

MEMORANDUM OF UNDERSTANDING

BETWEEN

MONTANA FISH, WILDLIFE AND PARKS

AND

**THE ASSINIBOINE & GROS VENTRE TRIBES
FORT BELKNAP INDIAN COMMUNITY**

This Memorandum of Understanding (MOU) is entered into between Montana Fish, Wildlife and Parks (MFWP) and the Fort Belknap Indian Community (FBIC).

WHEREAS, the bison is a keynote species that has important biological, historical, cultural, religious, socio-economic, and recreational values to the Assiniboine and Gros Ventre tribes and its members, and

WHEREAS, a Quarantine Feasibility Study (QFS) was developed by several cooperating agencies for the purpose of developing quarantine procedure, using the best available science and adaptive research strategies, to certify that individuals or groups of Yellowstone National Park (YNP) bison are free from brucellosis, including latent infections of brucellosis, and

WHEREAS, MFWP desires to proceed with Phase IV of the QFS under the criteria and conditions developed in the 2005 QFS EA for continued monitoring within contained facilities, with the desire that the QFS bison and/or their offspring may be available for conservation purposes at the completion of Phase IV, and

WHEREAS, QFS bison have been tested numerous times for brucellosis, and have repeatedly tested negative for brucellosis during Phase III of the QFS, and

WHEREAS, 61 QFS bison finished Phase III of the QFS and required a location where they and any offspring born over the five (5) year monitoring period can continue to be tested for brucellosis, and

WHEREAS, MFWP has prepared and completed an Environmental Assessment (EA) identifying four (4) Translocation Sites for the YNP bison, and

WHEREAS, MFWP held public hearing on the four possible sites, identifying the Tribes of Fort Belknap Indian Community – Assiniboine and Gros Ventre as one Translocation Site to maintain and manage the QFS bison with the long-term objective of restoring and conserving the genetics of YNP bison, and

WHEREAS, in December 2011, the Fish, Wildlife & Parks Commission approved the translocation of QFS bison to be transferred to tribal lands of Fort Peck Tribes and Fort Belknap Indian Community under the condition that the Fort Peck Tribes and FBIC would complete QFS Phase IV and negotiate an MOU to effect the transfer. MFWP under the authority conferred by that approval, enters into this MOU with FBIC.

WHEREAS, in April 2012, the Fort Peck Tribes, another of the Interim Translocation Sites, received 61 QFS bison from the Quarantine Facility near Gardiner, Montana, and

WHEREAS, the Fort Peck Tribes have agreed to manage all the QFS bison for an interim period until the FBIC has finished constructing an adequate facility, and negotiated an MOU with MFWP; and

WHEREAS, until the Montana Supreme Court issued its decision in *Citizens for Balanced Use v. Maurier*, Docket No. DA 12-0306, on June 19, 2013, the movement of bison from Fort Peck Tribes to FBIC was enjoined; and

WHEREAS, when FBIC has completed facility construction, Fort Peck Tribes will relinquish a mutually agreed upon number of QFS bison to FBIC. This transfer is expected to occur in August 2013; and

THEREFORE BE IT RESOLVED, that MFWP, under its authority to manage wildlife generally and disease-free bison specifically pursuant to Mont. Code Ann. §87-1-216, and FBIC enter into this Memorandum of Understanding to effect the transfer of a mutually agreed upon number of QFS bison associated with the Fort Peck Tribes/MFWP MOU to the Fort Belknap Indian Community. For the terms of this MOU, MFWP and FBIC agree that transferred bison will continue to be considered QFS bison. Upon completion of the terms of this MOU, MFWP and FBIC agree that such bison will no longer be considered QFS bison, but will be under the sole jurisdiction of FBIC unless they are found outside reservation boundaries, in which case they would be considered wildlife and under the jurisdiction of MFWP pursuant to MCA §87-1-216.

THEREFORE BE IT RESOLVED, that for the purpose of future bison conservation, up to twenty-five (25) percent of the progeny of QFS bison will be available to MFWP upon request.

A) TERM

The parties enter into this agreement until April 31, 2017. The parties reserve the right to negotiate past the termination date of this MOU for the continuance of any terms.

