



**Montana Fish,
Wildlife & Parks**

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JOINT DECISION NOTICE

Adaptive Management Adjustments to the Interagency Bison Management Plan February 2012

Preface

The Interagency Bison Management Plan (IBMP) was established in 2000 in order to coordinate bison management among five agencies; Montana Fish, Wildlife and Parks (FWP), Montana Department of Livestock (DoL), National Park Service (NPS), United States Forest Service (FS), and United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS). These five agencies agreed to work cooperatively within an adaptive management framework to implement the IBMP. The Confederated Salish and Kootenai Tribes, InterTribal Buffalo Cooperative, and Nez Perce Tribe became IBMP cooperating agencies in 2009.

In keeping with the adaptive management framework set up by the IBMP, the IBMP partner agencies meet several times a year to assess the effectiveness and outcomes of the IBMP management activities and incorporate short and long-term adaptive management adjustments to the IBMP based on prevailing conditions, experience, and new data. The proposed adjustments were agreed to in principle by the IBMP agencies in April 2011. The proposed adjustments are consistent with the basic management direction or goals of the IBMP 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.

Proposed Action & Alternative

Proposed Action: The following adaptive management adjustments would be implemented for the IBMP. Other aspects of the IBMP and previous adaptive management adjustments would continue to be implemented.

- Allow bison on habitat on FS and other lands north of the park boundary and south of Yankee Jim Canyon until May 1. Bison would not be allowed north of the hydrological divide (i.e., mountain ridge-tops) between Dome Mountain/Paradise Valley and the Gardiner Basin on the east side of the Yellowstone River, and Tom Miner basin and the Gardiner Basin on the west side of the Yellowstone River (see Map #2 in the environmental assessment).

- Trailer up to 300 female and calf bison testing negative for brucellosis from the Stephens Creek capture facility to a double-fenced quarantine facility in Corwin Springs for holding until release back into Yellowstone National Park (YNP) in spring as necessary.
- Evaluate the effects of these adjustments and modify as necessary to prevent bison from occupying lands north of the hydrological divide and minimize the risk of transmission of brucellosis to livestock.

No Action: Under this alternative, the IBMP partner agencies would manage migrating bison leaving YNP under the original IBMP guidance and all subsequent adaptive management adjustments through 2008. Yankee Jim Canyon would continue to be the northern most boundary where bison would be tolerated for Zone 2, as originally identified in the 2000 Final Environmental Impact Statement (FEIS).

Bison tolerance outside YNP would continue to be limited to Zone 2 from November through April and year-round within the Eagle Creek/Bear Creek area and as per the RTR specifications in the 2000 FEIS. Bison moving beyond the tolerance areas would trigger management actions such as hazing back into YNP or into existing tolerance areas (Zone 2 or Eagle Creek/Bear Creek), increased surveillance, capture, or lethal removal at the discretion of the State Veterinarian. Bison would be able to remain within Zone 2 until May 1 when any remaining bison would be hazed back to YNP.

Bison that have moved beyond the YNP boundary may be captured and moved into the Stephens Creek facility to be tested for brucellosis as per the RTR specifications in the 2000 Record of Decision plus all adaptive changes up through 2008. No other holding facility would be used. Those bison testing seronegative for brucellosis would be held at the facility until spring then released back into YNP. Those testing seropositive for brucellosis may be slaughtered and their meat distributed to food banks and tribal groups.

Montana Environmental Policy Act & Public Process

Montana Fish, Wildlife & Parks and Montana Department of Livestock are required by the Montana Environmental Policy Act (MEPA) to assess potential impacts of their proposed actions to the human and physical environments, evaluate those impacts through an interdisciplinary approach, including public input, and make a decision to proceed or not with the proposal. The 2000 Bison FEIS remains a valid assessment for much of the human and physical environments regarding bison management.

An environmental assessment (EA) was completed on the proposed action and released for public comment December 15, 2011 through January 13, 2012. The EA tiered to and utilized much of the evaluation in the 2000 FEIS where the assessment was substantially similar.

Two legal notices announcing the availability of the EA were published in the *Helena Independent Record*, *Livingston Enterprise*, and *The Bozeman Chronicle*. In addition to the announcement, the EA was posted on FWP's webpage - http://fwp.mt.gov/news/publicNotices/environmentalAssessments/plans/pn_0011.html.

An announcement regarding the availability of the EA was emailed to over 1,800 individuals and organizations including local, state, and federal government offices; non-profit organizations; and other parties who have expressed interest in bison management in the past. Announcements were sent as a hard copy EA or postcard notice.

Statewide press releases were also sent to the FWP distribution list of in-state and out-of-state media, non-profit organizations, sportsmen's organizations, and interested parties.

Summary of Public Comments

Public participation is a mechanism for agencies to consider substantive comments on a proposal. Over 5,400 comments were received via email and regular mail. Of the email comments submitted, 97% were form letters from four different Montana-based organizations. Three of those organizations supported the proposed action, where as the last organization did not specify its position on either alternative. The form letters were submitted from in-state, out-of-state, and international locations.

Of the 136 unique comments, the proposed action had supporters and opponents. Forty-two percent of the unique comments did not specify a preference for or against either alternative.

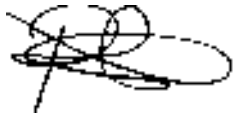
Some comments received pertained to a variety of bison management issues that are beyond the scope of this EA. Topics identified included: 1) eradication of brucellosis in wild bison, 2) disclosure of costs to implement the IBMP by partner agencies, 3) identification of the conservation status of bison within Montana, 4) vaccination of cattle, 5) bison hunting inside and outside YNP, 6) management of bison herd size within YNP, 7) use of the RB51 vaccination, and 8) brucellosis in elk.

