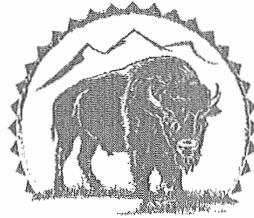


18-18

NPS-2018-00887



BUFFALO
FIELD CAMPAIGN

FREEDOM OF INFORMATION ACT REQUEST

June 20, 2018

Superintendent
Office of the Superintendent
Yellowstone National Park
PO Box 168
Yellowstone National Park, WY 82190-0168
Phone: (307) 344-2002
Fax: (307) 344-2014
E-Mail: kerrie_evans@nps.gov

Dear Kerrie Evans,

Pursuant to the Freedom of Information Act 5 U.S.C. § 552 et. seq. and the U.S. Department of the Interior's regulations 43 C.F.R. §§ 2.1-2.290 (Jan. 19, 2017), Buffalo Field Campaign is filing a request for public information and records.

REQUESTED RECORDS

Buffalo Field Campaign requests all records from the Office of the Superintendent, Yellowstone National Park 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.

The time period for the requested records is March 1, 2017 to June 20, 2018.

"Protecting the Last Wild Bison"

PO BOX 957 | WEST YELLOWSTONE, MT 59758 | 406.646.0070

WWW.BUFFALOFIELDCAMPAIGN.ORG

“Office of the Superintendent” refers to the Superintendent, Office of the Superintendent staff and personnel acting under the authority or on behalf of the Superintendent.

“All records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

Buffalo Field Campaign’s Freedom of Information Act request *is not meant* to exclude any other records that are reasonably related to the subject matter of our request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Buffalo Field Campaign is willing to receive records on a rolling basis.

RELEASE NON-EXEMPT REQUESTED RECORDS

As you know, the Freedom of Information Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed within the statutory time limit. 5 U.S.C. § 552(b).

Should you decide to invoke an exemption, Buffalo Field Campaign requests all non-exempt portions of the requested records and asks that you justify your decision by reference to specific exemptions allowed under the Freedom of Information Act. Please include sufficient information for Buffalo Field Campaign to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please provide a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

Buffalo Field Campaign reserves the right to appeal a decision by the agency to withhold any requested records.

FORMAT REQUESTED

Under the Freedom of Information Act, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily accessible” means text-searchable and OCR-formatted records. 5 U.S.C. § 552(a)(3)(B).

In responding to our Freedom of Information Act request, Buffalo Field Campaign requests the agency reduce costs and waste by providing the requested records in electronic format on a web site for downloading, or on a USB stick, or CD/DVD that can be mailed to the address below.

Please do not provide the records in a single or “batched” PDF file. Please do not provide files in portfolios and embedded files within PDF files as these documents are not “readily accessible.”

You may include an index.

RECORD DELIVERY

Buffalo Field Campaign appreciates your help in obtaining a determination of the requested records within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 5

C.F.R. § 1303.10(c). Failure to comply within the statutory timeframe may result in Buffalo Field Campaign taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may deliver the requested records to:

Darrell Geist
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
z@wildrockies.org

If our Freedom of Information Act request is unclear, if the responsive records are voluminous, or if I can be of assistance in expediting our request for records, please contact me at (406) 531-9284 or z@wildrockies.org.

FEE WAIVER REQUESTED

Buffalo Field Campaign requests a fee waiver for all search and duplication fees under the Freedom of Information Act and its implementing regulations. 5 U.S.C. § 552(a)(4)(A); 43 C.F.R. § 2.45. A fee waiver and release of the information and records requested will benefit the people of the United States by fostering public understanding of government activities and encouraging public involvement in important policy and management issues of bison as a wildlife species in Yellowstone National Park, the state of Montana, and the public trust interests of American Indian tribes and the American people.

The language of the Freedom of Information Act clearly indicates the U.S. Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government information and records. In addition, the legislative history of the Freedom of Information Act fee waiver language indicates the U.S. Congress intended a liberal interpretation of the phrase “primarily benefiting the public.” This suggests that all fees are to be waived whenever the release of information contributes to public debate on important public policy and management issues. This standard has been affirmed by the U.S. Court of Appeals for the District of Columbia in *Better Government Association v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986). In *Better Government*, the D.C. Circuit Court found that under the Freedom of Information Act, the U.S. Congress explicitly recognized the need for non-profit organizations to have free access to government

documents and those government agencies cannot impair this free access by charging duplication or search fees for Freedom of Information Act requests. *Better Government*, 780 F.2d at 89.

The Freedom of Information Act was designed to provide citizens a broad right to access government records. Its basic purpose is to “open agency action to the light of public scrutiny.” *U.S. Department of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 772 (1989) (internal quotation and citation omitted). “The generation that made the nation thought secrecy in government one of the instruments of Old World tyranny, and committed itself to the principle that a democracy cannot function unless the people are permitted to know *what their government is up to*.” *Freedom of Press*, 489 U.S. at 772-773 (internal quotation and citation omitted). In order to provide public access to this information, its fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The fee waiver requirement is “liberally construed.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Department of the Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Buffalo Field Campaign access to government records without the payment of fees. Indeed, the Freedom of Information Act’s fee waiver provision was intended by the U.S. Congress “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars and non-profit public interest groups.” *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Buffalo Field Campaign Qualifies for a Fee Waiver

Under the Freedom of Information Act, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a)–(f).

A. The Subject Matter of our Freedom of Information Act Request Concerns the “Operations and Activities of the Government.”

The subject matter of our Freedom of Information Act request concerns the operations and activities of the Superintendent, and the Office of the Superintendent, in bison management in Yellowstone National Park and the state of Montana, the associated Interagency Bison Management Plan, and the legal and public trust responsibilities of the Superintendent.

Release of the requested records will provide Buffalo Field Campaign and the public with crucial insight into the Office of the Superintendent's role in managing American bison and the ecosystems upon which the native species depends, a subject of immense public interest for the past several decades. The subject is of broad public interest due to the substantial taxpayer moneys spent, the significance held for this remnant bison population by the public at large, and the public's interest in the execution of the U.S. government's trust and legal responsibilities.

It is clear that the role of the Superintendent and the Office of the Superintendent in managing bison held in the public trust is a specific and identifiable activity of the government, in this case the executive branch agency of the U.S. National Park Service. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1313 (D.C. Cir. 2003) ("reasonable specificity" is all that is required). Thus, Buffalo Field Campaign meets this factor.

B. Disclosure of Requested Records is "Likely to Contribute" to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities. Release of the requested records will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow Buffalo Field Campaign to convey to the public information about the role of the Superintendent, and the Office of the Superintendent, in bison operations or activities, public trust management of National Parks and the ecosystems upon which bison depend for survival, and the legal and public trust interests of American Indian tribes and the American people.

Once records are available, Buffalo Field Campaign will review and analyze it and present it to the general public in a manner that will meaningfully

enhance the public's understanding of government operations or activities.

Release of the requested records is likely to contribute to an understanding of the operations and activities of the Superintendent, and the Office of the Superintendent, in managing public trust bison and National Parks, and the legal and public trust interests of American Indian tribes and the American people.

C. Disclosure of Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding Government Operations or Activities.

Release of the requested records will contribute to public understanding of how the Superintendent, Office of the Superintendent, National Park Service manage bison and Yellowstone National Park in light of their statutory duties under the Organic Act, a host of environmental and cultural resource laws, and the legal and public trust concerns held by American Indian tribes and the American people.

As explained herein, disclosing the records will contribute to public understanding of the role of the Superintendent in caretaking bison and Yellowstone National Park, and reasonably reach a broad audience of interested persons who can influence bison management, specifically in Yellowstone National Park and the state of Montana, through the associated Interagency Bison Management Plan.

Buffalo Field Campaign will use the information it obtains from the disclosed records to educate the public at large about how National Parks are being managed and how bison are being managed – operations or activities of government involving the U.S. National Park Service, the Superintendent, and the Office of the Superintendent.

Through Buffalo Field Campaign's synthesis and dissemination (by means discussed herein), disclosure of information contained in and gleaned from the requested records will contribute to the understanding of a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984) (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Department of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994)

(applying the term “public” to include a sufficient “breadth of benefit” beyond the requester’s own interests); *Community Legal Services. v. U.S. Department of Housing & Urban Development*, 405 F. Supp. 2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience . . . there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to evaluate the requested records, which concern how the Superintendent, Office of the Superintendent, National Park Service manage bison in light of their public trust and statutory duties under the Organic Act, and numerous environmental and cultural resource laws. To the best of our knowledge, none of the requested records are currently in the public domain, *e.g.*, the U.S. National Park Service’s FOIA Library (<https://www.nps.gov/aboutus/foia/foia-reading-room.htm>). *See Community Legal Services. v. HUD*, 405 F. Supp. 2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, the documents sought by the requestor “would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “Legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations”

Disclosure of requested records is not only “likely to contribute,” but is certain to contribute, to public understanding of the role of the Superintendent and the Office of the Superintendent, in executing their public trust duties and legal responsibilities concerning bison and National Parks.

The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions and public trust responsibilities. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties concerning bison and National Parks.

D. Disclosure of Requested Records is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

Buffalo Field Campaign is requesting the disclosure of records to significantly enhance the public's understanding of the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

Disclosure of the requested records will enhance what is publicly known or readily available. Disclosure will significantly enhance the public's understanding because the requested records will help reveal more about the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

Disclosure of requested records to Buffalo Field Campaign is also certain to shed light on the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

The release of information and records is for the public's benefit and in the public's interest and will be made available to the public at large through Buffalo Field Campaign's offices and our website, list-serve and network outlets. Information and records available to Buffalo Field Campaign are used in press conferences and releases, television and radio interviews, regional and national publications, local and national broadcast networks, in public meetings and before legislative bodies, is shared online through a variety of platforms that reaches the public nationwide and abroad, and shared with people traveling through Yellowstone National Park on an annual basis through our summer outreach programs. These and other Buffalo Field Campaign activities described herein significantly contribute to the public's understanding of government operations and activities.

Public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the Freedom of Information Act. Buffalo Field Campaign meets this factor as well.

Buffalo Field Campaign has a Demonstrated Ability to Disseminate the
Requested Records Broadly

Buffalo Field Campaign is a non-profit organization that informs, educates, and engages the public regarding bison management issues, policies, and laws. Buffalo Field Campaign has been substantially involved in the activities of

numerous government agencies for over 20 years and consistently demonstrated its ability to disseminate information granted to it through the Freedom of Information Act.

In consistently granting Buffalo Field Campaign fee waivers, agencies have recognized: (1) the information requested by Buffalo Field Campaign contributes significantly to the public's understanding of the government's operations or activities; (2) the information enhances the public's understanding to a greater degree than currently exists; (3) Buffalo Field Campaign possesses the expertise to explain the requested information to the public; (4) Buffalo Field Campaign possesses the ability to disseminate the requested information to the general public; and (5) news outlets and reporters recognize and rely upon Buffalo Field Campaign as an on the ground, and expert source of information on bison, and the ecosystem they depend on for survival.

Buffalo Field Campaign's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities, as compared to the level of public understanding prior to disclosure, are well established.

Buffalo Field Campaign intends to use the records requested here similarly. Information and records obtained by Buffalo Field Campaign appear in news stories online and in print, radio and TV, including regular reporting in local, regional, national, and international outlets. Buffalo Field Campaign's extensive website reaches a broad level of people. Buffalo Field Campaign sends out weekly and biweekly updates and action alerts to a network of supporters throughout the United States. Buffalo Field Campaign sends and distributes an annual printed newsletter to more than 45,000 people. A diverse and broad group of people has joined Buffalo Field Campaign's social media platforms to regularly post news and take action items concerning bison.

Buffalo Field Campaign is also a source of news based on our capacity as an in the field organization providing information and news reports to people located throughout the United States, to broadcast networks and news media outlets in the United States and abroad, and to various local, regional, and international communities.

Buffalo Field Campaign intends to use any or all of these far-reaching public outlets to share with the public information obtained as a result of our Freedom of Information Act request.

Public oversight and enhanced understanding of the Office of the Superintendent's legal and public trust duties is a matter of public interest and an on-going concern.

In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Department of Justice*, 19 F.3d 807 (2nd Cir. 1994). Buffalo Field Campaign need not show exactly how it intends to distribute the information, because "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). It is sufficient for Buffalo Field Campaign to show how it distributes information to the public generally. *Judicial Watch*, 326 F.3d at 1314.

Obtaining the Requested Records is of No Commercial Interest to Buffalo Field Campaign

Access to government records through Freedom of Information Act requests is essential to Buffalo Field Campaign's role in educating, informing, and engaging the general public. Founded in 1997, Buffalo Field Campaign is a 501(c)(3) nonprofit organization (EIN: 36 3964401) with supporters found throughout the United States who are dedicated to the protection of bison in the wild and the ecosystems upon which they depend for survival.

Buffalo Field Campaign has no commercial interest and will realize no commercial benefit from the release of the requested records.

For all of the foregoing reasons, Buffalo Field Campaign qualifies for a full fee waiver. We hope that the Office of the Superintendent will immediately grant our fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

All records and any related correspondence should be sent to my attention at the address below.

Thank you for your time and assistance.

Sincerely,

/s/

Darrell Geist
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
z@wildrockies.org

10/23/2019

DEPARTMENT OF THE INTERIOR Mail - [EXTERNAL] Freedom of Information Act request to the Superintendent



Evans, Kerrie <kerrie_evans@nps.gov>

[EXTERNAL] Freedom of Information Act request to the Superintendent

1 message

Darrell Geist <z@wildrockies.org>

Wed, Jun 20, 2018 at 2:59 PM

To: "Evans, Kerrie" <kerrie_evans@nps.gov>

Cc: Darrell Geist <z@wildrockies.org>, Ken Cole BFC Director <director@buffalofieldcampaign.org>

2 attachments



Superintendent FOIA (June 20, 2018).pdf

1083K



ATT00001

3K

10/23/2019

DEPARTMENT OF THE INTERIOR Mail - YELL FOIA NPS-2018-00887 Notice of Delay



Evans, Kerrie <kerrie_evans@nps.gov>

YELL FOIA NPS-2018-00887 Notice of Delay

1 message

Evans, Kerrie <kerrie_evans@nps.gov>
To: Darrell Geist <z@wildrockies.org>

Wed, Jul 18, 2018 at 9:33 AM

Dear Mr. Geist,

Attached is a notice of delay regarding your Freedom of Information Act request dated and received June 20, 2018.

Please acknowledge receipt of this email, and if you have any questions, please feel free to contact me.

Sincerely,

Kerrie Evans

P.O. Box 168

Yellowstone National Park, Wyoming 82190

(307) 344-2002



NPS-2018-00887 Notice of Delay.pdf
282K

10/23/2019

DEPARTMENT OF THE INTERIOR Mail - YELL FOIA NPS-2018-00887 Initial Response



Evans, Kerrie <kerrie_evans@nps.gov>

YELL FOIA NPS-2018-00887 Initial Response

1 message

Evans, Kerrie <kerrie_evans@nps.gov>
To: Darrell Geist <z@wildrockies.org>

Wed, Jul 18, 2018 at 4:57 PM

Dear Mr. Geist,

Attached is Yellowstone National Park's initial response to your Freedom of Information Act request dated and received June 20, 2018. The remaining documents responsive to your request will be provided to you in a subsequent response(s). Please acknowledge receipt of this email and attachments, and feel free to contact me should you have any questions.

Sincerely,

Kerrie Evans

P.O. Box 168

Yellowstone National Park, Wyoming 82190

(307) 344-2002



Response #1.zip

3573K

10/23/2019

DEPARTMENT OF THE INTERIOR Mail - [EXTERNAL] Re: YELL FOIA NPS-2018-00887 Notice of Delay



Evans, Kerrie <kerrie_evans@nps.gov>

[EXTERNAL] Re: YELL FOIA NPS-2018-00887 Notice of Delay

1 message

Darrell Geist <z@wildrockies.org>
To: "Evans, Kerrie" <kerrie_evans@nps.gov>
Cc: Darrell Geist <z@wildrockies.org>

Wed, Jul 18, 2018 at 10:35 AM

I have received NPS's non-determination letter.

Darrell Geist habitat coordinator
Buffalo Field Campaign
<z@wildrockies.org>
(406) 531-9284

On Jul 18, 2018, at 9:33 AM, Evans, Kerrie <kerrie_evans@nps.gov> wrote:

Dear Mr. Geist,
Attached is a notice of delay regarding your Freedom of Information Act request dated and received June 20, 2018. Please acknowledge receipt of this email, and if you have any questions, please feel free to contact me.
Sincerely,
Kerrie Evans
P.O. Box 168
Yellowstone National Park, Wyoming 82190
(307) 344-2002
<NPS-2018-00887 Notice of Delay.pdf>



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

PO Box 168
Yellowstone National Park
Wyoming 82190

A7221(YELL)

SENT VIA EMAIL – NO HARD COPY TO FOLLOW

July 18, 2018

Mr. Darrell Geist
Buffalo Field Campaign
P.O. Box 957
West Yellowstone, Montana 59758
z@wildrockies.org

Dear Mr. Geist:

This letter is in response to your Freedom of Information Act (FOIA) request dated and received June 20, 2018, in which you requested “The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem,” excluding documents previously produced by Yellowstone regarding bison census or population size estimates, and records available on ibmp.info. Your request has been assigned FOIA control number NPS-2018-00887.

It is the policy of the National Park Service (NPS) to: (1) make records of the NPS available to the public to the greatest extent possible in keeping with the spirit of the FOIA; and (2) make documents requested under the FOIA available at the earliest possible date while, at the same time, protecting the rights of the individuals involved and the administrative processes surrounding such rights. For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Your request is being processed under the provisions of the Freedom of Information Act (5 United States Code 552); United States Department of the Interior (“Department”) implementing regulations found at 43 Code of Federal Regulations Part 2, Subparts A through E, beginning at 2.1; and the Privacy Act of 1974 (5 United States Code 552a). Please be advised that additional FOIA and/or Privacy Act guidance/regulations may also be found at either the Department’s web site, www.doi.gov/foia, or the United States Department of Justice web site, www.usdoj.gov.

As yet, we have been unable to make a determination on your request. Although we hope that you will wait so that we can complete our review process, please note that you may seek dispute resolution services from our FOIA Public Liaison:

AR_0017

Ms. Charis Wilson, Ph.D., CRM
NPS FOIA Officer
12795 West Alameda Parkway
P.O. Box 25287
Denver, Colorado 80225-0287
Phone: (303) 969-2959
Fax: (303) 969-2557
1-855-NPS-FOIA

You may also seek dispute resolution services from the Office of Government Information Services (OGIS). As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
(OGIS) 8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the National Park Service's response is in error. You must also include with your appeal copies of all correspondence between you and Yellowstone National Park concerning your FOIA request, including your original FOIA request and the Bureau's response. Failure to include with your appeal all correspondence between you and the Bureau will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240
Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

For more information on FOIA Administrative Appeals, you may review the Department's FOIA regulations at 43 C.F.R. Part 2, Subpart H.

We regret the delay and appreciate your consideration. If you have questions concerning this FOIA response, please contact me at (307) 344-2002.

Sincerely,

A handwritten signature in black ink that reads "Kerrie Evans". The signature is written in a cursive, flowing style.

Kerrie Evans
Freedom of Information Act Coordinator



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

PO Box 168
Yellowstone National Park
Wyoming 82190

A7221(YELL)

VIA EMAIL – NO HARD COPY TO FOLLOW

July 18, 2018

Mr. Darrell Geist
Buffalo Field Campaign
P.O. Box 957
West Yellowstone, Montana 59758
z@wildrockies.org

Dear Mr. Geist:

This letter is a partial response to your Freedom of Information Act (FOIA) request dated and received June 20, 2018, in which you requested “The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem,” excluding documents previously produced by Yellowstone regarding bison census or population size estimates, and records available on ibmp.info.

Your request has been assigned FOIA control number NPS-2018-00887.

It is the policy of the National Park Service (NPS) to: (1) make records of the NPS available to the public to the greatest extent possible in keeping with the spirit of the FOIA; and (2) make documents requested under the FOIA available at the earliest possible date while, at the same time, protecting the rights of the individuals involved and the administrative processes surrounding such rights. For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Your request is being processed under the provisions of the Freedom of Information Act (5 United States Code 552); United States Department of the Interior (“Department”) implementing regulations found at 43 Code of Federal Regulations Part 2, Subparts A through E, beginning at 2.1; and the Privacy Act of 1974 (5 United States Code 552a). Please be advised that additional FOIA and/or Privacy Act guidance/regulations may also be found at either the Department’s web site, www.doi.gov/foia, or the United States Department of Justice web site, www.usdoj.gov.

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” 5 U.S.C. §

552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions. The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(a)-(f). We are withholding 2 pages in part under Exemption 7 because they are protected under the following subpart. Exemption 7(E) protects law enforcement records if their release would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law. For the materials that have been withheld under 7(E), we have determined that they are techniques for law enforcement investigations or prosecutions; they are procedures for law enforcement investigations or prosecutions; and they are guidelines for law enforcement investigations or prosecutions whose release could reasonably be expected to risk circumvention of the law.

Nine (9) documents totaling 33 pages have been released in their entirety:

1. March 14, 2017 – email from Dan Wenk to Amy Mitchell, Subject: Final Briefings 1 of 4 (9 pp.)
2. March 15, 2017 – email from Amy Mitchell to Dan Wenk, Subject: Re: Final Briefings 1 of 4 (1 page)
3. March 27, 2017 – email from Dan Wenk to Bert Frost, Sue Masica, Alexa Viets, Subject: Update to bison brief (2 pp.)
4. June 5, 2017 – email from Grace Stephens to Dan Wenk, Sue Masica, Herbert Frost, Subject: Re: YELL bison meeting (4 pp.)
5. March 22, 2018 – email from P.J. White to Dan Wenk, Patrick Kenney, Jody Lyle, Subject: Removals of Bison during Winter 2017-2018 (3 pp.)
6. April 10, 2018 – email from Tim Reid to Jennifer Carpenter, P.J. White, Rick Wallen, Subject: Fwd: YELL submissions for IMR Weekly Report (2 pp.)

7. April 23, 2018 – email from Tim Reid to Scott Bischke, Subject: Powerpoint (3 pp.)
8. May 17, 2018 – email from Tim Reid to Rick Wallen, Subject: Re: Briefs on Bison Grazing and Abundance (4 pp.)
9. June 14, 2018 – email from Tim Reid to P.J. White, Subject: Re: Hunt Mtg Notes (5 pp.)

A Notice of Delay letter was sent to you by email on July 18, 2018. As noted in that letter, as yet, we have been unable to make a determination on the remaining documents responsive to your request. Although we hope that you will wait so that we can complete our review process, please note that you may seek dispute resolution services from our FOIA Public Liaison or the Office of Government Information Services (OGIS), as detailed in that letter. The remaining documents responsive to your request will be provided in subsequent response(s).

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the National Park Service's response is in error. You must also include with your appeal copies of all correspondence between you and Yellowstone National Park concerning your FOIA request, including your original FOIA request and the Bureau's response. Failure to include with your appeal all correspondence between you and the Bureau will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

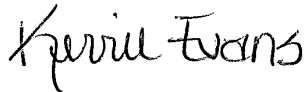
As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered

a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
(OGIS) 8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

Fee waivers are determined on a case-by-case basis. All fees have been waived. This letter is the first partial release of Yellowstone National Park's response to you for this request. If you have questions concerning this FOIA response, please contact me at (307) 344-2002.

