

VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF  
AND PUBLIC NUISANCE RELIEF

Brett D. Linneweber  
Park County Attorney  
414 East Callender Street  
Livingston, MT 59047  
Phone: (406) 222-4150

PARK COUNTY CLERK  
OF DISTRICT COURT  
JUNE LITTLE

2011 MAY 10 PM 12 36

JAC

MONTANA SIXTH JUDICIAL DISTRICT COURT, PARK COUNTY

FILED BY JUNE LITTLE  
DEPUTY

PARK COUNTY, )  
)  
Petitioner, )  
v. )  
)  
THE STATE OF MONTANA, )  
FISH, WILDLIFE AND PARKS, )  
an agency of the State of Montana, and )  
THE DEPARTMENT OF LIVESTOCK, )  
an agency of the State of Montana, )  
)  
Respondents. )  
)

Cause No. DV 11-78

**VERIFIED COMPLAINT FOR INJUNCTIVE RELIEF  
AND PUBLIC NUISANCE RELIEF**

COMES NOW, Brett D. Linneweber, Park County Attorney, in and for Petitioner Park County, and for its verified complaint for injunctive relief, including a preliminary injunction, and public nuisance relief, alleges as follows:

**IDENTITY OF PARTIES**

1. Petitioner Park County is a political subdivision of the State of Montana.
2. Respondent State of Montana is one of the states of the United States, and entered into the Interagency Bison Management Plan (IBMP) through its agencies. Respondent State of Montana's executive branch agencies of Respondent Fish, Wildlife and Parks, and Respondent Department of Livestock have roles in adopting and implementing their portions of the IBMP,

including within Park County. All Respondents have roles in implementing the Adaptive Management Changes to the IBMP, including expansion of bison tolerance zones within Park County.

### **JURISDICTION AND VENUE**

3. Jurisdiction is proper in this Court pursuant to the original jurisdiction of this Court under Section 3-5-302, MCA, the Montana Constitution Article II, Section 3, and the inherent power of this court to review state agency decisions and action.

4. Venue is proper in Park County in this matter because the proper place of trial for an action against a public officer or agency for an act done or not done by that officer or agency is the county where the cause or some part thereof arose. Venue is also proper in Park County because when the action is brought by Petitioner Park County against Respondent State of Montana and/or its agencies, the county of Petitioner Park County is a proper place of trial. Venue is also proper because the negative consequences resulting to Petitioner Park County from Respondents' acts allegedly transpire in part in Park County.

### **FACTS COMMON TO ALL CAUSES OF ACTION**

5. Petitioner Park County is not a partner agency in the IBMP. See affidavit of Marty Malone.

6. Petitioner Park County, through its County Commission, is tasked with providing for the public health and safety of the individuals located within its boundaries. This includes safety. In addition, Petitioner Park County has a direct interest in protecting the property, real and personal, of the individuals located within its boundaries. These interests of Petitioner Park County, have been, are, and unless the relief prayed for herein is granted, will continue to be adversely and

irreparably injured by Respondents' implementation of the Adaptive Management Changes to the IBMP, including expansion of bison tolerance zones. See affidavit of Marty Malone.

7. Historically, there have been different bison management strategies, primarily by Yellowstone Park, including culling/herd reduction. In the 1970's Yellowstone Park's management policy changed to that of no active manipulation of population controls. However, from that time until approximately 1984, few bison attempted to leave Yellowstone Park. With the increased bison population that changed, and many more bison migrated out of Yellowstone National Park. Subsequently, interagency planning to address bison management that included areas of Park County began in 1985. See History of Bison and Bison Management in Yellowstone National Park, Montana Farm Bureau Federation Bison Management Analysis, Kara Stermitz Ricketts, attached and incorporated as if fully stated herein.

8. In 1995 the Montana State Legislature statutorily named the Department of Livestock the lead agency to manage bison that leave Yellowstone Park and enter Montana, including in Park County. That mandate includes taking action to ensure the health and safety of Montana's livestock and citizens (as well as ensure that Montana's brucellosis free status is maintained). See History of Bison and Bison Management in Yellowstone National Park, Montana Farm Bureau Federation Bison Management Analysis, Kara Stermitz Ricketts.

9. On or about December 22, 2000, Respondent State of Montana issued a Record of Decision on the IBMP. The IBMP is Respondent State of Montana's approved management plan governing management activities for the bison that enter Montana, including into Park County, from Yellowstone Park. This Record of Decision is attached and incorporated as if fully stated herein this paragraph.

