Current Litigation Pertaining to Bison in Montana as of Spring 2011

Petition for the Listing of Plains Bison under the Endangered Species Act

Male during the rut. PHOTO CREDIT: J. BAILEY

On June 22, 2009, a petition was submitted to the Department of the Interior requesting the consideration of listing wild plains bison as a threatened species under the Endangered Species Act of 1973 (ESA). The petition requests that if bison are not listed as threatened under the ESA, that each of the four "major ecotypes of wild plains bison be listed as threatened, as significant distinct population segments, under the ESA in order to conserve the ecotypes and the ecosystem upon which these animals depend" (Bailey, 2009).

The petition requests the consideration of listing not due to threat of numerical extinction, but threat from "hybridization with cattle, loss of allelic diversity, domestication, loss of wildness due to anthropogenic selection overwhelming a limited range of natural selection, resulting in genetic extinction of wild plains bison, and also ecological extinction" (Bailey, 2009). The petition contends that bison are threatened over a significant portion of their range (Sanderson et al., 2008) and recognizes that the opportunities for bison restoration are limited (Bailey, 2009).

On February 24, 2011, following a 90-day review of the above petition, the USFWS announced that "the petition does not present substantial information indicating that listing may be warranted. Therefore, we are not initiating a status review in response to this petition" (76 FR 10299).

On April 14, 2011, the Center for Biological Diversity and Western Watersheds Project issued a press release announcing that a notice of intent to sue the USFWS over the decision not to list plains bison under the Endangered Species Act had been filed (Greenwald and Marvel, 2011). The organizations noted that "in order to claim bison do not deserve protection, the Fish and Wildlife Service ignored the fact that bison are gone from nearly all of their historic range and instead argued it must only consider the species' current range. Scientists refer to the practice of ignoring historic loss of wildlife populations as a 'shifting baseline,' whereby successive loss and degradation of the environment is accepted by only looking at a narrow window of time" (Greenwald and Marvel, 2011).

Western Watersheds Project et al. v. Ken Salazar et al.

In November 2009, the Western Watersheds Project, Buffalo Field Campaign, Tatanka Oyate, Gallatin Wildlife Association, Native Ecosystems Council, Yellowstone Buffalo Foundation, Meghan Gill, Charles Irestone, and Daniel Brister filed complaint for injunctive and declaratory relief against Ken Salazar, Secretary of Interior; Suzanne Lewis, YNP Superintendent; Leslie Weldon, Regional Forester, USFS Northern Region; and Mary Erickson, Gallatin National Forest Supervisor in the U.S. District Court for the District of Montana, Missoula Division.

The basis of the complaint filed by Western Watersheds Project et al. was that the USFS's decisions and actions under the Gallatin National Forest Plan, which are pursuant to the IBMP, prevents native bison from occupying and using national forest land around Yellowstone National Park. They claimed that the USFS is violating the National Forest Management Act by "not providing for diversity of plant and animal species on the Gallatin National Forest" (WWP et al., 2009, pp. 2).

The cooperative Western Watersheds Project group was also asking for review of the NPS actions and decisions. It contended that the NPS's actions and decisions will likely cause "impairment to native bison populations and other resources by allowing the wanton destruction of bison and not conserving bison and other resources" (WWP et al., 2009, pp. 2). Western Watersheds et al. was also asking the court for review "of both agencies' refusal to analyze and disclose new information and changed circumstances relating to bison management and brucellosis" (WWP et al., 2009, pp. 2).

On February 14, 2011, Judge Charles C. Lovell released his decision on the above lawsuit and request for injunctive relief. The court concluded that the defendants, Salazar et al. had not violated the National Environmental Policy Act, the National Forest Management Act, the National Park Service Organic Act, the National Forest Management Act, or the Yellowstone Enabling Act, and that the requisites for injunctive relief had not been proven (WWP et al., 2011b). Therefore the plaintiffs, Western Watersheds Project et al. were denied all relief (WWP et al., 2011b). Western Watersheds et al. has since filed an appeal to the 9th District Court of Appeals.

Sitz Angus Ranch et al. v. Montana Board of Livestock et al. and Edith Ford et al.

The Greater Yellowstone Coalition, Natural Resource Defense Council, and eight Horse Butte landowners, represented by Earthjustice, intervened on behalf of the Montana Board of Livestock, Montana Department of Livestock (MDOL), State of Montana, and Montana State Veterinarian, after the Sitz Angus Ranch, Bill Myers, and the Montana Stockgrowers Association filed suit against the state agencies in May 2008.

Sitz Angus Ranch et al. filed two Amended Complaints. The First Amended Complaint, filed in June 2008, raised two claims and requested that the court issue an order that would require the MDOL to "remove the wild bison, through hazing and slaughter,

from private and public lands in the area known as Zone 2, which consists of Horse Butte and surrounding lands adjacent to the western boundary of Yellowstone National Park" (Sitz Angus Ranch v. Montana Board of Livestock DV-09-388C). Sitz Angus Ranch et al. argued that that the IBMP is a legally enforceable document, and therefore the MDOL had a legal obligation to remove bison from Zone 2 by the 15th of May.

The Second Amended Complaint filed by Sitz Angus Ranch et al. repeated the original claims, but supplemented these claims with two new claims "attacking the IBMP Adaptive Adjustments and requesting that Respondents (MDOL) be ordered to follow and implement the existing IBMP until they comply with their legal duties to analyze the existing environmental impacts of modifying the IBMP" (Sitz Angus Ranch v. Montana Board of Livestock DV-09-388C). Sitz Angus Ranch et al. claimed that the adoption of the IBMP Adaptive Adjustments without preparing an adequate environmental analysis was in violation of the Montana Environmental Policy Ace (MEPA).

On May 27, 2010, the Honorable John C. Brown, District Judge in Montana's 18th Judicial District ruled that neither the IBMP nor Montana law created a mandatory obligation for the MDOL to remove the bison by the 15th of May, and dismissed Counts 1 and 2 of the Second Amended Complaint. The remaining claims in the litigation relating to compliance with MEPA are still pending.

Western Watersheds Project et al., v. State of Montana and Montana Department of Fish, Wildlife &Parks

In March 2010, the Western Watersheds Project, Gallatin Wildlife Association, Buffalo Field Campaign, and Yellowstone Buffalo Foundation filed a complaint against the State of Montana and FWP with Montana's 18th Judicial District Court, Gallatin County. Western Watersheds Project et al. filed the complaint following the decision of FWP to transfer temporary management of bison that are part of the Quarantine Feasibility Study to the Green Ranch, which is a private ranch owned and managed by Turner Enterprises Inc., and also over the transfer of 75 percent of the offspring that are born during the bison's tenure on Green Ranch to Turner Enterprises Inc.

Bison in the APHIS quarantine facility.
PHOTO CREDIT: S. ADAMS

In May 2010 the State of Montana and FWP filed an answer to the complaint. FWP states that "the public trust responsibility was to the species not individual animals," and that "the evolving long-term commitment was the best solution under the circumstances would be found" (State of Montana and FWP, 2010, pp. 1). The agency notes that the

agreement with Turner Enterprises Inc. "is a non-commercial agreement that will meet costs without taxpayer funding since the other alternatives fell through, and at the end of the five-year period the bison will be returned to FWP, which will have a permanent solution at that time" (State of Montana and FWP, 2010, pp. 2).

As of December 2010 the lawsuit has not yet been heard in front of the court.