Sincerely,

A handwritten signature in black ink that reads "Kerrie Evans". The signature is written in a cursive, flowing style.

Kerrie Evans
Freedom of Information Act Officer

Enclosures

Darrell Geist <z@wildrockies.org>

From: Darrell Geist <z@wildrockies.org>
Sent: Wed Aug 15 2018 17:30:21 GMT-0600 (MDT)
To: "Evans, Kerrie" <kerrie_evans@nps.gov>
CC: Darrell Geist <z@wildrockies.org>
Subject: [EXTERNAL] Determination Requested: YELL FOIA NPS-2018-00887 Notice of Delay
Attachments: NPS-2018-00887 Notice of Delay.pdf ATT00001 NPS FOIA Partial Response letter (July 18, 2018).pdf ATT00002

Dear Kerrie Evans,

I have not received any further communication since your July 18, 2018 letters (attached) communicating to BFC that the Superintendent's Office has yet to make a 20-day determination on our June 20, 2018 FOIA request (NPS-2018-00887).

Please let me know how the Superintendent's Office intends to comply with the FOIA and make the determination it is required to do.

Darrell Geist habitat coordinator
Buffalo Field Campaign
<z@wildrockies.org>
(406) 531-9284

Dear Mr. Geist,
Attached is a notice of delay regarding your Freedom of Information Act request dated and received June 20, 2018. Please acknowledge receipt of this email, and if you have any questions, please feel free to contact me.

Sincerely,

AR_0024

10/23/2019

DEPARTMENT OF THE INTERIOR Mail - Re: [EXTERNAL] Determination Requested: YELL FOIA NPS-2018-00887 Notice of Delay



Evans, Kerrie <kerrie_evans@nps.gov>

Re: [EXTERNAL] Determination Requested: YELL FOIA NPS-2018-00887 Notice of Delay

1 message

Evans, Kerrie <kerrie_evans@nps.gov>
To: Darrell Geist <z@wildrockies.org>

Thu, Aug 16, 2018 at 9:17 AM

Hi Darrell,
We are completing required review of the responsive documents and I anticipate sending you the remaining portion of our response in the near future. If you have any questions or would like to discuss this further, please feel free to call me.
Sincerely,

Kerrie Evans
P.O. Box 168
Yellowstone National Park, Wyoming 82190
(307) 344-2002

On Wed, Aug 15, 2018 at 5:30 PM, Darrell Geist <z@wildrockies.org> wrote:

Dear Kerrie Evans,

I have not received any further communication since your July 18, 2018 letters (attached) communicating to BFC that the Superintendent's Office has yet to make a 20-day determination on our June 20, 2018 FOIA request (NPS-2018-00887).

Please let me know how the Superintendent's Office intends to comply with the FOIA and make the determination it is required to do.

Darrell Geist habitat coordinator
Buffalo Field Campaign
<z@wildrockies.org>
(406) 531-9284

Dear Mr. Geist,
Attached is a notice of delay regarding your Freedom of Information Act request dated and received June 20, 2018. Please acknowledge receipt of this email, and if you have any questions, please feel free to contact me.

Sincerely,

Kerrie Evans
P.O. Box 168
Yellowstone National Park, Wyoming 82190
(307) 344-2002

"WASO FOIA Requests, NPS" <waso_foia_requests@nps.gov>

From: "WASO FOIA Requests, NPS" <waso_foia_requests@nps.gov>
Sent: Mon Aug 13 2018 13:17:14 GMT-0600 (MDT)
To: "Paul (Dan) Smith" <paul_smith@nps.gov>, Randal Bowman <randal_bowman@ios.doi.gov>
CC: Kerrie Evans <kerrie_evans@nps.gov>, "FOIA, NPS" <npsfoia@nps.gov>, Christine Powell <chris_powell@nps.gov>, Jeremy Barnum <jeremy_barnum@nps.gov>, Jeffrey Olsen <jeffrey_olsen@fws.gov>, Andrea Quick <andrea_quick@nps.gov>, Kevin Schmitt <kevin_schmitt@nps.gov>
Subject: FOIA AWARENESS REVIEW: NPS-2018-00887 (Buffalo Field Campaign) YELL Bison (Dept Awareness Review to Follow)
Attachments: NPS-2018-00887 Request.pdf

All,

The following link is to a temporary google drive folder containing materials response to FOIA NPS-2018-00887.

<https://drive.google.com/open?id=13B-vkbQhGpvEkxzBTaLCd9q5oja2KKWD>

Requester:

Mr. Darrell Geist, Buffalo Field Campaign

Request (incoming request attached):

"The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem," excluding documents previously produced by Yellowstone regarding bison census or population size estimates, and records available on ibmp.info.

Prepared by:

Kerrie Evans, YELL FOIA Officer
(307) 344-2002

Response Documents Provided by YELL:

Email transmittal letter

- NPS-2018-00887 Response Letter

3 PDFs

AR_0026

- Release in Entriety Complete Set
- (b)5DD Complete Set
- (b)7e Complete Set

Note: YELL has prepared separate folders for ease of the awareness reviewer. These contain the specific record(s) in which the corresponding entity is named. that are contained in the sets listed above.

Reviews:

Solicitor review completed by Kate Williams-Shuck, SOL, Rocky Mountain Region
NPS Awareness Review - P. Danny Smith (+ COS and Comms)
Department Level Awareness Reviews - Susan Combs, Todd Willens, Downey Magallanes (for Ryan Zinke) w/ FYI to OES

Action Dates:

8/1 Solicitor Review Complete

8/13 NPS Awareness Review

8/16 DOI Awareness Review*

8/22 Anticipated Release Date*

**Could be bumped up if cleared by previous review channels ahead of anticipated date.*

Should you have any questions or concerns regarding this material please do not hesitate to contact me.

Jessica McHugh
WASO FOIA Liaison
202-354-1449
waso_foia_requests@nps.gov

FOIA APPEAL ROUTE SLIP

DATE TRANSMITTED TO BUREAU: MARCH 15, 2019

TO: CHARIS WILSON, NPS: FOR ACTION (Phone: 303-969-2959 / Fax: 303-969-2557)

FROM: Darrell Strayhorn, FOIA Appeals Officer (PHONE: 202-208-5339/FAX: 202-208-6677)

E-MAIL: FOIA.Appeals@sol.doi.gov

Mail Correspondence To: 1849 C Street, N.W., MS-6556 (Attn: FOIA Appeals Office)
Washington, D.C. 20240

Appeal Number:	Date of Appeal:	Date Received:
2019-007	10/22/2018	10/22/2018

Appellant(s): GEIST, DARRELL; SNYDER, DANIEL C.

Organization: Law Offices of Charles M. Tebbutt
Representing Buffalo Field Campaign

FOIA Coordinator: Kerri Evans, NPS-Yellowstone NP

Attorney Consulted: Kate Williams-Shuck, SOL-Rocky Mountain Region

Issue(s): Ex5 (DPP); Segregation; Vaughn Index - NPS-Yellowstone NP

Subject: Docs re: "policy surrounding the size of the bison population or herds in the Yellowstone ecosystem."

ACTION TO BE TAKEN BY BUREAU

ISSUE 1: EXEMPTION (5) WITHHOLDING

☐ NPS, by no later than Tuesday, March 26, 2019, please provide the Department with unredacted and, if applicable, redacted versions of the withheld documents that are the subject of the appeal. Additionally, to assist the Department in addressing the issue the Appellant raises in the 3rd paragraph on page 9 of his appeal letter, please provide copies of pages 234-235 that the Appellant references.

ISSUES 2 & 3: SEGREGATION & VAUGHN INDEX

No action require by the bureau at this time.

Please direct any questions re: this matter to the FOIA Appeals Office at (202) 208-5339.

Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence Street
Eugene, OR 97401
Ph: 541-344-3505 Fax: 541-344-3516

October 22, 2018

FREEDOM OF INFORMATION ACT APPEAL

VIA E-MAIL TO: FOIA.appeals@sol.doi.gov

DOI FOIA/Privacy Act Appeals Office
ATTN: FOIA/PRIVACY ACT APPEALS OFFICE
Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240

Date Rcv'd in SOL:
10/22/2018 -drs-
Appeal #: 2019-007

Re: Buffalo Field Campaign Freedom of Information Act request (June 20, 2018)
FOIA control number NPS-2018-00887

Dear FOIA Appeals Officer:

This document constitutes Buffalo Field Campaign's appeal of records and information withheld by Yellowstone National Park Superintendent's office in response to our Freedom of Information Act (FOIA) request NPS-2018-00887.

Specifically, Buffalo Field Campaign appeals the National Park Service's unlawful use of Exemption (b)(5), the FOIA's deliberative privilege exemption, to redact 17 documents totaling 149 pages.

A copy of all correspondence and responses generated in our FOIA request are included in our appeal.

Attorney Daniel Snyder, Law Offices of Charles M. Tebbutt, P.C., Eugene, Oregon is handling Buffalo Field Campaign's appeal. Mr. Snyder may be reached at: dan@tebbuttlaw.com, or by phone at 541-344-3505.

BACKGROUND

On June 20, 2018 Buffalo Field Campaign requested all records from the Office of the Superintendent, Yellowstone National Park 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.

The time period for the requested records is March 1, 2017 to June 20, 2018.

“Office of the Superintendent” refers to the Superintendent, Office of the Superintendent staff and personnel acting under the authority or on behalf of the Superintendent.

“All records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

On July 18, 2018, the National Park Service provided a non-determination letter to Buffalo Field Campaign’s habitat coordinator who acknowledged receipt of the notice of delay. On the same day, the National Park Service provided a partial response releasing 9 documents totaling 33 pages.

On August 15, 2018, Buffalo Field Campaign’s habitat coordinator emailed the Superintendent’s office requesting the National Park Service comply with the FOIA and make a final determination on the remainder of the request. On August 16, 2018, the National Park Service responded that the agency intended to send the remaining portion of its response in the near future.

On August 22, 2018, the National Park Service released 20 documents totaling 108 pages in their entirety, applied a (b)(5) draft deliberative privilege claim to 17 documents totaling 149 pages, and applied a (b)(7) law enforcement privilege claim to 2 documents totaling 7 pages.

I. THE FREEDOM OF INFORMATION ACT IS DESIGNED TO REQUIRE DISCLOSURE OF AGENCY RECORDS.

The purpose of the FOIA “is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed.” *National Labor Relations Board v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 (1978) (citation omitted). The U.S. Congress designed the FOIA to “pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.” *Dep’t of the Air Force v. Rose*, 425 U.S. 352, 361 (1976) (citation omitted). Accordingly, the FOIA requires that federal government agencies disclose to the public any requested documents. 5 U.S.C. § 552(a). As the Supreme Court has declared: “FOIA is often explained as a means for citizens to know what ‘their Government is up to.’” *National Archives & Records Admin. v. Favish*, 541 U.S. 157, 171 (2004) (quoting *U.S. Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 773 (1989)). The Court elaborated that “[t]his phrase should not be dismissed as a convenient formalism.” *Id.* at 171-72. Rather, “[i]t defines a structural necessity in a real democracy.” *Id.* at 172. “As a general rule, if the information is subject to disclosure, it belongs to all.” *Id.*

The National Park Service may avoid disclosure only if it proves that the requested documents fall within one of the nine enumerated exemptions to the general disclosure requirement. 5 U.S.C. § 552(b)(1)–(9). Thus, the FOIA establishes a statutory right of access by any person to federal agency records. Consistent with encouraging disclosure, the exemptions under § 552(b) are discretionary, not mandatory. *Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). “Subsection (b), 5 U.S.C. § 552(b), which lists the exemptions, simply states that the specified material is not subject to the disclosure obligations set out in subsection (a). By its terms, subsection (b) demarcates the agency’s obligation to disclose; it does not foreclose disclosure.” *Id.* at 292.

The FOIA’s exemptions are to be construed “as narrowly as consistent with efficient Government operation.” *Environmental Protection Agency v. Mink*, 410 U.S. 73, 89 (1973) (citing Senate and House Reports on exemption 5). This includes the deliberative process exemption: “It is also clear that the agency has the burden of establishing what deliberative process is involved, and the role played by the documents in issue in the course of that process.” *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980) (citation omitted). “[W]hen material could not reasonably be said to reveal an agency’s or official’s mode of formulating or exercising policy-implicating judgment, the deliberative process privilege is inapplicable.” *Petroleum Inf. Corp. v. U.S. Dep’t of the Interior*, 976 F.2d 1429, 1435 (D.C. Cir. 1992) (citation omitted). “To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communications within the agency.” *Coastal States Gas Corp.*, 617 F.2d at 866.

The FOIA is to be broadly construed in favor of disclosure.

FOIA generally provides that the public has a right of access, enforceable in court, to federal agency records. *See Anderson v. Dep’t of Health & Human Services*, 907 F.2d 936, 941 (10th Cir. 1990). FOIA is to be

broadly construed in favor of disclosure, and its exemptions are to be narrowly construed. *Id.* The federal agency resisting disclosure bears the burden of justifying nondisclosure. *Id.*

Audubon Society v. U.S. Forest Service, 104 F.3d 1201, 1203 (10th Cir. 1997).

Given the public disclosure policy favored in the FOIA, federal courts have consistently refused to allow agencies to meet their burden of proving the requested documents fall within one of the FOIA's exemptions by making conclusory and generalized allegations of confidentiality. "We repeat, once again, that conclusory assertions of privilege will not suffice to carry the Government's burden of proof in defending FOIA cases." *Coastal States*, 617 F.2d at 861. *Mead Data Central, Inc. v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977) ("agencies must be required to provide the reasons behind their conclusions in order that they may be challenged by FOIA plaintiffs and reviewed by the courts."). "We remind the agencies, once again, that the burden is on them to establish their right to withhold information from the public and they must supply the courts with sufficient information to allow us to make a reasoned determination that they were correct." *Coastal States*, 617 F.2d at 861. *Anderson v. Dep't of Health & Human Services*, 907 F.2d 936, 941 (10th Cir. 1990) ("The district court must determine whether all of the requested materials fall within an exemption to the FOIA and may not simply conclude that an entire file or body of information is protected without consideration of the component parts.") (citation omitted).

II. THE NATIONAL PARK SERVICE DID NOT PROVIDE THE NECESSARY PROOF AND DETAILED SPECIFICITY FOR WITHHOLDING RECORDS AND INFORMATION FROM THE PUBLIC UNDER THE "DELIBERATIVE PROCESS" CLAIM.

The National Park Service's response letter (Aug. 22, 2018) does not provide the necessary detail, particular justification, and proof for withholding records and information from the public under the "deliberative process" exemption.

Courts employ a two-part test to examine an agency's withholding deliberative information under Exemption 5: (1) the document must be either inter-agency or intra-agency; and (2) the document must be both predecisional and part of the agency's deliberative or decisionmaking process. *Dep't of the Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001). Factors to consider in determining whether a document falls within the deliberative process privilege include whether the document (1) "is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency"; (2) "is recommendatory in nature or is a draft of what will become a final document"; and (3) "weigh[s] the pros and cons of agency adoption of one viewpoint or another"; however, even if the document was predecisional at the time it was prepared, it is not exempt from disclosure if it has been "adopted, formally or informally, as the agency position on an issue or is used by the agency in its dealings with the public." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

The exemption applies only to federal government agencies:

[T]he communication must be “inter-agency or intra-agency.” 5 U.S.C. § 552(b)(5). Statutory definitions underscore the apparent plainness of this text. With exceptions not relevant here, “agency” means “each authority of the Government of the United States,” § 551(1), and “includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government ..., or any independent regulatory agency,” § 552(f).

Dep’t of the Interior v. Klamath Water Users Protective Ass’n, 532 U.S. 1, 9 (2001). “If a document is neither inter- nor intra-agency, then an agency may not withhold it, regardless of whether or not it reflects the deliberative process of the agency, attorney work product, or is an attorney-client communication. *See Klamath*, 532 U.S. at 12, 121 S.Ct. 1060.” *Center for Biological Diversity v. Office of the U.S. Trade Rep.*, 450 Fed. Appx. 605, 608 (9th Cir. 2011).

If the record is found to be inter- or intra-agency, it must also satisfy the “deliberative process” prong of the exemption. The Ninth Circuit explained the “deliberative process” privilege in *National Wildlife Federation v. U.S. Forest Service*, stating that to qualify for Exemption 5, the document must be “both (1) ‘predecisional’ or ‘antecedent to the adoption of agency policy’ and (2) ‘deliberative,’ meaning ‘it must actually be related to the process by which policies are formulated.’” 861 F.2d 1114, 1117 (9th Cir. 1988) (citation omitted). The policy for protecting such records “is to enhance ‘the quality of agency decisions’ . . . by protecting open and frank discussion.” *Klamath*, 532 U.S. at 9 (citation omitted).

Two prerequisites are required to properly apply the deliberative process privilege:

In deciding whether a document should be protected by the privilege we look to whether the document is “predecisional”—whether it was generated *before* the adoption of an agency policy—and whether the document is “deliberative”—whether it reflects the give-and-take of the consultative process.

Senate of the Commonwealth of Puerto Rico v. U.S. Dep’t of Justice, 823 F.2d 574, 585 (D.C. Cir. 1987)(citations omitted). “Accordingly, to approve exemption of a document as predecisional, a court must be able ‘to pinpoint an agency decision or policy to which the document contributed.’ *Paisley*, 712 F.2d at 698.”

Documents that contain technical discussions by agency staff are not considered “deliberative” of policy determinations. Such records are “primarily reportorial and expository, not deliberative.” *In re Franklin Nat. Bank Securities Litigation*, 478 F. Supp. 577, 585 (E.D. N.Y. 1979). *See also Seafirst Corp. v. Jenkins*, 644 F. Supp. 1160, 1163

(W.D. Wash. 1986) (“expert interpretations of facts” are not deliberative); *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 868 (D.C. Cir. 1980) (documents which are “simply straightforward explanations of agency regulations in specific factual situations” are not deliberative, but are “more akin to a ‘resource’ opinion about the applicability of *existing policy* to a certain state of facts.”) (emphasis added).

“[F]actual material that does not reveal the deliberative process is not protected by this exemption.” *National Wildlife*, 861 F.2d at 1117 (quoting *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983)). “[D]ocuments containing nonbinding recommendations on law or policy would continue to remain exempt from disclosure,” as would factual materials “to the extent that they reveal the mental processes of decisionmakers.” *Id.* at 1119 (citation omitted). However, “‘memoranda consisting *only* of compiled factual material or *purely* factual material contained in deliberative memoranda and severable from its context would generally be available’ for inspection by the public.” *Id.* at 1118 (citations omitted).

“Under the deliberative process privilege, factual information generally must be disclosed.” *Petroleum Inf. Corp. v. U.S. Dep’t of the Interior*, 976 F.2d 1429, 1434 (D.C. Cir. 1992). “[T]he privilege applies only to the ‘opinion’ or ‘recommendatory’ portion of the report, not to factual information which is contained in the document.” *Coastal States*, 617 F.2d at 867. “The exemption does not protect ‘purely factual material appearing in ... documents in a form that is severable without compromising the private remainder of the documents.’” *Playboy Enterprises, Inc. v. Dep’t of Justice*, 677 F.2d 931, 935 (D.C. Cir. 1982) (citing *EPA v. Mink*, 410 U.S. at 91).

Thus, any report, or portion thereof, that does not qualify for the privilege must be disclosed.

Here, Buffalo Field Campaign takes exception with the National Park Service’s use of the deliberative process exemption. In particular, as to the “Briefing Statements”:

- The National Park Service did not “narrowly” interpret or construe its privilege to withhold records and information from the public. Instead, from the redacted records, it appears the Park Services used a broad brush in deciding what to redact.
- The National Park Service did not point to any specific or particular agency decision or policy that is “predecisional” for each record and information withheld. From our review of the materials, there does not appear to be any particular discussions between subordinate and supervisor discussing the formation of agency policy or law.
- The National Park Service did not identify the role each withheld and redacted Briefing Statement had in any deliberative process underway or in the formulation of policy it has not already adopted. Bison management policies as

presented and summarized in the Briefing Statements withheld by the agency have been in place since 2000.

- Briefing Statements do not meet the criteria of being predecisional (‘antecedent to the adoption of agency policy’) *and* deliberative (“meaning it must actually be related to the process by which policies are formulated”). *National Wildlife* 861 F.2d at 1117. Instead, they are reportorial, in that they are merely a presentation of facts regarding an existing agency decision or policy.
- Briefing Statements are akin to memoranda, factual material or reports compiled by the National Park Service to explain the basis for its policy to the public.
- The National Park Service has not demonstrated that any of the Briefing Statements withheld fall within “the frank exchange of ideas on legal or policy matters” that permit the (b)(5) exemption.
- The National Park Service has also not demonstrated that any of the Briefing Statements withheld are part of the “give-and-take of the consultative process” or that any of the Briefing Statements contain “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Coastal States*, 617 F.2d at 866.
- The National Park Service withheld Briefing Statements in their entirety that the agency released on the ibmp.info web site covering the same bison management topics. For example:

Adaptive Management Criteria in the federal and state IBMP Records of Decision (Aug. 28, 2008) available at <http://ibmp.info/Library/20080828/Briefing%20-%20YNP%20ROD.pdf>.

Bison Monitoring and Surveillance Plan (Aug. 28, 2008) available at <http://ibmp.info/Library/20080828/Briefing%20-%20YNP%20Bison%20Surveillance1.pdf>.

Bison Population Status (Aug. 7, 2008) available at http://ibmp.info/Library/20080806/Briefing%20-%20YNP2_Bison%20Populations.pdf.

Genetics Assessment of Effective Population Size (Dec. 8, 2010) available at http://ibmp.info/Library/20101207/Genetics%20report_8%20Dec%202010.pdf.

Interagency Bison Management Plan update - 2007/2008 (Aug. 6, 2008) available at <http://ibmp.info/Library/20080806/Briefing%20-%20YNP1.pdf>.

Transfer of Surplus Bison under the IBMP (Aug. 11, 2009) available at http://ibmp.info/Library/20090811/IBMP_TransferSurplusBison_Brief.pdf

•

- Indeed, the Briefing Statements the National Park Service withheld appear to be updated with new information on bison management policies long in place i.e., surplus/quarantine, monitoring, population size, adaptive management strategy, among them. It is difficult to understand how these can be both “predecisional” and “deliberative” when they discuss decisions and deliberations that have already been concluded.

Accordingly, Buffalo Field Campaign requests that the Briefing Statements be released in their entirety.

Additionally, Buffalo Field Campaign takes issue with the Park Service’s withholding of a manuscript submitted for the journal *Policy Sciences* (pages 95–112 and 125–138). The redactions should be removed, because the manuscript is not the formulation of agency policy or law, is not deliberative, and is not predecisional. In particular:

- A manuscript prepared for publication is science – an expert’s interpretation of facts.
- A manuscript prepared for publication in a journal is not deliberative. While the National Park Service may withhold opinions solicited in support of drafting its publication, it cannot withhold the manuscript submitted for publication under exemption (b)(5).

The National Park Service also withheld a record and information submitted by the Bureau of Land Management to the Superintendent (pages 222–223). The BLM official is not a subordinate to the Superintendent of Yellowstone National Park. The agency did not demonstrate how a document shared with the Superintendent bound the National Park Service to any policy or decision. As such, those pages should be released in full.

