

October 30, 2008

Montana Fish, Wildlife & Parks
Attn: RTR Grazing Rights Purchase Agreement
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Comments to the Draft Environmental Assessment for the Royal Teton Ranch Grazing Restriction and Bison Access Agreement from Western Watersheds Project and Buffalo Field Campaign, October 30, 2008

Thank you for the opportunity to comment on the draft Environmental Assessment (EA) for the Royal Teton Ranch Grazing Restriction and Bison Access Agreement (proposed action). Please consider and respond to our comments including the referenced accompanying documents and compact disc containing scientific and historic literature. These comments are being copied to the Governor of Montana and to Yellowstone National Park because the proposed action is a major federal action which requires environmental analysis by YNP in conjunction with Montana Fish, Wildlife and Parks (MFWP) and any other participating state and federal agencies.

The proposed action is a major federal action requiring NEPA analysis, and requires full NEPA and MEPA analysis in an Environmental Impact Statement

While MFWP's draft Environmental Assessment (EA) indicates it relies on the Interagency Bison Management Plan (IBMP) and its final EIS "to guide the proposed action" (EA at 37), it is unclear whether MFWP intends to tier to that analysis. Whether MFWP does or does not intend to tier to that plan and analysis, a full environmental analysis is necessary for the proposed action, and an EIS should be prepared. This is necessary for at least two reasons. First, the IBMP is flawed and requires a supplemental EIS, as both signatory organizations to these comments and others indicated in a letter to YNP Park Superintendent Suzanne Lewis and copied to the cooperating state and federal agencies including MFWP on October 21, 2008. That letter is hereby incorporated by reference in its entirety. Second, a full EIS must be prepared for the proposed action because the proposed lease is for thirty years while the IBMP was approved for only fifteen years in 2000. Therefore, no analysis exists for the life of the proposed action beyond the draft EA, which is inadequate.

Additionally, the proposed action constitutes major federal action, and MFWP must work with the involved federal agencies to prepare a full EIS, or the federal agencies must prepare an EIS in addition to MFWP's. The federal government is making a substantial contribution to the action through YNP's one and a half million dollar contribution, triggering federal NEPA requirements as well as the MEPA requirements. Because the proposed action raises substantial questions that environmental impacts will be significant, the state and federal agencies must prepare a full EIS with a full range of alternatives.

The EA is deficient and does not include an adequate range of alternatives

The EA is deficient and legally inadequate. We request that this be rectified by preparing an EIS with a wider range of alternatives and providing additional time for the public to review new information requested herein and contribute comments on the proposed action by the State of Montana.

The range of alternatives including A (RTR 30 year lease) and B (no action) is inadequate. Alternatives should include, but should not be limited to the following: purchase of the grazing right in perpetuity, managing wild bison as a free ranging wildlife species, bypassing Church Universal and Triumphant lands with a wildlife crossing to suitable habitat east of the Yellowstone River, and adapting Zone management changes in the IBMP to allow bison migration east and west of the Yellowstone River.

The EA is specifically deficient in that it does not provide adequate analysis of the following: factual information regarding fencing use and installment including location, extent, and type of fencing and the duration of installment; impacts of fencing on other wildlife including elk, bighorn sheep, mule deer, pronghorn antelope and bison, and impacts on grizzly bears, gray wolves and eagles based on impacted movements of the ungulates; impacts of fencing on wildlife access to critical habitat purchased and conserved with thirteen million dollars of taxpayer money in the Royal Teton Ranch land agreement in 1999; financial analysis for the proposed agreement such as sources of funding secured, pledged or otherwise sought; and additional information related to a potential additional bison trap on Gallatin National Forest lands that may be constructed as part of the lease agreement or under the IBMP in the project area of the proposed action.

Additionally, despite assurances by MFWP, the fact is several miles of electrified fencing will be installed and operated in a critical wildlife corridor during winter and spring. The negative and long term impacts to migrating wildlife include but are not limited to impeding free movement to water and forage. There is also a probability of electrocution of bird species that may use the fence posts as perches, and or attempt to perch on electrified wires. Fencing - even the most carefully designed and operated available - is a negative and major impact on native wildlife species in a known wildlife corridor.

MFWP must also conduct a cultural resource survey to prevent loss or damage to important cultural sites that may be impacted in this decision. MFWP declined to conduct such a survey (EA at 33) despite recommendations that it do so. (EA at 32 "SHPO has recommended FWP conduct a cultural resource survey along the fencing path in order to determine whether or not sites exist and if they will be impacted.") We urge MFWP to complete the recommended survey to fully comply with MEPA and NEPA requirements.

