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**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF WYOMING**

CHRISTOPHER KETCHAM and STEPHANY)
SEAY,)
)
Plaintiffs,)
)
v.)
)
U.S. NATIONAL PARK SERVICE, an agency of)
the U.S. Department of the Interior, SALLY)
JEWELL, in her official capacity as Secretary of the)
U.S. Department of the Interior, JONATHAN B.)
JARVIS, in his official capacity as Director of the)
U.S. National Park Service,)
)
Defendants.)

Case No. 16cv17-S

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

"I love this land and the buffalo and will not part with it...These soldiers cut down my timber, they kill my buffalo and when I see that, my heart feels like bursting."

Satanta-Kiowa Chief

INTRODUCTION

Once reduced to only 23 individuals, Yellowstone National Park's bison population comprises the last wild, genetically pure, migratory bison that have occupied their habitat since prehistoric times. For the last century, Yellowstone National Park has prided itself on bringing wild bison back from the brink of extinction and providing a safe haven for these bison to freely roam in their natural habitat. This winter the National Park Service will slaughter nearly one in five of these bison. To ensure that the public and media cannot observe this, the National Park Service has closed off a seven-mile perimeter around the bison trap in which the bison are culled and shipped to slaughter.

Plaintiffs Christopher Ketcham and Stephany Seay bring this Complaint against Defendants U.S. National Park Service, an agency of the U.S. Department of the Interior, Sally Jewell, in her official capacity as Secretary of the U.S. Department of the Interior, and Jonathan B. Jarvis, in his official capacity as Director of the U.S. National Park Service, and allege as follows:

DESCRIPTION OF ACTION

1. In the 19th century, approximately 60 million bison roamed the western plains of the United States. Today, there are fewer 5,000 thousand genetically pure, migratory bison left, almost all of which live in Yellowstone National Park.
2. This winter, approximately 600 to 900, or about one in five, of these bison will be shipped to meat processing facilities for slaughter.¹

¹ *Yellowstone to Cull Near-Record Bison Population*, Yellowstone National Park (Jan. 13, 2016), <http://www.yellowstonepark.com/managing-bison-population/>.

3. Each year, since 2000, the National Park Service “manages” Yellowstone’s bison population by killing a significant portion of the bison that migrate to lower elevations in the winter. The Montana Fish, Wildlife and Parks agency issues hunting permits for tribal hunting rights reserved to the Nez Perce, Salish-Kootenai, Shoshone-Bannock, and Confederated Umatilla tribes. The National Park Service supplements the hunting by regular “culling,” which includes herding, trapping, and sorting the bison into pens prior to shipping them to slaughter.

4. The culling activities that take place prior to slaughter occur within the boundaries of Yellowstone National Park, on public land, and are overseen by public officials.

5. The culling activities are facilitated by public agencies and, therefore, are paid for by American citizens’ tax dollars.

6. Bison are held in the public trust and belong to the American people.

7. Because of the status of the bison as an American icon, and because the culling activities take place on public land, are conducted by public officials, and are paid for with public funds, the culling activities and the health, handling, and condition of the bison during such activities are matters of significant public interest.

8. For approximately six years after the National Park Service began culling the bison in 2000, the National Park Service allowed the public and media to closely observe and document the bison as they were herded, trapped, sorted, and shipped to slaughter.

9. The National Park Service has not provided Plaintiffs with any documentation that shows any occasion where a member of the public was injured while observing these activities, nor have Plaintiffs been able to find such documentation after a diligent search.

10. Additionally, the National Park Service has not provided Plaintiffs with any documentation that shows on any occasion where the public observation negatively impacted the bison or the efficacy of the culling activities.

11. Furthermore, the National Park Service never documented any occasion in which the public's and media's presence to observe the culling activities negatively impacted the bison.

12. Since 2006, the National Park Service has denied the public and the media access to observe and document the bison during the culling activities in violation of the First Amendment.

13. In 2015, the National Park Service announced plans to cull bison and Plaintiffs Stephany Seay and Chris Ketcham requested access to view the herding, trapping, and sorting of the bison. The National Park Service refused to allow the public and media to view any part of the culling activities out of an ostensible concern for public safety, the bison, and the efficacy of the slaughtering process.

14. When the National Park Service received a letter of intent to sue from the Wyoming American Civil Liberties Union it provided a "sterilized" tour that was conducted after the bison had been captured and sorted into pens. In other words, the tour was provided after the bison culling activities were concluded and the Plaintiffs, therefore, did not have an opportunity to view the herding, trapping, and/or sorting of the bison.

