASSOCIATION, BUFFALO FIELD CAMPAIGN, &amp; YELLOWSTONE BUFFALO FOUNDATION</p> <p style="text-align: center;">Petitioners,</p> <p>vs.</p> <p>STATE OF MONTANA, &amp; MONTANA DEPARTMENT OF FISH, WILDLIFE &amp; PARKS, an agency of the State of Montana</p> <p style="text-align: center;">Respondents</p>	<p style="text-align: center;">Cause No.</p> <p style="text-align: center;">COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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INTRODUCTION

1. This is a civil action seeking declaratory and injunctive relief requiring the Montana Department of Fish, Wildlife, and Parks (FWP), and the State of Montana, to uphold its public trust responsibilities over wildlife, by declaring the State cannot alienate public wildlife to a private party for private benefit, enjoining the State/FWP from taking such action, and remanding the decision providing for wildlife privatization, to FWP with instructions to prepare an EIS pursuant to the Montana Environmental Policy Act to analyze and select other reasonable alternatives that uphold FWP's public trust responsibilities and ensure wild bison are managed as wildlife and not converted to privately owned livestock.
2. FWP decided to privatize offspring of wild, publicly held bison that were removed from Yellowstone National Park (YNP) for FWP's misguided Quarantine Feasibility Study

(QFS or Study), instead of upholding its public trust responsibilities and commitments it made throughout the Study to ensure all bison surviving the QFS would be managed as wildlife by public or tribal entities, and would not be commercialized ever. Other reasonable alternatives were and are available to FWP and the State, that FWP failed to analyze or pursue, and that would have upheld the State's public trust responsibilities and prevented alienation of public wildlife to a private party for private benefit.

3. FWP, in partnership with the federal agency, the Animal and Plant Health Inspection Service (APHIS) launched the quarantine Study in 2004 to determine whether quarantine could demonstrate with reasonable certainty that bison will not sero-convert, that is that bison tested for exposure to the bacteria brucellosis will not test negative during calthood and then test positive later in life. The agencies desired to determine whether quarantine could be used to create "brucellosis-free" bison originating from the Greater Yellowstone Area (GYA), purportedly to be used to supplement or establish wild bison herds for conservation purposes.
4. The agencies pursued the study conditioned on the premise and promise that all bison surviving such study would be placed in public and tribal herds for conservation purposes only, and none of the bison, including their offspring, could be commercialized or privatized ever. Instead of identifying, proposing or securing appropriate locations for the surviving bison, where all would continue to be recognized and managed as wildlife and not converted to private property, FWP delayed planning the translocation of these bison.
5. FWP did not begin to identify locations until late in 2008, and did not even propose or pursue locations itself for completing its study and relocating bison at the end of the study. Instead, FWP relied on other entities to propose locations to finish FWP's project. Under purported time constraints, and after receiving a set of proposals (one of which apparently expressed desire to use offspring for private purposes in exchange for housing bison for the duration of FWP's study), FWP changed its proposal criteria in the eleventh hour to allow offspring of the otherwise publicly held bison to be privatized.
6. FWP changed the criteria, and decided to transfer the bison to a private party, Turner Enterprises, Inc. (TEI), without analyzing impacts specific to the change in criteria, without analyzing the potential site-specific impacts to the bison of being transferred to

and held at each proposed location, and without adequately developing or analyzing other alternatives.

7. FWP additionally made the changes and the translocation decision involving privatization and commercialization without specific statutory authority, in violation of its public trust duties, without seeking FWP Commission approval, without publicly circulating the revised Request for Proposals, and without analysis regarding the effects of the decision on its public trust duties over wildlife, or recognizing its previous analysis and decisions confirming all surviving bison and offspring would never be commercialized.
8. Defendants' decision is a final State action reviewable by this court. Plaintiffs are harmed by this decision and improper procedure used to reach the decision, which alienates publicly held wildlife. Plaintiffs thus seek declaratory and injunctive relief to redress the harms caused to Plaintiffs by the State's and FWP's failure to adequately analyze alternatives to the decision that results in privatizing wildlife, and by the decision to remove wild bison from the public domain and convert them to private livestock.
9. Plaintiffs request this court declare FWP's attempted privatization of publicly held wildlife a violation of its public trust responsibilities, enjoin the State/FWP from transferring title to these publicly held bison to a private party, and remand to FWP with instructions to prepare a full EIS to analyze a full range of alternatives that would ensure all surviving bison and their offspring are managed as wildlife for conservation purposes, and not privatized or commercialized, and to analyze and disclose all potential and significant impacts of the translocation, and ensure these public domain bison are publicly viewable and accessible during the remainder of the Study.