10. Since issuing the Record of Decision on the IBMP, there have been multiple Adaptive Management Steps, i.e. a set of actions, that modified the original management plan actions taken by the IBMP partner agencies. The most recent proposed adjustments was finalized and adopted by the IBMP partner agencies on April 14, 2011 (and referred to herein as the Adaptive Management Changes to the IBMP). This most recent proposed adjustment is dated March 31, 2011, and is attached and incorporated as if fully stated herein this paragraph.

11. These most recent proposed adjustments include a significant northward expansion of the bison tolerance zone into Park County which is to be implemented by its state agencies. This expanded zone is planned for the near future. Bison tolerance zones are those areas in which bison are permitted to remain pursuant to the IBMP. These zones include numerous residences. See affidavit of Marty Malone.

12. In February, 2011, the Governor of Montana issued an executive order forbidding shipments of corralled bison into Montana for 90 days. See Schweitzer Halts Bison Slaughter, Bozeman Daily Chronicle February 16, 2011, attached. This was issued in response to the State of Montana's dispute with the US Department of the Interior regarding the bison management problem. As a result, the administration reached an agreement allowing bison further into Park County, specifically 13 miles within the area known as the Gardiner Basin. This agreement also calls for future fences and cattle guards to contain the bison. See Schweitzer's Bison Solution Should Protect Park County, Great Falls Tribune April 24, 2011, attached. The physical barriers are not in place. Natural barriers are non-existent and/or ineffective.

13. In addition to the bison that have been freely entering Park County, Yellowstone Park has approximately 650+ bison in a corral near the Park County border. However, bison are no longer

hazed towards and into this corral. On April 25, 2011, Yellowstone Park biologist P.J. White stated that officials would begin releasing bison from the corrals along Yellowstone's northern boundary to see if there is enough vegetation inside the park to keep the bison from again leaving. See Yellowstone to Release 25 Captured Bison Into Park, Billings Gazette, April 25, 2011, attached.

14. The years from the Record of Decision on the IBMP are considered drought, or low snowpack, winters in the Gardiner Basin region of Park County. The winter of 2010-2011 has had what is considered a more normal snowpack in the Gardiner Basin region.

15. Under (the Pre-Adaptive Management Changes to) the IBMP, Respondents are to manage and control bison outside the Northern Boundary Area of Yellowstone National Park (within Zone 2's boundary designated in the 2000 IBMP Record of Decision). This provides for spatial and temporal separation between cattle and bison. As a result, bison were hazed, preventing the present unsafe degree of human-bison interaction.

16. Step 2 of (the Pre-Adaptive Management Changes to) the IBMP provides that when cattle no longer grazed private lands in Zone 2, being the Royal Teton Ranch and which is the west side of the Yellowstone River north of Yellowstone Park. This also provides that the agencies successfully manage 25 bison (enforcing spatial and temporal separation). Once successful the number would be increased to 50, and upon successful management of such, a maximum of 100 in Zone 2. No bison are allowed in Zone 3 under the IBMP. Zone 1 is Yellowstone Park. Zone 3 is any area outside of Zone 2.

17. The Adaptive Management Changes to the IBMP have eliminated prior protections of the IBMP, including allowing brucellosis exposed and/or infected bison to occupy all lands south of Yankee Jim Canyon (including large expanses of land formerly Zone 3), as well as allowing

agencies to arbitrarily and summarily evaluate the effects of these adjustments and modify as necessary.

18. Respondents have also begun to implement changes not even enumerated in the Pre-Adaptive Management Changes to IBMP, including not limiting the number of bison outside of Yellowstone Park's northern boundary, nor limiting the number of bison to the previously existing Zone 2. These modifications, both in terms of the newly adopted Adaptive Management Changes and changes not even enumerated in the Adaptive Management Changes, failed to analyze the environmental impacts pursuant to Montana Environmental Policy Act (MEPA), including any Environmental Impact Study or Environmental Assessment, jeopardizing the human environment. An environmental impact statement was completed November 15, 2000. However, that the physical project area of the Adaptive Management Changes to the IBMP is significantly different than any area in the proposed alternatives previously analyzed, and importantly, covers a different area.

19. Since changes to the IBMP have begun to be implemented (both pursuant to the Adaptive Management Changes and those not enumerated as discussed above), there were many dates in which county law enforcement and citizens estimate of approximately many hundreds of bison in the Gardiner Basin region. Large numbers of bison now regularly congregate at school bus stops and other locations, interacting with children, elderly, and other individuals that live in the area to a degree not previously encountered. These bison have also caused extensive damage to property, and indicated aggression towards landowner animals. See affidavits of Marty Malone, Scott Hamilton, Keith Hatfield.