Public comments received and Departments' responses to them begin on page 5 of this notice.

Decision

Based upon the analysis completed in the EA and public comments that the Departments received through email and regular mail, we have decided to approve the implementation of the adaptive management adjustments to the IBMP. The analysis of potential impacts to the human and physical environment completed in the draft EA is adequate for the implementation of the proposed adjustments. Since no changes are necessary to the draft EA, with the publication of this notice, the EA with the additions reflected in this decision notice will be considered final.

All those who submitted written comment will receive a copy of the Decision Notice and the notice will be posted to FWP's website.

A handwritten signature in black ink, appearing to read 'Patrick J. Flowers', with a stylized flourish at the end.

Patrick J. Flowers
Region Three Supervisor
Montana Fish, Wildlife & Parks

A handwritten signature in black ink, appearing to read 'Christian Mackay', with a long horizontal flourish extending to the right.

Christian Mackay
Executive Officer
Montana Department of Livestock

Public Comments and Department Responses

1. Since cattle appear on public rangelands mid-June, can hazing activities be postponed until mid-May or later to accommodate bison or when a late snow event occurs in the Park? Can the requirement that bison need to be hazed back to YNP by May 1st be eliminated? Is the May 1 date based on safety to cattle?

Departments' response: As described in the 2000 FEIS ROD, the final decision on the duration of temporal separation after April 15 is made at the discretion of the Montana State Veterinarian. Current IBMP operating procedures state YNP bison are tolerated within Zone 2 until May 1. There is the potential for the final hazing date to be adjusted, in any given year, however that decision would be dependent on relevant data on bison movements in the Gardiner Basin, presence of cattle within the Basin and surrounding area, and the need to appropriately address the risk of the transmission of brucellosis. At the present time, the agencies do not plan to adjust the May 1 haze-back date as the general rule.

2. It is not clear what the purpose or need to confine bison at the Brogan facility is. Please elaborate on this aspect or remove it from the proposed action.

Departments' response: The Brogan facility would only be used if it were available (e.g. not being utilized by APHIS for another project) and if the capacity of the Stephens holding facility had been reached. The Brogan facility would only potentially be used in an emergency when we've exceed the capacity of the Stephens Creek trap and exceeded manageable numbers of bison in the Basin.

3. If there is a need to capture and confinement additional bison due to high migration numbers, can those bison be moved or translocated to other areas of minimal conflict in southwestern Montana?

Departments' response: Theoretically yes, but there are multiple processes for the State to complete before it takes any action to place bison on public or private lands outside of their usual migration routes. FWP is in the process of preparing a statewide bison management plan that will likely investigate potential areas in Montana appropriate for bison translocation. FWP's statewide bison management plan is expected to be completed by December 2015.

4. The use of an additional confinement facility increases the potential for disease transmission between bison, as well as domestication and habituation on human handling.

Departments' response: These possibilities have been considered; therefore the bison confined at Stephens Creek are handled as little as possible and used as a short-term (only during the winter) capture and testing facility. Any bison held at Corwin Springs facility would also be handled as little as possible so that the potential for habituation to

human handling is minimized. Furthermore, bison confined for a short period will not become domesticated by the experience.

5. Use of an additional confinement location allows Montana to temporarily avoid difficult and necessary decisions regarding the management of bison. Need to disclose the current conservation status of bison in Montana.

Departments' response: Yellowstone bison are designated as wildlife in Montana. Use of the Brogan facility does not eliminate difficult decisions related to bison. It provides an additional tool for managing bison and offers more management choices for IBMP partners. As stated above, FWP is working on a statewide bison management plan that is expected to be completed by December 2015. Contrary to the comment's assertion, the IBMP partners are continually discussing, considering, and modifying, as appropriate, decisions regarding management of bison. Within Montana, bison are designated with an S2 ranking, defined as: "At risk because of very limited and/or potentially declining population numbers, range and/or habitat, making it vulnerable to global extinction or extirpation in the state". The ranking is based on a number of factors such as population size, short and long-term population trends, area of occupancy, threats, intrinsic vulnerability, and specificity to environment (from the Montana Natural Heritage Program website). The Montana Comprehensive Fish and Wildlife Conservation Strategy (MCFWCS) identifies bison as a Tier One Species. In the MCFWCS, a tier one species is a species considered in greatest conservation need.

6. Why wasn't an environmentally preferred alternative considered that would value bison as native wildlife species, conserve historic migration corridors, secured additional habitat, and managed livestock to reduce bison/livestock conflicts?

Departments' response: Under the proposed alternative bison are valued as wildlife, and offered more opportunity to migrate to a larger area beyond YNP boundaries, which is within historic migration corridors. The current IBMP and the proposed adjustment continue to work towards the reduction of bison/livestock conflicts in the area.

7. Establishing an artificial boundary at Yankee Jim Canyon will remove the ecological benefits of migrating bison to the landscape within the Gardiner Basin. Confining bison within the Basin will lead to the degradation of existing soils, grasses, and life sources.

Departments' response: FWP and DoL disagree. Bison moving into the Gardiner Basin likely will be doing so during more severe winter conditions when soils will either be frozen, snow covered, or both. Furthermore, groundcover will likely be dormant and snow covered as well. As described in the draft EA, some life sources, such as scavengers, may benefit from bison being in the expanded area when carcasses are available.