#### PARTIES

10. Plaintiff WESTERN WATERSHEDS PROJECT (WWP) is a regional, membership, not-for-profit conservation organization, and its mission is to restore and protect western watersheds and native wildlife. WWP has its headquarters at the Greenfire Preserve in Custer County, Idaho; and is supported by more than 1,400 members located throughout the United States, including in Montana. WWP is authorized to conduct business in Montana, and has a Montana office with two staff persons located in Missoula.
11. WWP, as an organization and on behalf of its members, is concerned with and active in seeking to protect native, wild bison, and to protect and improve bison habitat in

Montana. WWP also seeks to improve public lands and wildlife management such that native wildlife and other public resources are protected.

12. WWP is also active in reviewing and commenting upon public agency decisions and actions, including those challenged here; and otherwise participating in efforts to eliminate conflicts between the domestic livestock industry and native wildlife such as bison, and promoting and educating the public and government agencies about the ecological, economic, cultural and other benefits of protecting wild, free-roaming bison and their habitat.
13. Plaintiff GALLATIN WILDLIFE ASSOCIATION (GWA) is a non-profit wildlife conservation organization based in Gallatin County, Montana. GWA represents concerned hunters and anglers in Southwest Montana and elsewhere. GWA is an affiliate of the Montana Wildlife Federation, which is an affiliate of the National Wildlife Federation.
14. GWA is supported and run by volunteers, who advocate for adequate habitat for native wildlife including wild bison, and opportunities for the public to view, hunt, and otherwise enjoy such wildlife and public lands.
15. GWA, as an organization and on behalf of its members, is concerned with and actively involved with protecting the last remaining descendants of the native plains bison on this continent in the GYE, and in restoring wild bison populations in Montana. GWA members visit historic and current bison habitat, and monitor land uses and other wildlife movements in such areas, in part to identify suitable bison habitat and corridors.
16. GWA works to protect habitat, including habitat for bison and other native wildlife, so fish and wildlife populations and hunting and fishing opportunities can be conserved for future generations. GWA supports sustainable management of fish and wildlife populations through fair chase regulation of public hunting and fishing opportunities.
17. Plaintiff BUFFALO FIELD CAMPAIGN (BFC) is a non-profit public interest organization founded in 1997 to stop the slaughter of Yellowstone's wild bison, protect the natural habitat of wild free-roaming bison and other native wildlife, and to work with people of all Nations to honor the sacredness of the wild bison. BFC has its headquarters in West Yellowstone, Gallatin County, Montana, and is supported by volunteers and participants around the world who value America's and Montana's native wildlife and the

ecosystems upon which they depend, and enjoy the natural wonders of our public lands and native wildlife.

18. BFC has staff located in Arlee, Moiese, Missoula, and West Yellowstone, Montana; and BFC has volunteers across Montana and the world. Through these staff, volunteers, and other supporters, BFC is a leader in advocating for viable, free-roaming populations of wild bison in the GYA and beyond.
19. BFC, as an organization and on behalf of its members, is concerned with and actively involved with protecting the last remaining descendants of the native plains bison on this continent, and advocating such bison be allowed to occupy their original range in the GYA and in Montana. BFC actively engages the American public to honor cultural heritage by allowing wild bison to exist as an indigenous wildlife species and fulfill their inherent ecological role within their native range, and serve as the genetic wellspring for future, wild, free-ranging bison populations.
20. Plaintiff YELLOWSTONE BUFFALO FOUNDATION (YBF) is a nonprofit public interest organization founded in 1991, with its headquarters in Bozeman, Montana in Gallatin County. YBF is committed to restoring wild bison on public lands managed by states and the federal government. YBF recognizes and values the unique importance of the Yellowstone area bison to bison restoration in general. On behalf of its members and itself, YBF advocates for wild bison habitat outside YNP, and for preservation of viable bison herds.
21. Collectively, the plaintiffs and their members have interests in the management of bison in the Greater Yellowstone Area and in Montana generally. The plaintiffs visit or live in the GYA and other areas of Montana, and actively seek opportunities to observe and otherwise enjoy wild bison in the state. They value wildlife and public lands, and work actively to protect both. Plaintiffs and their members derive recreational, scientific, aesthetic, cultural, spiritual and other benefits from interactions with and observations of wild and free-roaming bison.
22. Plaintiffs' above-described values and interests have been, are being, and unless the relief prayed for herein is granted, will continue to be adversely and irreparably harmed by FWP's and the State's failure to fulfill its public trust duties over wildlife in the State by privatizing wild animals, without adequately considering other reasonable alternatives