15. Plaintiffs bring this action for a declaratory judgment that Defendants' denial of reasonable public access to observe the bison culling activities in Yellowstone National Park violates the First Amendment of the U.S. Constitution, and an injunction prohibiting Defendants from denying such access to the Plaintiffs in the future.

JURISDICTION AND VENUE

16. Jurisdiction is proper under 28 U.S.C. § 1331 because Plaintiffs' claims arise under the First Amendment of the U.S. Constitution.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim occurred within the boundaries of Yellowstone National Park and 28 U.S.C. § 1391(e) because Defendants are officers, employees, and agencies of the United States. Venue is also proper pursuant to 28 U.S.C. § 131 because Plaintiffs' claims arise from activities that are conducted in Yellowstone National Park.

PARTIES

18. Plaintiff Christopher Ketcham is an award-winning freelance journalist who has published numerous articles on wildlife. For each article, Mr. Ketcham carefully selects an issue about which he is passionate. His principal interests lie in exposing governmental abuse of wildlife. Mr. Ketcham has an interest in viewing the culling of the Yellowstone bison because he believes the public has a right to know how the American bison, held in trust by the American people, are being treated, as well as how government funds are being spent to slaughter this iconic animal. Mr. Ketcham's articles can be found in numerous widely read publications, including VICE, Harper's, Vanity Fair, GQ, The Nation, and Salon. One of his most recent articles, published in VICE, discussed the National Park Service's closure of the bison culling activities in Yellowstone National Park to the public. The article explained how the National Park Service bars the viewing of these activities out of an ostensible concern for "the safety and welfare of the public, staff, and bison." <https://www.vice.com/read/witness-to-a-massacre-0000652-v22n5>.

19. On January 12, 2015, Mr. Ketcham emailed the Chief of Public Affairs of Yellowstone National Park, requesting to observe the management activities at the Stephens Creek Capture Facility to publish an article about bison management at Yellowstone National Park. He was unable to do so because when the National Park Service announced culling activities on January 15, 2015, no public access was granted to view such activities.

20. Only after Mr. Ketcham filed a letter on February 7, 2015 providing the National Park Service with notice of his intent to sue, did the Service provide a tour to members of the media and the public on February 18, 2015. The tour was only given after bison were sorted and confined into holding pens. Thus, the tour did not provide access to view the herding, trapping, sorting, or shipping activities.

21. Mr. Ketcham would like to continue to publish articles to inform the public regarding the controversial Interagency Bison Management Plan (IBMP), he is unable to do so because he is continuously denied access to view the bison culling activities.²

22. Mr. Ketchum's newsgathering activities are hindered by not being able to view the bison culling activities and the government's treatment of the bison during the activities.

23. Plaintiff Stephany Seay is an individual who resides in Moiese, Montana. This will be Ms. Seay's thirteenth season visiting Yellowstone National Park on a regular, if not daily, basis to observe and enjoy the last population of wild, genetically pure, migratory bison. Ms. Seay is particularly interested in this herd because they are a stark reminder of this country's prehistoric past, when sixty million bison roamed the western plains, as well as in recent history, when the bison were almost driven to extinction.

² Interagency Bison Management Plan, <http://ibmp.info/adaptivemgmt.php> (last visited Jan. 25, 2016).

24. Ms. Seay has been observing and documenting the Yellowstone bison for twelve years. Each year since 2004, from late fall through early spring, she visits the Yellowstone National Park every day to monitor the bison migration and document the IBMP in practice.

25. Ms. Seay also documents actions made against the bison and subsequently shares footage, photos, and first-hand experiences with bison advocates around the world, the media, the general public, and decision-makers. Ms. Seay believes it is important to educate the public about the management of the Yellowstone bison and help secure their right to roam in their native habitat.

26. Because of her aesthetic and emotional connection to the Yellowstone bison, Ms. Seay has a specific and particularized interest in viewing the culling activities of the bison.

27. Ms. Seay's enjoyment and documentation of the herd is drastically hindered by not being able to view the government's treatment of the bison during the culling activities. Ms. Seay is concerned that government officials seriously harm the bison when they use whips to herd them, shove them around with a machine called "the Silencer," and crowd them into tight pens before being shipped to slaughter. Ms. Seay believes it is important for the public to see and to be informed about the treatment of the bison, as this information will significantly contribute to the public debate over the IBMP.



28. Each year, when the National Park Service announces its plans to cull bison in Yellowstone National Park, Ms. Seay makes regular requests for access to view the culling activities.

29. Since 2006, the National Park Service has denied Ms. Seay access to view the culling activities, including the herding, trapping, sorting, and shipping of bison.

