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9 **IN THE UNITED STATES DISTRICT COURT**
FOR THE DISTRICT OF MONTANA

10 NEIGHBORS AGAINST BISON
11 SLAUGHTER, and
12 BONNIE LYNN,
13 Plaintiffs,

14 v.

15 THE NATIONAL PARK SERVICE;
16 THE UNITED STATES
DEPARTMENT OF AGRICULTURE,
FOREST SERVICE;
17 DAVID BERNHARDT, Secretary of
the Interior, in his official capacity;
18 CAM SHOLLY, Superintendent of
19 Yellowstone National Park, in his
official capacity; and
20

No. 1:19-cv-128-SPW

Judge Susan P. Watters

AMENDED COMPLAINT

1
2
1 SONNY PERDUE, Secretary of the
Department of Agriculture, in his
2 official capacity;

3 Defendants.¹

4
5 **INTRODUCTION**

6 1. The National Park Service and the U.S. Forest Service (collectively, the
7 Federal Agencies) have abandoned their duties to manage Yellowstone bison. They
8 have endangered and continue to endanger hunters, local property owners,
9 residents, and guests without exploring alternatives or otherwise analyzing the
10 impacts of the government’s bison hunt in Beattie Gulch, Montana. Montana has
11 recognized that “the safety issues continue to escalate and the fear for injury or
12 death to hunters is real.” Letter from Dave Loewen, Montana Fish, Wildlife, and
13 Parks (Montana Wildlife) Chief of Law Enforcement, et al. to Sam Sheppard, R3
14 Supervisor et al. (Jan. 27, 2017).

15 2. When grass and other food becomes scarce in the winter, some bison head
16 north and leave Yellowstone National Park in search of forage. The easiest path
17 out of Yellowstone crosses “a quarter-mile-square area at the mouth of Beattie
18 Gulch” Letter from Montana Wildlife to Interested Person (September 2,

19
20 ¹ Federal Defendants consented in writing to this amended complaint. Therefore, Federal Rule of Civil Procedure 15(a)(2) allows Plaintiffs to file this without a motion. The attached redline shows the changes except for formatting changes.
Neighbors Against Bison Slaughter v. Nat’l Park Serv., No. 1:19-cv-128-SPW AM. COMPL.

1 2018). To stop the bison from ranging deeper into cattle ranching territory, the
2 Federal Agencies turned that area into a killing field. They encourage state-
3 licensed and tribal hunters to slaughter bison there, as soon as the bison step foot
4 across Yellowstone’s border.

5 3. Hunting in Beattie Gulch has intensified until, in 2018, Montana concluded
6 that “the density of hunters has increased beyond what [it] considers safe.” *Id.* The
7 State found it “common for 20-30 or more hunters to shoot simultaneously as
8 groups of bison cross the [Yellowstone] boundary.” *Id.* That concentrated hunting
9 risks killing local residents, their guests, and visitors—who live and stay only
10 yards away. Sooner or later, the government-sanctioned, bison hunt is going to kill
11 someone.

12 4. Despite these risks to human life and safety, the Federal Agencies have
13 repeatedly authorized the slaughter. Most recently, they signed the December 31,
14 2018, Operating Procedures for the Interagency Bison Management Plan [IBMP]
15 (the 2019 Operation Plan).

16 5. The Park Service and Forest Service have arbitrarily and capriciously
17 implemented several statutory obligations. The Park Service failed to consider
18 public safety in otherwise disposing of bison under the Act of January 24, 1923,
19 Pub. L. No. 67-395, 43 Stat. 1174, 1214 (codified at 16 U.S.C. § 36, and
20 hereinafter “the Bison Clause”).

1 6. The Forest Service also failed to consider impacts on property owners,
2 neighbors, and visitors in implementing the Forest Service Organic Act of 1897, 16
3 U.S.C. §§ 472-482, 551, National Forest Management Act of 1976 (NFMA), 16
4 U.S.C. §§ 1600-1614, the Multiple-Use Sustained-Yield Act of 1960 (the MUSY
5 Act), 16 U.S.C. §§ 528-531, and other federal land management statutes, like 16
6 U.S.C. §§ 521a, 551a, 553, 572(b), and 574.