available to it that would avoid such alienation of public trust resources and abdication of public trust responsibilities.

23. Defendant STATE OF MONTANA is one of the several states of the United States and manages wild bison that migrate into and out of the state in the Greater Yellowstone Area where wild bison historically and naturally occurred and continue to occur.
24. Defendant DEPARTMENT OF FISH, WILDLIFE AND PARKS is an agency of the executive branch of the State of Montana, headquartered in Helena, Montana and charged with the statutory duty to supervise all the wildlife in the state (MCA Sec. 87-1-201(1), and the regulatory duty to protect, enhance, and regulate the wise use of the state's wildlife resources for public benefit now and in the future. ARM 12.1.101(8)(b). The Department is also responsible for the management of wild buffalo or bison in Montana that have not been exposed to or infected with the disease brucellosis. MCA Sec. 87-1-216(2)(a).

#### JURISDICTION AND VENUE

25. Jurisdiction is proper in this Court pursuant to MCA Secs. 27-8-201; 27-19-101; the general original jurisdiction of this Court under MCA Sec. 3-5-302; and the inherent power of this Court to review state agency decisions and actions.
26. Venue is proper in Gallatin County under MCA Sec. 25-2-126 because an action against the state is proper in the county where the claim arose, or when a plaintiff is a resident, in the county of the plaintiff's residence. This action is against the state, and the claim arose in Gallatin County, where the wildlife that is the subject of this action have been transferred and are currently held. Further, three of the four plaintiff organizations are incorporated, and thus have residence in, Gallatin County.

#### FACTUAL BACKGROUND

27. Defendants are charged under the Montana Code Annotated (MCA), the Administrative Rules of Montana (ARM), the common law, and the Montana State Constitution (Constitution), with protecting Montana wildlife as a public resource held in trust for the citizens of Montana, and with ensuring all State actions are made based only upon full analysis and disclosure regarding potential impacts of such actions.
28. This action arises from Defendants' failure to carry out such duties as applied to management and protection of wild bison removed from Yellowstone National Park

(YNP) and placed in a quarantine research facility, namely in violating obligations under the Public Trust Doctrine (PTD), by failing to consider other available alternatives in an environmental impact statement under the Montana Environmental Policy Act, and by deciding to complete the QFS on private lands where publicly owned bison are not publicly accessible during the remainder of the study, and by alienating wild bison from the public domain to a private party for private purposes in perpetuity.

29. Article II, section 3, and Article IX of the Montana constitution, protect the fundamental right to a clean and healthful environment and require the State and each person to “maintain and improve a clean and healthful environment in Montana for present and future generations.” These fundamental constitutional rights apply to wildlife in Montana, and require FWP to protect wildlife for future generations. See Hagener v. Wallace, 2002 MT 109, 309 Mont. 473.
30. The Public Trust Doctrine (PTD or public trust) imparts to states the duty to protect and preserve publicly held resources for the benefit of the people. The United States Supreme Court has indicated that under the PTD, a state cannot abandon its trust duties or alienate public resources to a private party for private benefit instead of managing for public benefit. See Illinois Central Railroad Co. v. State of Illinois, 146 U.S. 387, 135 S. Ct. 110 (1892). Montana also recognizes and applies the PTD to protect public resources, especially given the above-noted Constitutional protections over the environment and natural resources. See, e.g., Montana Coalition for Stream Access v. Curran, 210 Mont. 38, 682 P.2d 163 (1984).
31. The Montana Department of Fish, Wildlife and Parks is charged with supervising wildlife in the state and enforcing laws designed to protect, preserve, manage, and propagate wildlife in the state. MCA Sec. 87-1-201(1), (2). The Montana FWP Commission is a quasi-judicial board charged with setting policies “for the protection, preservation, management, and propagation of the wildlife” and “for the fulfillment of all other responsibilities of the department as provided by law.” MCA Sec. 87-1-301(a).
32. FWP Director Joe Maurier signed the final decision to transfer surviving bison from the QFS to TEI, and to remove 75% of these bison’s offspring from the public domain at the end of the Study, and did not seek Commission approval or input for this decision.