B) FBIC Responsibilities

- 1) FBIC will be solely responsible to transport a mutually agreed upon number of QFS bison from the surveillance pasture on Fort Peck Indian Reservation, directly to the Fort Belknap Indian Reservation and release and hold them within the boundaries of an approved FBIC surveillance pasture. Any risk or loss with respect to transport of the bison from the Fort Peck pasture to the Fort Belknap pasture shall remain with FBIC. MFWP shall bear no responsibility or liability for the transport of these QFS bison.

- 2) The surveillance pasture must; a) be of adequate carrying capacity for the mutually agreed upon number of QFS bison, and b) fencing will be of adequate height, and will consist of woven wire, a combination of barbed or high tensile wire and electricity, or any similar combination of materials that has been shown to be effective for bison, including panel fencing in the case of corral facilities.
- 3) FBIC will be solely responsible for the care and management of QFS bison and any subsequent offspring.
- 4) FBIC will keep QFS bison within the surveillance pasture and separate from other FBIC bison or livestock as required by the QFS Phase IV Protocol (protocol). In order to prevent any potential disease transmission or genetic introgression, QFS bison must not commingle with other FBIC bison or livestock at any time or under any circumstances, nor may QFS bison facilities be used for handling other non-QFS bison or livestock during the term of this MOU.
- 5) FBIC will design and implement an individual identification system. FBIC will keep records sufficient for MFWP to identify original QFS bison, their offspring, any and all mortalities, and any future YNP/QFS additions. FBIC will make records available to MFWP within 10 business days upon request.
- 6) FBIC will continue to disease test QFS bison and their offspring over the term of this MOU as per protocol. MFWP personnel are granted reasonable access to observe all elements of testing, upon request. The required testing will NOT occur during the calving season (April through June) of each year in order to avoid the potential for commingling of QFS bison with FBIC bison or livestock. If possible, appropriate tissue samples will be collected from any dead bison for tissue culture.
- 7) FBIC will allow for genetic testing of all QFS bison and progeny if such testing becomes necessary or desirable during the term of this MOU. Additionally, FBIC will cooperate with MFWP, as is deemed necessary through *the* best available science, to regularly exchange like bison in order to maintain genetic diversity and prevent inbreeding of QFS bison.
- 8) If, for any reason, QFS bison escape from the surveillance pasture and/or exterior reservation boundaries, FBIC has the sole responsibility to return escaped QFS bison to the surveillance pasture as early as practicable, but no more than 72 hours following FBIC's knowledge of such escape. The intent is to address both the potential for disease transmission to QFS bison through commingling and the potential for damage caused by escaped bison to persons or property outside the exterior reservation boundary.
 - a. Escape from surveillance pasture – calving season (April through June) but still within the reservation boundaries. If QFS bison escape during the calving season and are not returned to the surveillance pasture within 72 hours and the QFS bison are found within

the reservation boundaries, the FBIC upon MFWP request will take lethal removal, quarantine, or testing actions as FBIC and MFWP deem appropriate, for those QFS bison that have commingled or are suspected to have commingled with other bison or livestock on the reservation.

- b. Escape from surveillance pasture – exterior to reservation boundary. If escaped QFS bison are not returned to the surveillance pasture within 72 hours, and they are found outside the exterior reservation boundary, MFWP may remove escaped QFS bison through any means necessary and allowed by law. QFS bison that move off the reservation will be considered wildlife by MFWP, subject to applicable wildlife statutes and rules under Title 87 MCA. Tools for removal of QFS bison off of the reservation include hazing or herding, trapping and transporting, lethal removal by MFWP or FBIC officials, and the issuance of kill permits to landowners affected by QFS bison that are off the reservation. Trapping and transporting back to FBIC tribal lands is the preferred alternative.
 - c. If, during the term of this MOU, QFS bison escape more than three times from the exterior reservation boundaries due to negligence of FBIC, and such escapes result in damage to persons or property and FBIC fails to compensate for actual and reasonable damages within a reasonable time, FBIC, upon MFWP request, will return original QFS bison and up to twenty-five (25) percent of their progeny to MFWP.
- 9) FBIC will be solely responsible for any damages to persons or property caused by the QFS bison should they escape. FBIC will keep liability insurance to cover any claims during the monitoring period. Proof of liability insurance will be required to be included in quarterly reports (Section B.9). FBIC will disclose all claims to MFWP that have been filed on liability insurance concerning QFS bison. FBIC will indemnify and hold MFWP harmless for any and all claims for damages to persons or property occurring during the term of this MOU and the placement of QFS bison on FBIC lands caused by QFS bison escapes.
- 10) FBIC will ensure that adequate resources are available to maintain the surveillance pasture and care of QFS bison during the term of this MOU. FBIC will be required to maintain the QFS bison herd at or below range carrying capacity. If the QFS bison herd temporarily exceeds pasture carrying capacity, supplemental feeding or culling, or both, will be employed by FBIC.
- 11) FBIC will prepare status reports on all births, escapes, ingress, egress, deaths and other significant incidents related to QFS bison and provide such reports to MFWP quarterly. The first report will be due September 30, 2013.
- 12) Upon request, FBIC will transfer up to twenty-five (25) percent of the progeny of QFS bison for the aforementioned conservation purposes.