7 7. The Federal Agencies failed to comply with the National Environmental
8 Policy Act, 42 U.S.C. §§ 4321-4347. Instead, they hid behind the State of
9 Montana's analysis, although Congress assigned the Park Service control over the
10 Yellowstone bison, 16 U.S.C. § 36, and the Federal Agencies are paying for 95 %
11 of the management plan's costs. NEPA requires the agencies to analyze major
12 federal actions over which they have control. *Dep't of Transp. v. Pub. Citizen*, 541
13 U.S. 752, 772-73 (2004). The Federal Agencies have violated NEPA by failing to
14 analyze all Yellowstone bison management decisions, including hunting, as a
15 single connected action, in a single environmental impact statement. *See* 42 C.F.R.
16 § 1508.25.

17 8. The Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706, entitles
18 Plaintiffs Neighbors Against Bison Slaughter and Bonnie Lynn (collectively,
19 "Neighbors") to declaratory relief, a temporary restraining order, a preliminary
20 injunction, a permanent injunction, and a mandamus directing the agencies to stop

1 the government bison hunt in Beattie Gulch until the Federal Agencies analyze
2 bison management beyond Yellowstone’s boundaries.

3 **JURISDICTION**

4 9. United States Code Title 28, sections 1331 and 1361, grant this Court
5 jurisdiction over this case because the case presents a federal question and because
6 it names United States agents and agencies as defendants.

7 10. The APA waives the United States’ sovereign immunity and provides a
8 private cause of action for anyone “suffering legal wrong because of agency action,
9 or adversely affected or aggrieved by agency action within the meaning of a
10 relevant statute” 5 U.S.C. § 702; *Rattlesnake Coal. v. EPA*, 509 F.3d 1095, 1103
11 (9th Cir. 2007).

12 11. The Court may issue declaratory judgment under 28 U.S.C. §§ 2201-02,
13 commonly known as the Declaratory Judgment Act. Act of June 14, 1934, Pub. L.
14 No. 73-343, 48 Stat. 955 (1934).

15 12. This Court also may issue a writ of mandamus under 28 U.S.C. §1361. That
16 section, titled, “Action to compel an officer of the United States to perform his
17 duty,” grants district courts “original jurisdiction of any action in the nature of
18 mandamus to compel an officer or employee of the United States or any agency
19 thereof to perform a duty owed to the plaintiff.”

PLAINTIFFS

1
2 13. Bonnie Lynn owns three properties just across the road from an area of
3 Gallatin National Forest where hunters slaughter bison in Beattie Gulch, Montana.
4 She owns one plot of land where she parks an RV just north of Gardiner and a few
5 hundred yards north of the boundary of Yellowstone National Park. She also owns
6 two cabins another few hundred yards north on the Yellowstone River in a
7 condominium complex called the Yellowstone Park Riverfront Association.

8 14. The government's bison hunt has stopped Ms. Lynn from renting her
9 vacation rental cabins during the winter, lowered her property values, prevented
10 her from using her properties for family visits, and caused her emotional trauma.
11 Before the hunting intensified, Ms. Lynn used her cabins and properties more often
12 during the winter. She does that less often in recent years because she fears the
13 flying bullets will kill her or members of her family. Ms. Lynn loves
14 photographing the bison, and she feels devastated watching the slaughter.

15 15. Ms. Lynn and her neighbors cannot simply avoid the bison slaughter by
16 closing their doors and pulling their blinds. The bison slaughter in Beattie Gulch is
17 only a few hundred yards away and lasts for months. Rifle fire often shatters the
18 silence, and bison entrails hangs from their trees and lands in their yards. Bullets
19 fly across private property boundaries, bloody, bison carcasses are dragged near or
20 left on the roadway, and traffic obstructs the only route of egress. The only escape

1 for Ms. Lynn and her neighbors from the slaughter is to flee their homes and
2 abandon their businesses for up to half the year.