33. The decision was made without specific statutory authority for FWP to dispose of or sell wild bison to a private party, without a Commission policy governing such activity, and such decision violates FWP's public trust responsibilities as an agency of the state.
34. Although FWP did not provide a formal appeal process for the decision, GWA and BFC requested in writing and during public comment at the February 11, 2010 Commission meeting that the Commission overturn the Director's decision and act on the public's behalf to preserve these bison and their offspring in the public domain. The Director responded that the decision was within his authority, and the Commission did not take action.
35. Plains Bison are native to Montana, and once widely populated the state and much of North America. After the species was nearly exterminated in the late 1800s, a few wild bison remained in a remote valley of Yellowstone National Park. This population was supplemented with other wild bison previously captured by individuals who hoped to save the species from extinction. The population has since grown, but wild bison populations remain very limited, and they occupy only a small portion of their original range.
36. Plains bison are currently being considered for protection under the federal Endangered Species Act, based on a citizen petition for listing, because wild bison populations are confined, limited, and isolated, subject to management removals and potential natural catastrophic events, as well as domestication and genetic introgression.
37. Bison management in Montana is currently guided by the Interagency Bison Management Plan (IBMP), which the participating agencies entered into on or about December 22, 2000. The IBMP involves co-management by the signatory agencies, including the Montana Department of Fish, Wildlife and Parks (MFWP or FWP), the Montana Department of Livestock (MDOL or DOL), the federal Animal and Plant Health Inspection Service (APHIS), the United States Forest Service (USFS), and the National Park Service (NPS). The IBMP states two primary purposes, which are "to maintain a wild, free-ranging population of bison and address the risk of brucellosis transmission to protect the economic interest and viability of the livestock industry in Montana." State ROD page 2.
38. Some wild bison and elk in Montana have been exposed to or carry the bacterial disease

brucellosis. Brucellosis does not appear to significantly or negatively affect bison populations. Brucellosis is regulated in domestic livestock, and its presence in domestic livestock can have economic impacts. The livestock industry in Montana asserts wild bison pose a brucellosis transmission risk to domestic cattle in the Greater Yellowstone Area (GYA), thus the IBMP agencies manage bison to maintain temporal and spatial separation between bison and domestic cattle. Wild bison have never been known to transmit brucellosis to domestic cattle in a natural setting.

39. Under the IBMP, the agencies restrict the numbers and classification of bison that migrate near the boundary of YNP and beyond, and the times of year certain limited groups of or individual bison may use or occupy such lands. The agencies' do so by capturing bison in or outside of YNP in traps, and by transporting bison to slaughter, hazing, or shooting bison in the field, and other manipulation. The agencies have already killed over 3,200 wild bison since the IBMP went into effect in 2000.
40. In addition to other IBMP management techniques, the IBMP analysis contemplated, but did not analyze, quarantine as an additional management technique. The IBMP agencies indicated quarantine could be amended into the IBMP as a management technique, to be used to screen out bison testing positive for exposure to brucellosis (sero-positive or negative refers to how the animals test for exposure rather than infection; the agencies currently do not use tests for infection except in cultures that require killing the animal first). The IBMP final environmental impact statement (FEIS) and Record of Decision (ROD) indicated further analysis would be required before any quarantine could be implemented or used.
41. In or before 2004, Keith Aune then of MFWP and Jack Rhyan of APHIS, proposed a quarantine feasibility study (QFS) to the IBMP agencies. The agencies set forth to determine whether they could use quarantine as an additional management technique as part of the IBMP. They suggested they first needed to determine whether bison sero-convert after testing negative for brucellosis exposure during calthood. Such sero-conversion has been identified in domestic cattle, and the agencies wished to test whether the same would occur in bison or whether bison surviving quarantine could be labeled "disease-free" to the satisfaction of the domestic livestock industry.
42. Yellowstone National Park issued permit YELL-2007-SCI-5506 for the purpose of

testing “the feasibility of the bison quarantine protocol . . . to determine if bison that have successfully completed quarantine are reliably negative for brucellosis and suitable for the establishment of new tribal and public herds.”

