

EXHIBIT 11
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HB 484

House Bill 484
February 19, 2013
Presented by Pat Flowers
House Agriculture Committee

Mr. Chairman and committee members, I am Pat Flowers, Region 3 Supervisor with Montana Fish, Wildlife and Parks (FWP). I am representing our FWP Director today and here in opposition to Senate Bill 484.

FWP opposes HB 484 because it is confusing and adds uncertainty to the law rather than clarifies it, especially as it pertains to roles and responsibilities of FWP and the Department of Livestock (DoL). Also, if we interpret HB 484 correctly it clearly takes us in the wrong management direction. As you might imagine, ambiguities in the law lead to misunderstandings, challenges to interpretation, and mostly likely litigation. We believe this is bad policy and is not something the Legislature should condone, because if the law is not clear, it simply leads to litigation as people challenge the agency's interpretation of the language.

For example, section 1 requires DoL to use any feasible method to remove bison that wander out of Yellowstone National Park. This is a statutory mandate for DoL, with primary responsibility for these bison, to act and bear the costs necessary to meet the requirements of this section. Section 2 (page 3 line 14) reinforces that DoL has primary authority for bison coming out of Yellowstone National Park if the threat to livestock or public safety is from disease. Because approximately 50% of YNP bison are seropositive for brucellosis, we assume this means DoL has primary authority for bison that exit YNP. The bill only requires that FWP "cooperate and coordinate" with DoL on implementing the provisions that mandate DoL to physically remove bison that migrate from YNP. The only authority that FWP retains for bison at all are for those that have not been exposed to or infected with a dangerous disease, and that means none of the YNP bison.

The bill presents the question of whether FWP's "secondary authority," by virtue of its cooperate and coordinate responsibility, qualify as jurisdiction over Yellowstone bison. We don't believe that is the case because the term "jurisdiction" in subsection (5) relates, at least under present law, only to bison that have not been exposed or infected.

Despite the jurisdiction conferred solely to DoL in House Bill 484, section 2 (page 3 line 30) now requires FWP to adopt a management plan for those bison that are "under the Department's jurisdiction" that are "allowed to migrate" onto public or private land. Based on Section 1 and Section 2 above, YNP bison would not be under the jurisdiction of FWP and instead are the primary responsibility of DoL. Therefore, though House Bill 484 requires a management plan when bison are allowed to migrate, the requirement would not apply to bison migrating out of YNP because they would not be under the jurisdiction or authority of FWP.

Even if House Bill 484 were clear enough to require that FWP develop a management plan for those bison migrating naturally out of YNP, it sets up an impossible situation that is likely to result in even more litigation. HB 484 requires that for those bison migrating out of YNP, the

Department would have to develop measures that were originally designed in the last legislature for placement of bison onto specific and confined areas. For example, for migrating bison, the Department would have to develop animal identification and tracking protocol, measures for containment of bison in certain confined areas including fencing requirements, and determine maximum carrying capacity for a designated area. These measures were designed to address site-specific known placement of bison through translocation, and not for the random occurrence of natural migration that occurs with the Yellowstone herd.

Our final analysis is that under HB 484 the Department of Livestock will be required to remove every bison that enters Montana from Yellowstone National Park. That requirement takes us back to the failed management of the late 1980's that was a national disgrace for Montana. It caused the 1991 Legislature to end the bison hunt and it led to a full decade of planning and lawsuits that brought us to the current management plan for Yellowstone Bison. I have included a collection of articles regarding Montana's bison management from *Time*, *Newsweek*, *People*, *Sports Illustrated*, and the *New York Times* etc., that embarrassed our state and cost our tourism industry. We hope we have learned from our mistakes and will not go back to the disastrous bison management policies of the 1980s.

For these reason FWP recommends a Do Not Pass on HB 484.