Buffalo Field Campaign challenges the legality of Yellowstone National Park issuing APHIS a permit subjecting wild bison in the public trust to population control.

This comment serves as Buffalo Field Campaign's notice of our intent to sue Yellowstone National Park for illegally issuing permit(s) transferring wild bison to APHIS.

Based on correspondence from Yellowstone National Park (YNP Wallen 2011), the Park did not properly consider its non-impairment and conservation mandates prior to issuing a permit to APHIS to take bison. In place of its non-impairment and conservation mandates, YNP looked for justifications to remove bison from the population:

> 04/27/2011 email Rick Wallen/Yell/NPS to Christie Hendrix/Yell/NPS
> Jack Rhyan contraception study
>
> The reference in appendix D of bison management FEIS references study of contraception as a population dynamics need rather than a disease management approach. So, the adaptive management adjustments that we put in place in 2008 has a better description of justification to study immunocontraception. I will look for other justifications for removing bison from the population based on need to conduct studies. RW

Contrary to the claim above that the 2008 Adaptive Adjustments better describe the justification to take bison for bison population control, the plan is silent on immunocontraception and there is no stated goal, objective, management action, monitoring metric or management response on studying bison population control measures.

Based on correspondence from APHIS and YNP (APHIS FOIA 2011), in place of its non-impairment and conservation mandates, the Park looked for justification to conduct capture operations and take bison from the population for APHIS. Additionally, APHIS and YNP began preparations for capturing and or taking bison inside Yellowstone National Park prior to a valid permit (YNP APHIS bison permit 2011) being issued and a proper environmental analysis performed with public input.

> 04/18/2011 email Rick Wallen/Yell/NPS to Rebecca Frey APHIS, Patrick Clarke APHIS, PJ White NPS, Tim Reid NPS
> RE: bison operations
>
> Tim, I think that we will have trouble trying to get the appropriate number of bison in the young age groups that are seropositive. it will likely be difficult to collect the number needed simply by catching new bison. My best guess is that we will need to do both, sort the positives in the pen to get what we need and to catch new animals to achieve the number needed for the project. RW

undated email Tim Reid/Chief Ranger/YNP to Rebecca Frey APHIS, Patrick Clarke APHIS, Rick Wallen NPS, PJ White NPS, Eric Morey NPS Subject RE: bison operations

Becky -
We will take a look at how we can manage the the pen/new capture balance to meet your needs ….. and to time any new capture to take the edge off large numbers of new bison dropping into the basin…which we think will happen. Stay tuned.

04/18/2011 email Rebecca Frey APHIS to Tim Reid/Chief Ranger/YNP, PJ White NPS, Rick Wallen Patrick Clarke APHIS, NPS, Subject: bison operations.

Hi Tim,
I wanted to follow up with you regarding the possibility of transferring some sero-positive bison to Brogan's as part of the pending immunocontraceptive study. I understand there may be captures of untested animals that we could potentially get animals from (looking for calves and yearlings only), but would like to request that in lieu of any new captures, animals be sorted from the positive pens at Stephens Creek. We would be looking for 20 calf and yearling females from that pen. I look forward to hearing from you.

Thanks,
Becky

Buffalo Field Campaign challenges the legality of a decision by the U.S. Environmental Protection Agency permitting APHIS to subject wild bison in the public trust to population control with a chemical sterilant/hormone disruptor.

This comment serves as Buffalo Field Campaign's notice of our intent to sue U.S. EPA for inappropriately issuing a decision to permit APHIS to subject wild bison in the public trust to population control with a chemical sterilant/hormone disruptor.

U.S. EPA did not publish any notice in the Federal Register to alert the public of its action and decision (http://www.gpo.gov/fdsys/search/home.action last search performed February 22, 2012). U.S. EPA improperly avoided its consultation requirements with American Indian Nations that view bison as a cultural trust resource in violation of the President's Executive Order 13175 (online: http://www.epa.gov/fedreg/eo/eo13175.htm). U.S. EPA also failed to consider the implications of its decision on American Indian Nations with Treaty rights to hunt bison.

U.S. EPA did not properly consider the ecologically extinct status of bison as a wildlife species (Freese 2007). U.S. EPA also failed to properly consider and review impacts to bison as a wildlife species. U.S. EPA's action and decision is arbitrary and capricious and

an abuse of its discretion and fails to take into consideration the highly controversial nature of bison population control on America's last continuously wild bison population.

Buffalo Field Campaign challenges the authority of APHIS to control wild bison in the public trust; APHIS lacks Congressionally delegated jurisdiction over wild bison in the public trust.