8. What will be the situation with the Royal Teton Ranch (RTR) with the new adaptive management adjustments? Will migrant bison move through the ranch to the expanded areas?

Departments' response: The RTR agreement allows for the possibility of adaptive adjustments in the IBMP. The IBMP partners will continue to work with the RTR to implement the selected alternative in a manner that meets the intent of the lease agreement and the selected adaptive adjustment. It is likely some bison will continue to migrate through the ranch to the expanded bison tolerant areas.

9. The immediate expansion of a bison tolerant area, which includes the RTR, is in conflict with the gradual increase of the number of bison allowed to migrate through the ranch to public lands per the terms of the 2008 Grazing Restriction and Access Agreement. There is no identification of potentially how many bison would be turned out.

Departments' response: The Agreement recognizes the potential for adaptive adjustments. The number of bison tolerated on the landscape from November through April will be dependent upon many factors including but not limited to our experience managing where and when they move and to what areas, whether they are tolerated by landowners, whether they pose a safety threat, etc. Other tools for bison management, such as hazing, capture, and lethal removal, remain in place.

10. What is the future of the Corwin Springs facility and the Slip n' Slide pastures? The Corwin Springs facility is too small an area to hold 300 bison. Is it really necessary to use it at all?

Departments' response: The Corwin Springs facility, specifically the Brogan facility, is leased and operated by APHIS. As an IBMP partner agency, APHIS was part of the decision making group that included the use of the Corwin Springs facility in the new adaptive management adjustments. Neither FWP nor DoL has knowledge of the terms of APHIS's lease agreement or APHIS's plans for the facility in the future. See the response to comment #2 as to the need to use the Corwin Springs facility.

We believe the Corwin Springs pasture can provide adequate space to temporarily hold bison on an emergency basis while providing supplemental feed and water until they are released back into YNP.

The adaptive management adjustments do not involve changes to the current use of the Slip n' Slide pastures, which are leased by FWP. Currently, the Slip n' Slide pastures are being used to hold 68 brucellosis-free bison. These bison are the final group from the Quarantine Feasibility Study that was begun in 2006. The Fish, Wildlife & Parks Commission approved the movement of these bison to pastures on the tribal lands of the Fort Peck and Fort Belknap reservations during the spring of 2012 after Memorandums of Understanding between FWP and the Tribes are completed. When the FWP lease on Slip n' Slide pastures expires, use of the pastures will be at the discretion of landowners.

11. Opposed to the use of motorized vehicles to haze bison because tracks from the vehicles are visible for a long time and invite others to potentially drive in the same areas. Use of horseback hazers is preferred.

Departments' response: Staff typically uses the least intrusive tool (e.g. horseback or on foot) when it is necessary to haze bison since bison have a better response to those tools versus motorized vehicles, including all-terrain vehicles. The safety of staff is also an important consideration when determining which hazing method to use. For at least the last four years, motorized vehicles and ATVs have not been used for hazing activities within the Gardiner Basin.

12. Are bison legally wildlife or livestock within the Gardiner Basin? Who has jurisdiction over them?

Departments' response: Bison leaving Yellowstone National Park and entering Montana are designated by Montana statute as "wildlife" or "wild" animals. The Montana Legislature has granted both FWP and DoL significant discretionary authority over the YNP "wild bison" that enter Montana.

13. Bison hunting quotas need to be adjusted to account for unregulated takings by Native Americans.

Department's response: FWP cooperates with all tribes exercising their treaty hunting rights. We share bison harvest information and coordinate treaty and state licensed hunts annually based on on-going discussion and a regularly scheduled annual review. The Tribes maintain sovereign authority to regulate their takings. The state adjusts plans for state licensed bison harvest based on population size and distribution and in an effort to create compatible state licensed and treaty right hunts. In any event, this comment is not within the scope of this EA.

14. The fencing program needs to be open-ended to address development, as well as changing resident attitudes.

Departments' response: FWP and DoL agree. The fencing program has two primary objectives: 1) to ensure spatial separation between bison and cattle to address the risk of brucellosis transmission, and 2) to address public safety and bison tolerance concerns. FWP plans to continue its landowner outreach program that will periodically survey Gardiner Basin landowners and cattle operators to learn of their needs and bison tolerance levels. Results of those surveys will be provided to IBMP partner agencies and will be considered in possible or proposed future IBMP adaptive management adjustments. DoL will also continue to assess livestock operation needs within the Basin to ensure spatial separation between bison and cattle and provide fencing assistance as needed.

15. The proposed adjustments will increase brucellosis transmission, increase public safety risks (vehicle collisions, risk of contracting brucellosis, recreation, etc.), increase damages to private property (fencing, landscaping, etc.), and will not provide greater hunter opportunities.

Departments' response: FWP and DoL disagree. The IBMP partners considered the possibilities noted above and concluded that under the AMA's as proposed, the risk of brucellosis transmission from bison to cattle can be effectively managed, particularly with the reduction of potential sanctions because of APHIS rule changes, and through the use of the Designated Surveillance Area rules. In addition, as described in the EA, there are a very limited number of cattle in the Gardiner Basin. DoL has constructed fencing, as needed, on the existing cattle operations to reduce the opportunity for commingling between cattle and migrating bison.