20. The amount of human-bison interaction as described herein has increased to an unsafe degree, and will continue to do so as Respondents continue their implementation of the Adaptive

Management Changes to the IBMP. The number of bison entering Park County is a significantly larger quantity than the IBMP predicted and for which Respondents are taking action on. The expanded zones in which there is to be bison tolerance in Park County will increase that unsafe degree of human-bison interaction. See affidavits of Marty Malone, Scott Hamilton, Keith Hatfield.

21. Park County law enforcement, specifically county sheriff personnel, have had to take steps to haze bison and escort individuals to ensure the safety of others, placing themselves at risk of physical injury. Individual private citizens have had to take similar steps, placing themselves at risk of physical injury. See affidavits of Marty Malone, Scott Hamilton, Keith Hatfield.

22. Respondent State of Montana is also tasked with providing for the public health and safety of the individuals located within its boundaries. This includes safety. In addition, Respondent State of Montana has a direct interest in protecting the property, real and personal, of the individuals located within its boundaries.

23. In implementing the Adaptive Management Changes to the IBMP, Respondents set arbitrary dates in which it allows bison tolerance in Park County, and dates in which the bison are herded back into Yellowstone National Park. In doing so, Respondents have assigned insufficient personnel on the ground to sufficiently haze the bison both away from individuals in Park County, as well as into Yellowstone Park.

24. In implementing the Adaptive Management Changes to the IBMP, Respondents have failed to take steps to ensure to public health and safety of individuals in Park County, including personal safety as well as damage and threatened damage to property, both real and personal.

25. Respondents have taken the position that it has no obligation to adequately reimburse Park County or the individuals located therein, for damages to its property, real or personal. Instead,

it intends to begin a voluntary compensation program and to develop funding sources to assist landowners with damages. Respondents, in their role in implementing the Adaptive Management Changes to the IBMP, have left the individuals in Park County, to suffer the consequences regarding safety and damages.

26. Respondents, in implementing the Adaptive Management Changes to the IBMP, have failed to adequately address statutory procedural requirements, including the MEPA, as well as the procedures and polices outlined in the Adaptive Management Changes to the IBMP, but have still implemented further stages of the IBMP.

27. In implementing the Adaptive Management Changes to the IBMP, Respondents have failed to adequately provide for the public health and safety of individuals located within its boundaries, including safety as well as property, real and personal.

28. Continued implementation of the Adaptive Management Changes to the IBMP by Respondents constitutes a growing danger and actual harm to the individuals within Park County. See affidavits of Marty Malone, Scott Hamilton, Keith Hatfield.

29. On April 14, 2011, Petitioner Park County advised representatives of the IBMP partner agencies that Petitioner Park County has received numerous complaints about public health and safety, specifically about physical safety of individuals within Park County, as well as damage to property, real and personal. Petitioner Park County advised the partner agencies that it was prepared to take whatever legal measures necessary to ensure the public health and safety of individuals within the county if adequate steps by the partner agencies were not taken. Since that time, Respondent Fish, Wildlife and Parks and Respondent Department of Livestock has increased some hazing activities, but the above cited human-bison interaction remains at an unacceptable danger. See

affidavits of Marty Malone, Scott Hamilton.

**CLAIM FOR TEMPORARY INJUNCTIVE RELIEF**

30. Plaintiff Park County re-alleges all the allegations set forth in the prior paragraphs of this complaint.

31. Based on the above allegations, and pursuant to Section 27-19-201(1), MCA, Plaintiff Park County is entitled to a temporary injunction restraining Respondents from continuing to implement the Adaptive Management Changes to the IBMP in Park County, including expansion of tolerance zones for bison, until the Court is satisfied that Respondents ensure the public health and safety of the individuals located within Park County while managing bison in Park County. This may be for a limited period or perpetually.

32. Based on the above allegations, and pursuant to Section 27-19-201(2), MCA, Plaintiff Park County is entitled to a temporary injunction restraining Respondents from continuing to implement the Adaptive Management Changes to the IBMP in Park County, including expansion of tolerance zones for bison, because continued implementation will continue to produce a great or irreparable injury to Plaintiff Park County's ability to provide for the public health and safety of individuals located within its boundaries, including safety as well as protection of property, both real and personal.

33. A courtesy draft copy of this verified complaint was provided to Respondents prior to its filing to ensure compliance with Section 27-19-315(2), MCA. Regardless and alternatively, due to the immediacy needs notice should not be required in issuing a temporary restraining order.