The National Park Service also withheld an Environmental Assessment on the Conservation and Management of Yellowstone bison (pages 153–211). The National Park Service did not “narrowly” identify or construe its exemption privilege to segregate factual material and expert science presented in the environmental assessment. The National Park Service is well aware of the intense public interest in bison management policy. The public wants to know “what their government is up to.” *U.S. Dept of Justice v. Reporters Committee For Freedom of the Press*, 489 U.S. 749, 773 (1989). “Official information that sheds light on an agency’s performance of its statutory duties falls squarely within that statutory purpose.” *Id.* As such, the Environmental Assessment

should be released. At minimum, factual material and science contained in the Environmental Assessment should be released.

The National Park Service entirely withheld factual material and science in several Briefing Statements, none of which are identified as drafts:

- Bison Management: Long term Strategy (pages 84–85)
- Quarantine Program for Yellowstone Bison (page 87)
- Bison Grazing Effects on Northern Grasslands (page 88)
- Bison Issues (Population, Quarantine, Removal/Winter Operations) (pages 91–93)
- Long-Term Bison Management Strategy, including Quarantine (pages 121–123)

On one hand, the National Park Service entirely withheld a Briefing Statement on Bison Abundance under the Interagency Bison Management Plan (pages 236–237). And on the other hand, the Park Service released a document with the same date and title as the document it withheld (pages 234–235). This is highly confusing when attempting to ascertain how the redacted document actually constitutes a deliberative process, given the content provided in the fully released document.

The National Park Service also withheld Talking Points in a Briefing Statement on a Quarantine Program for Yellowstone bison (page 115). Talking points explain or elucidate a policy. Quarantining bison is an adopted policy of the National Park Service extending in practice to 2006, and originally proposed in 2000. The Talking Points should be released.

The National Park Service has a track record of publishing and updating Briefing Statements to share with the public facts and information about its bison management policies. For example, the web site ibmp.info contains National Park Service Briefing Statements and periodic updates to those Briefing Statements as new facts become available to the agency.

The National Park Service's Briefing Statements are an important way for the public, including Buffalo Field Campaign, to obtain factual information and updates on how the agency is carrying out its bison management policies that have been in place for two decades.

The National Park Service has not met its burden to withhold records and information from Buffalo Field Campaign. It did not “narrowly” identify and construe its privilege to exempt records from disclosure to the public. Instead, the agency broadly construed and applied a standard that arbitrarily kept from the public information it needs to know what “their Government is up to.”

The National Park Service's Conclusory Statements Do Not Justify Nondisclosure

As noted above, the federal courts have repeatedly held that “conclusory assertions of privilege will not suffice to carry the Government’s burden of proof in defending FOIA cases.” *Coastal States*, 617 F.2d at 861. *See also Mead Data Central, Inc. v. U.S. Dep’t of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977) (“agencies must be required to provide the reasons behind their conclusions in order that they may be challenged by FOIA plaintiffs and reviewed by the courts.”). Unsupported or conclusory justifications for nondisclosure “are unacceptable and cannot support an agency’s decision to withhold requested documents.” *Public Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983) (citation omitted).

FOIA imposes on agencies the burden of establishing that information is exempt from release. 5 U.S.C. § 552(a)(4)(B). In order to meet their burden, courts have uniformly required agencies to compile a so-called “Vaughn Index” that identifies each document withheld and the statutory exemption claimed for each document, and sets forth “a particularized explanation of how disclosure of the particular document would damage the interest protected by the claimed exemption.” *Wiener v. FBI*, 943 F.2d 972, 977 (9th Cir. 1991) (citation omitted). *See also Animal Legal Defense Fund v. Dep’t of the Air Force*, 44 F. Supp. 2d 295, 299 (D.D.C. 1999) (the government “must establish ‘what deliberative process is involved, and the role played by the documents in issue in the course of that process.’” (citation omitted); *King v. Dep’t of Justice*, 830 F.2d 210, 224 (D.C. Cir. 1987) (“specificity imposes on the agency the burden of demonstrating applicability of the exemptions invoked *as to each document or segment withheld* . . . and sets forth the exemption claimed and why that exemption is relevant.”) (emphasis in the original).

The National Park Service’s blanket claim for withholding records and information does not adequately state the particulars. While the agency identifies and explains the (b)(5) privilege, it does not “set[] forth a particularized explanation of how disclosure of the particular document would damage the interest protected by the claimed exemption.” *Wiener v. FBI*, 943 F.2d 972, 977 (9th Cir. 1991). Merely reciting the statutory language of exemption 5 evades the “particular” explanation or a statement of reasons for withholding a “particular” record or information sought under the FOIA.

III. EVEN IF PORTIONS OF THE WITHHELD DOCUMENTS ARE EXEMPTED FROM DISCLOSURE, THE NATIONAL PARK SERVICE FAILED TO PROVIDE “REASONABLY SEGREGABLE PORTIONS” OF THE RECORDS AND INFORMATION TO THE PUBLIC.

Even if the National Park Service could prove that the records and information it withheld are exempt from release under the FOIA, only those specific portions of the records(s) that are legally exempt can be withheld. In this case, the National Park Service improperly withheld entire documents, instead of releasing “reasonably segregable portions” not fully protected from disclosure by exemption 5. 5 U.S.C. § 552(b).

“[T]he exemptions to the FOIA do not apply wholesale. An item of exempt information does not insulate from disclosure the entire file in which it is contained, or even the entire page on which it appears.” *Arieff v. U.S. Dep’t of the Navy*, 712 F.2d 1462, 1466 (D.C. Cir. 1983). “Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.” *Anderson v. Dep’t of Health & Human Services*, 907 F.2d 936, 942 (10th Cir. 1990) (citation omitted).

Here, the National Park Service failed to describe the “mix of privileged and non-privileged information and explain[] why it would not be possible to simply redact the privileged materials.” *Judicial Watch, Inc. v. U.S. Postal Service*, 297 F. Supp. 2d 252, 267 (D.D.C. 2004) (citation omitted). Indeed, from our review, there are readily segregable portions of records that are purely factual. The Environmental Assessment is perhaps the most obvious example.

In addition, as shown above, “[f]actual material that does not reveal the deliberative process is not protected by this exemption.” *National Wildlife*, 861 F.2d at 1117 (quoting *Paisley v. CIA*, 712 F.2d 686, 698 (D.C. Cir. 1983)). “[M]emoranda consisting only of compiled factual material or purely factual material contained in deliberative memoranda and severable from its context would generally be available for discovery by private parties in litigation with the Government.” *EPA v. Mink*, 410 U.S. 73, 87–88 (1973) (footnote omitted).

The National Park Service withheld the title of an Issue, and the entire Briefing Statement on the undisclosed issue (pages 238–239). We believe it is a Briefing Statement on bison grazing. The National Park Service is studying bison grazing on the northern range with respect to managing the population size. See Geremia et al. *Bison Effects on Yellowstone Grasslands* (Update for 2015–16) available at: http://ibmp.info/Library/20161201/2_ChrisGermania_ProgressReport2016bestVersion.

The National Park Service must, at minimum, release factual information and science contained in the Briefing Statements on bison grazing (pages 88, 233, 238–239).

The National Park Service failed to release such portions, or adequately justify at all why it has not done so. Any records or information that can be reasonably segregable portions should be released.

RELIEF SOUGHT

Based on the above, Buffalo Field Campaign requests that the National Park Service immediately release the requested records, and reasonably segregable, non-exempt portions thereof, that were improperly withheld. We ask for your final determination within 20 working days pursuant to the FOIA. It would be useful as we evaluate the need to seek judicial review of this matter if you were to provide us with a projected date-certain by which we could expect a determination of our appeal as required by the FOIA.

We reserve the right to seek immediate judicial review if this appeal is not satisfactorily resolved and the requested documents produced in the FOIA-mandated time deadlines.

Dated this 22nd Day of October, 2018.

/s/ Darrell Geist
Habitat Coordinator
Buffalo Field Campaign

/s/ Daniel C. Snyder
OSB# 105127
Law Offices of Charles M. Tebbutt, P.C.



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

PO Box 168

Yellowstone National Park

Wyoming 82190

A7221(YELL)

VIA EMAIL – NO HARD COPY TO FOLLOW

August 22, 2018

Mr. Darrell Geist
Buffalo Field Campaign
P.O. Box 957
West Yellowstone, Montana 59758
z@wildrockies.org

Dear Mr. Geist:

This letter is the final response to your Freedom of Information Act (FOIA) request dated and received June 20, 2018, in which you requested “The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem,” excluding documents previously produced by Yellowstone regarding bison census or population size estimates, and records available on ibmp.info. An initial response was sent to you on July 18, 2018.

Your request has been assigned FOIA control number NPS-2018-00887.

It is the policy of the National Park Service (NPS) to: (1) make records of the NPS available to the public to the greatest extent possible in keeping with the spirit of the FOIA; and (2) make documents requested under the FOIA available at the earliest possible date while, at the same time, protecting the rights of the individuals involved and the administrative processes surrounding such rights. For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Your request is being processed under the provisions of the Freedom of Information Act (5 United States Code 552); United States Department of the Interior (“Department”) implementing regulations found at 43 Code of Federal Regulations Part 2, Subparts A through E, beginning at 2.1; and the Privacy Act of 1974 (5 United States Code 552a). Please be advised that additional FOIA and/or Privacy Act guidance/regulations may also be found at either the Department’s web site, www.doi.gov/foia, or the United States Department of Justice web site, www.usdoj.gov.

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” 5 U.S.C. § 552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the

decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions. The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(a)-(f). We are withholding 2 pages in part under Exemption 7 because they are protected under the following subpart. Exemption 7(E) protects law enforcement records if their release would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law. For the materials that have been withheld under 7(E), we have determined that they are techniques for law enforcement investigations or prosecutions; they are procedures for law enforcement investigations or prosecutions; and they are guidelines for law enforcement investigations or prosecutions whose release could reasonably be expected to risk circumvention of the law.

Twenty (20) documents totaling 108 pages have been released in their entirety:

1. March 19, 2017 – email from Dan Wenk to Sue Masica, Subject: Secretary’s visit (3 pp.)
2. March 20, 2017 – email from Michael Reynolds to Sue Masica, Subject: Re: Secretary’s visit (3 pp.)
3. March 21, 2017 – email from Herbert Frost to Sue Masica, Subject: Re: Secretary’s visit (3 pp.)
4. March 27, 2017 – email from Herbert Frost to Dan Wenk, Sue Masica, Subject: Fwd: YELL Bison briefing update: due today at 4:00 EDT (3 pp.)
5. March 27, 2017 – email from Dan Wenk to Sue Masica, Subject: Re: YELL Bison briefing update: due today at 4:00 EDT (3 pp.)
6. September 8, 2017 – email from Dan Wenk to Sue Masica, Subject: Background Bison Brief (3 pp.)
7. September 8, 2017 – email from Sue Masica to Todd Willens, Subject: Yellowstone Bison (4 pp.)
8. March 12, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Fwd: YELL_BisonManagement_3-12-18_FINAL.docx (3 pp.)
9. March 13, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: YELL_BisonManagement_3-12-18_FINAL.docx (3 pp.)
10. March 13, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: YELL_BisonManagement_3-12-18_FINAL.docx (2 pp.)
11. May 11, 2018 – email from Dan Wenk to Dave Mihalic, Subject: BisonSlides_IBMP_WinterOps_NPS_4-25.pptx (8 pp.)
12. May 14, 2018 – email from Dan Wenk to Susan Combs, Subject: Bison Briefs (6 pp.)
13. May 16, 2018 – email from Dan Wenk to Dave Mihalic, Subject: fuhlendorf et al 2012.pdf (14 pp.)
14. May 17, 2018 – email from Dan Wenk to Dave Mihalic, Subject: BisonAbundanceIBMP_May2018.docx (3 pp.)
15. June 6, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Fwd: PJ’s request-description of agreement with Washington Lee Univ (33 pp.)

16. June 7, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: PJ's request-description of agreement with Washington Lee Univ (3 pp.)
17. June 7, 2018 – email from Randal Bowman to Dave Mihalic, Subject: Re: PJ's request-description of agreement with Washington Lee Univ (3 pp.)
18. June 11, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Bison Brief (3 pp.)
19. June 11, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: Bison (1 page)
20. June 12, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: Bison Brief (4 pp.)

Seventeen (17) documents totaling 149 pages have been released with redactions made under Exemption (b)5 Draft Deliberative Privilege as cited above:

1. March 8, 2017 – email from P.J. White to Dan Wenk, Subject: Bison briefing statements for the Secretary of the Interior (6 pp.)
2. March 14, 2017 – email from Sue Masica to Dan Wenk, Subject: Bison overview BP (4 pp.)
3. May 24, 2017 – email from P.J. White to Dan Wenk, Patrick Kenney, Jennifer Carpenter, Pete Webster, Subject: (Subject Line Withheld under Exemption (b)5 Draft Deliberative Privilege) (18 pp.)
4. June 22, 2017 – email from Dan Wenk to Bert Frost, Sue Masica, Subject: Fwd: Bison briefs (4 pp.)
5. January 25, 2018 – email from Tim Reid to P.J. White, Jennifer Carpenter, Rick Wallen, Pete Webster, Jody Lyle, Subject: Strategic Mtg-save the date (5 pp.)
6. March 14, 2018 – email from P.J. White to Rick Wallen, Chris Geremia, Subject: Bison science and governance manuscript (14 pp.)
7. March 23, 2018 – email from Tim Reid to Jody Lyle, Subject: Re: information about bison numbers (3 pp.)
8. April 6, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Pete Webster, Patrick Kenney, Subject: Recommendations for Bison Conservation and Management (4 pp.)
9. April 17, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Pete Webster, Patrick Kenney, Rick Wallen, Subject: Bison strategy meeting on Thursday (3 pp.)
10. April 20, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Pete Webster, Rick Wallen, Chris Geremia, Ray McPadden, Subject: Environmental Assessment: Conservation and Management of Yellowstone Bison (59 pp.)
11. April 20, 2018 – email from Tim Reid to Dan Wenk, Jennifer Carpenter, P.J. White, Rick Wallen, Chris Geremia, Subject: IBMP PPT (8 pp.)
12. May 16, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Bison habitat (2 pp.)
13. May 16, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: Sorry to ask... (4 pp.)
14. May 16, 2018 – email from Dan Wenk to Jennifer Carpenter, P.J. White, Tim Reid, Subject: Fwd: Sorry to ask... (2 pp.)
15. May 17, 2018 – email from P.J. White to Dan Wenk, Jennifer Carpenter, Tim Reid, Rick Wallen, Chris Geremia, Pete Webster, Patrick Kenney, Subject: Briefs on Bison Grazing and Abundance (7 pp.)
16. May 17, 2018 – email from Dan Wenk to Dave Mihalic, Subject: Re: Sorry to ask... (3 pp.)
17. May 17, 2018 – email from Dave Mihalic to Dan Wenk, Subject: Re: Sorry to ask... (3 pp.)

Two (2) documents totaling 7 pages have been released with redactions made under Exemption (b)7e as cited above:

1. April 10, 2018 – Yellowstone Bison Update (3 pp.)
2. April 10, 2018 – email from Tim Reid to Dave Mihalic, Subject: YELL Bison Update (4 pp.)

The National Park Service consulted with Kate Williams-Shuck, Attorney, Office of the Solicitor, Rocky Mountain Region, United States Department of the Interior, Denver, Colorado, in connection with this FOIA response.

In accordance with Department regulations found at 43 C.F.R. 2.24(d), the following individuals are responsible for the partial denial of your request:

- Sue Masica, Director, Intermountain Region, National Park Service, Denver, Colorado
- Charis Wilson, Freedom of Information Act Officer, National Park Service, Denver, Colorado

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the National Park Service's response is in error. You must also include with your appeal copies of all correspondence between you and Yellowstone National Park concerning your FOIA request, including your original FOIA request and the Bureau's response. Failure to include with your appeal all correspondence between you and the Bureau will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
(OGIS) 8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

Fee waivers are determined on a case-by-case basis. All fees have been waived. This letter completes Yellowstone National Park's response to you for this request. If you have questions concerning this FOIA response, please contact me at (307) 344-2002.

Sincerely,

A handwritten signature in black ink that reads "Kerrie Evans". The signature is written in a cursive, flowing style.

Kerrie Evans
Freedom of Information Act Officer

Enclosures



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE

PO Box 168
Yellowstone National Park
Wyoming 82190

A7221(YELL)

VIA EMAIL – NO HARD COPY TO FOLLOW

July 18, 2018

Mr. Darrell Geist
Buffalo Field Campaign
P.O. Box 957
West Yellowstone, Montana 59758
z@wildrockies.org

Dear Mr. Geist:

This letter is a partial response to your Freedom of Information Act (FOIA) request dated and received June 20, 2018, in which you requested “The policy surrounding the size of the bison population or herds in the Yellowstone ecosystem,” excluding documents previously produced by Yellowstone regarding bison census or population size estimates, and records available on ibmp.info.

Your request has been assigned FOIA control number NPS-2018-00887.

It is the policy of the National Park Service (NPS) to: (1) make records of the NPS available to the public to the greatest extent possible in keeping with the spirit of the FOIA; and (2) make documents requested under the FOIA available at the earliest possible date while, at the same time, protecting the rights of the individuals involved and the administrative processes surrounding such rights. For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Your request is being processed under the provisions of the Freedom of Information Act (5 United States Code 552); United States Department of the Interior (“Department”) implementing regulations found at 43 Code of Federal Regulations Part 2, Subparts A through E, beginning at 2.1; and the Privacy Act of 1974 (5 United States Code 552a). Please be advised that additional FOIA and/or Privacy Act guidance/regulations may also be found at either the Department’s web site, www.doi.gov/foia, or the United States Department of Justice web site, www.usdoj.gov.

Exemption 5 allows an agency to withhold “inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency.” 5 U.S.C. §

552(b)(5). Exemption 5 therefore incorporates the privileges that protect materials from discovery in litigation, including the deliberative process, attorney work-product, attorney-client, and commercial information privileges. The deliberative process privilege protects the decision-making process of government agencies and encourages the frank exchange of ideas on legal or policy matters by ensuring agencies are not forced to operate in a fish bowl. A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) assure that subordinates will feel free to provide the decisionmaker with their uninhibited opinions and recommendations; (2) protect against premature disclosure of proposed policies; and (3) protect against confusing the issues and misleading the public. The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. The materials that have been withheld under the deliberative process privilege of Exemption 5 are both predecisional and deliberative. They do not contain or represent formal or informal agency policies or decisions. They are the result of frank and open discussions among employees of the Department of the Interior. Their contents have been held confidential by all parties and public dissemination of this information would have a chilling effect on the agency’s deliberative processes; expose the agency’s decision-making process in such a way as to discourage candid discussion within the agency, and thereby undermine its ability to perform its mandated functions. The deliberative process privilege does not apply to records created 25 years or more before the date on which the records were requested.

Exemption 7 protects from disclosure “records or information compiled for law enforcement purposes” if the records fall within one or more of six specific bases for withholding set forth in subparts (a) through (f). 5 U.S.C. § 552(b)(7)(a)-(f). We are withholding 2 pages in part under Exemption 7 because they are protected under the following subpart. Exemption 7(E) protects law enforcement records if their release would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law. For the materials that have been withheld under 7(E), we have determined that they are techniques for law enforcement investigations or prosecutions; they are procedures for law enforcement investigations or prosecutions; and they are guidelines for law enforcement investigations or prosecutions whose release could reasonably be expected to risk circumvention of the law.

Nine (9) documents totaling 33 pages have been released in their entirety:

1. March 14, 2017 – email from Dan Wenk to Amy Mitchell, Subject: Final Briefings 1 of 4 (9 pp.)
2. March 15, 2017 – email from Amy Mitchell to Dan Wenk, Subject: Re: Final Briefings 1 of 4 (1 page)
3. March 27, 2017 – email from Dan Wenk to Bert Frost, Sue Masica, Alexa Viets, Subject: Update to bison brief (2 pp.)
4. June 5, 2017 – email from Grace Stephens to Dan Wenk, Sue Masica, Herbert Frost, Subject: Re: YELL bison meeting (4 pp.)
5. March 22, 2018 – email from P.J. White to Dan Wenk, Patrick Kenney, Jody Lyle, Subject: Removals of Bison during Winter 2017-2018 (3 pp.)
6. April 10, 2018 – email from Tim Reid to Jennifer Carpenter, P.J. White, Rick Wallen, Subject: Fwd: YELL submissions for IMR Weekly Report (2 pp.)

7. April 23, 2018 – email from Tim Reid to Scott Bischke, Subject: Powerpoint (3 pp.)
8. May 17, 2018 – email from Tim Reid to Rick Wallen, Subject: Re: Briefs on Bison Grazing and Abundance (4 pp.)
9. June 14, 2018 – email from Tim Reid to P.J. White, Subject: Re: Hunt Mtg Notes (5 pp.)

A Notice of Delay letter was sent to you by email on July 18, 2018. As noted in that letter, as yet, we have been unable to make a determination on the remaining documents responsive to your request. Although we hope that you will wait so that we can complete our review process, please note that you may seek dispute resolution services from our FOIA Public Liaison or the Office of Government Information Services (OGIS), as detailed in that letter. The remaining documents responsive to your request will be provided in subsequent response(s).

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 90 workdays** from the date of this letter. Appeals arriving or delivered after 5:00 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the National Park Service's response is in error. You must also include with your appeal copies of all correspondence between you and Yellowstone National Park concerning your FOIA request, including your original FOIA request and the Bureau's response. Failure to include with your appeal all correspondence between you and the Bureau will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, D.C. 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

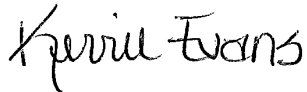
As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered

a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
(OGIS) 8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

Fee waivers are determined on a case-by-case basis. All fees have been waived. This letter is the first partial release of Yellowstone National Park's response to you for this request. If you have questions concerning this FOIA response, please contact me at (307) 344-2002.

Sincerely,

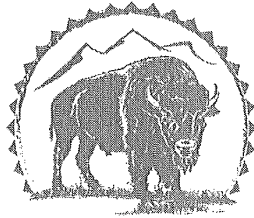
A handwritten signature in black ink that reads "Kerrie Evans". The signature is written in a cursive, flowing style.

Kerrie Evans
Freedom of Information Act Officer

Enclosures

18-18

NPS-2018-00887



BUFFALO
FIELD CAMPAIGN

FREEDOM OF INFORMATION ACT REQUEST

June 20, 2018

Superintendent
Office of the Superintendent
Yellowstone National Park
PO Box 168
Yellowstone National Park, WY 82190-0168
Phone: (307) 344-2002
Fax: (307) 344-2014
E-Mail: kerrie_evans@nps.gov

Dear Kerrie Evans,

Pursuant to the Freedom of Information Act 5 U.S.C. § 552 et. seq. and the U.S. Department of the Interior's regulations 43 C.F.R. §§ 2.1-2.290 (Jan. 19, 2017), Buffalo Field Campaign is filing a request for public information and records.

REQUESTED RECORDS

Buffalo Field Campaign requests all records from the Office of the Superintendent, Yellowstone National Park 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.

The time period for the requested records is March 1, 2017 to June 20, 2018.

