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BISON, TRIBES, AND BRUCELLOSIS IN THE INTERAGENCY BISON MANAGEMENT PLAN

Bailey Nickoloff*

INTRODUCTION

It would be in the best interest of the Interagency Bison Management Plan (“IBMP”) and its affiliated agencies to allow Tribal governments and Tribal members to hunt bison within Yellowstone National Park (“YNP”). This would help to reduce the spread of brucellosis, reduce the environmental impacts from bison in YNP, and honor the treaties signed between the United States and Tribal governments. These agencies can accomplish this by implementing treaty hunting rights in a new Environmental Impact Statement (“EIS”) and within an existing legal framework.

BACKGROUND: HISTORICAL INFORMATION ON THE AMERICAN BISON

Historically, the American Bison are vitally important to many of the Indigenous people of the United States.¹ At the beginning of the 19th century, millions of bison roamed the American West with herds stretching from Canada to Mexico.² During the same century, as railroads expanded and waves of settlers moved westward through the plains, the settlers and the United States government killed an estimated fifty million bison for food and sport.³ A more sinister goal of the slaughter was to eliminate the Indigenous peoples’ source of food, thus driving them from the land and accelerating westward expansion.⁴ What was once a strong and healthy bison population numbered in the millions was then estimated to be less than 1,000 toward the end of the 19th century.⁵

In 1902, only two dozen bison were left in YNP.⁶ Since that time, conservation efforts helped the bison population rebound to what is now approximately 500,000 across North America.⁷ Roughly 5,000 of these bison now live in YNP, which is the largest population living on public lands.⁸

THE INTERAGENCY BISON MANAGEMENT PLAN AND ITS ISSUES

One of the most successful conservation efforts concerning the Yellowstone Bison is the IBMP.⁹ In 2000, the Department of the Interior (“DOI”) released a Record of Decision (“ROD”) creating the IBMP, which consists of several government, state, and tribal agencies, including the National Park Service (“NPS”), United States Department of Agriculture (“USDA”)-Forest Service (“USFS”), USDA-Animal & Plant Health Inspection Service (“APHIS”), Montana Department of Livestock, and Montana Fish Wildlife & Parks, the Confederated Salish

Kootenai Tribe, the Nez Perce Tribe, and the InterTribal Buffalo Council.¹⁰

Every year, these agencies meet to discuss bison populations and determine how many bison to remove from YNP so as to maintain a viable population based on biology, genetics, and ecology.¹¹ Removal methods include hazing (herding), issuing hunting permits through the Montana Fish, Wildlife & Parks along the Montana border of YNP, allowing tribes to exercise their treaty hunting rights in the Greater Yellowstone Area (“GYA”), and culling through consignment to slaughter or quarantine facilities.¹² Another major goal of the IBMP is to keep the Yellowstone Bison brucellosis-free, thus keeping the bison healthy and preventing the spread to cattle that graze in the GYA.¹³

In recent years, the IBMP’s management of bison in the GYA and YNP, and the spread of brucellosis from bison to cattle, has been a major subject of controversy and litigation.¹⁴ For example, hunting is limited to areas outside the park because hunting within YNP is strictly prohibited by the NPS.¹⁵ Due to the limited area and time in which tribes and hunters can cull bison, it raises safety concerns for those who live on the borders of the park where the bison roam.¹⁶ Residents who live near the slaughter express potential harm from disease from rotting bison corpses and damage to their property from hunter’s stray bullets.¹⁷ Additionally, those who criticize the IBMP argue that too many bison currently reside in the park, causing damage to the environment and ecosystem.¹⁸ Furthermore, a 2017 study from the National Academies of Sciences, Engineering, and Medicine found that elk were the main culprit in spreading brucellosis to livestock within the GYA, and not bison, calling into question the need for the IBMP and the challenges of managing wild elk.¹⁹