The EA references related agreements not provided and the proposed action threatens to influence and bias these contractual agreements

The Environmental Assessment references a RTR Bison Management Plan (EA at 6) Exhibit D (EA at 13). However, there is a blank page and no plan presented in Exhibit D. To our knowledge no such plan has been agreed to by Church Universal & Triumphant (CUT) and the U.S. Forest Service (USFS), which is stipulated in the \$13,000,000 land deal negotiated in 1999:

A. "The parties agree ... to develop a Royal Teton Ranch Bison Management Plan ... for the Easement Lands and other lands mutually agreed upon ... This plan would be intended to guide management actions consistent with the terms and purposes of this Easement, though it may be more protective of bison and their habitat. It should identify ways to manage the land to preserve, restore and enhance the bison that utilize the Property and their habitat."

(Deed of Conservation Easement, Royal Teton Ranch - Devil's Slide Area August 30, 1999)

A decision on a 30 year lease must not bias negotiation between the USFS and CUT to uphold their duty to the public trust and establish a Bison Management Plan for the Royal Teton Ranch that ensures a "safe haven for bison":

"Even though the IBMP identifies a maximum of 100 bison to be allowed to roam through the RTR, as acknowledged in the agreement, FWP and the Church recognized the possibility that a decision may be made to move to Step 3 of the IBMP or allow an additional number of bison in to the corridor during the course of the 30-year term of the agreement. This decision and any subsequent amendments to the agreement would only be made if experience shows that agency partners are able to consistently and effectively contain bison within the bison corridor and bison use areas and that bison are not adversely impacting public safety, private property or habitat conditions; and the proposed amendment is consistent with the terms of the existing conservation easement between the RTR and the Forest Service." (EA at 35)

As proposed, the material terms and conditions of this lease bias negotiation of a safe haven for bison by locking in management terms for 30 years that have yet to be negotiated and agreed to by the USFS who has land management authority for these very same lands now potentially subject to a 30 year contract.

The proposed action further threatens to restrict management adaptation in the IBMP, and inappropriately relies on approval by a private party

The 30 year term of the lease locks in future management decisions not yet made or committed to, nor subject to public input beyond the 15-year life of the IBMP. "This environmental analysis focuses on Montana Fish, Wildlife and Park's (FWP) part of the implementation of Step 2 of the Interagency Bison Management Plan (IBMP) which would allow for the controlled movement of a limited number of bison through Royal Teton Ranch (RTR) properties to graze on Forest Service lands north of Yellowstone National Park (YNP)." (EA at 7)

The material terms of the plan illegally restrict management authority and adaptation in the IBMP. "1. Bison attempting to leave the Yellowstone National Park shall be captured and tested at the Stephens Creek capture facility. In Steps One and Two of the Plan, only seronegative bison will be allowed to roam outside Yellowstone National Park. In Step Three of the Plan, untested bison may be allowed to roam outside Yellowstone National Park." (EA Exhibit F - Material Terms of the Plan (GRAZING RESTRICTION AND BISON ACCESS

AGREEMENT at 22) The Record of Decision does not dictate capture of bison attempting to leave Yellowstone National Park: "In the north boundary area NPS would continue to monitor bison from approximately November 1 to April 30 within Yellowstone National Park and use hazing within the park to prevent bison movement north onto private and Gallatin National Forest lands in the Reese Creek area." (ROD at 11-12)

Additionally, we are alarmed about the appropriateness and legality of subjecting the authority and decisions of the federal and state IBMP agencies to approval by a private party. "Any adaptive changes in the IBMP will be incorporated into the Agreement, subject to the approval of the RTR that will not be unnecessarily withheld." (EA at 27) The question is not whether the private party unnecessarily withholds its approval, but the unprecedented nature of granting public decision making authority to a private party over a public trust bison herd.

The proposed action may reduce the ecological benefits of having wild bison on the landscape

MFWP did not analyze the ecological role of wild bison on the landscape or the ecological benefits of a natural free ranging herd including their role in restoring ecosystem function and health of grasslands where they have been extirpated. The proposed fencing, temporal use restrictions, and disruption of herd familial groups through capture, may negatively impact the beneficial role of wild bison on grasslands. We hereby incorporate by reference and in its entirety a compact disc submitted along with our comments covering the historical, cultural, biological, and keystone role of wild bison in their native range.

Thank you for reviewing and responding to our comments. We urge MFWP to prepare an EIS with a full range of alternatives in conjunction with YNP and any other participating state and federal agencies in order to comply with MEPA and NEPA requirements. If you have questions or would like to discuss these comments further, please contact either Darrell Geist or Summer Nelson.

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