This comment serves as Buffalo Field Campaign's notice of our intent to sue Yellowstone National Park for evading its non-impairment and conservation mandates, and inappropriately delegating jurisdictional authority over bison to APHIS under the pretense of a study. The agency's course of action is pre-decisional, committing Yellowstone National Park to conduct bison population control measures on behalf of and in partnership with APHIS. APHIS in turn has already made its decision to take bison for the agency's program, making a mockery of decision making by failing to take a hard look in a public environmental process before a decision is made, e.g. take bison from Yellowstone National Park for its program.

The U.S. Congress has not granted APHIS any direct jurisdiction over wild bison in the public trust including the population inhabiting Yellowstone National Park and Montana. APHIS jurisdiction applies only to interstate movement of bison as livestock to slaughter houses (CFR 78.20-78.23).

Yellowstone National Park cannot delegate its jurisdictional authority over bison to APHIS by simply setting up a take system under the guise of research. The Park must first consider its non-impairment and conservation mandates and not bias its decision making process by looking for justifications to control the bison population. Yellowstone National Park's action and decision is arbitrary and capricious and an abuse of its jurisdictional authority and fails to take into consideration the highly controversial nature of bison population control on America's last continuously wild bison population.

Buffalo Field Campaign challenges the legality of permitting an alternative rejected by Yellowstone National Park and APHIS in 2000 as a "research project" subjecting wild bison in the public trust to population control.

Bison population control was rejected as an alternative in the Interagency Bison Management Plan Record of Decision and Final Environmental Impact Statement (2000) because environmental impacts would be "too significant to be within the reasonable range of alternatives." The agencies clearly rejected population control because of significant harmful impacts to wild buffalo.

In the Record of Decision and the Final Environmental Impact Statement and Bison Management Plan for the State of Montana and Yellowstone National Park (2000) the agencies considered and rejected bison population control as an alternative and outlined several "environmental impacts too significant to be within the reasonable range of alternatives" (emphases added):

"...**immunocontraception would affect the immune system of bison and potentially make them more susceptible to disease**." (FEIS at 60 Volume I)

"**Significant behavioral changes can be expected for all major contraceptive agents currently under investigation** (Garrott 1995)." (FEIS at 60 Volume I)

"**Contraceptive agents could disrupt family and social bonds and extend or alter breeding and birthing seasons** (Garrott 1995)." (FEIS at 60 Volume I)

"**Sterilization, if done on a large scale, might have genetic influences on the population by eliminating pre-selected animals from the gene pool**." (FEIS at 60 Volume I)

"The final environmental impact statement (pp. 56-63) sets out several alternatives that the agencies rejected from in-depth analysis. The alternatives include fencing the perimeters of the park to physically prevent bison from leaving Yellowstone National Park, providing feed to bison to keep them within Yellowstone National Park, relocating bison to other public lands, **using birth control to control the size of the bison population, sterilizing bison to prevent the transmission of brucellosis**, depopulating the entire herd and replacing it with brucellosis-free bison, using native predators to control the bison population, controlling or eradicating brucellosis in elk, requiring cattle producers to change their operations, allowing natural forces to control the size and movements of the bison herd, and restoring bison to the Great Plains. **We agree with the judgment of the EIS team to reject a full analysis of these alternatives. Most of them would not have met the goals of the planning process. Others would have had environmental impacts too significant to be within the reasonable range of alternatives**." (Record of Decision at 20-21).

APHIS claims that the agency's proposed action does not constitute population control ignores the plain facts and outcomes sought in your proposed action.

APHIS own analysis belies your claim that this program is not bison population control (emphases added):

" …anti-GnRH antibodies interfere with the ability of GnRH to signal production of sex hormones, **resulting in temporary infertility. As long as adequate levels of anti-GnRH antibodies are present in the vaccinated animal, sexual activity, breeding, and reproduction are extremely unlikely**." (EA at 3)

"GonaCon™ is currently approved under the United States Environmental Protection Agency‘s (EPA‘s) Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) for use in female white-tailed deer as one **tool to aid in reducing deer overpopulation…"** (EA at 3)

"**The intended purpose of using GonaCon™ in female bison would be to manage reproduction in bison** known to be infected with brucellosis **by inducing temporary infertility**, thereby decreasing the potential for transmission of brucellosis through abortion and calving events." (EA at 3)

"Use of an effective immunocontraceptive such as GonaCon™ to **prevent pregnancy…"** (EA at 4)

"Miller et al. (2004) concluded that ―…Prolonging the breeding season of bison in the GYA may be deleterious to the winter survival of dominant bulls and PZP vaccinated cows because of increased sexual activity during fall and early winter. Therefore, this alternative was dismissed from further consideration because investigating the **use of a PZP vaccine would not be useful in brucellosis management strategies in bison since it is associated with increased mating and reproductive activity** (Killian et al., 2007)." (EA at 8)

"**APHIS also considered the alternative of physical sterilization** as a means of decreasing the transmission of B. abortus within bison populations and between bison and cattle in the GYA." (EA at 8)