30. Each year, when the National Park Service denies Ms. Seay access to view the bison culling activities, she goes each day to the closest possible publicly accessible road. This road is over a mile away, and from this distance, she cannot see the culling activities.

31. In 2011, after requests from the public, including Ms. Seay, the National Park Service provided a one-day tour of the Stephens Creek Capture Facility to members of the public, after the bison were sorted and contained in pens. The National Park Service denied access to view any of the herding, trapping, sorting, or shipping activities.

32. Defendant U.S. National Park Service is an agency within the U.S. Department of the Interior, entrusted with the management and protection of national parks, including Yellowstone National Park. The purpose of the National Park Service is to preserve and protect national parks and its wildlife occupants. The National Park Service executed its authority as conservator of Yellowstone when it denied Plaintiffs access to observe bison culling activities and has indicated it will continue to deny access. An injunction would provide Plaintiffs relief by requiring the National Park Service to use its authority as conservator to permit the public and media to observe the bison culling activities.

33. Defendant Sally Jewell is the U.S. Secretary of the Department of Interior. Ms. Jewell has the primary authority of the Department and is charged with the supervision of the management of the National Park Service. Ms. Jewell harmed Plaintiffs by permitting the National Park Service to continually deny the public and media access to observe the bison culling activities in Yellowstone National Park. In her capacity as Secretary, Ms. Jewell has the authority to redress Plaintiffs' harm by implementing a policy that grants public and media access to observe the bison culling activities.

34. Defendant Jonathan B. Jarvis is the Director of the U.S. National Park Service, which is a program within the U.S. Department of Interior. As Director, Mr. Jarvis is responsible for managing the National Park Service and has the delegated power under the Department of Interior to determine National Park policy. Mr. Jarvis harmed Plaintiffs by continually denying access to observe the bison culling activities in Yellowstone National Park. Under his authority as Director, Mr. Jarvis has the authority to redress Plaintiffs' harm by implementing a National Park Service policy that grants public and media access to observe the bison culling activities.

FACTUAL BACKGROUND

The Culling and Killing of the Bison

35. The Yellowstone bison are the last of their kind; they are the only remaining link to herds that roamed this country for more than 11,000 years. Bison are the iconic and historical symbol of the American West. Indeed, both the National Park Service and the U.S. Department of Interior include the image of a bison in their logo. The bison is the official state mammal of Oklahoma, Kansas, and Wyoming, and it figures on the state seal of Indiana. Eighteen states have a town or city named Buffalo. Currently the National Bison Legacy Act, which would adopt the North American bison as the national mammal of the United States, is pending in Congress.³ Additionally, there is a petition pending with the U.S. Fish and Wildlife Service to list the Yellowstone Bison as threatened or endangered.⁴ As such, killing hundreds of these bison every year, when there are only a few thousand left, has been a major point of public controversy and debate for over two decades.⁵ Indeed, it has been the subject of ongoing editorial debate in the news media.

36. In 1995, the Montana Department of Livestock (DOL) sued the National Park Service to implement the control of bison that stray out of Yellowstone National Park.⁶

³ Vote Bison, <http://www.votebison.org/bill>; https://www.opencongress.org/bill/hr2908-114/actions_votes (last visited Nov. 13, 2015).

⁴ Western Watersheds Project and Buffalo Field Campaign, *Petition to List the Yellowstone Bison as Threatened or Endangered Under the Endangered Species Act*, (Nov. 13, 2014), <http://www.buffalofieldcampaign.org/ESAPetition20141113.pdf>.

⁵ Before the National Park Service was required to carry out the bison culling, the Montana Department of Livestock culled the bison.

⁶ U.S. DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE & U.S. DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE & ANIMAL & PLANT HEALTH INSPECTION SERVICE, RECORD OF DECISION FOR FINAL ENVIRONMENTAL IMPACT STATEMENT AND BISON MANAGEMENT PLAN FOR THE STATE OF MONTANA AND YELLOWSTONE NATIONAL PARK 4 (Dec. 20, 2000), <http://www.nps.gov/yell/learn/management/upload/yellbisonrod.pdf>.