The same is true for public safety risks; they can be effectively managed using the tools proposed in the AMA's and the tools that are readily available to the IBMP partners. The presence of bison within the Gardiner Basin has been within a tolerance zone for bison since the current IBMP was adopted in the year 2000. The proposed expansion of the bison tolerant area is not expected to increase public safety risks under typical circumstances. The winter of 2010-2011 was not typical and saw an extremely high migration of bison into the Basin. If another high migration occurs, the addition of new bison tolerant areas will provide the agencies new options on where to haze bison, which should increase public safety. Partner agencies will continue to haze bison away from traffic corridors into suitable habitat as needed. FWP staff will continue to respond to public safety and property owner concerns including their work on strategic fencing to address those concerns. Typically, on-site agency personnel responses are either immediate or generally within twelve hours, depending on staffing, when the call was received, and travel time to the site. If private property landowners are concerned about bison on their property or threatening their livestock and if DoL is unavailable, MCA 81-2-121 empowers them or their agent to take publically-owned wild bison suspected of carrying disease, present on the landowner's property, and is potentially associating with or threatening livestock.

Bison have been migrating during the winter into the Basin for several decades. FWP and DoL will continue to work with landowners on a fencing project to protect livestock and private property and respond to landowner calls to move bison off private property as necessary. Montana law recognizes that wildlife are a natural part of the landscape, and that the rights and privileges of private property ownership also come with the challenge and benefits associated with having wildlife on the landscape.

*FWP disagrees with the comment that the proposed adjustments would not provide greater hunter opportunities. In a recently published paper by the NPS, *Monitoring Plan for Yellowstone Bison: The Effects and Effectiveness of Management Actions*, one of the management tools identified to reduce the number of bison to an end-of-winter target of*

3,000 in YNP is public and treaty harvests in Montana. More bison on a larger landscape will offer greater hunter opportunity. Ultimately, bison hunting quotas are established by the FWP Commission based upon scientific data and management goals, such as the need to reduce the number of bison migrating from the Park.

16. The public IBMP meeting in April 2011 did not meet the requirements of a public meeting. The meeting was not recorded, comments were not solicited, and attendance was not recorded.

Departments' response: FWP and DOL disagree. Under MEPA there are no specific public meeting requirements for an environmental assessment.

17. Who pays for the new fencing to keep bison away from private property and cattle? Who pays for the maintenance of those fences?

Departments' response: Fencing constructed to ensure spatial separation of cattle and bison was paid for by DoL, and maintenance of those fences will be paid for by the landowner per terms of signed Memorandum of Understanding. The fencing constructed to protect private property was shared by non-profit organizations and the landowner. It has yet to be determined who will be responsible for maintenance of those fences, and additional discussions between the parties will be required.

18. Costs for hazing bison will only increase if more bison are given a chance to roam. Who will pay for those additional costs?

Departments' response: FWP and DoL disagree. It is anticipated that bison migration to the expanded tolerance area on any large scale will be episodic and not an annual event. When such migrations occur, it is more costly to confine bison to a smaller area or continually move them back to YNP where they likely will not stay until there is reasonable forage opportunity. A desired outcome for the proposed expanded bison tolerant area is that the need for hazing bison during those migratory events would decrease because bison would choose to migrate to new suitable habitat available to them. While DoL and FWP do not believe that hazing costs will increase, each agency will assume responsibility for costs associated with their staff's participation in bison management activities.

19. Allowing bison to an additional 75,000 acres within the Designated Surveillance Area does not mitigate the spread of disease as required by the new APHIS rules. A 12 hour response time for FWP or DoL staff does not mitigate the risk of brucellosis transmission when cattle are present. To put the responsibility of risk mitigation for diseased YNP bison on the backs of livestock producers is a failure of the agencies involved to perform in a responsible manner to stop the spread of brucellosis.

Departments' response: DoL disagrees. As noted in the EA, steps to mitigate the commingling of bison and cattle include newly constructed strategic fencing around the two year-round cattle operations in the expanded tolerance area, ensuring bison are not

present on public lands within the expanded tolerance area when cattle will be present, hazing bison back to YNP before cattle arrive on grazing allotments on public lands, hazing of bison away from existing cattle operations and private property, lethal removal of bison when necessary, and prompt response to landowner complaints by FWP and DoL staff. In sum, DoL disagrees that the responsibility for risk mitigation of brucellosis transmission is placed solely on the landowner in the Gardiner Basin.

FWP and DoL believe all these tools will minimize the risk of transmission of brucellosis and provide responsible wildlife management and disease control.

20. The EA fails to disclose a purpose and need that is consistent with the commitments made in the IBMP for the proposed adaptive management adjustments.

Departments' response: FWP and DoL disagree. The proposed adaptive management adjustments are consistent with the original objectives of the IBMP that are "to maintain a wild, free-ranging population of bison and address the risk of brucellosis transmission to protect the economic interest and viability of the livestock industry in Montana." The proposed expanded bison tolerant area will provide Yellowstone bison with the opportunity to migrate into a greater area of their historic range, and better manage bison numbers through hunting. Mitigation tools described in the previous departments' response reflects IBMP partners' commitment to minimize the risk of brucellosis transmission.

21. The establishment of the Designated Surveillance Area might provide the opportunity for expanding Zone 2 but it is not a justification for the proposed adaptive management adjustments.

Departments' response: The establishment of a DSA was not intended to be a justification for the proposed adaptive management adjustments. Rather, the justifications for the adjustments are found at page 5 of the EA and include, among others, the APHIS rule change that lessened the threat of large-scale economic repercussions, the difficult scenario posed for management in the 2010-2011 winter, and the unsuccessful attempt to use the RTR as contemplated, etc. While establishment of the DSA was a requirement of the new APHIS rule, it was not the justification for the adaptive management adjustments.