"Protecting the Last Wild Bison"

PO BOX 957 | WEST YELLOWSTONE, MT 59758 | 406.646.0070

WWW.BUFFALOFIELDCAMPAIGN.ORG

“Office of the Superintendent” refers to the Superintendent, Office of the Superintendent staff and personnel acting under the authority or on behalf of the Superintendent.

“All records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

Buffalo Field Campaign’s Freedom of Information Act request *is not meant* to exclude any other records that are reasonably related to the subject matter of our request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Buffalo Field Campaign is willing to receive records on a rolling basis.

RELEASE NON-EXEMPT REQUESTED RECORDS

As you know, the Freedom of Information Act provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed within the statutory time limit. 5 U.S.C. § 552(b).

Should you decide to invoke an exemption, Buffalo Field Campaign requests all non-exempt portions of the requested records and asks that you justify your decision by reference to specific exemptions allowed under the Freedom of Information Act. Please include sufficient information for Buffalo Field Campaign to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please provide a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

Buffalo Field Campaign reserves the right to appeal a decision by the agency to withhold any requested records.

FORMAT REQUESTED

Under the Freedom of Information Act, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”). “Readily accessible” means text-searchable and OCR-formatted records. 5 U.S.C. § 552(a)(3)(B).

In responding to our Freedom of Information Act request, Buffalo Field Campaign requests the agency reduce costs and waste by providing the requested records in electronic format on a web site for downloading, or on a USB stick, or CD/DVD that can be mailed to the address below.

Please do not provide the records in a single or “batched” PDF file. Please do not provide files in portfolios and embedded files within PDF files as these documents are not “readily accessible.”

You may include an index.

RECORD DELIVERY

Buffalo Field Campaign appreciates your help in obtaining a determination of the requested records within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 5

C.F.R. § 1303.10(c). Failure to comply within the statutory timeframe may result in Buffalo Field Campaign taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may deliver the requested records to:

Darrell Geist
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
z@wildrockies.org

If our Freedom of Information Act request is unclear, if the responsive records are voluminous, or if I can be of assistance in expediting our request for records, please contact me at (406) 531-9284 or z@wildrockies.org.

FEE WAIVER REQUESTED

Buffalo Field Campaign requests a fee waiver for all search and duplication fees under the Freedom of Information Act and its implementing regulations. 5 U.S.C. § 552(a)(4)(A); 43 C.F.R. § 2.45. A fee waiver and release of the information and records requested will benefit the people of the United States by fostering public understanding of government activities and encouraging public involvement in important policy and management issues of bison as a wildlife species in Yellowstone National Park, the state of Montana, and the public trust interests of American Indian tribes and the American people.

The language of the Freedom of Information Act clearly indicates the U.S. Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government information and records. In addition, the legislative history of the Freedom of Information Act fee waiver language indicates the U.S. Congress intended a liberal interpretation of the phrase “primarily benefiting the public.” This suggests that all fees are to be waived whenever the release of information contributes to public debate on important public policy and management issues. This standard has been affirmed by the U.S. Court of Appeals for the District of Columbia in *Better Government Association v. Department of State*, 780 F.2d 86 (D.C. Cir. 1986). In *Better Government*, the D.C. Circuit Court found that under the Freedom of Information Act, the U.S. Congress explicitly recognized the need for non-profit organizations to have free access to government

documents and those government agencies cannot impair this free access by charging duplication or search fees for Freedom of Information Act requests. *Better Government*, 780 F.2d at 89.

The Freedom of Information Act was designed to provide citizens a broad right to access government records. Its basic purpose is to “open agency action to the light of public scrutiny.” *U.S. Department of Justice v. Reporters Committee for Freedom of Press*, 489 U.S. 749, 772 (1989) (internal quotation and citation omitted). “The generation that made the nation thought secrecy in government one of the instruments of Old World tyranny, and committed itself to the principle that a democracy cannot function unless the people are permitted to know *what their government is up to*.” *Freedom of Press*, 489 U.S. at 772-773 (internal quotation and citation omitted). In order to provide public access to this information, its fee waiver provision requires that “[d]ocuments shall be furnished without any charge or at a [reduced] charge,” if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). The fee waiver requirement is “liberally construed.” *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Department of the Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as Buffalo Field Campaign access to government records without the payment of fees. Indeed, the Freedom of Information Act’s fee waiver provision was intended by the U.S. Congress “to prevent government agencies from using high fees to discourage certain types of requesters and requests,” which are “consistently associated with requests from journalists, scholars and non-profit public interest groups.” *Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Buffalo Field Campaign Qualifies for a Fee Waiver

Under the Freedom of Information Act, a party is entitled to a fee waiver when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 43 C.F.R. § 2.45(a)–(f).

A. The Subject Matter of our Freedom of Information Act Request Concerns the “Operations and Activities of the Government.”

The subject matter of our Freedom of Information Act request concerns the operations and activities of the Superintendent, and the Office of the Superintendent, in bison management in Yellowstone National Park and the state of Montana, the associated Interagency Bison Management Plan, and the legal and public trust responsibilities of the Superintendent.

Release of the requested records will provide Buffalo Field Campaign and the public with crucial insight into the Office of the Superintendent's role in managing American bison and the ecosystems upon which the native species depends, a subject of immense public interest for the past several decades. The subject is of broad public interest due to the substantial taxpayer moneys spent, the significance held for this remnant bison population by the public at large, and the public's interest in the execution of the U.S. government's trust and legal responsibilities.

It is clear that the role of the Superintendent and the Office of the Superintendent in managing bison held in the public trust is a specific and identifiable activity of the government, in this case the executive branch agency of the U.S. National Park Service. *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1313 (D.C. Cir. 2003) ("reasonable specificity" is all that is required). Thus, Buffalo Field Campaign meets this factor.

B. Disclosure of Requested Records is "Likely to Contribute" to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities. Release of the requested records will contribute to an increased understanding of those operations and activities by the public.

Disclosure of the requested records will allow Buffalo Field Campaign to convey to the public information about the role of the Superintendent, and the Office of the Superintendent, in bison operations or activities, public trust management of National Parks and the ecosystems upon which bison depend for survival, and the legal and public trust interests of American Indian tribes and the American people.

Once records are available, Buffalo Field Campaign will review and analyze it and present it to the general public in a manner that will meaningfully

enhance the public's understanding of government operations or activities.

Release of the requested records is likely to contribute to an understanding of the operations and activities of the Superintendent, and the Office of the Superintendent, in managing public trust bison and National Parks, and the legal and public trust interests of American Indian tribes and the American people.

C. Disclosure of Requested Records Will Contribute to a Reasonably Broad Audience of Interested Persons' Understanding Government Operations or Activities.

Release of the requested records will contribute to public understanding of how the Superintendent, Office of the Superintendent, National Park Service manage bison and Yellowstone National Park in light of their statutory duties under the Organic Act, a host of environmental and cultural resource laws, and the legal and public trust concerns held by American Indian tribes and the American people.

As explained herein, disclosing the records will contribute to public understanding of the role of the Superintendent in caretaking bison and Yellowstone National Park, and reasonably reach a broad audience of interested persons who can influence bison management, specifically in Yellowstone National Park and the state of Montana, through the associated Interagency Bison Management Plan.

Buffalo Field Campaign will use the information it obtains from the disclosed records to educate the public at large about how National Parks are being managed and how bison are being managed – operations or activities of government involving the U.S. National Park Service, the Superintendent, and the Office of the Superintendent.

Through Buffalo Field Campaign's synthesis and dissemination (by means discussed herein), disclosure of information contained in and gleaned from the requested records will contribute to the understanding of a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F. Supp. 867, 876 (D. Mass. 1984) (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Department of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994)

(applying the term “public” to include a sufficient “breadth of benefit” beyond the requester’s own interests); *Community Legal Services. v. U.S. Department of Housing & Urban Development*, 405 F. Supp. 2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience . . . there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to evaluate the requested records, which concern how the Superintendent, Office of the Superintendent, National Park Service manage bison in light of their public trust and statutory duties under the Organic Act, and numerous environmental and cultural resource laws. To the best of our knowledge, none of the requested records are currently in the public domain, *e.g.*, the U.S. National Park Service’s FOIA Library (<https://www.nps.gov/aboutus/foia/foia-reading-room.htm>). *See Community Legal Services. v. HUD*, 405 F. Supp. 2d 553, 560 (D. Pa. 2005) (because requested records “clarify important facts” about agency policy, the documents sought by the requestor “would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “Legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations”

Disclosure of requested records is not only “likely to contribute,” but is certain to contribute, to public understanding of the role of the Superintendent and the Office of the Superintendent, in executing their public trust duties and legal responsibilities concerning bison and National Parks.

The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions and public trust responsibilities. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties concerning bison and National Parks.

D. Disclosure of Requested Records is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

Buffalo Field Campaign is requesting the disclosure of records to significantly enhance the public's understanding of the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

Disclosure of the requested records will enhance what is publicly known or readily available. Disclosure will significantly enhance the public's understanding because the requested records will help reveal more about the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

Disclosure of requested records to Buffalo Field Campaign is also certain to shed light on the role of the Superintendent, and the Office of the Superintendent, and the legal and public trust duties carried out concerning bison and National Parks.

The release of information and records is for the public's benefit and in the public's interest and will be made available to the public at large through Buffalo Field Campaign's offices and our website, list-serve and network outlets. Information and records available to Buffalo Field Campaign are used in press conferences and releases, television and radio interviews, regional and national publications, local and national broadcast networks, in public meetings and before legislative bodies, is shared online through a variety of platforms that reaches the public nationwide and abroad, and shared with people traveling through Yellowstone National Park on an annual basis through our summer outreach programs. These and other Buffalo Field Campaign activities described herein significantly contribute to the public's understanding of government operations and activities.

Public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the Freedom of Information Act. Buffalo Field Campaign meets this factor as well.

Buffalo Field Campaign has a Demonstrated Ability to Disseminate the
Requested Records Broadly

Buffalo Field Campaign is a non-profit organization that informs, educates, and engages the public regarding bison management issues, policies, and laws. Buffalo Field Campaign has been substantially involved in the activities of

numerous government agencies for over 20 years and consistently demonstrated its ability to disseminate information granted to it through the Freedom of Information Act.

In consistently granting Buffalo Field Campaign fee waivers, agencies have recognized: (1) the information requested by Buffalo Field Campaign contributes significantly to the public's understanding of the government's operations or activities; (2) the information enhances the public's understanding to a greater degree than currently exists; (3) Buffalo Field Campaign possesses the expertise to explain the requested information to the public; (4) Buffalo Field Campaign possesses the ability to disseminate the requested information to the general public; and (5) news outlets and reporters recognize and rely upon Buffalo Field Campaign as an on the ground, and expert source of information on bison, and the ecosystem they depend on for survival.

Buffalo Field Campaign's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities, as compared to the level of public understanding prior to disclosure, are well established.

Buffalo Field Campaign intends to use the records requested here similarly. Information and records obtained by Buffalo Field Campaign appear in news stories online and in print, radio and TV, including regular reporting in local, regional, national, and international outlets. Buffalo Field Campaign's extensive website reaches a broad level of people. Buffalo Field Campaign sends out weekly and biweekly updates and action alerts to a network of supporters throughout the United States. Buffalo Field Campaign sends and distributes an annual printed newsletter to more than 45,000 people. A diverse and broad group of people has joined Buffalo Field Campaign's social media platforms to regularly post news and take action items concerning bison.

Buffalo Field Campaign is also a source of news based on our capacity as an in the field organization providing information and news reports to people located throughout the United States, to broadcast networks and news media outlets in the United States and abroad, and to various local, regional, and international communities.

Buffalo Field Campaign intends to use any or all of these far-reaching public outlets to share with the public information obtained as a result of our Freedom of Information Act request.

Public oversight and enhanced understanding of the Office of the Superintendent's legal and public trust duties is a matter of public interest and an on-going concern.

In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Department of Justice*, 19 F.3d 807 (2nd Cir. 1994). Buffalo Field Campaign need not show exactly how it intends to distribute the information, because "nothing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1314 (D.C. Cir. 2003). It is sufficient for Buffalo Field Campaign to show how it distributes information to the public generally. *Judicial Watch*, 326 F.3d at 1314.

Obtaining the Requested Records is of No Commercial Interest to Buffalo Field Campaign

Access to government records through Freedom of Information Act requests is essential to Buffalo Field Campaign's role in educating, informing, and engaging the general public. Founded in 1997, Buffalo Field Campaign is a 501(c)(3) nonprofit organization (EIN: 36 3964401) with supporters found throughout the United States who are dedicated to the protection of bison in the wild and the ecosystems upon which they depend for survival.

Buffalo Field Campaign has no commercial interest and will realize no commercial benefit from the release of the requested records.

For all of the foregoing reasons, Buffalo Field Campaign qualifies for a full fee waiver. We hope that the Office of the Superintendent will immediately grant our fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

All records and any related correspondence should be sent to my attention at the address below.

Thank you for your time and assistance.

Sincerely,

/s/

Darrell Geist
Buffalo Field Campaign
PO Box 957
West Yellowstone, MT 59758
z@wildrockies.org

From: Daniel Snyder Dan@tebbuttlaw.com
Subject: Re: [EXTERNAL] Following up on our call
Date: March 14, 2019 at 2:11 PM
To: Wilson, Charis charis_wilson@nps.gov

Thanks Charis. I plan to check back with you one more time.

Best,

Dan

Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401
dan@tebbuttlaw.com
541-344-3505

<http://www.charlietebbutt.com>

On Mar 14, 2019, at 12:09 PM, Wilson, Charis <charis_wilson@nps.gov> wrote:

Happy Pi day to you too. I have not heard anything back.

Ms. Charis Wilson, Ph.D., CRM
NPS FOIA Officer
12795 W. Alameda Parkway
PO Box 25287
Denver, CO 80225-0287
303-969-2959
Fax: 303-969-2557
1-855-NPS-FOIA

"What we find changes who we become." - Peter Morville

"The historian works with records...there is no substitute for records: no records, no history." - Paraphrasing Langlois & Seignobos (1903)

"Let us be guardians, not gardeners" - Unknown, From 1963 Living Wilderness editorial - Attributed to Adolph Murie

On Thu, Mar 14, 2019 at 1:08 PM Daniel Snyder <Dan@tebbuttlaw.com> wrote:

Charis - Happy Pi day. Checking back again.

Dan

Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401
dan@tebbuttlaw.com
541-344-3505

<http://www.charlietebbutt.com>

On Mar 4, 2019, at 11:42 AM, Wilson, Charis <charis_wilson@nps.gov> wrote:

Mr. Snyder,

Nothing yet. I have reached out to their office again. If I hear anything I will let you know.

C.

Ms. Charis Wilson, Ph.D., CRM
NPS FOIA Officer
12795 W. Alameda Parkway
PO Box 25287
Denver, CO 80225-0287
303-969-2959
Fax: 303-969-2557

1-855-NPS-FOIA

"What we find changes who we become." - Peter Morville

"The historian works with records...there is no substitute for records: no records, no history." - Paraphrasing Langlois & Seignobos (1903)

"Let us be guardians, not gardeners" - Unknown, From 1963 Living Wilderness editorial - Attributed to Adolph Murie

On Mon, Mar 4, 2019 at 12:09 PM Daniel Snyder <Dan@tebbuttlaw.com> wrote:

Hi Charis - Just following up on our call from a couple weeks ago. Were you able to get an idea of whether BFC's FOIA appeal - NPS-2018-00887 - has been received and/or processed?

Thank you,

Dan

Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401
dan@tebbuttlaw.com
541-344-3505

<http://www.charlietebbutt.com>

From: Daniel Snyder Dan@tebbuttlaw.com
Subject: Re: Update on your appeal of NPS-2018-00887
Date: March 18, 2019 at 6:30 PM
To: FOIA, NPS npsfoia@nps.gov

Thank you!

Dan

Sent from my iPhone

On Mar 18, 2019, at 9:33 AM, FOIA, NPS <npsfoia@nps.gov> wrote:

Mr. Snyder,

Wanted to update you that I have heard back from the DOI FOIA Appeals Office and your appeal, which they received on October 22, 2018, has been assigned number 2019-007. They have routed the appeal to us and notified us that they want to provide them with copies of the records that are the subject of the appeal by March 26.

Sincerely,

C.

Ms. Charis Wilson, PhD, CRM
NPS FOIA Officer
12795 W. Alameda Parkway
PO Box 25287
Denver, CO 80225-0287
303-969-2959
Fax: 303-969-2557
1-855-NPS-FOIA
npsfoia@nps.gov

From: FOIA, NPS npsfoia@nps.gov
Subject: Re: Re: [EXTERNAL] Update on your appeal of NPS-2018-00887
Date: June 3, 2019 at 10:04 AM
To: Daniel Snyder Dan@tebbuttlaw.com

Mr. Snyder,

The last I heard from the appeals office they planned to issue a response "soon". I contacted them last week after receiving your email and have not yet heard back from them.

Sincerely,

C.

Ms. Charis Wilson, PhD, CRM
NPS FOIA Officer
12795 W. Alameda Parkway
PO Box 25287
Denver, CO 80225-0287
303-969-2959
Fax: 303-969-2557
1-855-NPS-FOIA
npsfoia@nps.gov

On Thu, May 30, 2019 at 12:43 PM Daniel Snyder <Dan@tebbuttlaw.com> wrote:

Hello again Charis,

I am following up on this one last time before we head off to court. We haven't heard anything from the DOI appeals office since your March 18, 2019 e-mail below. Calls and e-mails have again gone unanswered. Can you please check back with the DOI FOIA appeals office for me to obtain the status of this appeal?

Thank you,

Best,

Dan

Daniel C. Snyder
Law Offices of Charles M. Tebbutt, P.C.
941 Lawrence St.
Eugene, OR 97401
dan@tebbuttlaw.com
541-344-3505

<http://www.charlietebbutt.com>

On Mar 18, 2019, at 7:33 AM, FOIA, NPS <npsfoia@nps.gov> wrote:

Mr. Snyder,

Wanted to update you that I have heard back from the DOI FOIA Appeals Office and your appeal, which they received on October 22, 2018, has been assigned number 2019-007. They have routed the appeal to us and notified us that they want to provide them with copies of the records that are the subject of the appeal by March 26.

Sincerely,

C.

Ms. Charis Wilson, PhD, CRM
NPS FOIA Officer

NPS FOIA Officer
12795 W. Alameda Parkway
PO Box 25287
Denver, CO 80225-0287
303-969-2959
Fax: 303-969-2557
1-855-NPS-FOIA
npsfoia@nps.gov

3/8/2017.

DEPARTMENT OF THE INTERIOR Mail - Bison briefing statements for the Secretary of the Interior



White, P <pj_white@nps.gov>

Bison briefing statements for the Secretary of the Interior

1 message

White, P <pj_white@nps.gov>

Wed, Mar 8, 2017 at 4:28 PM


To: Dan Wenk <dan_wenk@nps.gov>


Cc: "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Kerrie Evans <Kerrie_Evans@nps.gov>, Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>, "Haas, Sarah" <sarah_haas@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>


Attached:

Issues and recommended long-term management strategy
Bison management (focusing on winter operations and 2017)
Quarantine program
Bison grazing effects

4 attachments

 **YELL_BisonManagement_Mar2017.docx**
19K

 **YELL_LongTermBisonMgmt_USDISecretary_Mar2017.docx**
30K

 **YELL_BisonQuarantine_Mar2017.docx**
28K

 **BisonGrazing_GrasslandHealth_Mar2017.docx**
21K

Briefing Statement FY 2017

Bureau: National Park Service (NPS)

Issue: Bison Management: Long-term Strategy

Park: Yellowstone National Park (YELL)

Key Points

- The conservation of bison requires cooperation and negotiation among multiple agencies and tribes with different mandates, philosophies, and treaties. The Interagency Bison Management Plan (IBMP) has been implemented in YELL and Montana since 2001 to conserve a viable, wild population with no brucellosis transmission to cattle.

(b)5 Draft Deliberative



Background

- Members of the IBMP include the Animal and Plant Health Inspection Service (APHIS), Forest Service, InterTribal Buffalo Council (ITBC), Montana Department of Livestock, Montana Fish, Wildlife & Parks, Nez Perce Tribe, NPS, and the Salish and Kootenai Tribes of the Flathead Nation.

(b)5 Draft Deliberative



- There is very limited tolerance for wild bison in Montana due to concerns about competition with cattle, human safety, property damage, and brucellosis transmission. Idaho and Wyoming do not want wild bison outside parks.
- About 5,500 bison were counted during summer 2016. High bison densities can degrade other resources and result in mass migrations into Montana. Managers intend to harvest and cull (slaughter) up to 1,300 bison this winter.
- The State of Montana and five tribes have hunted bison on public lands in Montana adjacent to YELL, including the Nez Perce, Salish and Kootenai, Shoshone-Bannock, Umatilla, and Yakama tribes. The State of Montana and each sovereign tribe develop and enforce their own harvest permits, regulations, and seasons.
- By itself, hunting has not been sufficient to attain management removal objectives. Thus, hundreds of bison are culled by the NPS during some winters at the Stephens Creek facility in the northern portion of YELL. The culling and shipment of bison to slaughter facilities is extremely controversial and generates negative publicity.
- The tribes are opposed to culling in YELL because it reduces the number of migrating bison available for treaty hunting opportunities outside the park. However, the NPS provides all bison captured for slaughter to several tribes and a tribal organization (ITBC) for the subsequent distribution of meat and hides to their members.
- Culling needs to occur throughout the winter (January through March) because there is a limited number of processing facilities, limited capacity (150-200 bison) for processing bison each week, and females are late in pregnancy by April. Typically, facilities will not accept bison during autumn due to cattle processing operations.

Long-Term Management Strategy

- Population size
(b)5 Draft Deliberative
◦ Maintain the historic lineages (central [indigenous]; northern [Pablo-Allard]) and existing genetic diversity
- Culling
◦ Make capture, culling, shipping, and distribution operations a shared commitment among the agencies
(b)5 Draft Deliberative
- Hunting
(b)5 Draft Deliberative
◦ When possible, use hunters to harvest bison that move outside the northern and western management areas
- Quarantine
◦ Implement a surveillance program that accommodates at least 50 male and 50 female bison each year to provide brucellosis-free bison for relocation to public and tribal lands
◦ Use the Stephens Creek facility in northern YELL to conduct brucellosis screenings for quarantine and then complete the testing protocol elsewhere (alternatively, the facility could be redesigned for quarantine)
◦ Continue to refine quarantine procedures, including testing frequency and duration, as new data become available
- Tolerance and relocation
(b)5 Draft Deliberative
- Conflict resolution
◦ Identify likely conflict areas for targeted surveillance and monitoring, and initiate conflict resolution activities when necessary
◦ Use targeted fencing, hazing, and hunting to maintain separation between bison and cattle and protect people and property (similar to elk)
◦ Capture and/or lethally remove animals that cannot be hazed or pose an imminent risk to humans, property, or livestock
◦ Coordinate with the State of Montana to reduce speed limits and vehicle strikes of wildlife on Highways 89 and 191
- Brucellosis
◦ No brucellosis suppression actions would be taken, but collaborative research on brucellosis dynamics, diagnostic procedures, and various potential suppression methods would be conducted
◦ Continue to manage the already low risk of brucellosis transmission from bison directly to cattle
◦ Monitor brucellosis exposure and culture rates over time
- Organization and Involvement
(b)5 Draft Deliberative
◦ Continue to hold quarterly meetings with local officials
◦ Continue to hold public meetings and consider workshops on relevant management issues

Contact Person: Daniel N. Wenk, Superintendent, Yellowstone National Park, 307/344-2002, dan_wenk@nps.gov
Last Updated: Wednesday, March 8, 2017

Briefing Statement FY 2017

Bureau: National Park Service (NPS)
Issue: Bison Management
Member: General Interest
Park: Yellowstone National Park (YELL)

Key Points:

- There is very limited tolerance for wild bison in Montana due to concerns about competition with cattle, human safety, property damage, and brucellosis transmission. Idaho and Wyoming do not want wild bison outside parks.
- Approximately 5,500 Yellowstone bison were counted during summer 2016. High bison densities can degrade other resources and result in the migration of thousands of bison into Montana, which can overwhelm managers' abilities to maintain separation with cattle and protect people and property.
- In December 2016, YELL and other members of the Interagency Bison Management Plan (IBMP) agreed to manage for a decreasing population this winter, using hunting in Montana and capture/culling (primarily shipments to slaughter) to remove more than 750 bison; possibly as many as 1,300 bison.
- As of March 8, 2017, 439 bison have been harvested, 563 have been shipped to slaughter, and 23 have been removed by other means (1,025 total). Another 176 bison have been captured, but not yet shipped to slaughter. Additional captures and shipping may continue through March.
- The shipment of bison to meat processing (slaughter) facilities is extremely controversial and generates negative publicity. However, there is limited habitat inside the park and limited tolerance for bison outside the park.