37. The lawsuit developed over alleged concerns regarding the spread of a disease called brucellosis from bison to cattle. However, there was also underlying pressure from cattle ranchers to keep the bison in Yellowstone National Park because of concern that bison would compete with the ranchers' cows for grass on the federal land surrounding the park.⁷

38. In 2000, pursuant to a court mediated settlement, the National Park Service established the Interim Bison Management Plan (IBMP), which is still in effect today.⁸

39. The IBMP currently requires the National Park Service to keep the Yellowstone bison population at approximately 3,000 individuals.⁹ When the plan was adopted, the DOL explained that it was necessary in order to "manage the bison and brucellosis in and around Yellowstone National Park." Specifically, the plan seeks to "reduce the risk of brucellosis transmission from bison to cattle" and "maintain Montana's brucellosis free status for domestic cattle."¹⁰

40. However, it is extremely difficult to research the spread of brucellosis in the wild and field tests are often inaccurate. As such, it is uncertain if bison spread brucellosis to cattle in the wild.¹¹

⁷ Laura Zuckerman, *Yellowstone Proposes Killing Famed Herd*, REUTERS (Nov. 18, 2015, 7:21 PM EST), <http://www.reuters.com/article/yellowstone-bison-idUSL1N13E00V20151119> ("Ranchers also worry about bison overgrazing lands needed to feed livestock.").

⁸ Interagency Bison Management Plan, <http://ibmp.info/adaptivemgmt.php> (last visited Jan. 25, 2016).

⁹ U.S. DEPARTMENT OF INTERIOR, NATIONAL PARK SERVICE & U.S. DEPARTMENT OF AGRICULTURE, U.S. FOREST SERVICE & ANIMAL & PLANT HEALTH INSPECTION SERVICE, RECORD OF DECISION FOR FINAL ENVIRONMENTAL IMPACT STATEMENT AND BISON MANAGEMENT PLAN FOR THE STATE OF MONTANA AND YELLOWSTONE NATIONAL PARK 4 (Dec. 20, 2000), <http://www.nps.gov/yell/learn/management/upload/yellbisonrod.pdf>.

¹⁰ Interagency Bison Management Plan, <http://www.ibmp.info/> (last visited Jan. 23, 2016).

¹¹ National Park Service, Frequently Asked Questions: Bison Management, <http://www.nps.gov/yell/learn/nature/bisonmngntfaq.htm> (last visited Jan. 25, 2016).

41. There has never been a documented transmission of brucellosis from wild bison to cattle.¹² In fact, the only documented possible transmission from bison to cattle occurred in a lab.¹³ The lab test comprised of feeding infected grass to a cow. No bison were in fact involved in the lab test.

42. Notwithstanding Defendants' putative interests, under the IBMP the bison are shipped to slaughter regardless of whether they are infected with brucellosis.

43. In 1996, several years before the IBMP went into effect, the Superintendent of Yellowstone described the slaughter of the bison as a "national tragedy."¹⁴ He explained that Yellowstone was participating "in something that is totally unpalatable to the American people, and we are not convinced that science justifies."¹⁵

44. Currently, the National Park Service website states, "It's time to craft a new [bison management] plan and find different ways for the public to get involved."¹⁶

45. The National Park Service spends approximately \$3.3 million dollars a year to have the Yellowstone bison herded, trapped, sorted, tested, and shipped to slaughter.

¹² Amanda Linder, *What Our Obsession With Hamburgers Has To Do With The Planned Cull of 900 Bison*, ONE GREEN PLANET (Jan. 6, 2016), <http://www.onegreenplanet.org/news/what-our-obsession-with-hamburgers-has-to-do-with-cull-of-yellowstone-bison/> ("There is not a single recorded instance of brucellosis transmissions from bison to cattle disease.").

¹³ U.S. DEPARTMENT OF AGRICULTURE, ANIMAL & PLANT HEALTH INSPECTION SERVICE, BRUCELLOSIS AND YELLOWSTONE BISON, https://www.aphis.usda.gov/animal_health/animal_dis_spec/cattle/downloads/cattle-bison.pdf (last visited Nov. 13, 2015).

¹⁴ RONALD D. BRUNNER, *FINDING COMMON GROUND: GOVERNANCE AND NATURAL RESOURCES IN THE AMERICAN WEST 2* (2002).

¹⁵ *Id.*

¹⁶ National Park Service, *Bison Management*, <http://www.nps.gov/yell/learn/nature/bisonmgnt.htm> (last visited Jan. 25, 2016).

46. So far, it is estimated that taxpayers have spent over \$50 million because of the fear that brucellosis from bison will spread to cattle, despite the fact that it has never been documented to occur outside of a single controlled laboratory setting.