22. The proposed adaptive management adjustments are inconsistent with the concept of adaptive management framework in the IBMP and are outside the scope of the IBMP.

Departments' response: FWP and DoL disagree. The proposed adjustments are consistent with the 2000 IBMP's definition of adaptive management: "testing and validating with generally accepted scientific and management principles the proposed spatial and temporal separation risk management and other management actions. Under the adaptive management approach, future management actions could be adjusted based on feedback from implementation of the proposed risk management actions." (2000 FEIS, page 42) The proposed management adjustment, number 3 under the proposed

action, follows the definition in that the proposed adjustments would be tested, evaluated, and validated by ongoing monitoring and possibly future research.

As noted in the EA, the proposed adaptive management adjustments are in part a response to the experiences from the winter of 2010-2011 when weather, forage, and population conditions within YNP were an incentive for large numbers of bison to migrate into the Gardiner Basin. The proposed adjustments were in recognition of that experience along with the availability of scientific data generated by recent and ongoing IBMP partner research and the change in federal rules related to brucellosis management.

The combined management and mitigation steps now employed by the IBMP partners, such as hazing, testing, fencing, hunting, and lethal removal, continue to provide valuable experience for the best management of Yellowstone bison migrating into Montana while balancing the needs of the species with the needs of an important component of Montana's economy.

23. The EA suggests that environmental impacts of the proposed adaptive management adjustments and use of a quarantine facility, such as the one at Corwin Springs, to hold bison until they are returned to YNP, were analyzed in the FEIS because of the similarities with Alternative 2 in the FEIS. These suggestions are incorrect.

Departments' response: Comparisons with Alternative 2 in the EA were mainly to show that the proposed expanded bison tolerance area had been evaluated in the FEIS. The area of Alternative 2 was considerably larger than the area of the proposed expanded tolerance area of the Gardiner Basin. In addition to the geographic similarity, Alternative 2 was similar to current IBMP practices in other respects, such as the vaccination of bison, the shipping of seropositive bison, hazing, and maintaining spatial and temporal separation of bison and cattle.

Use of a holding facility was described and analyzed under the Modified Preferred Alternative in the federal FEIS and the Preferred Alternative in Montana's FEIS. In both documents, there was consideration for using the quarantine facility (i.e. Corwin Springs) as a holding facility if the Stephens Creek facility was at capacity.

24. Since IBMP partner agencies already have implemented several of the proposed management adjustments during the 2010-2011 operational season, what is the purpose of the EA?

Departments' response: There appears to be a misunderstanding by these commenters concerning implementation of the adaptive management adjustments. Although IBMP partner agencies agreed in principle to the proposed adjustments in late-April 2011, the adjustments were not implemented last winter and, in fact, will not be implemented until after this Decision Notice is signed.

The winter conditions of 2010-2011 within YNP created an environment that caused a large, episodic migration of bison into the Gardiner Basin. Between February and May,

the number of bison observed in the Basin, including the Stephens Creek holding facility, ranged from 570 to over 1,000 animals. Because there was an unusually high number of bison present, FWP, DoL, and NPS staff were required to prioritize which bison were in need of attention at any given time giving a priority to public safety, separation of cattle to bison, and protection of private property. Hazing activities happened nearly every day during the 2010-2011 winter in an effort to manage the large population of bison within the Zone 2 boundaries. The hazing efforts were conducted with the intent of hazing bison away from livestock and to address private property and safety concerns and into bison tolerant areas under the terms of the IBMP. Had the adaptive management adjustments been in effect, the agencies would have attempted to haze bison to other suitable habitat in the Basin now proposed as bison tolerance habitat. That the agencies were unable to keep bison within zone 1 or 2 was based simply on the fact that so many bison had migrated to the Gardiner Basin under the severe winter conditions that were present. In fact, the infrastructure necessary to contain bison within the Gardiner Basin was not in place until early May 2011.

In association with attempts to manage the large bison presence by IBMP partners, the use of the Corwin Springs facility was initiated because the Stephens Creek facility had reached capacity and the Governor signed an executive order (#1-2011) in February 2011 that prohibited the transportation of Yellowstone bison in areas of Montana outside of the DSA. Therefore, the agencies eliminated use of slaughter through May 2011 as a bison management tool for IBMP partners because slaughterhouses were outside the DSA.

The purpose of the proposed action is found at page 4 in the EA.

25. The proposed action does not comply with 87-1-216 Montana Code Annotated (AKA Senate Bill 212). FWP and DoL must develop and adopt a management plan before any wild buffalo or bison under FWP's jurisdiction may be released or transplanted onto private or public land in Montana. Additionally, FWP is required to identify long-term funding sources that would be used to implement the management plan. Furthermore, FWP is required to provide the public the opportunity to comment on the management plan prior to its implementation.

Departments' response: FWP and DOL disagree. The agencies will fully comply with the provisions of 87-1-216 as it concerns release or transplantation of bison in Montana. Activities related to IBMP management of Yellowstone bison that seasonally migrate into Montana cannot accurately be called release or transplantation, as is evident by the extensive ongoing management of these bison in the basin. It is also clear from the legislative record that SB 212 addressed bison actually intended for release or transplant to other landscapes in Montana, and not seasonally-migrating Yellowstone bison managed under the IBMP.

26. How much of the effective area (70,000 acres) is suitable winter habitat for the bison?

Departments' response: Based upon materials provided by Rick Wallen, Wildlife Biologist - YNP Bison Ecology and Management Program, there are approximately an additional 17,400 acres within the effective area that is predicted to be bison habitat. The predicted available habitat is based upon existing vegetation maps and aerial photographs with both public and private lands included in the estimate.