3 16. Ms. Lynn created Neighbors Against Bison Slaughter as a community
4 organization to present a unified front to the IBMP. In Ms. Lynn’s words: “We
5 believe in hunting for subsistence and for meat. But the hunting here has stepped
6 over the line to threaten the safety and peace of the neighborhood. The hunting
7 creates a public safety hazard, risks the lives of the neighbors and their property,
8 and upsets our way of life.”

9 **DEFENDANTS**

10 17. Congress assigned the Park Service a duty to manage Yellowstone.
11 Congress also assigned the Park Service responsibility for managing the
12 Yellowstone bison herd.

13 18. Congress assigned the United States Department of Agriculture, Forest
14 Service, a duty to manage the National Forest System lands.

15 19. Dave Bernhardt serves as the Secretary of the Interior. Mr. Bernhardt
16 oversees and directs the Department of the Interior’s activities.

17 20. Cam Sholly serves as Superintendent of Yellowstone. Mr. Sholly oversees
18 and directs Yellowstone’s activities.

1 21. Sonny Perdue serves as Secretary of the Department of Agriculture. Mr.
2 Perdue oversees and directs the Department of Agriculture’s activities, and those
3 activities include the Forest Service’s activities.

4 **LEGAL BACKGROUND**

5 **I. The Administrative Procedure Act**

6 22. In the Administrative Procedure Act, Congress created a private cause of
7 action and waived sovereign immunity for claims like these. “A person suffering
8 legal wrong because of agency action, or adversely affected or aggrieved by
9 agency action within the meaning of a relevant statute, is entitled to judicial review
10 thereof.” 5 U.S.C. § 702.

11 23. The APA requires this Court to “compel agency action unlawfully withheld
12” 5 U.S.C. § 706(1).

13 24. The APA also directs the Court to “hold unlawful and set aside agency
14 action, findings, and conclusions” that qualify as

- 15 ● “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance
16 with law,”
- 17 ● “short of statutory right,” or
- 18 ● “without observance of procedure required by law.”

19 *Id.* § 706(2)(A), (C), (D).

1 **II. Yellowstone Enabling Act and the Bison Clause**

2 25. In 1872, Congress created Yellowstone National Park as the first national
3 park in the world. Bison Management for the State of Montana and Yellowstone
4 National Park Final Environmental Impact Statement (the IBMP EIS) xxx,
5 *available at* ibmp.info/library.php. Congress designated Yellowstone a “public
6 park or pleasuring ground for the benefit and enjoyment of the people.” 16 U.S.C §
7 21.

8 26. In 1923, about fifty years after establishing Yellowstone, Congress
9 delegated authority to the Secretary of the Interior to donate Yellowstone bison to
10 “Federal, State, county, and municipal authorities for preserves, zoos, zoological
11 gardens, and parks.” *Id.* 36 (Yellowstone Management Act Amendments or Bison
12 Clause). Congress also gave the Secretary power to “sell or otherwise dispose of
13 the surplus” Yellowstone bison. *Id.*

14 **III. Forest Service Management Statutes**

15 27. The Forest Service manages the National Forests under the Forest Service
16 Organic Act of 1897, 16 U.S.C. §§ 472-482, 551, the MUSY Act, *id.* §§ 528-531,
17 and NFMA, *id.* §§ 1600-1614. The Organic Act gives the Forest Service broad
18 authority to “to regulate [the national forests’] occupancy and use.” *Id.* § 551. The
19 Forest Service’s regulations authorized it to close areas for “Public health or
20 safety.” 36 C.F.R. § 261.53(e).

1 **IV. The National Environmental Policy Act**

2 28. Congress enacted NEPA to ensure federal agencies make informed
3 decisions by considering the environmental consequences of “major Federal
4 actions” in environmental impact statements. 42 U.S.C. §§ 4321, 4332(2)(C); 40
5 C.F.R. § 1500.1(c). NEPA established the Council on Environmental Quality
6 (CEQ), and CEQ promulgated regulations to govern federal agency NEPA
7 compliance. 42 U.S.C. § 4342; 40 C.F.R. §§ 1500.1-1517.7; Implementation of
8 Procedural Provisions, 43 Fed. Reg. 55,978 (Nov. 29, 1978); *Robertson v. Methow*
9 *Valley Citizens Council*, 490 U.S. 332, 354 (1989).