Background:

- The federal government and the State of Montana are signatories to the IBMP, which has been implemented since 2001 to manage Yellowstone bison and reduce the risk of brucellosis transmission from bison to cattle.
- The plan has been successful at conserving a viable population of wild, wide-ranging bison and there have been no transmissions of brucellosis from bison to cattle. Other members involved with the IBMP include the Animal and Plant Health Inspection Service, Confederated Salish and Kootenai Tribes of the Flathead Nation, Forest Service, InterTribal Buffalo Council, and the Nez Perce Tribe.
- Five tribes have hunted bison on open and unclaimed lands in Montana adjacent to YELL, including the Confederated Salish and Kootenai Tribes, Nez Perce Tribe, Shoshone-Bannock Tribes, Confederated Tribes of the Umatilla Reservation, and the Yakama Nation.
- There are recurring ethical, public relations, and safety issues in communities of Montana adjacent to YELL due to concentrations of hunters, gut piles near roads and residences, shooting across roads, shooting elk, and hunting practices perceived to be unethical (e.g., firing lines of hunters along the park boundary; "flock" shooting).
- Hunting is prohibited in YELL. However, when bison migrations into Montana are small or late, tribal hunters become frustrated and assert that treaty rights include hunting bison inside the park; a point that is encouraged by the Montana legislature, state veterinarian, and organizations associated with the livestock community.

Current Status:

- While hunting and meat processing are currently available tools for managers, quarantine and release of live, brucellosis-free animals are being considered as a future option. The NPS has prepared a decision document (i.e., FONSI) which is currently under review at the Intermountain Region.
- Montana recently decided to provide for some additional tolerance of bison north and west of the park. In addition, the NPS and Montana have initiated the preparation of a new Environmental Impact Statement to consider changes in the management of bison and brucellosis given substantial new information, changed circumstances, and the passage of 15 years since the IBMP was initiated.

Contact Person: Daniel N. Wenk, Superintendent, Yellowstone National Park, 307/344-2002, dan_wenk@nps.gov
Last Updated: Wednesday, March 8, 2017

Briefing Statement FY 2017

Bureau: National Park Service (NPS)
Issue: Quarantine Program for Yellowstone Bison
Member: General Interest
Park: Yellowstone National Park (YELL)

Key Points

- The NPS has proposed to transfer Yellowstone bison testing negative for brucellosis exposure for several months from YELL to a facility on the Fort Peck Reservation for the completion of the quarantine testing protocol and eventual release on the Reservation. Bison transport would necessarily occur on highways through Montana.
- The State Veterinarian maintains the shipment of Yellowstone bison through Montana to the Fort Peck Reservation is not allowed per Montana Code Annotated [MCA] 81-2-120 until the bison complete quarantine and are certified as brucellosis-free. Otherwise, he maintains Montana's livestock industry will be threatened.
- The Animal and Plant Health Inspection Service (APHIS) maintains quarantine facilities must be located in or near YELL and approved by state and federal animal health officials per the Uniform Methods and Rules (2003; 91-45-013). This livestock rule was not declared prohibitive during collaborative planning from 2012 to 2016.
- The actual risk of brucellosis transmission from wild bison in quarantine to cattle is negligible due to the state-of-the-art facility, rigorous and proven testing protocol, and commitments from the Assiniboine and Sioux tribes at the Fort Peck Reservation to collaborate with the Montana State Veterinarian and APHIS on further testing.

Background

- A quarantine feasibility study (2006-2010) by the State of Montana and APHIS north of YELL demonstrated Yellowstone bison repeatedly testing negative for brucellosis exposure could be considered brucellosis-free. Since that study, APHIS has used the facilities for fertility control research.
- In 2012, the Secretary of the Interior directed the NPS to explore options for quarantine for Yellowstone bison. The purpose of quarantine is to (1) augment or establish new conservation/cultural herds, (2) enhance cultural and nutritional opportunities for Native Americans, and (3) reduce shipments of bison to slaughter.
- During 2012 to 2016, Yellowstone bison numbers increased to about 5,500 and biologists have observed high grazing intensities on summer ranges that may not be sustainable. There is a need to regulate bison numbers inside YELL unless and until there is additional tolerance for them to migrate and disperse outside the park.
- Culling bison from the population is necessary for the proper management of YELL under the NPS' statutory authorities. Shipments of bison to slaughter are disdained by the public and, as a result, bison managers have investigated alternatives such as quarantine to preserve valuable brucellosis-free bison for augmenting or creating new herds with the diverse genetics and unique adaptive capabilities inherent in Yellowstone bison.
- The Fort Peck tribes constructed a double-fenced quarantine facility, within a larger fenced pasture, that meets the specifications used by APHIS and the State of Montana during the quarantine feasibility study and agreed to use the same brucellosis testing requirements (as specified in the Uniform Methods and Rules developed by APHIS).

Current Status

- Despite extensive discussions since March 2016, the State of Montana and APHIS remain steadfast that the shipment of Yellowstone bison through Montana to the Fort Peck Reservation cannot occur until bison have completed quarantine. They maintain the NPS should build and operate a quarantine facility within or near YELL.
- The NPS has prepared a decision document (i.e., FONSI) which is currently under review at the Intermountain Region. The NPS is not proposing to conduct quarantine within, or to release Yellowstone bison onto, lands under the jurisdiction of Montana. Rather, the NPS is proposing to conduct initial brucellosis testing inside YELL, which is an exclusive federal jurisdiction, and then send bison to the Fort Peck Reservation, which is a sovereign domestic-dependent nation, to complete the quarantine testing protocol.
- The Fort Peck tribes are frustrated the NPS has not released a decision document and by the State of Montana's and APHIS' refusal to allow the quarantine of bison at Fort Peck.
- The NPS is currently holding 24 male bison testing negative for brucellosis since March 2016 for relocation in the near future to the quarantine facility north of the park leased by APHIS. The bulls will complete quarantine (~1 year) and, eventually, be relocated to the Fort Peck Reservation. The Governor of Montana has agreed to this plan.

Contact: Daniel N. Wenk, Superintendent, Yellowstone National Park, (307) 344-2002, dan_wenk@nps.gov
Last Updated: Wednesday, March 8, 2017

Briefing Statement FY 2017

Bureau: National Park Service
Issue: Bison Grazing Effects on Northern Grasslands
Member: General Interest
Park: Yellowstone National Park

Key Points:

- Bison numbers in northern Yellowstone have doubled since 2011, but migrating and dispersing bison are generally not tolerated in surrounding states. As a result, increasing bison densities in the park have led to concerns about high grazing intensities on some summer ranges that may not be sustainable over time.
- Research during 2012 to 2016 found bison grazing intensities in some grassland areas were higher than previously reported for elk, especially in dry areas. Consumption of vegetation exceeded 70% in some areas and the amount remaining at summer's end was approximately 30% of what was available in areas where grazing was excluded.
- Yellowstone and other members of the Interagency Bison Management Plan are implementing actions to substantially decrease the number of bison in northern Yellowstone this winter, using hunting in Montana and culling (primarily shipments to slaughter) to remove as many as 1,300 bison.
- Scientists are monitoring indicators and drivers of undesired plant community changes and will continue to evaluate the impacts of grazing by bison on plant productivity, species composition, and nutrient cycling.
- Yellowstone National Park is not a ranch with domesticated animals and human-controlled animal, nutrient, and water inputs, but rather a wilderness where untamed, free-roaming animals and natural processes with wide-ranging variations are allowed to prevail in an environment not dominated by humans.

Background:

- Numbers of elk in northern Yellowstone exceeded 20,000 during the 1990s, which led to contentious debates about whether they were irreversibly damaging the landscape by removing too much vegetation, compacting soils, and reducing the diversity of plants. An independent investigation by the National Research Council concluded in 2002 that the grasslands were not overgrazed.
- The recovery of predators such as bears and wolves by the mid-2000s reduced numbers of northern Yellowstone elk by ~70%. Subsequently, bison numbers in northern Yellowstone quadrupled and intense grazing by bison in some areas such as the Lamar Valley rekindled the debate about grazing effects on grasslands. The transition from an elk- to a bison-dominated system on grassland communities is unprecedented and, thus, effects are unknown.
- Plants subject to excessive grazing may be unable to maintain leaf tissue growth, which makes overgrazed areas susceptible to loss of rare species, reduced productivity, increases in bare ground, loss of plant litter, and exotic vegetation introduction; thereby beginning a cascade of events that changes the state of the vegetation community.
- Invasion by exotic winter annuals such as cheatgrass, annual wheatgrass, and desert alyssum has occurred in some grassland and shrub land communities in northern Yellowstone, which has fundamentally changed those communities. Also, portions of the Lamar Valley were managed as hayfields during the early 20th century.

Current Status:

- Bison were recently declared the national mammal. The Yellowstone population is considered the only ecologically and genetically viable population of plains bison in existence due to its large size, genetic diversity and purity, and continuous persistence in its original range.
- The State of Montana and the Society for Range Management have expressed concerns over grassland conditions in northern Yellowstone and the size of the bison population, calling for assessments of conditions by their scientists, drastic reductions in numbers of bison and elk, and the hunting of bison in the park.
- The Lacey Act of 1894 prohibits hunting and the possession or removal of wildlife from Yellowstone. Hunting in the park would affect the behavior of many wildlife species and drastically change the experiences of visitors.
- Scientists are monitoring grazing effects on grassland production and nutrient cycling at 16 sites in Yellowstone.
- Climate is the single most important driving factor of plant community composition in northern Yellowstone. Over the past 50 years, temperatures have warmed and precipitation has decreased in northern Yellowstone. Further warming could increase the combined effects of climate and grazing on grassland sustainability.

Contact Person: Daniel N. Wenk, Superintendent, Yellowstone National Park, 307/344-2002, dan_wenk@nps.gov
Last Updated: Wednesday, March 8, 2017

7/2/2018

DEPARTMENT OF THE INTERIOR Mail - Bison overview BP



Wenk, Dan <dan_wenk@nps.gov>

Bison overview BP

1 message

Masica, Sue <sue_masica@nps.gov>
To: Dan Wenk <dan_wenk@nps.gov>

Tue, Mar 14, 2017 at 10:24 AM

A few edits/comments. If you need to proceed with the others, please do so ... I didn't get them until this AM and have not had a chance to review in detail, and won't until noon California time.

Sue Masica | National Park Service | Regional Director, Intermountain
12795 W. Alameda Parkway | Lakewood, CO 80228 | (303) 969-2503



Bison Management Brief and Topics 03-14-17.doc
55K

Briefing Statement

Bureau: National Park Service
Issue: Bison Issues (Population, Quarantine, Removal/Winter Operations)
Park Site: Yellowstone National Park
Date: March 2017

Key Points:

- Bison management and the migration of bison outside of Yellowstone National Park (YELL) remains a contentious issue involving the National Park Service (NPS), State of Montana, Animal Plant Health and Inspection Service (APHIS), Native American tribes, U.S. Forest Service, and assorted stakeholder interests (livestock, conservation, animal rights).
- Bison are currently migrating to lower elevations in search of forage due to snow accumulation in the higher elevations of the park. Winter operations, including harvests in Montana outside the park and capture/culling in northern YELL, are being conducted pursuant to the Interagency Bison Management Plan (IBMP).
- Twenty-four male bison have been held in isolation at the Stephens Creek capture facility in northern YELL since March 2016, pending transfer to nearby quarantine pastures leased by APHIS. After completing a brucellosis surveillance period lasting 1 year, bison remaining test-negative will be transferred to, and released on, the Fort Peck Reservation in their wild conservation/cultural herd.
- As of March 13, about 460 bison have been harvested/removed, 660 shipped to slaughter, and another 100 are being held in the park's capture facility for shipment next week. Tribes transport bison to slaughter and distribute meat and hides to their members.
- Bison management requires communication and cooperation among multiple federal and state agencies and tribes with different mandates, philosophies, and treaties. Complicating any movement of bison outside the park are Montana and APHIS requirements about brucellosis-free certifications and a Montana executive order regarding state approval to transport bison on state roads. If those parties are in disagreement with NPS actions, they may reach out to DOI leadership for engagement.

Background:

- Yellowstone bison are important due to their large population size, high genetic diversity, lack of interbreeding with cattle, and wild behaviors and adaptive capabilities like their ancestors.
- Many bison are infected with the disease brucellosis, which was introduced by cattle and induces abortions, reduces pregnancy rates, and poses a risk of transmission back to cattle.
- Brucellosis and concerns about property damage, human safety, and competition with cattle limit tolerance for bison outside Yellowstone and prevent relocations elsewhere to restore the species.
- Yellowstone bison have high reproductive and survival rates, with few animals perishing due to old age, predators, and severe winter conditions. Thus, some bison need to be culled from the population.
- Alternative strategies for bison management have been constrained by legal and administrative factors, including federal trust responsibilities to tribes, Montana statutes and executive orders having to do with brucellosis-free certification and state approval for any transport of bison within the state, and APHIS' "uniform methods and rules" with regard to protocols for quarantine.

Current Population Size and Management Actions**Formatted:** Font: Not Bold**Formatted:** Indent: Left: 0", Bulleted + Level: 1 + Aligned at: 0.5" + Indent at: 0.75", Tab stops: 0.25", Left + Not at**Comment [s1]:** Note, at the end of the BP, the number 25 is used**Formatted:** Font: Not Bold**Comment [s2]:****Comment [s3R2]:** This assumes transfer is automatic after a year. Isn't it dependent on the EA getting approved?**Formatted:** Font: Not Bold

- The federal government and State of Montana are signatories to the IBMP, which they have implemented since 2001 to sustain a viable population of Yellowstone bison and reduce the risk of brucellosis transmission from bison to cattle.
- Bison numbers have almost doubled since 2008, and there are concerns that high grazing intensities on some summer ranges may not be sustainable over time. Population size was about 5,500 bison during summer 2016. To date, no cases of brucellosis transmission directly from Yellowstone bison to cattle have been detected. However, there have been at least 20 documented cases of transmission from infected wild elk to cattle in the Greater Yellowstone Area in the past 15 years.
- High bison densities can result in the migration of thousands of bison into Montana, which can overwhelm managers' abilities to maintain separation with cattle and protect people and property.
- Consistent with the IBMP, managers developed an operations plan to decrease bison numbers by 750 to 1,300 during the winter of 2017 through public and treaty harvests in Montana and culling in YELL at the Stephens Creek capture facility.
- The NPS has signed agreements with several tribes to provide them with bison for direct transfer to meat processing facilities and subsequent distribution to their members.
- The effectiveness of hunting in Montana has been limited by concentrations of hunters near the park boundary that prevent bison from distributing, wound bison, and cause safety issues.
- The shipment of bison to processing facilities is extremely controversial and generates negative publicity. The State of Montana and APHIS object because of the risk of brucellosis transmission; animal rights groups object on humane treatment grounds.

Development of a New Interagency Bison Management Plan

- The NPS and the State of Montana have entered into an agreement to co-lead the development of a new Yellowstone Bison Management Plan. There are also six cooperating agencies, including the U.S. Forest Service, the Confederated Salish and Kootenai Tribes, the Confederated Tribes of the Umatilla Indian Reservation, the Shoshone-Bannock Tribes, the Nez Perce Tribe, and the InterTribal Buffalo Council. The states of Wyoming and Idaho, as well as APHIS, declined to participate.
- The EIS is managed by the NPS, who is providing sole funding for the EIS effort at this time.
- Public scoping was initiated in 2015 that included editing a newsletter identifying alternative concepts. About 8,300 individual comments were received. Since that time, the NPS and Montana have met on several occasions to develop a range of alternatives for a Draft EIS.
- To assist with alternative development, the co-leads contracted the Udall Foundation, U.S. Institute on Environmental Conflict Resolution, to provide third-party, neutral facilitation and engagement services for the EIS process. The Udall Foundation completed a situational assessment of co-lead and cooperating agencies perspectives on bison management, and provided facilitation at one meeting between the NPS and Montana.

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(b)5 Draft Deliberative

Current Status:

- YELL will retain the 25 male bison in isolation at Stephens Creek until APHIS is ready for them to be transported to their leased quarantine pastures.
- Shipments of other captured bison to slaughter may continue through March.
- The Intermountain Region is prepared to complete its work on the quarantine Environmental Assessment and sign the Finding of No Significant Impact.
- The tribal hunt outside the park should largely end next week.
- Critical bison management issues-Bison Management Status, Bison Grazing Effects on Northern Grasslands, and Quarantine Program for Yellowstone Bison- (see attached)

Comment [s4]: Third bullet at the top says 24 male bison

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Contact:

Daniel N. Wenk, Superintendent (307) 344-2002 dan_wenk@nps.gov
Pat Kenney, Deputy Superintendent, (307) 344-2003 pat_kenney@nps.gov

(b)(5) Draft-Deliberative



White, P <pj_white@nps.gov>

(b)5 Draft-Deliberative

1 message

White, P <pj_white@nps.gov>

Wed, May 24, 2017 at 1:34 PM

To: Dan Wenk <dan_wenk@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>, "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Pete Webster <pete_webster@nps.gov>

Cc: Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>

Attached for your reading pleasure. We will be revising this draft over the summer.



(b)5 Draft-Deliberative

110K

(b)5 Draft-Deliberative

*P. J. White, Rick Wallen, and Chris Geremia
Yellowstone National Park, Mammoth, Wyoming*

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6/29/2018

DEPARTMENT OF THE INTERIOR Mail - Fwd: Bison briefs



Wenk, Dan <dan_wenk@nps.gov>

Fwd: Bison briefs

1 message

Dan Wenk <dan_wenk@nps.gov>

Thu, Jun 22, 2017 at 5:08 PM

To: Bert Frost <Bert_Frost@nps.gov>, Sue Masica <Sue_Masica@nps.gov>

The following two briefs. The first is a general bison brief as of June 5th. The second is directed toward Quarantine and the transfer of 24 bull bison from the Designated Surveillance Area (DSA) to the Quarantine facility at Fort Peck. It includes the positions of the parties and recommended talking points by the Secretary with Governor Bullock if the schedule a sidebar discussion.

Questions please let me know.

Dan Wenk
Superintendent
Yellowstone National Park
(307) 344-2002
>
>

2 attachments



YELL_BisonQuarantine_Jun2017.docx
27K



Bison combined BP updated 06-05-17.docx
33K

Briefing Statement FY 2017

Bureau: National Park Service (NPS)
Issue: Quarantine Program for Yellowstone Bison
Park: Yellowstone National Park (YELL)

Background

- The NPS has proposed to transfer 24 male Yellowstone bison testing negative for brucellosis exposure since March 2016 from YELL to a facility on the Fort Peck Reservation for the completion of the quarantine testing protocol and eventual release on the Reservation. Bison transport would occur on highways through Montana.
- The actual risk of brucellosis transmission from these bison in quarantine to cattle is negligible because males do not transmit brucellosis, as well as the state-of-the-art facility, rigorous and proven testing protocol, and commitments from the Fort Peck tribes to collaborate with APHIS on further testing.
- Shipments of bison to slaughter are disdained by the public and, as a result, bison managers have investigated alternatives such as quarantine to preserve valuable brucellosis-free bison for augmenting or creating new herds with the diverse genetics and unique adaptive capabilities inherent in Yellowstone bison.
- The Fort Peck tribes constructed a double-fenced quarantine facility, within a larger fenced pasture, that meets the specifications used by APHIS and the State of Montana during a 2006-2010 quarantine study and agreed to use the same brucellosis testing requirements as specified in the Uniform Methods and Rules developed by APHIS.

Initial Positions of Other Parties

- The State of Montana has maintained the shipment of Yellowstone bison through Montana to the Fort Peck Reservation is not allowed per Montana Code Annotated [MCA] 81-2-120 until the bison complete quarantine and are certified as brucellosis-free. Otherwise, Montana's livestock industry will be threatened.
- The Animal and Plant Health Inspection Service (APHIS) has maintained quarantine facilities must be located in or near YELL and approved by state and federal animal health officials per the Uniform Methods and Rules. Ongoing discussions between the Departments of Interior and Agriculture may have reduced this opposition.
- The Fort Peck tribes are frustrated the NPS has not released a decision document and by the State of Montana's and APHIS' refusal to allow the quarantine of bison at Fort Peck.

Talking Points

- This is an important initiative coming from Secretary Zinke, not Yellowstone.
- The transfer of bison to the Fort Peck Reservation will be viewed by most people and media as a very positive step; especially compared to the outrage and negative publicity generated by shipping bison to slaughter.
- The Secretary is working with the Department of Agriculture, APHIS, to ensure the bison are suitable for transfer to Fort Peck and will not jeopardize the State of Montana's brucellosis-free status.
- The Secretary would like Governor Bullock's support on the transfer of these males to Fort Peck this summer to complete the full quarantine protocol (1 year) at the tribal facility.
- The Secretary will assure a Memorandum of Agreement is in place among the National Park Service, APHIS, State of Montana, and Fort Peck tribes to outline roles and responsibilities for testing and holding animals at the Fort Peck facility.
- The Secretary would like this initiative to be the start of a long-term quarantine program to transfer live Yellowstone bison to Fort Peck.