27. The fact of no economic hardship because of the changes at the federal level (APHIS) is not true. There is a stigma placed upon Gardiner producers by other industries that are afraid of bringing disease into their area. Allowing additional bison into the Basin will only increase this fear.

Departments' response: The DoL has not found this charge to be true. The DSA provisions adopted and implemented by DoL have met with the approval of APHIS and the importing States. No State has taken any action or threatened any action against Montana as a result of the DSA provisions, and likewise no State has given any indication that the AMA's will give them greater concerns in regard to importing cattle from Montana's producers in the Gardiner Valley. Other states have recognized Montana's authority to manage bison and have imposed no additional restrictions. The assertion of an economic stigma is not supported by any data.

DoL completed an economic impact statement in response to the request of Senator Debby Barrett for the ruling regarding the Designated Surveillance Area (DSA). The analysis showed that the establishment of a DSA would cost cattle producers in the affected counties (Beaverhead, Madison, Gallatin, and Park) approximately \$38,000 because of the county wide vaccination requirement. However, some of those costs are reimbursed by DoL through the terms of the DSA rule.

DoL identified three benefits the DSA rule provides to Montana cattle producers, which include:

- 1) Producers within the DSA benefit from the DSA regulations for movement and change of ownership requirements by having a consistent set of regulations for sale and movement of their cattle and domestic bison. Through testing, DSA producers provide assurance of the brucellosis free status of their cattle and domestic bison to buyers. These regulations also currently allow for funds for brucellosis surveillance of their herds.*
- 2) Montana cattle producers outside of the DSA benefit from the lack of brucellosis testing regulations as required for a Class A state or as imposed by individual importing states.*
- 3) States and producers receiving Montana cattle benefit from the assurance of brucellosis free cattle and domestic bison through testing. An additional benefit is a higher percentage of brucellosis vaccinated animals available for purchase.*

The conclusion of the economic impact statement analysis showed a net benefit to Montana producers of 5.5 to 11.5 million dollars annually with the DSA rule. The DSA economic impact statement is available at: <http://liv.mt.gov/brucellosis/default.mcp>.

28. Additional analysis of economic impacts to cattle producers needs to be completed. Although whole herd depopulation is no longer required within the Designated Surveillance Area, any cattle testing positive is slaughtered, the herd is quarantined by DoL, and the producer, as well as neighboring producers, must test their cattle. The quarantined producer can only sell animals that aren't sexually intact and must perform multiple blood tests until DoL and the state veterinarian are satisfied the herd is brucellosis free.

Departments' response: DoL recognizes there are costs associated with an infected herd. DoL has a proven record of working with producers to minimize costs, including reimbursements for the costs of testing. Since 2007, all brucellosis infections in cattle have been determined to have come from elk.

29. Who will lethally remove bison that cross the hydrological divide? How will the divide be monitored for bison movements?

Departments' response: DoL is the lead agency for making decisions on and for the lethal removal of Yellowstone bison per the current IBMP Operating Procedures and 81-2-120 MCA. DoL can request the assistance of other IBMP partners, such as FWP, for the removal of bison. The FWP Commission also passed a rule at their February 2012 meeting to allow Montana hunters to take bison that cross the hydrologic divide to the north of the Gardiner Basin in areas that allow for an ethical hunt.

The monitoring of bison movements within the Basin, including the proposed expanded bison tolerant area, would be completed through general presence observations completed by DoL and FWP staff. FWP area wildlife biologists would continue to report the locations of bison in the Basin as part of their ungulate surveys during the winter.

30. DoL needs to follow the Park Service's concern and response to a private landowner. Currently, DoL is allowed to enter a private landowner's property without permission and without respect for the landowner's rights. Private property rights are being eroded.

Departments' response: The Department of Livestock has retained this statutory authority for a very long time as it relates to disease control. The department has rarely needed to use this authority and always as a last resort with a landowner who refuses to cooperate regarding disease management. Nothing in the current proposal changes that authority, and private property rights are not being eroded. They will continue to be respected.

31. Can the costs of bison damages to cement walkways and patios be reimbursed?

Departments' response: There is no provision in Montana statute or administrative rules providing for reimbursement for such damages.

32. Could the proposed expanded bison tolerant area be expanded to include Dome Mountain Wildlife Management Area and Dome Mountain Ranch, which have been suggested by the IBMP Citizens Working Group?

Departments' response: To date the IBMP partners have not agreed that such an expansion could occur and still provide for adequate temporal and spatial separation between bison and livestock.

33. The financial costs of each alternative were not identified. (i.e. trucking, confinement, feeding, personnel, additional fencing, costs to taxpayers, etc.)

Departments' response: FWP and DoL did not identify the specific costs of the proposed alternative because they will be covered under existing budgets. Trucking, confinement, and feeding will all be covered by federal budgets and additional fencing is covered by non-government organizations or through existing budgets.

34. The No Action Alternative should include that a limited number of bison are only tolerated out of YNP if they test negative and are vaccinated.

Departments' response: The No Action alternative, which would maintain the status quo, includes the suggestion made in this comment. The No Action alternative includes all the provisions of Step 2 as described in the Record of Decision for the IBMP along with the adaptive changes adopted up through 2008.

35. A plan of action for responding to public health and safety issues needs to be thoroughly addressed. The Park County sheriff's office shouldn't be the default agency to haze bison.

Departments' response: FWP and DoL believe their current bison management procedures are adequate and proactive to reasonably address public health and safety issues that may arise.