10 29. When a major federal action may significantly affect the environment,
11 NEPA requires the acting agency to analyze the action in an environmental
12 assessment (EA) or in an environmental impact statement (EIS). 40 C.F.R. §§
13 1501.3, 1501.4. As part of that process, NEPA requires the agency to compile a
14 draft EIS, *id.* § 1502.9(a), and to present that draft to the public and to other
15 agencies for notice and comment. *Id.* § 1503.1(a). After the agency evaluates and
16 responds to the comments, it prepares a final EIS. *Id.* § 1502.9(b). This process
17 culminates in a record of decision that explains the agency’s rationale. *Id.* §
18 1505.2.

1 **V. The United States’ Constitutional Duty to Faithfully Execute the Laws**

2 30. The United States Constitution vests the executive power in the President.
3 Art. II, sec. 1. It assigns the President and the Executive Branch the duty to “take
4 Care that the Laws be faithfully executed.” Art. II, sec. 3. The Supreme Court has
5 recognized, as part of the responsibilities of the Executive Branch, “the basic
6 principle that the President cannot delegate ultimate responsibility or the active
7 obligation to supervise that goes with it” *Free Enter. Fund v. Pub. Co.*
8 *Accounting Oversight Bd.*, 561 U.S. 477, 496 (2010) (quotations omitted).

9 31. Alexander Hamilton warned against executive committees because they
10 “tend[] to conceal faults and destroy responsibility.” THE FEDERALIST NO. 70, at
11 453 (Robert Scigliano ed., 2000). Blame “is shifted from one to another with so
12 much dexterity, and under such plausible appearances, that the public opinion is
13 left in suspense about the real author.” *Id.* More complicated circumstances make
14 that objective even easier to accomplish.

15 32. Moreover, committee members with different constituencies may
16 undermine the federal agents’ responsibilities to the People of the United States.
17 For that reason, courts have held that “delegation to outside entities increases the
18 risk that these parties will not share the agency’s national vision and perspective,
19 and thus may pursue goals inconsistent with those of the agency and the underlying
20 statutory scheme.” *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir.

1 2004) (quotations and citation omitted). In other words, delegating to outside
2 committees risks non-federal members coopting the committee to obtain outcomes
3 that benefit that member (or member group) over other citizens. Article II, in
4 contrast, assigns federal agencies equal duties to all citizens. *See id.*

5 33. Hamilton even prophesied the unappreciated citizen who would criticize
6 committee arrangements that benefit only committee members at the expense of
7 democratic accountability:

8 And who is there that will either take the trouble or incur the odium, of a strict
9 scrutiny into the secret springs of the transaction? Should there be found a
10 citizen zealous enough to undertake the unpromising task, if there happen to
11 be collusion between the parties concerned, how easy it is to clothe the
12 circumstances with so much ambiguity, as to render it uncertain what was the
13 precise conduct of any of those parties?

14 THE FEDERALIST NO. 70.

15 34. Therefore, although federal agencies may consult outside committees,
16 courts require the federal agencies to independently evaluate the guidance and to
17 issue separate, independent decisions on the federal issues that Congress has
18 assigned to them. *Assiniboine Sioux Tribes v. Bd. of Oil Gas*, 792 F.2d 782, 795
19 (9th Cir. 1986).

20 **FACTUAL BACKGROUND**

21 35. The dangerous, overcrowded, and poorly regulated bison hunt in Beattie
22 Gulch, threatens the lives of hunters, local property owners, neighbors, and visitors
23 to the area. During the 1990s, several federal and state agencies developed a bison

1 management plan. *See generally* IBMP EIS. They issued it in 2000. Federal IBMP
2 Record of Decision (the IBMP ROD); Montana IBMP ROD (Dec. 22, 2000).
3 Membership in the IBMP has expanded over the years. Now, the Interagency
4 Bison Management Plan group includes nine agencies, tribes, and organizations.
5 IBMP Partner Protocols 2 (Aug. 28, 2018).