Contact Person: Daniel N. Wenk, Superintendent, 307/344-2002, dan_wenk@nps.gov

Last Updated: June 22, 2017

Briefing Statement FY 2017

Bureau: National Park Service (NPS)
Issue: Bison Issues (Population, Quarantine, Removal/Winter Operations)
Park: Yellowstone National Park (YELL)

Key Points

- The management of bison migrating outside YELL during winter remains a contentious issue involving the NPS, State of Montana, Animal Plant Health and Inspection Service (APHIS), Native American tribes, U.S. Forest Service, and other stakeholders (livestock, conservation, animal rights).
- Winter operations, including harvests in Montana and capture/culling in northern YELL, are conducted pursuant to an Interagency Bison Management Plan (IBMP). During 2017, approximately 1,276 bison were removed from the population, including 748 shipped to slaughter, 468 harvested in Montana, 34 male calves held for quarantine, and 26 otherwise removed (e.g., killing of animals wounded during hunts; vehicle strikes).
- Twenty-four male bison have been held in isolation at the Stephens Creek capture facility in northern YELL since March 2016 pending transfer to the Fort Peck Reservation for quarantine. After completing a brucellosis surveillance period lasting 1 year, bison remaining test-negative will be released on the Fort Peck Reservation in their wild conservation/cultural herd.
- Bison management requires communication and cooperation among multiple federal and state agencies and tribes with different mandates, philosophies, and treaties. Complicating any movement of bison outside the park are Montana and APHIS requirements about brucellosis-free certifications and a Montana executive order regarding state approval to transport bison on state roads. If those parties are in disagreement with NPS actions, they may reach out to DOI leadership for engagement.

Background

- Yellowstone bison are important due to their large population size, high genetic diversity, lack of interbreeding with cattle, and wild behaviors and adaptive capabilities like their ancestors.
- Many bison are infected with the disease brucellosis, which was introduced by cattle and induces abortions, reduces pregnancy rates, and poses a risk of transmission back to cattle.
- Brucellosis and concerns about property damage, human safety, and competition with cattle limit tolerance for bison outside YELL and prevent relocations elsewhere to restore the species.
- Yellowstone bison have high reproductive and survival rates, with few animals perishing due to predators and severe winter conditions. Thus, some bison need to be culled from the population.
- Alternative strategies for bison management have been constrained by legal and administrative factors, including federal trust responsibilities to tribes, Montana statutes and executive orders, and APHIS' Uniform Methods & Rules with regard to protocols for quarantine.

Current Population Size and Management Actions

- The federal government and the State of Montana have implemented the IBMP since 2001 to sustain a viable population of Yellowstone bison, with no brucellosis transmission from bison to cattle. For comparison, 27 livestock herds in the Greater Yellowstone Area have been infected by wild elk since 1998.
- Bison numbers almost doubled to 5,500 bison during 2008 to 2016, leading to concerns that high grazing intensities on some summer ranges may not be sustainable over time. Also, the mass migration of bison into Montana can overwhelm efforts to protect people, cattle, and property.
- Managers removed approximately 1,276 bison from the population during winter 2017, primarily through public and treaty harvests in Montana and capture in YELL for shipment to slaughter. Tribes transfer bison to meat processing facilities and distribute the meat to their members.
- The shipment of bison to processing facilities is extremely controversial and generates negative publicity. However, the effectiveness of hunting has been limited by concentrations of hunters near the park boundary that prevent bison from distributing, wound bison, and cause safety issues.

Consideration of a Quarantine Program

- In 2012, the Secretary of the Interior directed YELL to explore developing and operating quarantine facilities for Yellowstone bison. Park managers drafted a Finding of No Significant Impact to implement quarantine with initial screening in the park and completion of APHIS' testing protocol on the Fort Peck Reservation.
- Montana maintains the shipment of bison to the Fort Peck Reservation is prohibited by state law until bison complete quarantine and are certified as brucellosis-free. Also, APHIS maintains quarantine facilities must be located in or near YELL and approved by animal health officials according to their 2003 Uniform Methods and Rules, which are directed at managing livestock.
- The NPS is at an impasse because Montana and APHIS have refused to allow bison quarantine on the Fort Peck Reservation. Also, DOI solicitors maintain the Secretary must conclude this impasse is preventing the carrying out of our statutory duties before bison can be transferred without agreement.
 - Departmental policies regarding state and federal relationships are set forth at 43 CFR Part 24. Such policies direct agencies to consult with states and comply with state permit requirements regarding the planned removal of surplus or harmful populations of wildlife and the disposition of these wildlife except in instances where the Secretary determines that such compliance would prevent him from carrying out his statutory responsibilities (*e.g.* 43 C.F.R. 24.4(i)(5)).
- The Fort Peck tribes are frustrated the NPS has not released a decision document and by the State of Montana's and APHIS' refusal to allow the quarantine of bison on the Fort Peck Reservation.
- YELL recommends issuing a Finding of No Significant Impact to conduct quarantine at the Fort Peck Reservation, while continuing negotiations with the State, APHIS, and the Tribes.

Development of a New Interagency Bison Management Plan

- The NPS and the State of Montana have entered into an agreement to co-lead the development of a new Yellowstone Bison Management Plan. The NPS is funding the effort.
- There are six cooperating agencies, including the U.S. Forest Service, Confederated Salish and Kootenai Tribes, Confederated Tribes of the Umatilla Indian Reservation, Shoshone-Bannock Tribes, Nez Perce Tribe, and InterTribal Buffalo Council. The states of Wyoming and Idaho, as well as APHIS, declined to participate.
- Public scoping was initiated in 2015, with 8,300 individual comments received. Since that time, the NPS and Montana have met several times to develop a range of alternatives for a draft Environmental Impact Statement.
- There has been little agreement on many facets of bison management, both under the existing IBMP and in this new planning process. Montana has two agencies involved, the Department of Livestock and Fish, Wildlife & Parks, which differ in their perspectives on bison management. This has made it difficult to come to agreement on a range of alternatives, tools for management, and overall objectives and goals.
- In addition, relationships are strained due to the conflict over the NPS bison quarantine proposal and current management under the existing IBMP. There may need to be a reevaluation of goals and objectives, as well as renewed State of Montana commitment, to a new bison management plan to move forward.

Current Status

- Biologists at YELL will conduct post-calving counts of bison in the central and northern regions of the park during June and July. These counts will be used to determine the appropriate levels of removals next winter to continue to decrease population size towards 4,200 bison.
- YELL will retain the 24 male bison in isolation at Stephens Creek until an option for quarantine is determined. Options include: 1) sending the bison to the Fort Peck Reservation for quarantine (preferred); 2) sending the bison to pastures leased by APHIS in Corwin Springs, Montana for quarantine; and 3) conducting quarantine at the Stephens Creek capture facility in YELL.
- The Intermountain Region is prepared to complete its work on the quarantine Environmental Assessment and sign the Finding of No Significant Impact.

Contact Person: Daniel N. Wenk, Superintendent, 307-344-2002, dan_wenk@nps.gov

Last Updated: June 5, 2017

1/25/2018

DEPARTMENT OF THE INTERIOR Mail - Strategic Mtg - save the date



White, P <pj_white@nps.gov>

Strategic Mtg - save the date

2 messages

Reid, Tim <tim_reid@nps.gov>

Thu, Jan 25, 2018 at 2:30 PM

To: PJ White <pj_white@nps.gov>, Jennifer Carpenter <jennifer_carpenter@nps.gov>, Rick Wallen <rick_wallen@nps.gov>, Pete Webster <pete_webster@nps.gov>, "Lyle, Jody" <jody_yle@nps.gov>

Cc: Dan Wenk <dan_wenk@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>

(b)5 Draft-Deliberative

Jody - I believe that Strat Comm has an obvious role in this...you or Morgan in the room will ensure that the leaders intent, issue/sub-issue background and nuance are clear.

Stay tuned. It may be that I ask for a short notice/short duration confab on Monday.

Tim

Tim Reid
Superintendent
Devils Tower National Monument
307/467-5283 x213

White, P <pj_white@nps.gov>

Thu, Jan 25, 2018 at 3:04 PM

To: "Reid, Tim" <tim_reid@nps.gov>, Dan Wenk <dan_wenk@nps.gov>, Jennifer Carpenter <jennifer_carpenter@nps.gov>, Pete Webster <pete_webster@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>, "Lyle, Jody" <jody_yle@nps.gov>

Cc: Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>, Kerrie Evans <Kerrie_Evans@nps.gov>

The latest revision of the strategic plan framework is attached.

[Quoted text hidden]

1/25/2018

DEPARTMENT OF THE INTERIOR Mail - Strategic Mtg - save the date

--

P. J. White
Chief, Wildlife and Aquatic Resources
Yellowstone National Park
Mammoth, Wyoming 82190
Office: 307/344-2442

NOTE: *Every email I send or receive is subject to release under the Freedom of Information Act.*

Microsoft Word Document



BisonMgmtStrategy_QuarantineRecommendations_Jan2018_v2.docx

32K

Briefing Statement FY 2018

Bureau: National Park Service (NPS)

Issue: Long-Term Bison Management Strategy, including Quarantine

Park: Yellowstone National Park (YELL)

- Population size
 - (b)5 Draft Deliberative
 - Maintain the historic lineages (indigenous, Pablo-Allard) and existing genetic diversity (b)5 Draft Deliberative
- Culling
 - Make capture, culling, shipping, and distribution operations a shared commitment among the agencies (b)5 Draft Deliberative
- Hunting
 - (b)5 Draft Deliberative
 - When possible, use hunters to harvest bison that move outside the northern and western management areas
- Quarantine
 - Implement a quarantine program that provides brucellosis-free bison for relocation to public and tribal lands
 - Use the Stephens Creek facility in northern YELL to conduct brucellosis screenings for quarantine (b)5 Draft Deliberative
 - and complete the testing protocol at Corwin Springs and/or Fort Peck (see attached Scope of Work)
 - Continue to refine quarantine procedures, including testing frequency and duration, as data become available
- Tolerance and relocation
 - (b)5 Draft Deliberative
- Conflict resolution
 - Identify likely conflict areas for targeted surveillance and monitoring, and initiate conflict resolution activities when necessary
 - Use targeted fencing, hazing, and hunting to maintain separation between bison and cattle and protect people and property (similar to elk)
 - Capture or kill bison that cannot be hazed or pose an imminent risk to humans, property, or livestock
 - Coordinate with the State of Montana to reduce nighttime speed limits and vehicle strikes of wildlife on Highways 89 and 191
- Brucellosis
 - No brucellosis suppression actions would be taken, but collaborative research on brucellosis dynamics, diagnostic procedures, and various potential suppression methods would be conducted
 - Continue to manage the already low risk of brucellosis transmission from bison directly to cattle
 - Monitor brucellosis exposure and culture rates over time
- Organization and Involvement
 - (b)5 Draft Deliberative
 - Continue to hold quarterly meetings with local officials (e.g., county commissioners)
 - Continue to hold public meetings and consider workshops on relevant management issues

Scope of Work, Bison Quarantine, 2018-2019

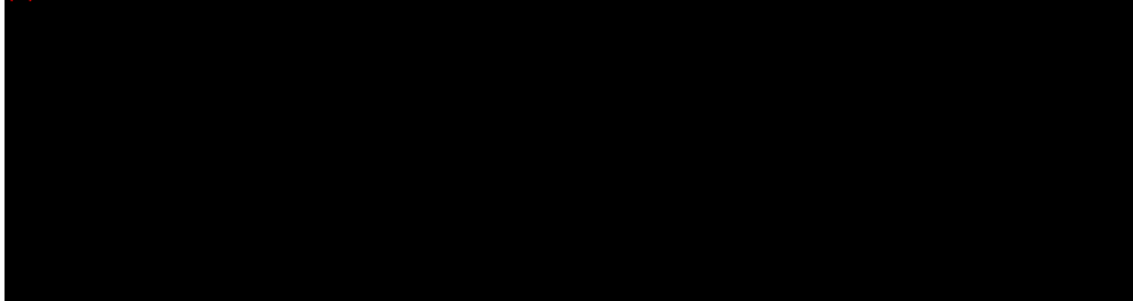
Stephens Creek

- APHIS certify the two double-fenced pastures as a quarantine facility
- NPS capture, test, and isolate ~20 yearling females and ~40 male calves testing negative for brucellosis
 - NPS uniquely mark each animal with RFID tags approved by APHIS and the Montana State Veterinarian
- NPS complete serial testing every 30-45 days until no new test-positive animals are identified for two successive testing periods (b)5 Draft Deliberative
 - NPS perform two screening tests (BAPA, CARD) and one confirmatory test (FPA) on-site and place a unique back tag identifier on each bison during each testing occasion
 - NPS remove bison testing suspect or positive using the onsite confirmatory test (FPA) into a separate holding (suspect) pen.
 - Keep animals in this pen and test at least one additional time every 30-45 days
 - NPS submit serum samples from bison to the Montana Veterinary Diagnostic Laboratory and request two screening tests (BAPA, CARD) and two confirmatory tests (FPA, Complement Fixation)
 - NPS interpret results with APHIS and determine bison disposition, which would include consignment of test-positives to slaughter and/or holding suspect animals in a separate pasture for further testing
 - NPS consign bison testing positive or repeatedly testing suspect to slaughter and collect mandibular, parotid, retropharyngeal, mesenteric, hepatic, and internal iliac lymph nodes along with a piece of spleen tissue
 - Submit these samples to the National Veterinary Services Laboratories for culture assays
 - NPS maintain appropriate records to allow bison repeatedly testing negative to be certified as brucellosis free, including copies of SV-2A forms and serology and culture results
- NPS move bison continuing to test negative for brucellosis exposure to quarantine facilities in Corwin Springs and/or on the Fort Peck Reservation to undergo the appropriate quarantine testing protocol for bison by age and sex as described in the 2003 Uniform Methods and Rules (APHIS 91-45-013)¹
 - These transfers should occur prior to the potential transmission period beginning about January 1st
- At the end of the quarantine testing period, APHIS and the Montana State Veterinarian certify bison remaining test-negative as brucellosis free and vaccinate them before they are released or relocated elsewhere
 - An additional blood test is recommended between 6 and 12 months after these bison are released
- If any of the 52 bison that were illegally released from the isolation pastures during January 2018 are recaptured, either transport them to Corwin Springs and/or Fort Peck to undergo quarantine or release them
 - These male bison are reaching adult size and will be hard to hold for another 1½ years at Stephens Creek

Fort Peck Reservation

- APHIS certify the double-fenced pastures as a quarantine facility

(b)5 Draft Deliberative



- At the end of the quarantine testing period, APHIS and the Montana State Veterinarian certify bison remaining test-negative as brucellosis free and vaccinate them before they are released on the Fort Peck Reservation
 - An additional blood test of all bison is recommended 6 and 12 months after they are released

¹ Portions of the Uniform Methods and Rules pertaining to quarantine were adopted for the confinement and testing of Yellowstone bison. However, the use of these rules should not be construed to indicate wild bison are subject to, or bound by, federal or state livestock regulations.

Corwin Springs

- Per previous agreements with the NPS, APHIS is responsible for putting ~62 test-negative bison in double-fenced pastures at Corwin Springs, Montana (north of YELL) through quarantine over the next several years
 - APHIS has committed to providing ~\$100,000 over the next three years, which is well below the projected cost of about \$700,000 total over the next five years to complete quarantine for these bison
 - Montana maintains bison undergoing quarantine at Corwin Springs are subject to MCA 81-2-120 and 87-1-216, which gives the State Veterinarian authority over their final disposition and requires Fish, Wildlife & Parks to approve a bison transfer and relocation plan; the NPS would no longer be involved in decisions
- APHIS has had discussions with Colorado State University and several non-governmental organizations about this effort and, in turn, these organizations contacted YELL about fund raising and financial accounting through the park's partner organization (Yellowstone Forever)

(b)5 Draft Deliberative



3/14/2018

DEPARTMENT OF THE INTERIOR Mail - Bison science and governance manuscript



White, P <pj_white@nps.gov>

Bison science and governance manuscript

1 message

White, P <pj_white@nps.gov>

Wed, Mar 14, 2018 at 11:52 AM

To: Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>

Cc: "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Tim Reid <tim_reid@nps.gov>

Revision attached for your review and comments before submission to the journal *Policy Sciences*. Thanks.

--
P. J. White
Chief, Wildlife and Aquatic Resources
Yellowstone National Park
Mammoth, Wyoming 82190
Office: 307/344-2442

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(b)5 Draft-Deliberative

(b)5 Draft-Deliberative

*P. J. White¹, Rick Wallen, and Chris Geremia
National Park Service, Yellowstone National Park, Mammoth, Wyoming*

(b)5 Draft-Deliberative

(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



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(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



White, P <pj_white@nps.gov>

Re: information about bison numbers

2 messages

Reid, Tim <tim_reid@nps.gov>

Fri, Mar 23, 2018 at 10:09 AM

To: "Lyle, Jody" <jody_lyle@nps.gov>

Cc: Dan Wenk <Dan_Wenk@nps.gov>, "Herbert, Neal" <Neal_Herbert@nps.gov>, Morgan Warthin <morgan_warthin@nps.gov>, PJ White <pj_white@nps.gov>

Jody - I think it looks good. Per my conversation with you, PJ, and Rick....my stab at teeing up the concept that collar data indicating most bison in or moving to basin in mid-feb were northern range bison, the target for reduction.

Given the low reported harvest of bison north of YNP by mid-February, and telemetry data indicating that the preponderance of bison present or staged to move in to the Gardiner basin were affiliated with breeding in the northern portion of the park, the NPS began capturing bison at Stephens Creek on February 16, 2018. Winter conditions contributed to a relatively large bison migration into the Gardiner basin during late February and March, a condition that only happens a few times per decade. About 800 bison were captured at Stephens Creek over a 3-week period, while another 800 bison occupied the Gardiner Basin from Mammoth Hot Springs to Yankee Jim Canyon.

or

The NPS began capturing bison at Stephens Creek on February 16, 2018, given the low reported harvest of bison north of YNP by mid-February, and telemetry data indicating that the preponderance of bison present or staged to move in to the Gardiner basin were affiliated with breeding in the northern portion of the park.

Regardless whether included or not, it was part of the calculus.

Tim

Tim Reid
Bison Management Coordinator
Yellowstone National Park
O: 307/344-2035
C: 307/281-1343

On Fri, Mar 23, 2018 at 9:24 AM, Lyle, Jody <jody_lyle@nps.gov> wrote:

Dan, Tim, Morgan, Neal - Per our conversation this morning, here is the text I'm proposing we use from PJ's briefing paper when we get press calls about this today or early next week. Dan, I made the changes you requested. Anyone see anything we should fix? If not, we'll hold this until we get questions.

During September 2017, Yellowstone National Park recommended removing up to 1,250 bison breeding in the northern portion of Yellowstone National Park (YNP) to decrease overall bison numbers to about 4,200 to 4,400 after calving during summer 2018. We recommended not removing or harvesting bison migrating west of the park due to decreasing numbers of bison breeding in the central portion of the park during recent years, and to focus harvest and capture on bison breeding in the northern portion of the park.

3/23/2018

DEPARTMENT OF THE INTERIOR Mail - Re: information about bison numbers

In December 2017, managers of the Interagency Bison Management Plan signed a winter operations plan that included "optimize hunter harvest take while assuring combined hunt/trap take of 600 bison to 900 bison." Direction from leaders of the U.S. Department of the Interior and the National Park Service (NPS) was to decrease bison numbers during 2017-2018 and subsequent winters towards a range of 3,500 to 4,200 at the end of each winter, which translates to about 3,800 to 4,500 bison after calving.

During December 2017, public and treaty hunters began harvesting bison west of YNP, ignoring NPS recommendations. Also, reported harvests of bison north of YNP lagged well behind monthly removal goals defined in the winter operations plan:

- 75-115 by the end of November 2017 (reported harvest in north was 8 bison by December 7, 2017)*
- 225-335 by the end of December 2017 (reported harvest in north was 8 bison by January 8, 2018)*
- 372-560 by the end of January 2018 (reported harvest in north was 21 by February 2, 2018)*
- 522-785 by the end of February 2018 (reported harvest in north was 146 by March 8, 2018)*
- 600-900 by March 15, 2018 (reported harvest in north was 206 bison by March 14, 2018)*

Given the low reported harvest of bison north of YNP by mid-February, the NPS began capturing bison at Stephens Creek on February 16, 2018. Winter conditions contributed to a relatively large bison migration into the Gardiner basin during late February and March, a condition that only happens a few times per decade. About 800 bison were captured at Stephens Creek over a 3-week period, while another 800 bison occupied the Gardiner Basin from Mammoth Hot Springs to Yankee Jim Canyon.

Approximately 695 bison will be shipped to slaughter by the end of winter 2018, and 4 bison died in holding pens. Another 98 yearling bison (25 females; 73 males) testing negative for brucellosis exposure were moved to isolation pastures for further testing to identify test groups for quarantine.

As of March 21, 2018, about 248 bison were reported harvested north of YNP (including 5 wounded/dispatched and 3 poaching) and 87 bison were reported harvested west of YNP (including 1 discarded/left). Hunters were more successful after capture operations began, with about 172 bison harvested during the month after the first capture of bison, while only about 77 bison were harvested during the 30 days prior to capture. Also, many harvests north of YNP occurred, or were reported, after March 11, 2018, when bison captures at Stephens Creek ended.

In total, about 1,132 bison will be removed from the Yellowstone bison population during winter 2017-2018 -- 699 captured/shipped/pen mortality; 335 harvested (248 on the north side, 87 on the west side); and 98 captured/quarantine. As noted, this total includes at least 87 bison harvested west of YNP that did not contribute to the goal of decreasing bison numbers breeding in northern YNP.

Overall bison abundance after calving during summer 2018 is forecast to be about 4,300 +/- 500 bison, which is in accordance with guidance from U.S. Department of the Interior and NPS leadership, as well as recommendations from biologists at YNP given the current limited tolerance for bison outside the park. If this projection is realized, the summer count of bison during 2018 is expected to meet the NPS objective of less than 4,500 bison for the first time since 2012.

Jody Lyle
 Chief, Office of Strategic Communications
 Yellowstone National Park
 307-344-2012 (office)
 406-589-7712 (cell)

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3/23/2018

DEPARTMENT OF THE INTERIOR Mail - Re: information about prison numbers

Lyle, Jody <jody_lyle@nps.gov>

To: "Reid, Tim" <tim_reid@nps.gov>

Fri, Mar 23, 2018 at 10:32 AM

Cc: Dan Wenk <Dan_Wenk@nps.gov>, "Herbert, Neal" <Neal_Herbert@nps.gov>, Morgan Warthin <morgan_warthin@nps.gov>, PJ White <pj_white@nps.gov>

Thanks Tim. I think the first version works best. We'll make the change.

Jody Lyle

Chief, Office of Strategic Communications

Yellowstone National Park

307-344-2012 (office)

406-589-7712 (cell)

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[Quoted text hidden]

4/9/2018

DEPARTMENT OF THE INTERIOR Mail - Recommendations for Bison Conservation and Management



White, P <pj_white@nps.gov>

Recommendations for Bison Conservation and Management

3 messages

White, P <pj_white@nps.gov>

Fri, Apr 6, 2018 at 12:04 PM

To: Dan Wenk <dan_wenk@nps.gov>, "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Tim Reid <tim_reid@nps.gov>, Pete Webster <pete_webster@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>
Cc: Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>

Attached are recommendations which outline a strategy for NPS management actions with bison. If we can agree to a revision, then I can prepare an environmental assessment within 1-2 weeks. Thanks.

P. J. White
Chief, Wildlife and Aquatic Resources
Yellowstone National Park
Mammoth, Wyoming 82190
Office: 307/344-2442

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.



BisonConservation_ExecutiveSummary_RevisedApr2018.docx
45K

Wallen, Rick <rick_wallen@nps.gov>

Fri, Apr 6, 2018 at 3:56 PM

To: "White, P" <pj_white@nps.gov>
Cc: Dan Wenk <dan_wenk@nps.gov>, "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Tim Reid <tim_reid@nps.gov>, Pete Webster <pete_webster@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>, Chris Geremia <chris_geremia@nps.gov>

There you go again PJ... channeling your inner Cool Hand Luke. We can all see you from here, standing in the rain, talking to yourself.