POSSIBLE SOLUTIONS: SECURING TRIBAL TREATY HUNTING RIGHTS TO YELLOWSTONE NATIONAL PARK BISON

However, the IBMP’s solutions to these problems come with their own issues. Environmental groups would like to see bison roam freely on public lands in Montana, thus creating more room for the bison to roam; however, this is often met with hostility from ranchers who graze their livestock near YNP.²⁰ While elk are the main culprit in spreading brucellosis to cattle, the remote possibility of the spread of the disease from bison to livestock leaves ranchers weary of allowing bison on Montana


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public lands.²¹ Another solution is allowing tribes to exercise their treaty hunting rights within YNP, thus reducing the risk of harm from hunting activities at YNP borders and helping to maintain viable bison populations in the park; however, as previously mentioned, YNP and its agencies prohibit hunting within the park, despite the agencies recognizing tribal treaty hunting rights.²² The NPS argues that if it were to allow hunting within the park's exterior boundaries, it would alter the behavior of the bison, causing aesthetic harm to visitors who come to see the bison.²³

The complexities of these issues have not gone unnoticed by the IBMP agencies. As of the writing of this paper, the DOI agreed to initiate an additional EIS to supplement its original ROD from 2000.²⁴ One solution the DOI and its partnering agencies can consider in the new EIS is allowing tribes to exercise their treaty hunting rights in YNP. The DOI and the NPS could allow tribal hunting in YNP, and the recent Supreme Court ruling in *Herrera v. Wyoming* provides a promising outlook to

allow tribal hunting in the National Park System.²⁵ While the *Herrera* court dealt with the Bighorn National Forest (an area managed by USFS), it may be in the Tribes' best interest to consult with the DOI to determine their eligibility to hunt in YNP. Additionally, in September 2021, the NPS issued twelve hunting permits for the North Rim of Grand Canyon National Park—the first time the agency allowed hunting in a National Park.²⁶ This additional fact reinforces the DOI's and the NPS's ability to issue hunting permits and regulate hunting, generally.

CONCLUSION

The DOI has the ability to issue hunting permits and, arguably, can give priority of these permits to tribal members. While this plan would be slightly different from the DOI's plan in Grand Canyon National Park, the model and method of issuing permits would be similar. This is something the DOI and the NPS should consider for their forthcoming EIS, as it would help maintain the goals of the IBMP and, more importantly, would honor the treaties between the United States and Tribal governments. 

ENDNOTES

¹ See Melinda Martin et al., *Bison Research for the Native American Community*, N.D. STATE UNIV., https://www.ag.ndsu.edu/archive/carringt/bison/native_american.htm (last visited Sept. 9, 2021) (stating that Plains Indians were almost entirely dependent on the bison for food, shelter, and clothing; also noting that the bison are spiritually and culturally significant to Plains Indians).

² See *The Buffalo War*, PBS, <https://www.pbs.org/buffalower/buffalo.html> (last visited Sept. 9, 2021).

³ See Martin, *supra* note 1 (acknowledging that the Native Americans lived harmoniously with the American Bison and had a strong spiritual connection with the animal long before European settlers moved west and the railroad expanded); see also *American Bison*, NAT'L GEOGRAPHIC, <https://www.nationalgeographic.com/animals/mammals/facts/american-bison?loggedin=true> (last visited Sept. 9, 2021) (stating that killing such a large number of bison deprived Plains Indian societies of their most valuable asset).

⁴ See *History of Bison Management in Yellowstone*, NAT'L PARK SERV., <https://www.nps.gov/articles/bison-history-yellowstone.htm> (last visited Sept. 9, 2021) (admitting that the U.S. army had a goal to remove Native Americans from the land by removing their main food source).

⁵ *Bison by the Number*, NAT'L BISON ASS'N, <https://bisoncentral.com/bison-by-the-numbers/> (last visited Sept. 9, 2021).

⁶ *Bison Management*, NAT'L PARK SERV., <https://www.nps.gov/yell/learn/management/bison-management.htm> (last visited Sept. 9, 2021).

⁷ See *American Bison*, *supra* note 3 (noting that many of these 500,000 bison live on preserves or are owned by ranchers who raise them for meat).