**CLAIM FOR FINAL INJUNCTIVE RELIEF**

34. Plaintiff Park County re-alleges all the allegations set forth in the prior paragraphs of this

complaint.

35. Based on the above allegations, and pursuant to Section 27-19-102(1), MCA, Plaintiff Park County is entitled to a final injunction restraining Respondents from continuing to implement the Adaptive Management Changes to the IBMP in Park County, including expansion of tolerance zones for bison, because Respondents have breached their obligation in providing for the health and public safety of the individuals located within Park County, Respondents' breach is preventing Park County from providing for the health and public safety of individuals within Park County, and pecuniary compensation will not afford adequate relief.

36. Based on the above allegations, and pursuant to Section 27-19-102(2), MCA, Plaintiff Park County is entitled to a final injunction restraining Respondents from continuing to implement the Adaptive Management Changes to the IBMP in Park County, including expansion of tolerance zones for bison, because Respondents have breached their obligation in providing for the health and public safety of the individuals located within Park County, Respondents' breach is preventing Park County from providing for the health and public safety of individuals within Park County, and it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

#### **CLAIM FOR PUBLIC NUISANCE RELIEF**

37. Plaintiff Park County re-alleges all the allegations set forth in the prior paragraphs of this complaint.

38. As applied in implementing the Adaptive Management Changes to the IBMP, including expansion of tolerance zones, Respondents have, are, and in the future will injure the health and free use of property, so as to interfere with the comfortable enjoyment of life or property, as defined in

Section 27-30-101(1), MCA.

39. As applied in implementing the Adaptive Management Changes to the IBMP, including the establishment of tolerance zones and planned expansion of such, affects an entire community/considerable numbers of persons in the Gardiner Basin region. Pursuant to Section 27-30-102(2), MCA, any allegation that the extent of the annoyance or damage inflicted is unequal is not a defense.

40. Civil actions are proper remedies for public nuisances. Section 27-3-202(1), MCA.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff prays as follows:

1. That the Court issue a preliminary injunction enjoining Respondents from implementing the Adaptive Management Changes to the IBMP in Park County, including any expansion of the bison tolerance zone. That Respondents use sufficient personnel to immediately effectuate the Court's order to adhere to the IBMP Pre-adaptive Management change that includes keeping the bison west of the Yellowstone River, specifically on Royal Teton Ranch or Forest Service Lands. That in doing so Respondents use sufficient personnel to immediately effectuate the Court's order.

2. That after a hearing on the matter that the Court issue a final injunction enjoining Respondents from implementing the Adaptive Management Changes to the IBMP in Park County, including any expansion of the bison tolerance zone, unless and until the Court is satisfied that Respondents ensure the public health and safety of the individuals located within Park County in its role of bison management in Park County. That until that time, Respondents use sufficient personnel to immediately effectuate the Court's order to adhere to the IBMP Pre-adaptive Management change that includes keeping the bison west of the Yellowstone River on Royal Teton Ranch or Forest

Service Lands. That in doing so Respondents use sufficient personnel to immediately effectuate the Court's order.

3. That the Court declare that as applied Respondents' implementation of the Adaptive Management Changes to the IBMP, including any bison tolerance zone, is a public nuisance, and order cessation of Respondents' implementation of the Adaptive Management Changes to the IBMP unless and until the Court is satisfied that Respondents ensure the public health and safety of the individuals located within Park County in its role of bison management in Park County. That until that time, Respondents use sufficient personnel to immediately effectuate the Court's order to adhere to the IBMP Pre-adaptive Management change that includes keeping the bison west of the Yellowstone River on Royal Teton Ranch or Forest Service Lands. That in doing so Respondents use sufficient personnel to immediately effectuate the Court's order.

DATED this \_\_\_\_\_ day of May, 2011.

\_\_\_\_\_  
Brett D. Linneweber  
Park County Attorney

VERIFICATION

STATE OF MONTANA     )  
                                  :     ss  
County of Park            )

Brett D. Linneweber, Park County Attorney, being first duly sworn, deposes and says:

- 1) That he is the attorney for Petitioner Park County; and
- 2) That he has read the foregoing petition, knows the contents thereof, and that the

matters stated in the pleadings are true to the best knowledge, information and belief of the affiant.

\_\_\_\_\_  
Brett D. Linneweber  
Park County Attorney

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of May, 2011.

\_\_\_\_\_  
Clerk of District Court

(S E A L)

By \_\_\_\_\_  
Deputy Clerk