The Park County sheriff's office is not the default agency to haze bison. DoL and FWP staff should be contacted if bison conflicts arise. The role of the sheriff's office is to work with IBMP partners when traffic control is required during hazing activities or as necessary to ensure public safety.

36. Why aren't fencing projects being initiated to keep bison from Forest Service allotments?

Departments' response: Fencing priorities have been focused upon the needs of livestock owners with cattle present in the Basin during the winter and the protection of private property. Bison are not tolerated in the Gardiner Basin at the same time that cattle are on Forest Service allotments even under the proposed adaptive changes, so there is no need to fence those allotments.

Bison, as a native wildlife species, would not be excluded from National Forest system lands, including livestock grazing allotments. It is possible that localized fencing or other means may be appropriate for public health and safety purposes, but any such instances are speculative at this point, and will be dealt with on a case by case basis.

37. Monitoring protocols should be implemented to record any changes to rangelands as bison access areas and when less cattle use the area. Existing rangeland conditions are not described in the EA nor whether the proposed action will meet the required rangeland conditions for the Gallatin National Forest (GNF) Plan.

Departments' response: Following adoption of the proposed adaptive management changes, the IBMP partners will prepare objectives, management actions, monitoring metrics and management responses to implement the changes. If there are changes that warrant further adjustments, such as degradation of habitat, the agencies will consider those in the future.

Like any other wildlife species, any impacts by bison to rangeland conditions within the GNF will be considered and incorporated as appropriate in permittee's annual operating plans, with livestock numbers or other variables adjusted as needed to maintain rangeland conditions (personal communication with S. Barndt, GNF 2/3/12).

38. How will FWP and DoL monitor the effectiveness of the adjustments and would additional modifications be proposed? Clearly defined, measureable objectives were not included in the EA.

Departments' response: If the proposed adaptive changes are adopted under this EA, then the IBMP partners will incorporate them as adaptive changes under a similar format to the 2008 adaptive changes that include objectives, management actions, monitoring metrics and management response. Additional adaptive changes could occur in the future.

39. Will the expanded bison tolerant area be monitored for bison abortions/birthing materials? If so, which agency and what actions will be taken to reduce the risk of brucellosis?

Departments' response: Currently, DoL and APHIS staff respond when possible to collect samples of the abortion and birthing materials in order to track the events. Collections would continue to occur within the expanded bison tolerant area.

40. In reference to grazing allotments, on page 24 it is stated that "Cattle are not present on these FS allotments in winter, and the FS can modify conditions of grazing permits in any case to change livestock class and timing of allotment use to address any potential conflicts with bison." This language seems to infer that grazing permits can be easily changed with no impacts to the grazing permittee, which is false. Any changes to a grazing permit, especially change of livestock and timing, will have a tremendous impact on that permittee. Such potential impacts should be analyzed.

Departments' response: No changes to current Forest Service allotments are required to implement the proposed adaptive changes so it is beyond the scope of this EA to evaluate changes to Forest Service allotments.

41. The analysis of the alternatives should include potential impacts to reserved rights of the Tribes.

Departments' response: As noted in the EA, the implementation of the proposed action would provide Yellowstone bison an opportunity to roam a greater portion of the Gardiner Basin than before within the expanded tolerance area. With the potential of a larger area open for bison on public lands in the expanded area, there would be the potential for increased tribal treaty hunting opportunities because hazing activities would no longer be mandatory within public lands currently identified as a bison-free zone under the current IBMP guidance and the 2008 adaptive management adjustments.

Under the current 2008 adaptive management adjustments under the No Action Alternative, bison are hazed during the winter off public lands that are not within Zone 2 and the existing bison tolerant areas, thus potentially reducing the opportunities for tribal treaty opportunities.

42. What is the expected longevity of the intent to move bison back to YNP by May 1?

Departments' response: That is the current target agreed to by the IBMP Partners. The expected longevity of that agreement is unknown at this time.

43. No fencing is bison proof. What is the fencing design being installed to protect livestock and private property?

Departments' response: Most fencing is no match for a determined bison. The fencing being installed to protect livestock and private property is not bison-proof, but is a deterrent to bison movements.

The fencing used for a spatial barrier between bison and cattle has been constructed in two different configurations to meet the needs of the individual site. One design is a 5 foot high, 6-wire high tensile fence with the top wire electrified. The top wire has visual markers on it. The other design is a 5 foot high jackleg fence with braces at 15 foot intervals.

The fencing constructed to protect private property is a jackleg fence with two wooden rails. The height of the top rail is five feet with the other rail placed at three feet above the ground. A smooth wire can be installed twenty inches from the fence's base as needed. This fence is designed to be a visually-restrictive barrier to most bison while allowing for wildlife passage above and below it.

Both fencing designs and construction efforts are completed in consultation with the property owner.

44. What is really meant by maintaining a "wild free-ranging bison populations within the areas north of Yellowstone Park"?

Departments' response: As described in the 2000 FEIS, the interagency team defined a "wild, free-roaming population" of bison as one that is not routinely handled by humans and can move without restriction within a specific geography area.

45. The proposed bison management adjustments create a "significant impact" to the physical and human environment, thus requiring the completion of an environmental impact statement.

Departments' response: Based on the EA and 2000 FEIS we have evaluated all impacts associated with the proposed adaptive adjustments as required under MEPA and NEPA and concluded those adjustment will not result in any significant impacts to the human and physical environment.

46. The presence of additional bison to the Gardiner Basin will reduce property values.

Departments' response: Property values are very much a function of the eye of the beholder. As much anecdotal evidence exists to support the presumption of increased property values as does anecdotal evidence that might support the presumption of decreased values.