6 36. The agencies and tribes, which include the Park Service and Forest Service,
7 manage the Yellowstone bison herd, by committee. Each agency claims to act only
8 within the narrow sphere of jurisdiction it perceives the respective agency has. *See*
9 Answering Br. for the Fed. Appellees 4, *Cottonwood Env'tl. Law Ctr. v. Bernhardt*,
10 No. 19-35150 (9th Cir. Aug. 2, 2019).

11 37. Bison form an integral part of the Greater Yellowstone Ecosystem. IBMP
12 FEIS vi. They may carry brucellosis, and Montana views brucellosis as a threat to
13 its cattle industry. IBMP EIS i, 39.

14 38. When the agencies analyzed the environmental effects of the bison
15 management plan, they considered some alternatives that included hunting. IBMP
16 EIS xviii-xxii.

17 39. To this day, however, the Park Service and Forest Service have never
18 analyzed the impacts of hunting on private property owners, neighbors, and visitors
19 in a NEPA document. Specifically, the Agencies never analyzed the likelihood of
20

1 stray bullets threatening homes or people or the impacts of concentrated,
2 potentially infected bison carcasses spreading disease to people and wildlife.

3 40. Before the IBMP issued the 2000 ROD, the Park Service culled the bison
4 population within Yellowstone to ensure the population did not exceed 3,000.
5 IBMP ROD 52. Every year, the Park Service decides how many bison to slaughter
6 as they migrate north out of Yellowstone to “meet population management and
7 conflict resolution objectives.” Operation Plan 4. The Park Service lets some of the
8 bison continue north for hunters, quarantines some bison for research, and transfers
9 some bison to the Assiniboine and Sioux Tribes’ Fort Peck Reservation. *Id.* at 10-
10 13.

11 41. When the Park Service slaughters migrating bison, it distributes the “meat,
12 hides, and other bison parts to support tribal nutrition and culture; thereby allowing
13 more tribal members to benefit from the healthy benefits bison provide.” *Id.* at 11.

14 42. In certain years, the Park Service has not slaughtered any bison, but in other
15 years it slaughters up to 700, 800, and even 1,200 bison at the Stephens Creek
16 facility. 2018 Annual Report of the [IBMP] 16-17 (Dec. 31, 2018). The Park
17 Service built the Stephens Creek capture facility on “an important migration
18 corridor and provides winter or year-round habitat for ungulates and other
19
20

wildlife.” NPS7275.² The Park Service takes advantage of that corridor by leaving out hay to attract the bison, so it can capture them on their way to Beattie Gulch. See NPS799. On its 13 acres, the Park Service built five pens to separate bison, two holding pastures (one large and one small), and chutes to help direct bison. FS4531; FS4532 (map); NPS7238 (structural diagram). It releases some bison and ships the rest to “meat processing or research facilities.” NPS700, NPS605. The Park Service calls this process “capture-and-consignment.” *Id.*

43. As the agencies implemented the IBMP plan, the United States paid for it, but let Montana make most of the decisions outside of Yellowstone—even on federal land. Between 2002 and 2008, the state and federal agencies spent over \$2 million to implement the IBMP. General Accountability Office, Interagency Plan and Agencies’ Management Need Improvement to Better Address Bison-Cattle Brucellosis Controversy, at PDF page 2 (Mar. 2008). Montana paid only \$100,000, while the United States paid the other \$1.9 million. *Id.*³

44. Hunting has escalated since 2000. In 2011, the Park Service and Forest Service concluded that their various changes to the bison management plan did not

² Citations to the Park Service and Forest Service administrative records will use the format NPSXXX and FSXXX, respectively; XXX will reflect the page number.

³ Montana has analyzed areas where bison could roam outside Yellowstone. In 2015, it designated more land west of Yellowstone for bison to roam. State of Montana Decision Notice, Year-round Habitat for Yellowstone Bison Environmental Assessment 7 (Map) (Nov. 2015).

1 amount to a significant change. Mem. to Files, IBMP Agencies, Adaptive
2 Management Adjustments to [IBMP] and [NEPA/MEPA] Documentation (Dec. 1,
3 2011). They also proposed additional changes. Among them, the agencies
4 proposed increasing tribal hunting opportunities. *Id.* at 2, 5.

5 45. The potential for hundreds of bison kills per season changed the character of
6 Beattie Gulch. Hunting intensified.