13) FBIC will provide reasonable access to MFWP for inspection of QFS bison or FBIC facilities at any time and for any reason, given 24 hours' notice from MFWP.

C) MFWP responsibilities

- 1) MFWP will conduct a final inspection of the FBIC surveillance pasture referenced in Section B.2 prior to movement of QFS bison. No QFS bison currently residing on the Fort Peck Tribal reservation will be moved until MFWP has completed this inspection.
- 2) MFWP will coordinate with both Fort Peck Tribes and FBIC to facilitate the transfer of a mutually agreed upon number of QFS bison.
- 3) MFWP will coordinate with FBIC to design and implement an individual identification system for QFS bison.
- 4) MFWP reserves the right to lethally remove QFS bison that are found outside of the reservation boundaries and are within the jurisdiction of the State of Montana as provided in Section B. 8.
- 5) MFWP reserves the right to reasonable access and to inspect QFS bison or FBIC facilities at any time and for any reason, given 24 hours' notice as provided in Sect. B.13.
- 6) MFWP reserves the right to request and receive up to twenty-five (25) percent of the progeny of QFS bison for the aforementioned conservation purposes as provided in Sect. B. 12. MFWP will notify the FBIC of intent to recover such bison 180 days prior to any request.
- 7) MFWP will cooperate with FBIC, as is deemed necessary through the best available science, to regularly exchange like bison in order to maintain genetic diversity and prevent inbreeding of QFS bison.

D) Assurance for Brucellosis Status

- 1) Pursuant to QFS protocol, FBIC will coordinate with APHIS for annual testing of the QFS bison and their offspring to ensure that the bison continue to be brucellosis-free during term of this MOU.
- 2) Pursuant to QFS protocol, FBIC will coordinate with APHIS to ensure that any afterbirth from bison that abort during pregnancy is removed and tested, to determine the status of brucellosis antibodies.
- 3) In the event a QFS bison tests sero-positive for brucellosis, and as long as the FBIC has complied with the terms of this MOU, FBIC will be responsible for addressing any outbreak in accordance with the Tribes Foreign Animal Disease Emergency Preparedness and Response Plan. In the event a QFS bison tests sero-positive for brucellosis due to commingling because of a material violation of a term of this MOU, MFWP reserves the

right to address the outbreak in accordance with APHIS and Montana Department of Livestock authorities, which may include lethal removal of all QFS bison. MFWP will make best efforts, to the extent allowed by law, to contain any such response solely to QFS bison and not to other FBIC bison or livestock.

E) Indemnification

FBIC agrees to protect, defend and save MFWP and its appointed officials, agents, and employees, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, against MFWP and its appointed officials, agents, and employees on account of bodily or personal injuries, death, or damage to property arising out of the negligent acts or omissions of FBIC.

MFWP agrees to protect, defend and save FBIC and its elected and appointed officials, agents, and employees, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, against FBIC and its elected and appointed officials, agents, and employees on account of bodily or personal injuries, death, or damage to property arising out of the negligent acts or omissions of MFWP.

F) Liaison and Service of Notices

Unless otherwise designated by the FBIC President and the Director of MFWP, the liaisons for day-to-day implementation of this MOU shall be the FBIC Fish and Game Director and the MFWP Region 6 Regional Supervisor. All written notices, reports and other information required to be exchanged between the parties must be directed to those persons, with copies to the FBIC President and the Director of MFWP.

Execution

The parties through their authorized agents have executed this MOU on the dates set out below.

Tracy King, President
Fort Belknap Tribal Council
Fort Belknap Indian Community

Date

Jeff Hagener, Director
Montana Fish, Wildlife and Parks

Date