47. A broader range of alternatives should be investigated to compare costs and benefits and to determine impacts on the bison population and their long-term viability, including a "no management" alternative.

Departments' response: We have concluded that the No Action and Proposed Action alternatives represented an adequate range of alternatives in this case.

48. A larger body of new information and changed circumstances renders the underlying IBMP Final Environmental Impact Statement, to which the EA purportedly tiered, outdated and invalid. This must be analyzed and disclosed in the EA.

Departments' response: FWP and DOL disagree. Although many positive administrative and management changes have occurred, the underlying biological, geographical, social, and economic conditions on which the Final EIS was completed remain. The IBMP retains its dual central goals, and its adaptive management provisions are sufficient to incorporate new information and changing circumstances.

49. Some of the documents to which the EA is purportedly tiered, are not documents that were subject to any MEPA analysis. The EA must contain analysis based upon the new information and circumstances.

Departments' response: The state is required to conduct analysis contemplated by the Montana Environmental Policy Act when it proposes an action that has the potential for impact to the human environment. The comment does not specify what "documents" were not subjected to MEPA analysis.

50. Need to analyze the current impacts of and justification for continued use of “tools in the toolbox” that limit bison habitat, tolerance, and natural wildlife behavior.

Departments’ response: The IBMP partners are continuously analyzing the current impacts of their “tools in the toolbox” and changing management activities based on what they learn. Additionally, the “tools in the toolbox” were analyzed in the 2000 FEIS, along with every other bison management EA since then, including the RTR Easement, Bison Hunting, and the Quarantine Feasibility Study. Along with the current EA, the analysis spans a wide variety of analysis for all “tools in the toolbox”, including those tools that limit bison habitat, tolerance, and natural wildlife behavior.

51. The EA should disclose and analyze the Gallatin National Forest’s position regarding the bison presence throughout the forest.

Departments’ response: That is beyond the scope of this EA. The Gallatin National Forest (GNF) has demonstrated tolerance as prescribed under the IBMP as a cooperative partner in implementing that plan. The GNF supports bison presence, as a native wildlife species, across the Forest as deemed appropriate by our State of Montana bison management partners (personal communication with S. Barndt GNF, 2/3/12).

52. EA lacks any information concerning water quality and any impacts that bison may have on water quality.

Departments’ response: During a typical winter, the perennial streams within the expanded bison tolerant area are covered by ice and the stream banks are frozen. Thus the movements of bison do not significantly impact water quality. Bison, like other ungulate wildlife species, can have impacts to water quality in some cases - typically localized in places where they are concentrated by topography or other reasons. We do not expect any significant impacts on water quality associated with either the No Action or the Proposed Action alternatives.

53. The EA violates the public’s constitutional right to participate, citizen’s right to a clean and healthy environment, citizen’s constitutional property rights, and citizen’s constitutional right to seek safety.

Departments’ response: FWP and DoL disagree. For all the reasons stated in the EA and this Decision Notice, the agencies believe these adaptive management adjustments are reasonable and that any impacts to the livestock community or to the citizens’ public safety have and will be appropriately addressed through management actions. Additionally, as bison managers for YNP bison entering Montana, FWP and DoL support the adaptive management adjustments under the discretionary authority granted them by the Montana Legislature (see section 1.4 in the EA for a description of agency authorities). In addition to previous public meetings and the ongoing communications between the agencies and members of the Gardiner Basin community since the adaptive management adjustments were proposed, the public has been provided an opportunity to participate in the decision making process through the 30-day public comment period to this EA. The public comments

submitted have been considered by the agencies and are being addressed in this Decision Notice, which will be sent to all who provided comment.

54. The proposed adaptive management adjustments are inconsistent with goals and objectives of the IBMP (e.g. adjustments that put bison and cattle closer when there is a responsibility to minimize the risk of brucellosis transmission).

Departments' response: FWP and DoL disagree. The adjustments do not put bison and cattle in closer proximity. Bison have been migrating into the Gardiner Basin for decades. Livestock owners have also operated in the Basin during the same period. Since the 2000 FEIS was published, the number of active livestock owners in the Basin has decreased from seven to three; only two of which are located within the expanded tolerance area. DoL has worked with the remaining three operators to install fencing around their cattle to maintain spatial separation and reduce the risk of transmission. In addition, the presence of the DSA has reduced the risk of disease transmission.

55. The EA underestimated impacts of the proposed action on wildlife (i.e. exposure to brucellosis and fencing).

Departments' response: FWP and DoL disagree. The proposed adaptive management adjustments do not increase the risk of exposure between bison and other wildlife species. Bison have a long history of migrating into the basin during the winter. The presence of brucellosis within the proposed expanded bison tolerance area already exists through the existing elk herds that migrate through the Gardiner Basin.

Numerous fences already exist in the Basin, erected by private landowners for various purposes including the containment of cattle or horses, delineation of property boundaries or irrigated fields, exclusion of wildlife, and protection of private property. FWP and DoL are sensitive to the needs of resident and transient wildlife species in the Basin, and potential new fencing erected through the assistance of DoL or nonprofit organizations specific to bison mitigation activities are built with the needs of wildlife considered so that new fences do not significantly limit their movements. Adjustments to new fencing will continue to be completed as needed to minimize negative impacts to wildlife while ensuring spatial separation of bison and cattle and the public's safety.

56. The EA contains an insufficient cumulative effects analysis.

Departments' response: The EA has analyzed cumulative effects as required.