7 46. The bison hunt evicts property owners, neighbors, and visitors to Beattie
8 Gulch, and risks their lives.

9 47. The hunt endangers private property owners, neighbors, and visitors to
10 Beattie Gulch.

11 48. Montana Wildlife has recognized the danger for years, but like the Park
12 Service and the Forest Service, it has done almost nothing.

13 49. According to Montana, in 2015, the Forest Service had closed eighteen
14 acres of Forest Service land to hunting for safety. Montana Wildlife, Hunting
15 Season/Quota Change Supporting Information 2 (Sept. 19, 2019). Two years later,
16 the Forest Service pushed hunting 200 yards further west of Old Yellowstone Trail
17 and deeper into Beattie Gulch. *See* Custer Gallatin National Forest, Order No. 01-
18 11-03-18-01 (Nov. 20, 2017).

19 50. In fall of 2018, Montana Wildlife proposed closing part of Beattie Gulch to
20 Montana-licensed hunters because too many hunters were shooting too many bison

1 on too small of an area. In the end, Montana Wildlife retracted that proposal. The
2 status quo won out over safety, again. Montana Governor Steve Bullock has
3 recognized this risk. “On-going rancor regarding [Yellowstone] bison management
4 can lead to indecision or a default to status quo or a ‘no action’ alternative,
5 regardless of whether the current management is effective.” Montana Decision
6 Notice, Year-round Habitat for Yellowstone Bison EA 7 (Map) (Nov. 2015).

7 51. Montana Wildlife found that bullets from a rifle can travel between one and
8 four miles. [Montana Wildlife] Recommendations for Subdivision Development,
9 App’x C.3, <http://fwp.mt.gov/fwpDoc.html?id=55372>. It recognized that
10 “occasional stray bullets can threaten [residents’] safety or damage their homes.”
11 *Id.* In other words, residents and visitors near Beattie Gulch can die in their living
12 rooms from any single hunter’s mistake or failure of judgment.

13 52. Moreover, the Federal Agencies have created circumstances that drastically
14 increase the chances of those mistakes or failures of judgment. That danger not
15 only evicts Beattie Gulch residents from their homes, but also scares away visitors
16 who would rent Ms. Lynn’s cabins there.

17 53. The hunting causes other dangers. Hunters leave behind hundreds of gut
18 piles that rot in the open, attracts wildlife (that may include grizzly bears and gray
19 wolves), finds its way into trees and yards on private property (from raptors and
20 ravens), and turns the entire local area into an open-air charnel house. The massive,

1 bison “gut piles” could transmit *Brucella abortus* and pose a significant health
2 threat to people, pets, livestock, and wildlife in the area.

3 54. For years, neighbors and residents, who live only a few hundred yards away
4 from the bison-hunting, have objected at regular IBMP public meetings.

5 55. The IBMP has ignored and sidelined their legitimate concerns and done
6 nothing to limit the hunt, as the hunting forces local residents to flee the area for
7 months at a time, causes their businesses to lose money, and severely traumatizes
8 them.

9 56. The government-sanctioned bison hunt has continued to expand as the
10 Federal Agencies have released more bison from Yellowstone and allowed more
11 hunters to participate in an already dangerous and poorly regulated hunt at Beattie
12 Gulch. Rather than address this untenable situation, the Federal Agencies have
13 foisted the dangerous and concentrated impacts of bison hunting in this tiny
14 geographic area onto the residents and neighbors.

15 **COUNT 1**

16 **Violation of the APA in Implementing the Bison Clause**

17 57. Neighbors hereby adopts by reference Paragraphs 1-56.

18 58. The Park Service and Superintendent Sholly have arbitrarily and
19 capriciously implemented the Bison Clause.

1 59. The IBMP authorized hunters to shoot bison in Beattie Gulch mere yards
2 from nearby residents, visitors, and businesses.

3 60. The Federal Agencies have created circumstances that drastically increase
4 the chances of hunters, private property owners, neighbors, and visitors dying. That
5 danger not only evicts the residents from their homes, but also scares away visitors
6 who would otherwise rent cabins there. The Park Service has “entirely failed to
7 consider an important aspect of the problem. . . .” *Motor Vehicle Mfrs. Ass’n of the*
8 *U.S., Inc. v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 43 (1983).