47. When the National Park Service was questioned about brucellosis it admitted that “[t]here is recognition by both disease regulators and wildlife managers that the risk of brucellosis transmission from bison to cattle is *minute*.”¹⁷

48. Indeed, the National Park Service website currently states, “there have been no incidents of Yellowstone bison infecting cattle with brucellosis, while more than 20 incidents of elk infecting cattle have occurred in the greater Yellowstone area since 2002.”¹⁸

49. Yet, Yellowstone elk are permitted to roam freely onto federal land outside of the park and are not managed in the same manner as the bison.¹⁹

50. There is considerable public concern that the IBMP’s brucellosis justification is a tool to keep the bison away from federal grazing land shared by the cattle ranchers. Indeed, their cows will have to compete with bison for grass if the bison are permitted to migrate to lower elevations.

51. The bison culling activities undertaken by the National Park Service, the U.S. Forest Service, and the Animal Plant Health Inspection Service consists of hazing the bison with horses and trucks, herding them into a trap, corralling and tearing apart family groups by sorting them into different pens, isolating individual bison and immobilizing them by restraining their

¹⁷ Chris Ketcham, *The Government Won't let me Watch Them So I'm Suing*, VICE (May 21, 2015), <http://www.vice.com/read/witness-to-a-massacre-0000652-v22n5> (emphasis added).

¹⁸ National Park Service, *Frequently Asked Questions: Bison Management*, <http://www.nps.gov/yell/learn/nature/bisonmgntfaq.htm> (last visited Jan. 25, 2016).

¹⁹ *Id.*

necks between metal bars, using a machine called “the Silencer” to hold them in place by the neck, occasionally testing the bison for disease, vaccinating them with an unapproved drug to prevent the spread of brucellosis, and packing them onto trucks to be transported to slaughterhouses.

52. As a result of the stress imposed on them by this process, the bison are known to gore each other, which occurs very rarely in the wild.²⁰

53. In Yellowstone National Park, the bison culling activities take place in and around the Stephens Creek Capture Facility, located on the north side of the Park, near Gardiner, Montana.

54. The Stephens Creek Capture Facility, where bison are held before being shipped to slaughter, contains catwalks above the holding pens, which provide a place for people to safely observe the culling activities at close range without interfering in any way with the culling activities.

²⁰ Buffalo Field Campaign has video from the last time they were allowed to view and document culling activities at the Stephens Creek Capture Facility. This video depicts buffalo slamming into and goring each other while being herded into the capture pen; it also depicts buffalo panicking while being held in “the Silencer” for testing. Hazing Operations & The Stephens Creek Capture Facility (2004), available at <http://www.buffalofieldcampaign.org/media/bisonvideogallery.html>. Additionally, Temple Grandin, world-famous consultant to the livestock industry on animal behavior, has written that even *domesticated* bison “may react very violently when they are moved through a handling facility. Bison producers report that even though they try to handle their animals carefully, horns are often broken, and bison gore each other in squeeze chutes. Frightened bison in a small pen may attack both people and each other.” Temple Grandin, *Safe Handling of Large Animals*, 14 OCCUPATIONAL MEDICINE 2 (June 1999), available at <http://www.grandin.com/references/safe.html>; see also J. Lanier, T. Grandin, A. Chaffin, & T. Chaffin, *Training American Bison*, BISON WORLD 94 (1999), available at <http://bisoncentre.com/resources/resource-library/advanced-bison-information-producers/raising-orphans/training-american-bison-bison-bison-calves/> (“Injuries and death during handling are more frequent in bison than in cattle, which have been bred for calm temperaments. Bison often break off a horn cap, gore one another, attempt to jump out or smash through a holding pen, and even die due to excessive stress caused by handling.”).



55. Upon Plaintiffs' information and belief, as part of the culling process, bison have been shipped to White's Wholesale Meats for slaughter.

56. White's Wholesale Meats is a meat processing and packing plant located in Ronan, Montana. That facility received a Notice of Intended Enforcement from the U.S. Department of Agriculture on April 29, 2014 for failing to humanely handle animals during slaughter, as required by federal regulations.²¹

57. To Plaintiffs' information and belief, the bison have also been shipped to slaughterhouses in Big Timber, Montana.

58. The National Park Service plans for bison culling activities in Yellowstone National Park to occur from winter to spring each year, with the exact number of bison culled

²¹ U.S. Department of Agriculture, Food Safety and Inspection Service, Notice of Suspension (Apr. 21, 2015), available at <http://www.fsis.usda.gov/wps/wcm/connect/84fba339-93c1-48aa-bcd2-fc6776a8f3e7/M7717-Suspension-042115.pdf?MOD=AJPERES>.

and the time-frame dependent on the number of bison killed by hunting, the weather, and the migration patterns of the bison.

59. Until there is a change in the IBMP, public officials will continue the culling activities every winter in Yellowstone.

