EXHIBIT 2
DATE 2/20/13
HB 249

BUFFALO FIELD CAMPAIGN
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February 20, 2013

Chairman Duane Ankney and members of the House Appropriations committee Montana House of Representatives
PO Box 200400
Helena, MT 59620-0400

Mr. Chairman and members of the House Appropriations committee,

On behalf of Buffalo Field Campaign I am submitting testimony on HB 249. Mr. Chairman, I would also request that my testimony be shared with committee members and entered into the hearing record. Thank you.

Buffalo Field Campaign is a nonprofit 501(c)(3) whose mission is to stop the slaughter of Yellowstone's wild buffalo herd, protect the natural habitat of wild free-roaming buffalo and native wildlife, and to work with people of all Nations to honor the sacredness of the wild buffalo.

Buffalo Field Campaign is located in West Yellowstone, Gallatin County, Montana, and is supported by volunteers and citizens in Montana and by people from around the world who value America's native wildlife and the ecosystems upon which they depend, and enjoy the natural wonders of our irreplaceable public lands.

As an organization and on behalf of our members, Buffalo Field Campaign is concerned and actively involved with protecting the last remaining descendants of indigenous buffalo in North America to occupy their original range, and securing long-term protection for viable populations of wild buffalo and year-round habitat.

Buffalo Field Campaign is adamantly opposed to HB 249, for many reasons.

A Fiscal Note for HB 249 projects nearly $600,000 in costs to be borne by Montana taxpayers over the next several years.

These costs, along with the provisions of HB 249 establishing a right to take public wildlife on private land on sight, simultaneously robs Montanan's of our taxpayer money to destroy our public wildlife.

HB 249 undermines the work being done locally to address and resolve potential conflicts with wildlife on private lands. If people have a safety concern over migratory buffalo being on private land in Gardiner Basin and Hebgen Basin, call Buffalo Field Campaign (406) 646-0070.

HB 249 is an attempt to gut long-standing Montana Supreme Court precedent that private landowners have some responsibility of sharing the land with wildlife:

"Montana is one of the few areas in the nation where wild game abounds. It is regarded as one of the greatest of the state's natural resources, as well as the chief attraction for visitors. Wild game existed here long before the coming of man. One who acquires property in Montana does so with notice and knowledge of the presence of wild game and presumably is cognizant of its natural habits. Wild game does not possess the power to distinguish between fructus naturales and fructus industriales, and cannot like domestic animals be controlled through an owner. Accordingly, a property owner in this state must recognize the fact that there may be some injury to property or inconvenience from wild game for which there is no recourse." (quoting State v. Rathbone, 110 Mont. 225, 100 P.2d 86, 92-93 (1940)).

This wildlife protecting precedent was recently re-affirmed in Park County Stockgrowers Association v. Montana (2013) by Judge E. Wayne Phillips recognizing that migratory buffalo are part of Montana's landscape and natural heritage.

Judge E. Wayne Phillips wrote: "Montana's Constitution contains no provision safeguarding against threats to personal safety caused by naturally occurring conditions such as native wildlife. To the contrary, Montana's Constitution, laws, and regulations provide special

considerations to assure that our wild places and the creatures that inhabit them are preserved for future generations."

Please review our handout on Montana and U.S. Court Rulings on the Question of Liability for Acts of Wildlife as HB 249 stands in conflict with several legal precedents protecting native wildlife species vis-à-vis with claims of harm to private property and personal safety.

HB 249 is not amendable. Thank you for taking action to uphold Montana Supreme Court precedent and protecting migratory buffalo as a valued wildlife species by voting to defeat HB 249.

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MONTANA AND U.S. COURT RULINGS ON THE QUESTION OF LIABILITY FOR ACTS OF WILDLIFE

Excerpted from Montana Judge E. Wayne Phillips ruling dismissing all ten claims brought against the state in Park County Stockgrowers v. Montana (2013).

BARRETT V. STATE NEW YORK (1917) "Wherever protection is accorded [to wild animals] harm may be done to the individual. Deer or moose may browse on his crops; mink or skunks kill his chickens; robins eat his cherries. In certain cases the Legislature may be mistaken in its belief that more good than harm is occasioned. But this is clearly a matter which is confided to its discretion. It exercises a governmental function for the benefit of the public at large, and no one can complain of the incidental injuries that may result."

SICKMAN ET AL. V. U.S. (U.S. 7TH CIRCUIT 1950) Claim for depredation, nuisance, and damages to crops by federally regulated migratory birds rejected.

RATHBONE V. MONTANA (1960) A property owner in the State of Montana "must recognize the fact that there may be some injury to property or inconvenience from wild game for which there is no recourse."

STATE V. SACKMAN (MONTANA 1968) Discretion to act in response to a report of an elk damaging property remains with Fish, Wildlife & Parks.

KASALA V. KALISPELL PEE WEE BASEBALL LEAGUE (MONTANA 1968) In considering the criteria of what should constitute interference with a property owner's peaceful enjoyment of property, courts have held "that it is the ordinary and reasonable person's complaint that should serve as a basis for what is a nuisance."

CHRISTY V. HODEL (U.S. 9TH CIRCUIT 1988) Montana sheep ranchers requested compensation for the killing of their sheep by grizzly bears because they were precluded from defending their sheep since the bears were protected by the Endangered Species Act. "The Federal Government does not 'own' the wild animals it protects, nor does the government control the conduct of such animals." "... the losses sustained by the plaintiffs are the incidental, and by no means inevitable, result of reasonable regulation in the public interest."

STATE V. HUEBNER (MONTANA 1992) "Montana's Constitution and law mandate special considerations to ensure that our wild places and the creatures that inhabit them are preserved for future generations."

STATE V. BOYER (MONTANA 2002) "Montana has also recognized in numerous decisions, the State's power to protect public wildlife resources through regulations designed for that purpose."

PARK COUNTY STOCKGROWERS ASSOCIATION V. MONTANA (2013) "Montana's Constitution contains no provision safeguarding against threats to personal safety caused by naturally occurring conditions such as native wildlife. To the contrary, Montana's Constitution, laws, and regulations provide special considerations to assure that our wild places and the creatures that inhabit them are preserved for future generations." (citing State v. Boyer 2002)

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