9 61. The Park Service misapprehends its legal authority and obligation to
10 otherwise dispose of surplus Yellowstone bison, which includes bison outside
11 Yellowstone who could potentially return. The Park Service cannot make a
12 reasonable decision with its narrow interpretation of its own legal duties and
13 authorities. “Courts must, of course, set aside [agency] decisions which rest on an
14 erroneous legal foundation.” *NRLB v. Brown*, 380 U.S. 278, 292 (1965) (quotations
15 omitted); 5 U.S.C. § 706(2)(A).

16 62. The Park Service failed to analyze the impacts of the bison hunt before
17 issuing the 2019 Operation Plan. It has thus violated the APA by arbitrarily and
18 capriciously implementing the Act of June 30, 1923 Pub. L. No. 67-395, 42 Stat.
19 1174, 1214 (the Bison Clause).

COUNT 2

Violation of the APA in implementing Forest Service

Land Management Statutes

63. Neighbors hereby adopts by reference Paragraphs 1-62.

64. The Forest Service has arbitrarily and capriciously implemented the Forest Service Organic Act of 1897, NFMA, the MUSY Act, and other land management statutes. 16 U.S.C. §§ 497, 528-531; 16 U.S.C. § 1604(e), 16 U.S.C. §§ 521a, 551, 551a, 553, 572, and 574.

65. The Forest Service has failed to protect the citizens who live near Beattie Gulch. The Forest Service has created circumstances that drastically increase the chances of hunters, private property owners, neighbors, and visitors dying. That danger not only evicts the property owners and residents from their homes in Beattie Gulch, but also scares away visitors who would otherwise rent cabins there. The Forest Service has “entirely failed to consider an important aspect of the problem” *State Farm*, 463 U.S. at 43.

66. The Forest Service never analyzed the impacts of the government-sanctioned bison hunt on private property owners, neighbors, and visitors before issuing the 2019 Operation Plan. It has thus violated the APA by arbitrarily and capriciously implementing the Forest Service Organic Act of 1897, NFMA, the MUSY Act, 16 U.S.C. §§ 521a, 528-531, 1604(e), and other statutes that include 551a, 553, 572, and 574.

1 **COUNT 3**

2 **Violation of NEPA and the APA**

3 67. Neighbors hereby adopts by reference Paragraphs 1-66.

4 68. Every action under the IBMP qualifies as a connected action under NEPA,
5 so NEPA required the Federal Agencies to analyze those actions as parts of a
6 major federal action.

7 69. The actions qualify as major federal actions because the Park Service has
8 control over disposing of surplus bison. 16 U.S.C. § 36. The Forest Service has
9 control because the bison hunt in Beattie Gulch takes place on its land.

10 70. The actions further qualify as major federal actions because the United
11 States agencies are paying for 95 % of the bison management plan under the
12 IBMP. Therefore, the Federal Agencies have actual control over bison
13 management and “power to act on [the] information” NEPA would provide.” *See*
14 *Pub. Citizen*, 541 U.S. at 767-68.

15 71. NEPA requires the agencies to analyze the entire bison management plan
16 and not to break it up into segments with insignificant impacts, or delegate parts of
17 the analyses to Montana. Instead of analyzing all of the aspects of bison
18 management, the Federal Agencies have deferred to Montana Wildlife to complete
19 two EAs outside of NEPA. They based the 2019 Operation Plan, in part, on those
20

1 analyses. The Federal Agencies have thus violated NEPA and the APA by acting
2 without completing the environmental analysis of that action.

3 72. Moreover, the Agencies have failed to analyze the impacts of the 2019
4 Operation Plan to determine whether their effects fit within the anticipated
5 outcomes from the adaptive management criteria they established.

6 **COUNT 4**

7 **Violation of NEPA's Requirement to Issue a Supplemental EIS**
8 **and the APA**

9 73. Neighbors hereby adopts by reference Paragraphs 1-72.