60. The Defendants have announced plans to begin culling again this winter as early as February 15, 2016. The National Park Service anticipates that another 600 to 900 bison will be captured at the Stephens Creek Capture Facility and subsequently shipped to slaughterhouses without regard for age, sex, or disease status.²²

Past Access

61. Upon information and belief, Jim Peaco, Yellowstone National Park's documentarian, previously was allowed to document bison culling activities at the Stephens Creek Capture Facility.

62. From the late 1990s until 2006, Defendants regularly allowed the public and media to view the herding, trapping, sorting, and shipping of bison from the catwalks over the pens within the Stephens Creek Capture Facility.

63. When Defendants allowed such access, the public and media were able to safely observe these activities with the naked eye.

64. In fact, the public and media were permitted to stand on the catwalks above the Stephens Creek Capture Facility and view the bison culling activities.

²² National Park Service, Frequently Asked Questions: Bison Management, <http://www.nps.gov/yell/learn/nature/bisonmgntfaq.htm> (last visited Jan. 25, 2015).

65. Plaintiffs are not aware of anyone being injured when viewing the bison culling activities.

66. Furthermore, Plaintiffs are unaware of any documentation that the presence of the public disturbed the bison, made the culling activities more difficult to carry out, or in any way interfered with the culling activities.

67. There is no documentation that the Plaintiffs' viewing of the bison culling activities ever impeded the National Park Service's ability to conduct the herding, sorting or shipping of the bison.

Denial of Access

68. Upon information and belief, there have been at least five culls since 2006. Each year, the National Park Service plans a cull and sets goals for the number of bison to be culled, but culling activities depend on the number of bison killed by hunters and the migration patterns of the herd.

69. Upon information and belief, after Dan Wenk took office as Superintendent of Yellowstone National Park in 2011, Jim Peaco, Yellowstone National Park's documentarian, was no longer allowed to document bison culling activities at the Stephens Creek Capture Facility.

70. In 2011, after repeated requests from the public, the National Park Service provided a "sterilized" tour that was conducted after bison were sorted into pens. In other words, the tour that was provided took place only when the bison culling activities were no longer taking place. Plaintiffs, therefore, did not have an opportunity to view the herding, trapping, and sorting of the bison.

71. In 2013, the National Park Service announced plans to cull bison and Plaintiff Stephany Seay requested access to view the herding, trapping, and sorting of the bison. However,

upon information and belief, because 250 bison were killed by hunters that year²³ and the bison left the management area, no cull was conducted.

72. In 2014, the National Park Service announced plans to cull bison and Plaintiff Stephany Seay requested access to view the herding, trapping, and sorting of the bison. The National Park Service refused to allow the public and the media to view any part of the culling activities during the management season. The National Park Service culled and shipped to slaughter 318 bison.²⁴

73. Also in 2014, the Park Service also changed its information-sharing protocol. While the Park Service had previously provided daily updates on the number of bison it had captured and shipped to slaughter, it determined to only offer updates every other week.

74. Now, the Park Service provides no updates and only releases the final number of bison killed after culling activities are complete.

75. On January 12, 2015, Plaintiffs, through their attorneys, contacted Al Nash, the Park's Director of Public Affairs, to request information as to why they could not view the bison culling activities.

76. Al Nash responded that the bison culling activities had not yet started in the Stephens Creek area for the year and that he would notify Plaintiffs if the Park Service offered a media tour.

²³ Bison Harvest Data, Winter 2005-2012, *available at* <http://www.ibmp.info/Library/HarvestPlans/Bison%20Harvest%20Data%202005%20-%202013.pdf>.

²⁴ 2014 Annual Report of the Interagency Bison Management Plan, *available at* http://www.ibmp.info/Library/AnnualReports/2014_IBMP_AnnualReport_final.pdf.

77. Instead of offering a media tour, after the culling activities began, on or around January 15, 2015, Mr. Nash informed the public and media that they would not be allowed access or view the bison culling activities.

78. When the bison culling activity began, on or around January 15, 2015, Park Service officials closed off access to the Stephens Creek Capture Facility. The area of closure is approximately 3.5 miles long, with a 7-mile perimeter around the facility. Park Service officials posted signs around the closure area prohibiting the public from entering. *See* Appendix A.

79. A public road runs along the perimeter of the closure area. The distance from this public road is over a mile away from the Stephens Creek Capture Facility. Plaintiffs tried to view the culling activity from this road, but the road is too far away for Plaintiffs to observe the bison culling activities.

80. Plaintiffs have also tried to view the bison culling activities from Highway 89 at the McConnell river access, which is over a mile from the Stephens Creek Capture Facility and outside of the closure area. Plaintiffs must use a spotting scope to even see the outer pens.