"In this proposed study, **the desired effect of administering GonaCon™ is the temporary suspension of reproductive activity in the vaccinated female bison**. Miller et al. (2004) report that ―The gonadotropin-releasing hormone (GnRH) vaccine is generally **considered to provide temporary sterilization**, because the reproductive activity of the target animal returns as the GnRH antibody titer drops below a protective level." (EA at 9-10)

"A small study conducted at the Idaho Fish and Game Wildlife Health Laboratory in Caldwell, Idaho in 2002-2003 demonstrated ―that a single injection of GnRH vaccine is **effective in preventing conception in female bison for at least 1 yr** (Miller et al., 2004)." (EA at 10)

"In the GonaCon™ EPA registration process for use in deer, concerns were initially raised by some States that **GonaCon™ would eliminate the need to use hunting as a tool to control deer overpopulation**. Contraception alone would not reduce overabundant deer populations to healthy levels (USDA APHIS, 2010b). In deer, **GonaCon™ is meant to be used in combination with other wildlife management tools to control populations. Assuming the use of GonaCon™ is eventually**

> **registered by EPA for bison, it is equally implausible to conclude that use of the contraceptive vaccine in bison would result in any significant population decreases in bison in the absence of other management tools** (USDA APHIS, 2010b). " (EA at 11)
>
> "**Abortions or calving events by GonaCon™-treated bison should be very minimal since the expected effect of treatment with GonaCon™ is to prevent pregnancy**." (EA at 12)
>
> "This EA examines the activities associated with a proposed study to evaluate whether GonaCon™, an immunocontraceptive vaccine, would be effective as a non-lethal method of decreasing the prevalence of brucellosis **in the YNP bison population by effecting temporary infertility in bison cows**…" (EA at 20)
>
> "Some of the female animals in the study would be injected with **GonaCon™, which would reduce the likelihood of pregnancy and delivery of offspring in the treated animals**." (EA at 20)

In fact, part of APHIS purpose and need is to gather information to re-evaluate and re-consider an alternative rejected in 2000, that is, bison population control:

> "Without the proposed study, use of the immunocontraception approach as a viable disease management tool for bison would not be evaluated, and could not be considered as a potential management tool." (EA at 5)
>
> "The proposed study may provide important information that would allow for re-evaluation and re-consideration of some of the current IBMP activities. This may result in impacts to future decision-making regarding protocols for bison habitat management, bison vaccination strategies, and bison hunt activities. IBMP activities that could be impacted include strategies to maintain appropriate bison population and distribution, should bison habitat be expanded." (EA at 20)

APHIS proposed action is bison population control, and what APHIS proposes is, in effect and outcome, bison population control and artificial interference in the wildlife species natural selection and evolutionary adaptation.

APHIS, a federal livestock overseer and promoter, is an institutionally biased and inappropriate agency to manage wild bison in the public trust.

APHIS is institutionally biased against "maintaining a wild free ranging bison population" and is a multi-billion dollar federal overseer and promoter of livestock interests. None of APHIS activities under the IBMP or otherwise have "maintained" a wild free ranging bison population.

Many of APHIS projects have resulted in costly and lengthy unresolved quagmire based on the agency's poor planning and institutional bias, e.g. bison quarantine. Frequently, APHIS proposes studies of bison than fail to release agency findings, or subject them to peer review and publication in independent journals, e.g. bull semen study, tissue culture results of slaughtered bison to demonstrate infectiousness, etc.

APHIS program for population control stands diametrically opposed to natural section and evolutionary adaption of bison as a wildlife species. A federal livestock agency has no business controlling or attempting to control America's last wild bison.

References
Attachments incorporated by reference for review and evaluation by APHIS in its Environmental Assessment for the Evaluation of GonaCon.

APHIS FOIA Records, 04/18/2011 email Rick Wallen/Yell/NPS to Rebecca Frey APHIS, Patrick Clarke APHIS, PJ White NPS, Tim Reid NPS
RE: bison operations; undated email Tim Reid/Chief Ranger/YNP to Rebecca Frey APHIS, Patrick Clarke APHIS, Rick Wallen NPS, PJ White NPS, Eric Morey NPS, RE: bison operations.

Freese, Curtis H., Keith E. Aune, Delaney P. Boyd, James N. Derr, Steve C. Forrest, C. Cormack Gates, Peter J.P. Gogan, Shaun M. Grassel, Natalie D. Halbert, Kyran Kunkel, Kent H. Redford. 2007. Second chance for the plains bison. Biological Conservation 136(2): 175-184.

Yellowstone National Park, Rick Wallen, email to Christie Hendrix/Yell/NPS 04/27/2011.

Yellowstone National Park Scientific Research and Collecting Permit YELL-2011-SCI-5892, May 10, 2011.