43. A condition of the permit stated bison collected under the permit “may be used for scientific or educational purposes only, and shall be dedicated to public benefit and be accessible to the public . . .” Furthermore, “any components” - buffalo offspring in this case - “are to be used for scientific or educational purposes only, and may not be used for commercial or other revenue-generating purposes unless the permittee has entered into a Cooperative Research And Development Agreement (CRADA) or other approved benefit-sharing agreement with the NPS.”
44. The State/FWP was required to analyze and disclose the impacts of its action, and potentially significant impacts, pursuant to the Montana Environmental Policy Act (MEPA), MCA 75-1-101 et seq.
45. MEPA was enacted to provide for the adequate review of state actions in order to ensure that environmental attributes are fully considered before the state or an agency makes a decision or takes action affecting the environment, in recognition of the constitutional rights to a clean and healthful environment. MCA Sec. 75-1-102.
46. MEPA reflects the public trust doctrine, with its policy indicating it is designed for “fulfill[ing] the responsibilities of each generation as trustee of the environment for succeeding generations”, “attain[ing] the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences”, and “preserv[ing] important historic, cultural, and natural aspects of our unique heritage.” MCA Sec. 75-1-103(a), (c), (e).
47. MCA Sec. 75-1-201 requires a state agency to prepare an environmental impact statement (EIS) for any major action significantly affecting the quality of the human environment.
48. A project or action’s “significance” under MEPA is determined based upon criteria set forth in ARM 12.2.431. The criteria include, for example, the following: “(d) the quantity and quality of each environmental resource or value that would be affected, including the uniqueness and fragility of those resources or values: (e) the importance to the state and to society of each environmental resource or value that would be affected;

(f) any precedent that would be set as a result of an impact of the proposed action that would commit the department to future actions with significant impacts or a decision in principle about such future actions; and (g) potential conflict with local, state, or federal laws, requirements, or formal plans.”

49. Although the proposed action has potentially significant impacts – especially in the decision to privatize wildlife and turn them into private livestock – FWP did not prepare an environmental impact statement, nor did it prepare one MEPA document to analyze and disclose impacts of and alternative actions for the study as a whole.
50. Instead, FWP prepared a less in-depth environmental assessment (EA) for each phase of its study. The proposed QFS involved multiple phases, and at least two cohorts of bison were expected to go through the QFS at different times.
51. At each phase, FWP prepared an EA, followed by a Decision Notice/Finding of No Significant Impact (DN/FONSI), and determined not to prepare an EIS at any point.
52. Phase I of the QFS involved removing approximately 100 bison calves captured from YNP, to “test the hypothesis that there is a 95% certainty that fewer than 5% of these bison will sero-convert or express latent infection through culture testing.” The agencies obtained a second cohort following the first cohort of 100 calves.
53. Phases II and III were designed to determine whether latent disease expression would occur in bison during breeding (Phase II) or calving (Phase III), after testing negative for brucellosis over the course of the initial quarantine. FWP indicated progression from Phase I to Phases II and III was contingent upon results obtained in Phase I.
54. Throughout the study, certain numbers of bison were slaughtered for culture tests and/or other analysis. Thus, only some bison taken into the study would remain at the end of Phase III. At the end of Phase III, surviving bison were to be relocated to public or tribal lands for conservation purposes.
55. Although FWP segmented the analysis and decisions, FWP knew from the beginning of the QFS that at least some of the bison taken from YNP to be used in the study would remain alive at the end of the study and would need to be translocated from the quarantine facility to another location. The QFS proposal and initial MEPA analyses and decisions indicated the agencies would identify and select appropriate locations for relocating surviving bison early in the QFS process.