⁸ See Johnathan Hettinger, *Study Says Yellowstone's Bison are Exerting an Unhealthily Heavy Footprint*, MONT. FREE PRESS (Apr. 9, 2020), <https://montanafreepress.org/2020/04/09/study-says-yellowstone-bison-are-exerting-an-unhealthily-heavy-footprint/> (discussing whether or not the Park's current plan of maintaining a bison population of 3,500 to 5,000 is reasonable for the park); see also *15 Facts About Our National Mammal: The American Bison*, U.S. DEP'T OF THE INTERIOR BLOG (May 9, 2016), <https://www.doi.gov/blog/15-facts-about-our-national-mammal-american-bison#:~:text=As%20of%20July%202015%2C%20Yellowstone's,Yellowstone%20National%20Park%20in%20Wyoming.> (estimating that in 2015, 4,900 bison roamed Yellowstone National Park and are free of cattle ancestry).

⁹ See generally INTERAGENCY BISON MGMT. PLAN, <http://www.ibmp.info> (last visited Sept. 9, 2021) (providing a general overview of the IBMP and its participating agencies).

¹⁰ See *id.* (noting that the tribal governments and entities began co-managing Yellowstone bison after the 2000 ROD).

¹¹ See *Bison Management*, *supra* note 6 (agreeing that since 2013, the number of bison in NYP should stabilize around 4,900); see also INTERAGENCY BISON MGMT. PLAN, 2020 ANNUAL REPORT OF THE INTERAGENCY BISON MANAGEMENT PLAN 3-4 (2020), http://www.ibmp.info/Library/AnnualReports/2020IBMP_AnnualReport_final.pdf (providing a list of objectives in maintaining bison populations in Yellowstone National Park).

¹² See generally *id.* 2020 *Annual Report of the Interagency Bison Management Plan*, INTERAGENCY BISON MGMT. PLAN at 3 (2020), http://www.ibmp.info/Library/AnnualReports/2020IBMP_AnnualReport_final.pdf (laying out several methods in which the IBMP uses to remove bison from YNP).

¹³ See *id.* at 3 (recognizing that one of the IBMP's goals is to protect Montana ranchers' interests in keeping their cattle brucellosis free); see also *Brucellosis and Yellowstone Bison*, ANIMAL AND PLANT HEALTH INSPECTION SERV. U.S. DEP'T OF AGRIC. at 1, https://www.aphis.usda.gov/animal_health/animal_dis_spec/cattle/downloads/cattle-bison.pdf (last visited Sept. 9, 2020) (highlighting the seriousness of brucellosis and its impact on both humans and livestock).

¹⁴ See Brief of Petitioner-Appellant at 12, *Cottonwood Env't Law Ctr. v. Bernhardt*, No. 19-35150 (9th Cir. June 4, 2019) (arguing that elk are the main culprit in spreading brucellosis to cattle and not bison).

¹⁵ See *id.* at 2 (complaining that hunters of Yellowstone bison "are concentrated in too small an area . . ."); see also *Bison Management supra*, note 6.

¹⁶ See Complaint at 5, *Neighbors Against Bison Slaughter v. Nat'l Park Serv.* (D.D.C. 2019), <https://www.doi.gov/sites/doi.gov/files/agreements-settlements/document/neighbors-v-park-service-complaint.pdf> (complaining that the National Park Service's abandonment of their duties to manage Yellowstone bison has put hunters, residents, owners in danger from hunting, and that the current plan turns a "quarter mile-square area" into a killing field).

¹⁷ *Id.*

¹⁸ See Robert L. Beschta et al., *Bison Limit Ecosystem in Northern Yellowstone*, 23 *Food Webs* 1, ELSEVIER, 2 (Jan. 15, 2020), <https://www.documentcloud.org/documents/6834324-2020-Bison-Limit-Ecosystem-Recovery-in.html> (observing that Lamar Valley's biodiversity has decreased along with the increase in the bison population within YNP).

¹⁹ See NAT'L ACAD. OF SCI., ENG'G, AND MED., *Revisiting Brucellosis in Greater Yellowstone Area* 1-2 (May 2017) (suggesting that reducing populations of wild elk and bison, as well as continuing to maintain "spatial and

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