10 74. The Park Service and the Forest Service violated NEPA by failing to
11 analyze the environmental effects of bison hunting on residents. They have never
12 analyzed any alternative areas for bison hunting or any alternatives to bison
13 hunting at Beattie Gulch.

14 75. The agencies have modified their action beyond the spectrum of alternatives
15 they analyzed in the IBMP EIS. Because of the significant impacts of the bison
16 hunt on hunters, neighbors, guests, and visitors to the Beattie Gulch area, NEPA
17 required the Federal Agencies to complete a supplemental environmental impact
18 statement before acting. By failing to complete that analysis, they have violated
19 NEPA and the APA.
20

COUNT 5

Violation of the United States Constitution Article II, Section 3, and the APA

76. Neighbors hereby adopts by reference Paragraphs 1-75.

77. The Park Service and the Forest Service have delegated their authority to the IBMP committee and allowed that committee to execute federal law without independently evaluating those decisions and making independent decisions. That structure changes the balance of power among the tribes because some are IBMP members. Consequently, and instead of ensuring a more equitable distribution among tribes, the United States allows some tribes to obtain more bison meat, hides, horns, and other bison parts from consignment than other tribes.

78. The Park Service aims to reduce the bison population down to a specific number every year through a combination of two methods: hunting and “consignment.” The Park Service calls “consignment” the process of capturing bison within Yellowstone, killing them, and distributing the resulting meat, hides, horns, and other bison parts to support tribal nutrition and culture. The amount of hunting encouraged in Beattie Gulch directly correlates to consignment. Each year, the IBMP sets a target number of bison to kill. When state and tribal hunters kill more bison through hunting, the Park Service can spend less money on consignment.

1 79. The Park Service has allowed some tribes to obtain more bison meat
2 through consignment than other tribes.

3 80. The tribes that receive less meat through consignment will naturally press
4 for more hunting because more hunting would give tribal members a better
5 opportunity to obtain more meat than they could obtain through consignment.

6 81. Because the Federal Agencies never make independent decisions and
7 instead defer absolutely to the IBMP committee with non-federal members, the
8 Federal Agencies have abdicated the Executive Branch's obligation to faithfully
9 execute the laws. The IBMP structure therefore violates the United States
10 Constitution, Article II, section 3, and the APA.

11
12 **PRAYER FOR RELIEF**

13 82. Neighbors request the following relief:

14 a. Hold unlawful and set aside the 2019 Operation Plan, and any future
15 operation plans.

16 b. Declare that the Bison Clause, 16 U.S.C. § 36, gives the Park Service
17 plenary authority to transfer bison to tribes regardless of Montana laws or orders
18 that could prohibit that.

19 c. Declare that the Bison Clause gives the Park Service plenary authority
20 over Yellowstone bison even outside Yellowstone National Park.

1 d. Declare that the Park Service violated the Bison Clause by arbitrarily and
2 capriciously implementing it through the 2019 Operation Plan.

3 e. Declare that the Forest Service has violated the Forest Service Organic
4 Act of 1897 and other statutory obligations by implementing the 2019 Operation
5 Plan arbitrarily and capriciously.

6 f. Declare that the Park Service and the Forest Service violated NEPA by
7 arbitrarily and capriciously failing to analyze the impacts of escalating bison
8 hunting in Beattie Gulch.

9 g. Declare the Park Service and the Forest Service violated NEPA by failing
10 to analyze all of the IBMP's impacts, and instead leaving to non-federal actors to
11 analyze aspects of major federal actions.

12 h. Declare that NEPA required the Park Service and the Forest Service to
13 issue a supplemental EIS.

14 i. Declare that the Agencies violated Article II, section 3, of the United
15 States Constitution by failing to independently evaluate decisions made by the
16 IBMP committee.

17 j. Permanently enjoin the Park Service and the Forest Service from
18 authorizing bison hunting on federal land in Beattie Gulch and within one mile of
19 the private homes, vacation cabins, and residences there.

1 k. Award attorney fees and costs in favor of Neighbors Against Bison
2 Slaughter and Ms. Lynn.

3 l. Any other and further relief as the Court concludes necessary or
4 appropriate.

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6 Dated June 10, 2020,

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