This is absolutely the right message to share. Thank you for hoisting the guide on!

I think you know my thoughts here already. I am feeling a lot like Phil Connor, and that makes today February the 2nd. I am a bit numb from seeing this proposal so many times I don't know how to respond now.

I recommend that we gather the first five folks on the **send to** list and go through this proposal with an ear for discussion about the key topics. We should be able to do this in one to 1 1/2 hours max. This would be an excellent preparation for the upcoming IBMP meeting and prepare park leadership to decide whether we have a theme to work from on 25 April.

RW

[Quoted text hidden]

Tim Reid <tim_reid@nps.gov>

Fri, Apr 6, 2018 at 4:16 PM

To: "Wallen, Rick" <rick_wallen@nps.gov>
Cc: "White, P" <pj_white@nps.gov>, Dan Wenk <dan_wenk@nps.gov>, "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Pete Webster <pete_webster@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>, Chris Geremia <chris_geremia@nps.gov>

I like it.

Sent from my iPhone

[Quoted text hidden]

April 6, 2018

INFORMATION MEMORANDUM

To: Dan Wenk, Superintendent, Yellowstone National Park
Through: Jennifer Carpenter, Director, Yellowstone Center for Resources
From: P. J. White, Rick Wallen, and Chris Geremia, Yellowstone Center for Resources
Subject: Recommendations for the Conservation and Management of Yellowstone Bison

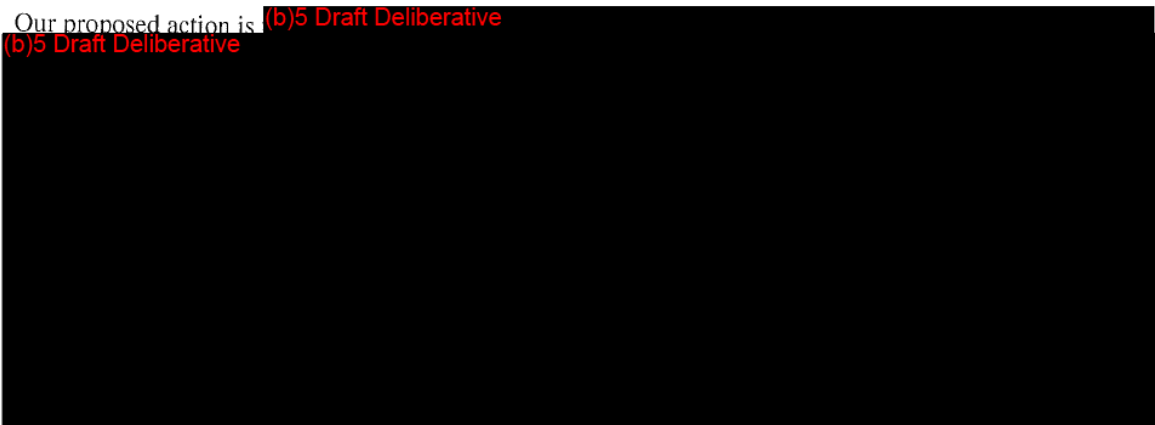
A decision regarding whether the National Park Service (NPS) should initiate an alternate management paradigm for wild bison within and near Yellowstone National Park (YNP) is needed because:

- Bison numbers in the northern portion of YNP have increased in recent years, but there is limited capacity and forage for bison within the park;
- There is limited tolerance for bison migration into surrounding states due to concerns about competition with cattle, brucellosis transmission to cattle, human safety, and property damage.
- There is substantial new information and changed circumstances since the Interagency Bison Management Plan began being implemented in 2001 to reduce brucellosis transmission risk while conserving a viable population of Yellowstone bison; and
- There are persistent disputes among federal, state, and tribal agencies regarding issues related to authority, priorities, and sovereignty that impede efforts by the NPS to recover bison across a larger landscape and treat them more like other wildlife (as wanted by the majority of the public).

Recognizing these circumstances, which are unlikely to change in the near future, we considered alternate management paradigms for wild bison and the non-native disease brucellosis within and near YNP. The following recommendations (Table 1) for bison conservation and management in and near YNP would sustain a population of wild Yellowstone bison that should be allowed to move across suitable public lands like other wildlife, while protecting the public trust, respecting private property and people's livelihoods, and supporting tribal treaty hunts of bison outside the park. Specific NPS objectives are to:

- Preserve a wild, wide-ranging population with seasonal migration to low-elevation winter ranges and dispersal to other suitable public lands;
- Contribute to maintaining the already low risk of brucellosis transmission from bison directly to cattle in surrounding states and, as necessary; and
- Adjust bison abundance to lessen adverse impacts from high densities of bison on other natural resources and reduce conflicts with human safety and property damage.

Our proposed action is (b)5 Draft Deliberative
(b)5 Draft Deliberative



(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



4/17/2018

DEPARTMENT OF THE INTERIOR Mail - Bison strategy meeting on Thursday



White, P <pj_white@nps.gov>

Bison strategy meeting on Thursday

1 message

White, P <pj_white@nps.gov>

Tue, Apr 17, 2018 at 10:47 AM

To: Dan Wenk <dan_wenk@nps.gov>, "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Tim Reid <tim_reid@nps.gov>, Pete Webster <pete_webster@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>, Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>
Cc: Kerrie Evans <Kerrie_Evans@nps.gov>

see attached proposal

--
P. J. White
Chief, Wildlife and Aquatic Resources
Yellowstone National Park
Mammoth, Wyoming 82190
Office: 307/344-2442

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.



BisonConservation_ExecutiveSummary_RevisedApr2018_v3.docx

41K

April 17, 2018

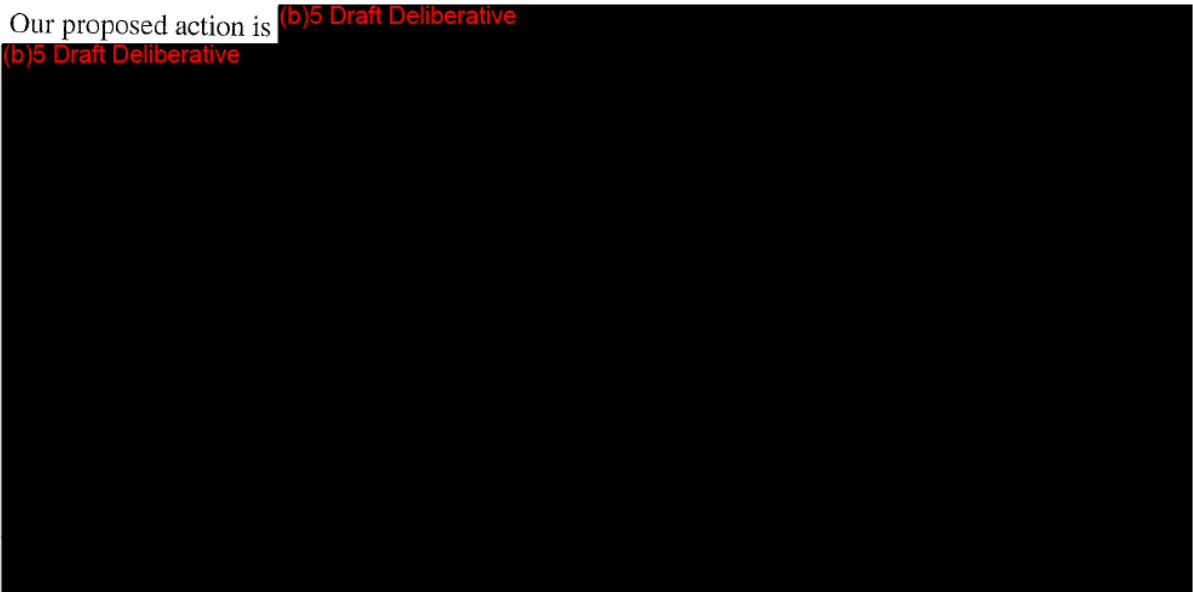
INFORMATION MEMORANDUM

To: Dan Wenk, Superintendent, Yellowstone National Park
From: P. J. White, Rick Wallen, and Chris Geremia, Yellowstone Center for Resources
Subject: Recommendations for the Conservation and Management of Yellowstone Bison

The National Park Service (NPS) is considering alternate management paradigms to sustain the viable population of wild, wide-ranging bison within and near Yellowstone National Park (YELL). The chosen management approach should (1) maintain the processes of migration and dispersal, (2) maintain existing genetic diversity and historic lineages, (3) contribute to a low risk of brucellosis transmission from bison directly to cattle and, as necessary, (4) regulate bison abundance to lessen adverse impacts to other natural resources and reduce conflicts with humans. A decision regarding whether the NPS should initiate an alternate management paradigm for wild, wide-ranging bison within and near YELL is needed because:

- Bison numbers in the northern portion of YELL have increased in recent years, but there is limited capacity and forage for bison within the park;
- There is limited tolerance for bison migration into surrounding states due to concerns about competition with cattle, brucellosis transmission to cattle, human safety, and property damage;
- There are changed circumstances and substantial new information regarding bison ecology and brucellosis dynamics in bison and elk since the Interagency Bison Management Plan began being implemented in 2001; and
- There are persistent disputes among federal, state, and tribal agencies regarding issues related to authority, priorities, and sovereignty that impede efforts by the NPS to recover bison across a larger landscape and treat them more like other wildlife (as wanted by the majority of the public).

Our proposed action is (b)5 Draft Deliberative
(b)5 Draft Deliberative



(b)5 Draft-Deliberative



4/20/2018

DEPARTMENT OF THE INTERIOR Mail - Environmental Assessment: Conservation and Management of Yellowstone Bison



White, P <pj_white@nps.gov>

Environmental Assessment: Conservation and Management of Yellowstone Bison

1 message

White, P <pj_white@nps.gov>

Fri, Apr 20, 2018 at 12:37 PM

To: Dan Wenk <dan_wenk@nps.gov>, "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Tim Reid <tim_reid@nps.gov>, Pete Webster <pete_webster@nps.gov>, Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>, "McPadden, Raymond" <raymond_mcpadden@nps.gov>

The attached EA evaluates the new strategy we discussed yesterday, as well as 3 other alternatives that we considered during scoping for the new EIS.

P. J. White
Chief, Wildlife and Aquatic Resources
Yellowstone National Park
Mammoth, Wyoming 82190
Office: 307/344-2442

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BisonConservationManagementEA_Apr2018.doc
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National Park Service
U.S. Department of the Interior



Yellowstone National Park
Idaho, Montana, Wyoming

Conservation and Management of Yellowstone Bison

Environmental Assessment

April 20, 2018

(b)5 Draft-Deliberative



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4/20/2018

DEPARTMENT OF THE INTERIOR Mail - IBMP



White, P <pj_white@nps.gov>

IBMP PPT

1 message

Reid, Tim <tim_reid@nps.gov>

Fri, Apr 20, 2018 at 11:31 AM

To: Dan Wenk <dan_wenk@nps.gov>, jennifer_carpenter <jennifer_carpenter@nps.gov>, PJ White <pj_white@nps.gov>, Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>

Attached is a draft ppt for the IBMP mtg. This is based off of a draft template that Rick generated. It includes some updated numbers and additional discussion points. Please edit/comment as you see fit. The summary numbers slide reflects our discussion (sans Dan) from yesterday.

Thx -

Tim

Tim Reid
Bison Management Coordinator
Yellowstone National Park
O: 307/344-2035
C: 307/281-1343



BisonSlides_IBMP_WinterOps_NPS_4-20v1.pptx
806K

NPS Recommendations 2017

~4,800 bison: ~3,970 north/~850 central

- Remove up to 1,250 bison breeding in north**
- Decrease numbers to 4,200-4,400 after calving**
- No removals in west due to lower numbers**
- Allow bison to distribute on landscape and hunt**
- Maintain 250-400 bison in Gardiner basin**
- Begin culling bison in north when migration deemed sufficient to support hunting and culling**
- Conduct larger culls if there is a larger migration**

17/18 Winter Operations Plan

Manage for a decreasing population

- **Optimize harvest while assuring combined hunt/cull take of 600 to 900 bison**
- **Reduce impacts of bison captures on hunt**
- **Monthly removal goals:**
 - **75-115 by the end of November**
 - **225-335 by the end of December**
 - **372-560 by the end of January**
 - **522-785 by the end of February**
 - **600-900 by March 15**

Harvests

December 2017: Hunters began harvesting bison west of the park (NPS recommended zero)

Removal goals/reported harvests (north):

- November 30: Goal = 75-115; Harvest = 8
- December 31: Goal = 225-335; Harvest = 8
- January 31: Goal = 372-560; Harvest = 21
- February 28: Goal = 522-785; Harvest = 146
- March 15: Goal = 600-900; Harvest = 206

➤ Reported harvests lagged well behind removal goals by mid-February

Captures/Culls

- **Winter conditions led to a large migration into Gardiner basin during late February/March**
- **NPS began capturing on February 16 and captured ~800 bison over a 3-week period**
- **Another 800+ bison in the Gardiner basin (Mammoth-Yankee Jim) during captures**
- **NOTES:**
 - **Harvest higher after captures began (77 bison harvested 30 days before; 172 after)**
 - **Many harvests and reports after March 11, when captures ended**

Harvests and Culls

	MT/ NPS	CSKT	Nez Perce	ShoBan	CTUR	Yakama	BFN
Hunt (372)							
North	37*	2	111	35	28	40	32
West	22*	45	4	2	0	8	6
Subtotal	59	47	115	37	28	48	38
* includes 6 dispatched, 3 poached, 1 abandoned							
Cull (796)		Transferred to the CSKT for processing Includes 25 female and 73 male yearlings					
Slaughter	694						
Quarantine	98						
Pen Mort	4						
Total	1,168	2018: Harvest 32%; Culls 68% 2012-2017: Harvest 50%; Culls 50%					

WHY > 600-900

- Winter severity exceeded predictions.
- Unusually large migration in late February allowed continued capture and hunter success with > 500 bison north of park at times.
- Telemetric data indicating that bison migrating into Gardiner bison were associated with the northern breeding area.
- NPS holds that a long-term average of ~4,200 bison allows balance of myriad demands/values surrounding bison and provides opportunity for progress on issues that have been difficult to advance, including:
 - Full dispersal into the conservation area
 - Reduced hunting pressure near boundary/better hunt success and optics
 - Mitigation of capture/hunt conflict
 - Reduction of cull size and shipments to slaughter
- The removal of 1,100+ bison provided the highest chance of a summer 2018 count near 4,200 bison compared to other alternatives.
 - Summer 2018: Predict ~4,200 +/- 500 bison post-calving
 - <4,500 bison for the first time since 2012

Conclusions/Considerations

The combined use of hunting and culling over the past six years has reduced bison numbers toward the NPS objective (4,200), while supporting hunter harvest (41% of removals/no >800 to slaughter in any one winter).

Future removals to stabilize population growth could be one-half of what was necessary to reduce the population size (i.e., 400-500 instead of 1,000 – 1,200).

Consider:

Removal of fewer bison via capture/culling can shift focus to reducing hunt pressure near boundary and advance other efforts:

- As outlined in the 2000 IBMP ROD, establish temporary capture facilities near Yankee Jim Canyon. Facilitates bison distribution over available landscape, habitat learning, and a dispersed hunt.
- Limit capture at Stephens Creek primarily to support quarantine or research.
- Utilize quarantine facilities at Stephens Creek, Corwin Springs, and Fort Peck Reservation to reduce shipments to slaughter.

From: [Dan Wenk](#)
To: [Dave Mihalic](#)
Subject: Bison habitat
Date: Wednesday, May 16, 2018 1:04:19 PM

Dave,

The information below is from a trusted colleague in the BLM giving me some good information on getting this up and running. Just got this yesterday so I haven't made any calls following up on the recommendations. This is for you and sharpening any talking points please do not share directly with the Secretary.

Dan Wenk
Superintendent
Yellowstone National Park
(307) 344-2002

Begin forwarded message:

(b)5 Draft-Deliberative



(b)5 Draft-Deliberative



7/2/2018

DEPARTMENT OF THE INTERIOR Mail - Re: Sorry to ask...



Wenk, Dan <dan_wenk@nps.gov>

Re: Sorry to ask...

1 message

Wenk, Dan <dan_wenk@nps.gov>
To: "Mihalic, David" <david_mihalic@ios.doi.gov>

Wed, May 16, 2018 at 4:50 PM

Dave,

attached is the beginning of a brief on this issue. The information may be good for your discussions tomorrow.

Questions please let me know.

more information tomorrow morning concerning your other questions.

On Wed, May 16, 2018 at 1:54 PM, Mihalic, David <david_mihalic@ios.doi.gov> wrote:

(b)5 Draft-Deliberative



Dave

--
David A. Mihalic

Senior Advisor to the Secretary
United States Department of the Interior
MIB Room 6124
[1849 "C" Street NW](#)
[Washington, D.C. 20240](#)

Phone: 202-208-4130
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david_mihalic@ios.doi.gov

Remember, everything I send or receive is subject to the Freedom of Information Act

--
Dan Wenk
Superintendent
Yellowstone National Park

7/2/2018

DEPARTMENT OF THE INTERIOR Mail - Re: Sorry to ask...

307-344-2002

Fax: 307-344-2014

dan_wenk@nps.gov



BisonGrazingMgmt_May2018.docx

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(b)5 Draft Deliberative



- No single “stocking rate” (i.e., density) of ungulates is optimal for conserving biodiversity and ecological processes because some species of wildlife need a variety of habitats, while others favor severely disturbed or undisturbed habitats. A wide range of grazing intensities should occur across the landscape to produce a mosaic of vegetation composition and structure, with some heavily grazed areas and some nearly ungrazed areas.
- Independent evaluations sponsored by the National Academy of Sciences (2002) and the U.S. Geological Survey (2005) concluded YELL is not overgrazed and bison have not reached carrying capacity (>6,200 bison). However, migrations outside the park increase during winters with deep snowpack and more than 4,700 bison.
- A total of 4,816 bison were counted in YELL during summer 2017, including 3,969 in northern YELL and 847 in central YELL. About 1,173 bison were removed from the population this winter, primarily in northern YELL. Thus, biologists expect about 4,300 bison after calving, which will be verified with a count in late July.
- Some sites in northern YELL are intensely grazed by bison, but the locale with the highest consumption (Lamar Valley) supports large areas of rhizomatous grasses from abandoned hayfields that fare relatively well in response to repeated, intense grazing; despite low standing crop by the end of summer.
- Intensively grazed areas comprise a small portion of the available summer habitats for bison and elk in YELL. The majority of the summer range and all of the winter range has moderate to low consumption rates due to a substantial decrease in elk numbers throughout the park and fewer bison in the central region.
- The biomass and production of ungulates in YELL has remained relatively high for decades; indicating many thousands of animals are attaining adequate forage to sustain sufficient body condition for reproduction and survival. This would not occur if YELL was overgrazed and ungulates exceeded ecological carrying capacity.

Background:

- The Yellowstone National Park Act of 1872 dedicated land as a public park for the benefit and enjoyment of the people. Congress directed the Secretary of the Interior to “provide for the preservation ... of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition.”
- The desired condition for the native shrub-grass plant association in northern YELL is a sustainable community with functioning water, soil properties, energy and nutrient cycles, and disturbance dynamics (e.g., fires, floods, herbivory). Some areas of the extensive grasslands would be more heavily grazed than others.
- The desired condition for wildlife in YELL is to sustain or restore populations of native wildlife consisting of untamed, free-roaming animals that live in an environment not dominated by humans and whose behaviors, movements, survival, and reproduction are predominantly affected by their own decisions and natural selection.
- Bison are the only exception to this practice and are frequently captured near the park boundary and shipped to slaughter facilities pursuant to a court-mediated plan finalized in 2000 due to concerns about brucellosis transmission risk to cattle. Chronically infected elk populations in surrounding states are not managed similarly.
- Since numbers of migratory ungulates are allowed to vary substantially among seasons and years, quite unlike the stocking and rotation of livestock on commercial rangelands and grazing allotments, grasslands within the park should not be expected to look like nearby ranches cultivated, fertilized, and irrigated for cattle production.
- During the 1980s and 1990s, elk were abundant (11,000-19,000) and the primary grazer in northern Yellowstone. Grass consumption was relatively high (45-55% of annual above-ground production) in some areas and comparable to the consumption of grasses (60%) in the savanna systems of the African Serengeti.
- In 2002, an independent review of grazing and grasslands in northern YELL by the National Research Council cautioned “For example, some people compare the northern range unfavorably with nearby ranches, but that reflects a mixing of values. Ranching seeks high production for human uses, but YNP seeks to preserve a natural environment and the species and ecological processes within it.”
- An independent evaluation of the food-limited carrying capacity for Yellowstone bison was completed by Colorado State University and the U.S. Geological Survey in 2005. With about 5,000 elk, the model predicted a carrying capacity of more than 8,000 bison. With about 20,000 elk, the model predicted a capacity of about

6,200 bison (see <http://www.americanbisonsocietyonline.org/Portals/7/PlumbEtAl2009.pdf> for more details). Currently, there are about 8,000 northern Yellowstone elk; 80% of which winter outside YELL.

- As northern Yellowstone elk numbers decreased by 75% following predator restoration, bison numbers quadrupled in northern YELL during the 2000s and grazing became more concentrated and prolonged in certain areas (e.g., Lamar Valley) compared to the more dispersed and seasonal grazing by elk. Grass consumption by abundant bison during 2012 to 2014 was higher (49%) than when elk were the dominant grazers (31%) and exceeded 70% annually in some areas.
- Climate is a primary factor influencing grass production because variations in precipitation and temperature strongly influence soil moisture which, in turn, limits production. As a result, variations in weather among years contribute to large variations in grassland production. Also, the proliferation of nonnative plant species since 2005 has fundamentally changed the composition and production of some grassland communities in YELL.

Current Status:

- During 2012-2014, biologists performed mechanical removal experiments to test the response of grasslands to controlled, simulated grazing. Total aboveground production was maintained even when clipping intensity (i.e., removal of leave tissue) reached 80%. However, removal of more than 30% of annual production reduced standing crop available at the end of the growing season.
- Since 2012, biologists have been documenting changes in the amount of above-ground production, percent consumption by the grazing community, soil nutrient availability, soil organic matter, plant composition, bare ground, and litter at 30 sites in high-use bison areas in YELL. A summary of findings to date could be produced by December 31, 2018.
- Biologists are completing a remote sensing analysis using satellite data to classify vegetation communities based on spectral signatures, with field staff ground-truthing sites to improve mapping precision. Also, biologists are using real-time GPS data recorded from Iridium telemetry collars fit to bison to generate use surfaces/maps. Staff are visiting sites to collect standing crop estimates.
- By November 30, 2018, biologists will estimate (1) the forage capacity of habitats in YELL for bison using park-wide annual production estimates generated from remote sensing satellite data, (2) recommended stocking rates based on livestock models, and (3) current stocking rates using bison aerial counts and utilization distributions estimated from radio-collared bison.