56. The agencies indicated at each phase - except the final decision that is the subject of this action - that surviving bison would be used for conservation purposes only, and all bison, including future offspring, would be placed only on public or tribal lands and could never be privatized or used for commercial purposes.
57. MFWP neglected its responsibilities to identify and select appropriate locations to finish its own project and to relocate surviving bison, for almost 5 years after initiating the study.
58. Even then, MFWP never itself proposed or analyzed potential relocation sites to complete its study and to manage the bison as wildlife when the study is complete. Instead, MFWP chose to rely on other parties to propose sites and contribute resources to house the bison during a final 5-year study period, during which the bison must be kept separate from other wildlife and domestic livestock and subject to further capturing, monitoring and brucellosis testing by MFWP and APHIS.
59. FWP published Requests for Proposals (RFPs) to seek sites upon which the surviving bison could be housed during the final 5-year study period, and where they could remain as public or tribal herds for conservation purposes once the study was complete. FWP presumably used the RFP process pursuant to the Montana Procurement Act (MCA 18-4-101 et seq).
60. FWP conducted the RFP and translocation decision process more than once, as its initial decision ultimately did not go forward. The first process and decision involved the initial RFP criteria, while a final process resulting in the decision challenged here, involved revised criteria.
61. The initial RFP indicated “All quarantine bison and their offspring are and will continue to be classified as public wildlife under the management jurisdiction of Montana Fish, Wildlife and Parks or the appropriate state or Tribal jurisdiction where they reside.” The initial criteria also prohibited a receiving entity from using bison surviving the QFS, including any offspring, for commercial purposes, and required the bison be managed as native wildlife and kept in public or tribal herds forever.
62. In response to the first RFP publication, FWP received and selected a proposal from the Northern Arapaho Tribe in Wyoming, on the Wind River Reservation. FWP was to transfer 41 bison from the first cohort surviving the QFS to Northern Arapaho lands.

- Under the NA Tribe's proposal, the bison moved onto tribal lands would be managed as wild bison and allowed to range freely within their designated area. The agencies would require the bison to be kept separate from other animals for five years for additional brucellosis testing. The Tribe accepted "all costs associated with the movement of bison to Wyoming, fencing, and management of the QFS herd." Translocation EA 1, page 15.
63. However, after FWP issued its decision notice in March 2009 for this translocation, the Tribe rescinded its offer for various reasons identified by the agencies or the media.
  64. FWP initiated a second RFP and MEPA process for Translocation after the initial arrangement fell through, and FWP received 7 proposals in response to the re-published RFP.
  65. At least one proposal (TEI's) apparently did not conform to the original RFP criteria, and the party apparently requested wild bison offspring to cover costs of housing the bison for the duration of the study period, as FWP indicated it did not have funding to complete its own study.
  66. Instead of rejecting the non-conforming proposal, FWP claimed it needed to "clarify" the criteria, then revised the criteria to allow privatization, and recirculated the RFP only to those already involved in the process.
  67. The supposed "clarification" eliminated the requirement that surviving bison, including offspring, be classified and managed as public wildlife.
  68. Those entities that received the revised RFP, did so on October 9, 2009, with a deadline to respond with new or revised proposals by November 2, 2009. The Wyoming State Parks and Cultural Resources submitted a new proposal, and the Wildlife Conservation Society (zoo consortium), Fort Belknap Indian Community, and Turner Enterprises, Inc. each submitted revised proposals.
  69. FWP then prepared a Draft EA for the new and revised translocation proposals, but declined to even analyze other alternatives suggested by the public that would ensure the bison would continue to be managed as public wildlife and that would not result in any wildlife privatization.
  70. FWP subsequently issued a Final EA and DN/FONSI indicating FWP Director Joe Maurier had decided to relocate all of the available surviving bison to TEI's Green Ranch in southwestern Montana, to complete the agency's study there, with five years of

capturing, monitoring and testing.

71. FWP did not make or require any provisions for public access during this five-year period of completing the study on TEI property. The public currently has no way to monitor, view, observe or otherwise enjoy these publicly held bison.
72. Further, FWP decided, agreed, and committed to transfer title to 75% of the offspring from these publicly held bison to the private party, TEI, for its private benefit in perpetuity.
73. TEI ranches domesticated bison classified as livestock, sells bison meat in its restaurant chain, and hosts bison shoots on its Flying D Ranch in Montana, through outfitters who charge up to \$4000 per shoot. See [http://www.tedturner.com/enterprises/ranches\\_Template.asp?page=ranches\\_outfit.html](http://www.tedturner.com/enterprises/ranches_Template.asp?page=ranches_outfit.html); <http://arnaudoutfitting.com/hunts/bison.html>.
74. FWP's decision to transfer the publicly held bison to TEI does not contain any guarantees or provisions against using these YNP-derived bison for any of TEI's commercial activities, or against mixing the "pure" wild bison genetics of the YNP-derived bison with TEI's commercial bison classified as livestock.
75. Following Director Maurier's decision, FWP and DOL signed an agreement with TEI providing that title to these offspring bison would be transferred from the State to TEI at the end of the five-year surveillance period, with provisions allowing TEI to extract and keep genetic material (including semen, ova, and/or zygotes) and/or some bison offspring in the event a court finds FWP's decision illegal or FWP decides to move the bison again before the end of the five-year period.
76. In its Draft and Final EAs and Decision Notice, FWP did not analyze alternatives that would keep bison on public land in Montana and/or that would ensure these bison are managed as public wildlife, did not analyze the impacts of retaining the bison on TEI property without public access for the five-year study period, did not analyze impacts of removing bison offspring from the public trust and allowing them to be privatized as commercial livestock, and did not fully analyze and disclose the impacts of privatizing these wildlife on FWP's public trust responsibilities.