81. Further, the Stephens Creek Capture Facility is located at the base of a mountain, and the contours of this landscape contribute to the obstruction of the public and media's view.

82. Although Defendants refuse to provide access to bison culling activities in Stephens Creek, the U.S. Fish and Wildlife Service conducts similar culling activities in the National Bison Range, and the public is invited to view these activities from the catwalks above the pens and chutes.²⁵

²⁵ Vince Devlin, *Bison Roundup Gives Hundreds of Kids Up-Close View of Wild Animals*, MISSOULIAN (Oct. 5, 2015), http://missoulian.com/news/local/bison-roundup-gives-hundreds-of-kids-up-close-view-of/article_f0604207-bfa9-585d-a31a-853a90d72273.html.

83. Moreover, in the past, the Montana Department of Livestock has set up a temporary trap in the Horse Butte Peninsula of the Gallatin National Forest to round-up bison, and permitted the media to view the activity from a distance of roughly twenty-five meters.²⁶

84. In contrast, in this case, Plaintiffs lack any ability to observe and document the culling of the Yellowstone bison by the National Park Service on National Park land. As such, the Plaintiffs and other members of the public are unable to learn about the implementation of the IBMP and, therefore, unable to meaningfully contribute to public discourse about it.

Minimal Provision of Access in Response to Demand

85. Because Defendants denied access to the bison culling activities, Plaintiffs sent the National Park Service a letter on February 6, 2015, requesting access to the bison culling activity—access that would allow Plaintiffs to observe the herding, trapping, sorting, and shipping activities with the naked eye.

86. On February 17, 2015, Steven F. Iobst, Acting Superintendent of Yellowstone National Park, responded to Plaintiffs' letter by stating that the Park Service would offer "planned and escorted media tours."

87. Pursuant to this letter, the Park Service conducted a sterilized media tour on February 18, 2015, which Plaintiffs attended.

88. During the tour, Park Service officials allowed members of the public to enter the facility and access a portion of the catwalks in the Stephens Creek Capture Facility.

89. However, tour members were unable to view any bison culling activities during the tour.

²⁶ See video of bison capture at the Horse Butte facility. Buffalo Field Campaign, Horse Butte Capture Facility (2005), <http://www.buffalofieldcampaign.org/media/bisonvideogallery.html#yellowstonebuffalo>.

90. Instead, the tour occurred when bison were already sorted into pens and no herding, trapping, sorting, or shipping was taking place.

91. Plaintiffs observed evidence that the bison culling activities had taken place earlier in the day. Additionally, Plaintiffs were given the impression that the activities would continue after the tour and that they, therefore, would be denied access to observe.

92. Plaintiffs believe that Defendants strategically scheduled the tour at a time when no bison culling activities were occurring. The access provided was, accordingly, a sham.

93. Without allowing the public or media to view any of the ongoing bison culling activities, the tour did not provide Plaintiffs with meaningful access. Therefore, the denial of access to the culling activities denied Plaintiffs any opportunity to observe and document the bison culling activities to inform the public.

94. In anticipation of Defendants' announced plans to again engage in culling activities in winter 2016, Plaintiffs, through their counsel, have reached out to determine whether the Defendants might provide reasonable public and media access for observation of these activities, as they did prior to 2006. However, no agreement for meaningful access was reached.

CLAIM FOR RELIEF

First Amendment Right of Access to National Public Park

95. Plaintiffs incorporate by reference paragraphs 1 through 95 as though the same were set forth fully herein.

96. Plaintiffs have a continuing right of access under the First Amendment of the U.S. Constitution to view the bison culling activities that occur on public land, including Yellowstone National Park.

97. The public has a strong interest in accessing information about the operation of our government, including how it uses federal funds and other resources in National Parks.

98. Additionally, the public has a strong interest in knowing if the government is treating wildlife humanely under its stewardship.

99. Allowing the public to view these activities plays a significant positive role in the functioning of the process because it informs the public of how the bison are captured and slaughtered and contributes to the public discourse over the controversial IBMP.

100. Yellowstone National Park is a public forum under Federal environmental laws and regulations. Federal law repeatedly recognizes the importance of public access to public land, especially public parks.

101. Defendants have repeatedly denied Plaintiffs the right of access to observe important activities on public property in Yellowstone National Park.

102. Plaintiffs have observed hikers and tour groups in the 7-mile restricted perimeter of the trap remain undisturbed, but Defendants have singled-out Plaintiffs on multiple occasions and threatened them with arrest when they enter the same area.