(b)5 Draft Deliberative



- To advance the Interagency Bison Management Plan and the restoration of plains bison, there is a need to restore seasonal movements of bison across jurisdictional boundaries to conditions resembling those for other ungulates in the Yellowstone area. This restoration would contribute to the National Park Service mission of preserving wildlife and the ecological processes that sustain them for the benefit and enjoyment of people.

(b)5 Draft Deliberative



Contact Person: Dan Wenk, Superintendent, Yellowstone National Park, (307) 344-2002, dan_wenk@nps.gov

Last Updated: May 16, 2018

Updated By: P. J. White, Chief, Wildlife and Aquatic Resources Branch, Yellowstone Center for Resources

5/16/2018

DEPARTMENT OF THE INTERIOR Mail - Fwd: Sorry to ask...



White, P <pj_white@nps.gov>

Fwd: Sorry to ask...

1 message

Dan Wenk <dan_wenk@nps.gov>

To: jennifer_carpenter@nps.gov, pj_white@nps.gov, Tim Reid <tim_reid@nps.gov>

Wed, May 16, 2018 at 3:28 PM

Dan Wenk
Superintendent
Yellowstone National Park
(307) 344-2002

Begin forwarded message:

From: "Mihalic, David" <david_mihalic@ios.doi.gov>
Date: May 16, 2018 at 1:54:13 PM MDT
To: Dan Wenk <dan_wenk@nps.gov>
Subject: Sorry to ask...

(b)5 Draft-Deliberative

Dave

--

David A. Mihalic

Senior Advisor to the Secretary
United States Department of the Interior
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Washington, D.C. 20240

Phone: 202-208-4130
cell: 202-706-4978
david_mihalic@ios.doi.gov

https://mail.google.com/mail/u/0/?ui=2&ik=5759b02a99&jsver=GAFHaMvshdw.en.&cbl=gmail_fe_180506.06_p7&view=pt&search=inbox&th=1636ada908649334

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5/16/2018

DEPARTMENT OF THE INTERIOR Mail - [REDACTED] Sorry to ask...

Remember, everything I send or receive is subject to the Freedom of Information Act

5/17/2018

DEPARTMENT OF THE INTERIOR Mail - Briefs on Bison Grazing and Abundance



White, P <pj_white@nps.gov>

Briefs on Bison Grazing and Abundance

1 message

White, P <pj_white@nps.gov>

Thu, May 17, 2018 at 6:52 AM


To: Dan Wenk <dan_wenk@nps.gov>, "Carpenter, Jennifer" <jennifer_carpenter@nps.gov>, Tim Reid <tim_reid@nps.gov>, Rick Wallen <rick_wallen@nps.gov>, Chris Geremia <chris_geremia@nps.gov>, Pete Webster <pete_webster@nps.gov>, Patrick Kenney <pat_kenney@nps.gov>
Cc: Kerrie Evans <Kerrie_Evans@nps.gov>

attached

P. J. White
Chief, Wildlife and Aquatic Resources
Yellowstone National Park
Mammoth, Wyoming 82190
Office: 307/344-2442

NOTE: Every email I send or receive is subject to release under the Freedom of Information Act.

2 attachments

 **BisonAbundanceIBMP_May2018.docx**
22K

 **Brief_BisonGrazingMgmt_May2018.docx**
42K

Briefing Statement FY 2018

Bureau: National Park Service
Issue: Bison Abundance under the Interagency Bison Management Plan
Member: State of Montana, Montana Congressional Delegation
Issue: Yellowstone National Park

Key Points:

- When the Interagency Bison Management Plan (IBMP) was negotiated (late 1990s), there was pressure to prevent cattle from being infected with brucellosis to maintain interstate movements and trade agreements without additional testing. A population target of 3,000 bison was chosen to reduce migrations outside the park to prevent brucellosis transmission. Elk were considered unlikely to mingle with cattle and transmit brucellosis.
- We now know brucellosis is sustained independently in elk populations inhabiting about 17 million acres, whereas bison inhabit about 1.5 million acres near the core. Elk commonly mingle with livestock and have transmitted brucellosis to them 27 times since 1998. No transmissions from bison to cattle have been detected.
- A 2006 adjustment to the IBMP clarified "a population of 3,000 bison is defined as a population indicator to guide implementation of risk management activities, and is not a target for deliberate population adjustment."
- During 2006-2017, spatial and temporal tolerance for more untested bison in Montana was increased several times due to fewer cattle adjacent to YELL, desire for larger public and treaty harvests, changes in APHIS regulations regarding brucellosis class-free status, recognition that bull bison are not transmission vectors, and successful management to reduce conflicts with landowners and livestock operators.
- Bison numbers were allowed to increase and averaged ~4,200 during 2001-2017 (range ~2,900-5,500).

Background:

- 2000: The goal of the IBMP is "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."
- 2002: An independent review of grazing and grasslands in northern YELL by the National Academy of Sciences concluded the park was not overgrazed and managers could continue to allow numbers of ungulates to fluctuate in response to predators, resource limitations, weather, and hunting outside the park.
- 2004-2005: The State of Montana completed environmental evaluations for a public bison hunt and hunting was included in the IBMP as a management action outside YELL.
- 2005: An independent evaluation of the food-limited carrying capacity for Yellowstone bison was completed by Colorado State University and the U.S. Geological Survey. With about 5,000 elk, the model predicted a carrying capacity of more than 8,000 bison. With about 20,000 elk, the model predicted a capacity of about 6,200 bison. Currently, there are about 8,000 northern Yellowstone elk; 80% of which winter outside YELL.
- 2006: Montana recognized the treaty rights of the Salish and Kootenai tribes and the Nez Perce tribe for harvesting bison on open and unclaimed federal lands adjacent to YELL. Treaty rights of the Shoshone-Bannock, Umatilla, Yakama, and Blackfeet tribes were recognized during 2009-2018.
- 2006: The IBMP was adjusted to increase tolerance for bull bison in Montana because there is virtually no risk of them transmitting brucellosis to cattle.
- 2008: The State of Montana signed a 30-year livestock grazing restriction and bison access agreement with the Church Universal and Triumphant, Inc. to remove livestock from the Royal Teton Ranch, located just north of the park boundary. The National Park Service provided \$1.5 million to implement the initial payment for this agreement and allow progressively increasing numbers of bison to use habitats north of the park boundary, including portions of the Royal Teton Ranch and the Custer Gallatin National Forest.
- 2009: A peer-reviewed article by YELL staff proposed maintaining a bison population that varies on a decadal scale between 2,500 and 4,500 animals to satisfy the collective long-term interests of stakeholders, as a balance between the park's forage base, conservation of the genetic integrity of the bison population, protection of their migratory tendencies, brucellosis risk management, and other societal constraints.
- 2010: APHIS promulgated a regulatory rule that greatly reduced the risk of Montana losing its brucellosis-free status and experiencing associated economic costs by dealing with outbreaks in cattle on a case-by-case basis and eliminating the need to remove exposed herds and test across the entire state.
- 2011-2012: Several adjustments were made to the IBMP to substantially increase spatial and temporal tolerance for bison migrating north and west of YELL during winter.

- 2015: The Governor of Montana approved a greater distribution of wild bison on some lands near YELL, including year-round in some areas, which he concluded would not increase the risk of brucellosis transmission to cattle.
- 2016: An independent analysis of genetic data determined all cattle herds infected with brucellosis in the Greater Yellowstone Area were from elk, not bison. There were five distinct strains of *Brucella abortus* bacteria, four of which were associated with elk and originated from the feed grounds in Wyoming. Brucellosis was self-sustaining in elk and spreading at an increased rate in populations outside of the feed grounds. As a result, control measures in bison likely would not affect the dynamics of unrelated strains in elk populations.
- 2016: At meetings with the State of Montana regarding alternatives for a new Environmental Impact Statement (EIS) regarding bison management, there was agreement in principle to average 4,200 bison (summer count) over 5-year moving windows.
- 2017: The National Academies of Sciences, Engineering, and Medicine issued a report revisiting brucellosis in the Greater Yellowstone Area and concluded there was clear evidence that brucellosis transmission to livestock has come from infected elk and, as a result, aggressive control measures in bison seem unwarranted until tools become available that would simultaneously allow for an eradication program in elk.

Current Status:

- A total of 4,816 bison were counted in YELL during summer 2017, including 3,969 in northern YELL and 847 in central YELL. About 1,173 bison were removed from the population this winter, primarily in northern YELL. Thus, biologists expect about 4,300 bison after calving, which will be verified with a count in late July.
- Under the IBMP, there has been no detected transmission of brucellosis from wild bison to cattle, while a viable, wild population of bison has been sustained in YELL.
- Preparation of a new EIS for the IBMP has stagnated in recent years due, in part, to a lack of commitment, funding, and staff participation from the State of Montana and some cooperators. The Superintendent of YELL intends to reinstate discussions regarding whether this effort should be rekindled.

Contact Person: Dan Wenk, Superintendent, Yellowstone National Park, (307) 344-2002, dan_wenk@nps.gov

Last Updated: May 17, 2018

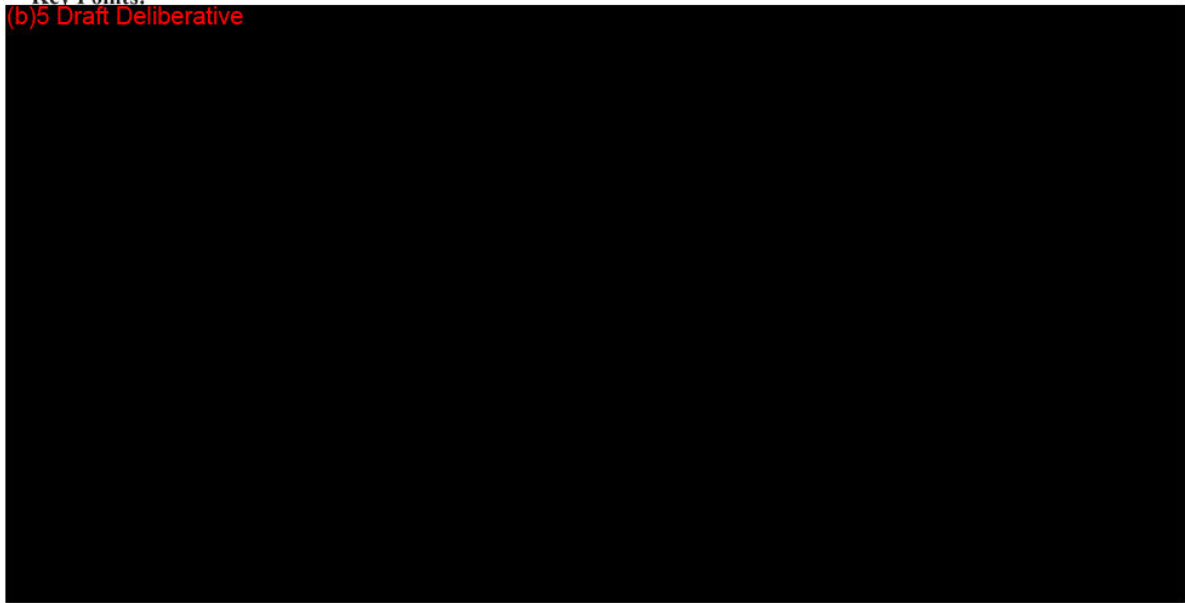
Updated By: P. J. White, Chief, Wildlife and Aquatic Resources Branch, Yellowstone Center for Resources

Briefing Statement FY 2018

Bureau: National Park Service
Issue: Bison Abundance under the Interagency Bison Management Plan
Member: State of Montana, Montana Congressional Delegation
Issue: Yellowstone National Park

Key Points:

(b)5 Draft Deliberative



Background:

- 2000: The goal of the IBMP is “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.”
- 2002: An independent review of grazing and grasslands in northern YELL by the National Academy of Sciences concluded the park was not overgrazed and managers could continue to allow numbers of ungulates to fluctuate in response to predators, resource limitations, weather, and hunting outside the park.
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- 2008: The State of Montana signed a 30-year livestock grazing restriction and bison access agreement with the Church Universal and Triumphant, Inc. to remove livestock from the Royal Teton Ranch, located just north of the park boundary. The National Park Service provided \$1.5 million to implement the initial payment for this agreement and allow progressively increasing numbers of bison to use habitats north of the park boundary, including portions of the Royal Teton Ranch and the Custer Gallatin National Forest.
- 2009: A peer-reviewed article by YELL staff proposed maintaining a bison population that varies on a decadal scale between 2,500 and 4,500 animals to satisfy the collective long-term interests of stakeholders, as a balance

between the park's forage base, conservation of the genetic integrity of the bison population, protection of their migratory tendencies, brucellosis risk management, and other societal constraints.

- 2010: APHIS promulgated a regulatory rule that greatly reduced the risk of Montana losing its brucellosis-free status and experiencing associated economic costs by dealing with outbreaks in cattle on a case-by-case basis and eliminating the need to remove exposed herds and test across the entire state.
- 2011-2012: Several adjustments were made to the IBMP to substantially increase spatial and temporal tolerance for bison migrating north and west of YELL during winter.
- 2015: The Governor of Montana approved a greater distribution of wild bison on some lands near YELL, including year-round in some areas, which he concluded would not increase the risk of brucellosis transmission to cattle.
- 2016: An independent analysis of genetic data determined all cattle herds infected with brucellosis in the Greater Yellowstone Area were from elk, not bison. There were five distinct strains of *Brucella abortus* bacteria, four of which were associated with elk and originated from the feed grounds in Wyoming. Brucellosis was self-sustaining in elk and spreading at an increased rate in populations outside of the feed grounds. As a result, control measures in bison likely would not affect the dynamics of unrelated strains in elk populations.
- 2016: At meetings with the State of Montana regarding alternatives for a new Environmental Impact Statement (EIS) regarding bison management, there was agreement in principle to average 4,200 bison (summer count) over 5-year moving windows.
- 2017: The National Academies of Sciences, Engineering, and Medicine issued a report revisiting brucellosis in the Greater Yellowstone Area and concluded there was clear evidence that brucellosis transmission to livestock has come from infected elk and, as a result, aggressive control measures in bison seem unwarranted until tools become available that would simultaneously allow for an eradication program in elk.

Current Status:

- A total of 4,816 bison were counted in YELL during summer 2017, including 3,969 in northern YELL and 847 in central YELL. About 1,173 bison were removed from the population this winter, primarily in northern YELL. Thus, biologists expect about 4,300 bison after calving, which will be verified with a count in late July.
- Under the IBMP, there has been no detected transmission of brucellosis from wild bison to cattle, while a viable, wild population of bison has been sustained in YELL.

(b)5 Draft Deliberative

Contact Person: Dan Wenk, Superintendent, Yellowstone National Park, (307) 344-2002, dan_wenk@nps.gov

Last Updated: May 17, 2018

Updated By: P. J. White, Chief, Wildlife and Aquatic Resources Branch, Yellowstone Center for Resources

Briefing Statement FY 2018

Bureau: National Park Service
Issue: (b)5 Draft-Deliberative
Member: State of Montana, Montana Congressional Delegation
Issue: Yellowstone National Park

Key Points:

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- No single "stocking rate" (i.e., density) of ungulates is optimal for conserving biodiversity and ecological processes because some species of wildlife need a variety of habitats, while others favor severely disturbed or undisturbed habitats. A wide range of grazing intensities should occur across the landscape to produce a mosaic of vegetation composition and structure, with some heavily grazed areas and some nearly ungrazed areas.
- Independent evaluations sponsored by the National Academy of Sciences (2002) and the U.S. Geological Survey (2005) concluded YELL is not overgrazed and bison have not reached carrying capacity (>6,200 bison). However, migrations outside the park increase during winters with deep snowpack and more than 4,700 bison.
- A total of 4,816 bison were counted in YELL during summer 2017, including 3,969 in northern YELL and 847 in central YELL. About 1,173 bison were removed from the population this winter, primarily in northern YELL. Thus, biologists expect about 4,300 bison after calving, which will be verified with a count in late July.
- Some sites in northern YELL are intensely grazed by bison, but the locale with the highest consumption (Lamar Valley) supports large areas of rhizomatous grasses from abandoned hayfields that fare relatively well in response to repeated, intense grazing; despite low standing crop by the end of summer.
- Intensively grazed areas comprise a small portion of the available summer habitats for bison and elk in YELL. The majority of the summer range and all of the winter range has moderate to low consumption rates due to a substantial decrease in elk numbers throughout the park and fewer bison in the central region.
- The biomass and production of ungulates in YELL has remained relatively high for decades; indicating many thousands of animals are attaining adequate forage to sustain sufficient body condition for reproduction and survival. This would not occur if YELL was overgrazed and ungulates exceeded ecological carrying capacity.

Background:

- The Yellowstone National Park Act of 1872 dedicated land as a public park for the benefit and enjoyment of the people. Congress directed the Secretary of the Interior to "provide for the preservation ... of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition."
- The desired condition for the native shrub-grass plant association in northern YELL is a sustainable community with functioning water, soil properties, energy and nutrient cycles, and disturbance dynamics (e.g., fires, floods, herbivory). Some areas of the extensive grasslands would be more heavily grazed than others.
- The desired condition for wildlife in YELL is to sustain or restore populations of native wildlife consisting of untamed, free-roaming animals that live in an environment not dominated by humans and whose behaviors, movements, survival, and reproduction are predominantly affected by their own decisions and natural selection.
- Bison are the only exception to this practice and are frequently captured near the park boundary and shipped to slaughter facilities pursuant to a court-mediated plan finalized in 2000 due to concerns about brucellosis transmission risk to cattle. Chronically infected elk populations in surrounding states are not managed similarly.
- Since numbers of migratory ungulates are allowed to vary substantially among seasons and years, quite unlike the stocking and rotation of livestock on commercial rangelands and grazing allotments, grasslands within the park should not be expected to look like nearby ranches cultivated, fertilized, and irrigated for cattle production.
- During the 1980s and 1990s, elk were abundant (11,000-19,000) and the primary grazer in northern Yellowstone. Grass consumption was relatively high (45-55% of annual above-ground production) in some areas and comparable to the consumption of grasses (60%) in the savanna systems of the African Serengeti.

- In 2002, an independent review of grazing and grasslands in northern YELL by the National Research Council cautioned "For example, some people compare the northern range unfavorably with nearby ranches, but that reflects a mixing of values. Ranching seeks high production for human uses, but YNP seeks to preserve a natural environment and the species and ecological processes within it."
- An independent evaluation of the food-limited carrying capacity for Yellowstone bison was completed by Colorado State University and the U.S. Geological Survey in 2005. With about 5,000 elk, the model predicted a carrying capacity of more than 8,000 bison. With about 20,000 elk, the model predicted a capacity of about 6,200 bison (see <http://www.americanbisonsocietyonline.org/Portals/7/PlumbEtAl2009.pdf> for more details). Currently, there are about 8,000 northern Yellowstone elk; 80% of which winter outside YELL.
- As northern Yellowstone elk numbers decreased by 75% following predator restoration, bison numbers quadrupled in northern YELL during the 2000s and grazing became more concentrated and prolonged in certain areas (e.g., Lamar Valley) compared to the more dispersed and seasonal grazing by elk. Grass consumption by abundant bison during 2012 to 2014 was higher (49%) than when elk were the dominant grazers (31%) and exceeded 70% annually in some areas.
- Climate is a primary factor influencing grass production because variations in precipitation and temperature strongly influence soil moisture which, in turn, limits production. As a result, variations in weather among years contribute to large variations in grassland production. Also, the proliferation of nonnative plant species since 2005 has fundamentally changed the composition and production of some grassland communities in YELL.

Current Status:

- During 2012-2014, biologists performed mechanical removal experiments to test the response of grasslands to controlled, simulated grazing. Total aboveground production was maintained even when clipping intensity (i.e., removal of leave tissue) reached 80%. However, removal of more than 30% of annual production reduced standing crop available at the end of the growing season.
- Since 2012, biologists have been documenting changes in the amount of above-ground production, percent consumption by the grazing community, soil nutrient availability, soil organic matter, plant composition, bare ground, and litter at 30 sites in high-use bison areas in YELL. A summary of findings to date could be produced by December 31, 2018.
- Biologists are completing a remote sensing analysis using satellite data to classify vegetation communities based on spectral signatures, with field staff ground-truthing sites to improve mapping precision. Also, biologists are using real-time GPS data recorded from Iridium telemetry collars fit to bison to generate use surfaces/maps. Staff are visiting sites to collect standing crop estimates.
- By November 30, 2018, biologists will estimate (1) the forage capacity of habitats in YELL for bison using park-wide annual production estimates generated from remote sensing satellite data, (2) recommended stocking rates based on livestock models, and (3) current stocking rates using bison aerial counts and utilization distributions estimated from radio-collared bison.

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- To advance the Interagency Bison Management Plan and the restoration of plains bison, there is a need to restore seasonal movements of bison across jurisdictional boundaries to conditions resembling those for other ungulates in the Yellowstone area. This restoration would contribute to the National Park Service mission of preserving wildlife and the ecological processes that sustain them for the benefit and enjoyment of people.

(b)5 Draft Deliberative

Contact Person: Dan Wenk, Superintendent, Yellowstone National Park, (307) 344-2002, dan_wenk@nps.gov

Last Updated: May 16, 2018

Updated By: P. J. White, Chief, Wildlife and Aquatic Resources Branch, Yellowstone Center for Resources

From: [Dan Wenk](#)
To: [Mihalic, David](#)
Subject: Re: Sorry to ask...
Date: Thursday, May 17, 2018 7:09:07 AM

Dave,

That was not ready for prime time and therefore not set up as a brief. I was just giving you information informally. We will adjust for all the things you are concerned about before we would submit (b)5 Draft-Deliberative

Did you see the brief I just sent?

And there is no second brief or no 1 of 2.

We can talk at about 8:45 your time.

Dan Wenk
Superintendent
Yellowstone National Park
(307) 344-2002

On May 17, 2018, at 7:03 AM, Mihalic, David <david_mihalic@ios.doi.gov> wrote:

Dan,

(b)5 Draft-Deliberative

(b)5 Draft-Deliberative

When can we talk?

Dave

On Wed, May 16, 2018 at 6:50 PM, Wenk, Dan <dan_wenk@nps.gov> wrote:

Dave,

attached is the beginning of a brief on this issue. The information may be good for your discussions tomorrow.

Questions please let me know.

more information tomorrow morning concerning your other questions.

On Wed, May 16, 2018 at 1:54 PM, Mihalic, David

<david_mihalic@ios.doi.gov> wrote:

(b)5 Draft-Deliberative

Dave

--

David A. Mihalic

Senior Advisor to the Secretary
United States Department of the Interior

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Remember, everything I send or receive is subject to the Freedom of Information Act

--

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From: [Mihalic, David](#)
To: [Dan Wenk](#)
Subject: Re: Sorry to ask...
Date: Thursday, May 17, 2018 7:24:21 AM

Got it - after 8 am your time - and - I don't think that brief is needed (or helpful) at this time. Let's see how this shakes out - (b)5 Draft-Deliberative
(b)5 Draft-Deliberative

D

On Thu, May 17, 2018 at 9:19 AM, Dan Wenk <dan_wenk@nps.gov> wrote:
Anytime between 10:00 - 11:00 your time, call me.

Dan Wenk
Superintendent
Yellowstone National Park
(307) 344-2002

On May 17, 2018, at 7:03 AM, Mihalic, David <david_mihalic@ios.doi.gov> wrote:

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(b)5 Draft-Deliberative

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Dave

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