#### CLAIMS FOR RELIEF

#### COUNT ONE – FWP'S DECISION WAS MADE WITHOUT SPECIFIC STATUTORY AUTHORITY AND VIOLATES ITS PUBLIC TRUST DUTIES OVER WILDLIFE

77. Plaintiffs incorporate the allegations set forth in Paragraphs 1 through 76 above, as though fully stated herein.
78. Under the common law Public Trust Doctrine, and supported by the Montana Constitution, the State and its agencies have the duty to manage and protect wildlife as a public resource. Natural resources including wildlife are common to all citizens. The State, in its sovereign capacity, must govern and protect these resources for the benefit of the people, and must prevent unreasonable exploitation of the wildlife resources, including preventing alienation of wildlife to private parties or for private benefit.
79. The State, through FWP, breached its public trust responsibilities when it decided to transfer publicly held bison to a private, commercial entity for a five-year study period during which FWP did not ensure the public would have any access whatsoever to the publicly held resource, the bison.
80. The State further breached its public trust responsibilities when it decided and committed to transfer title of 75% of the offspring of these publicly held bison, the offspring themselves being wildlife and a necessary part of the trust corpus, to a private, commercial entity.
81. The State determined to divest the public of these previously and otherwise publicly held bison without any guarantee that even those bison expected to be returned to the State in five years will then be kept in the public trust or managed as public or tribal wildlife, without providing public access to the bison held on private land for the duration of the QFS, and without proposing, analyzing, or pursuing other reasonable alternatives for relocating these bison surviving the QFS to appropriate locations where they would be managed as public wildlife in perpetuity.
82. The State further determined to divest the public of these previously and otherwise publicly held bison without fully analyzing the impacts to the trust corpus, and without sufficiently analyzing and disclosing whether such privatization would violate its public trust duties.
83. The State/FWP declined to even consider other alternatives available for relocating these wild bison that would ensure they are classified and managed as public wildlife and not converted to chattel.

84. Nor does FWP or the Director have specific authority to transfer or sell wild bison to a private party. The FWP Commission has not set a policy for such action, and no statute exists to govern or regulate such action or decision. FWP therefore has no authority for this decision under the laws of Montana, and such decision and action would violate its public trust responsibilities in any event.
85. Through the State's breach of its public trust obligations over these bison, Plaintiffs' have been and continue to be injured by the removal of these bison from public access for the duration of the study, and by the loss of 75% of the offspring to a private party to be managed as privately owned livestock, thus depriving Plaintiffs of any opportunity to view, hunt, monitor, or otherwise access and enjoy these publicly held bison now or in the future.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a declaration affirmatively stating the duty of Defendants to protect the trust asset of bison as publicly held wildlife, and declaring that alienating such bison, including offspring, to a private party for private purposes violates its Public Trust responsibilities to manage and protect the bison for public benefit only;
2. For injunctive relief remanding the decision to Defendants with instructions to analyze impacts and alternatives in an environmental impact statement pursuant to MEPA, and to select an alternative that ensures all surviving bison are publicly viewable and accessible for the duration of the quarantine study if it is completed, and that all bison, including offspring, are managed as wildlife in perpetuity, and not transferred to a private party for private purposes; and
3. For such other relief as this court deems proper.

Dated this \_\_\_\_ day of March, 2010.

SUMMER NELSON, WESTERN WATERSHEDS PROJECT

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Summer Nelson

*Attorney for Plaintiffs*