103. Bison culling activities, in general, and bison culling activities at the Stephens Creek Capture Facility, have traditionally been open to the press and to the general public.

104. Defendants allowed the public and media access to the bison culling activities in the Stephens Creek Capture Facility until 2006, and the U.S. Fish and Wildlife Service (USFWS) currently allows access to bison culling activities. The USFWS conducts similar culling activities in the National Bison Range, and the public and media are invited to view these activities from the catwalks above the pens and chutes. In the past, the Montana Department of Livestock set up a temporary trap in the Horse Butte Peninsula of the Gallatin National Forest to round-up bison and also permitted the public and media to view the activities.

105. For approximately the past ten years, since 2006, the National Park Service has denied the public and the media access to view treatment of the bison during the herding, trapping, sorting, and shipping activities.

106. Defendants have unjustifiably denied access to the bison culling activity in the Stephens Creek Capture Facility because they have not provided a reason for closure that is narrowly tailored to serve the government's interests.

107. Access to the bison culling activities has never posed a safety threat because the catwalks provide a safe viewing point for the public. Therefore, the right of access must be observed. Moreover, other government-operated culling facilities have found a way to balance safety with public access.

108. Defendants did not provide access to culling activities in their February 18, 2015 media tour, because the tour did not allow the public to view any herding, trapping, sorting, or shipping of the bison.

109. Instead, the tour allowed the public to view the bison in pens in between culling activities.

110. Defendants have not scheduled or agreed to any future access opportunities for the public to view any part of the bison culling activities.

111. In fact, Defendants have indicated that they will continue to deny public access to future culls, which will continue to occur every winter in accordance with the IBMP.

112. Defendants' denial of access to view the bison culling activities violates Plaintiffs' right of access to government activities, as provided under the First Amendment of the U.S. Constitution.

113. Based on the National Park Service's conduct displayed during prior culling activities—which prohibited Plaintiffs' and the public's observation of the Defendants' handling of the bison, from the point of their capture to their ultimate slaughter—and based on the Defendants' notices concerning the closure of the Stephens Creek Capture facility, Plaintiffs are informed and believe that the Defendants' conduct at Stephens Creek would cause irreparable harm to Plaintiffs and the public by impermissibly restricting and precluding them from observing the Defendants' activities in key places, times, events and situations.

114. Moreover, contrary to fundamental notions protected by the First Amendment of the U.S. Constitution, Defendants' unduly restricting or altogether prohibiting Plaintiffs and other media from observing, monitoring, and reporting to the public how Defendants conduct the bison culling activities constitutes impermissible prior restraints and censorship of Plaintiffs' and the citizenry's right to know, and of their rights to a free press, free speech, and such freedoms nurturing expression and opinion.

115. Plaintiffs have no adequate remedy at law, and Plaintiffs will suffer irreparable harm from being denied meaningful access to observe the bison culling activities in Yellowstone National Park.

116. For the reasons stated above, a controversy exists between Plaintiffs and Defendants arising from Defendants' deprivation of access to observe the bison culling activities in Yellowstone National Park.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs Christopher Ketcham and Stephany Seay pray for judgment entered in their favor and against Defendants as follows:

1. Direct that Defendants provide Plaintiffs with direct and meaningful access to observe bison culling activities that occur in Yellowstone National Park, both immediately prior to and during all future culls, including:

- a. Access to view and/or record all herding, trapping, sorting, and shipping activities from a distance that allows observation with the naked eye;
- b. Access from catwalks to all herding, trapping, sorting, shipping, and, to the extent observable, slaughter activities;

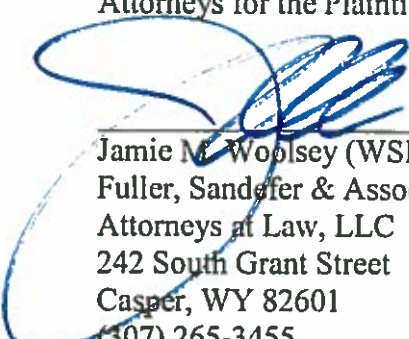
2. Declare that Plaintiffs are entitled to directly observe and report on the bison culling activities in Yellowstone National Park, and that they are entitled to reasonable access to observe the herding, trapping, sorting, and shipping activities during all future culls, that such access must occur regularly, and that it must be of such character that Plaintiffs are able to meaningfully observe the bison and bison culling activities;

3. Award Plaintiffs their costs of suit and expenses, including expert witnesses and consultant fees, and reasonable attorney fees; and

4. Award Plaintiffs any further relief that this Court deems just and proper.

DATED and SIGNED this 21st day of January, 2016.

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APPENDIX A

