

June 20, 2019

Attn: Natasha Kline, Forest Biologist

RE: HRWA Bison Management Improvements Project

800 South Sixth Street

Williams, Arizona 86046

Sent via email to: comments-southwestern-kaibab-north-kaibab@fs.fed.us and nkline@fs.fed.us

RE: House Rock Wildlife Area Bison Management Improvements Project #54296

Dear Ms. Kline:

We are writing on behalf of the following organizations, all of whom have been engaged in management of the North Kaibab District of the Kaibab National Forest (KNF) and engaged in particular with the management of bison and bison-hybrids on the North Kaibab: Sierra Club - Grand Canyon (Arizona) Chapter, Wildlands Network, Wild Arizona, Public Employees for Environmental Responsibility, and Center for Biological Diversity. Now that the Arizona Game and Fish Department has imported bison to the House Rock Wildlife Area (HRWA), we are extremely concerned that mistakes of the past will be repeated.

Previous mismanagement at HRWA, including failure to maintain fencing and inability to round up escaped animals, has resulted in a stray population of bison-hybrids on the North Kaibab and in Grand Canyon National Park that numbers in the hundreds, with possibly more than 1,000 stray animals on the landscape ("Stray animal" as defined in ARS 3-1401). Damage from these animals is ubiquitous across the Plateau and extending south to Powell Plateau, manifesting as denuded meadow vegetation, abundant manure in and surrounding water sources, and damaged cultural resources.

Before even beginning to round up the stray bison-hybrids, the Arizona Game and Fish Department is now importing new animals to HRWA, evidently with the goal of hunting (Scoping letter dated May 21, 2019, p.1) and eventually releasing these animals from HRWA (Table of the Arizona Game and Fish Department's (AGFD) requests for House Rock Wildlife Area (HRWA) travel and access needs, *in* 20190521-HRWA_CE_Justifications, dated May 20, 2019, p.1)

This urgent request from the AGFD demonstrates that the AGFD hurriedly brought these large, powerful, and wide-ranging animals onto HRWA when this agency was completely unprepared to contain and keep them, failing to learn from past mistakes. Corrals are "dilapidated" (House Rock Wildlife Area Bison Management Improvements Project Proposed Action, pp. 1 and 3). AGFD should have known what would be required and that bison are hard to contain, and prepared adequately before these needs became too urgent to wait for a full environmental assessment in the form of an Environmental Assessment or Environmental Impact Statement. Further, environmental studies should have been performed before the animals were ever imported, giving a hard look at the full cost and risk associated with bringing bison to this fragile landscape and the cumulative impacts with the bison-hybrids already in the area, to determine whether bison should have been brought to these public lands in the first place. Instead, US Forest Service (USFS) plans to issue a Categorical Exclusion for the current actions and do more analysis for future actions, creating a piecemeal approach that fails to examine cumulative impacts. USFS should be analyzing the impacts of these actions in conjunction with the impact of bison-hybrids on the landscape because by authorizing actions to keep the newly imported

animals, USFS is losing HRWA as a place to move bison-hybrids from the Kaibab Plateau. This compounds the difficulty of managing the bison-hybrid strays.

We also disagree with the following statement:

“Authorizing this proposal would also help the KNF meet Forest Plan direction for bison, a desired introduced wildlife species. The Plan specifies that bison should be concentrated within the designated HRWA, and that herd size should be in balance with ecological conditions.” (House Rock Wildlife Area Bison Management Improvements Project Proposed Action, p. 1)

The animals to which the KNF Forest Plan was referring were the stray bison-hybrids, which were supposed to be moved to HRWA to stop the damage that they were doing on the Kaibab Plateau. Now that the area is occupied by imported bison, it becomes harder to round up and keep the stray bison-hybrids. **If AGFD is abandoning plans to round up and contain bison-hybrids on HRWA, this should be seen as AGFD rescinding all claim of ownership of the stray bison-hybrids and this should be put in writing as part of the final authorization for this CE.**

It is obvious that AGFD has no intention of recovering the stray animals and KNF can now proceed with removing them, as they are fully authorized to do under federal and state law (see below). The herd size is *not* “in balance with ecological conditions” (House Rock Wildlife Area Bison Management Improvements Project Proposed Action, p. 1) if KNF is including stray bison-hybrids in its proclamation that keeping imported bison at HRWA brings the KNF closer to meeting Forest Plan direction. Quite the opposite, this makes it harder to meet Plan direction because of the loss of HRWA for keeping and processing bison-hybrids. The animals were deemed as “excess for their Forest Service grazing lands” by the mid-1940s (AGFD 2015). In its explanation of the history of bison in northern Arizona, AGFD elucidated as to why bison management will never be a profitable, or even sustainable, endeavor for the State of Arizona: “The herds at House Rock and Raymond Ranch wildlife areas remained, however, and the Department set out to manage these herds on a sustained basis. A economic profit [sic] proved elusive, however, as it was impossible to sustain sufficient breeding stock without damaging the range,” (AGFD 2015, p.145).

Further, the idea that “site fidelity” will be accomplished in three years, allowing AGFD to release these bison from HRWA, is completely ignoring the repeated lessons of history (House Rock Wildlife Area Bison Management Improvements Project Proposed Action, pp. 1). Under no conditions should KNF authorize the release of any bison or bison-hybrids from HRWA at any time in the future. Bison-hybrids previously escaped from HRWA and established a population on the Kaibab Plateau; although these animals came from HRWA they exhibited a lack of “site fidelity.” Why would such a thing work in future? Also, it is extremely unlikely that bison-hybrids will be removed from the Kaibab Plateau within three years, leading to an exacerbated problem where imported bison breed with bison-hybrids and their offspring add to the hybrid population, diminishing the potential of breeding bison without cattle genes in the future.

Cattle genes cannot be bred out of the bison hybrid herd on the Kaibab Plateau; the herd has a significant level of cattle genes compared to 11 bison populations in the U.S., with hybridization levels that are an order of magnitude larger than any of the other federal herds (Halbert 2003, Halbert and Derr 2007, as cited in Larson et al. 2009). Hedrick (2010) reports that the House

Rock herd has 97.5 percent cattle mtDNA and 1.9 percent autosomal ancestry, placing it as one of the top two out of 22 herds studied for percent of cattle ancestry. Bison bulls were bred with domestic cattle, and almost no fertile males resulted from the first generation of mating. As a result, mtDNA carries through on X chromosomes and cannot be bred out of the herd. While the House Rock herd showed 97.5 percent cattle mtDNA, the average for the 22 herds is 13.9 percent mtDNA and 0.6 percent autosomal cattle ancestry. Any offspring between “pure” bison and the bison-hybrids on the Kaibab Plateau will retain cattle genes.

Legal Framework

USFS has authority to manage stray bison-hybrids under both state and federal law. Authorizing this Proposed Action should act to relinquish any claim on stray bison-hybrids held by AGFD.

Under federal law, USFS maintains authority to manage the bison on the North Kaibab. The following, excerpted from the National Park Service’s Briefing Statement on the issue of “Clarification of NPS authority to regulate and manage wildlife on Park lands,” regarding Rocky Mountain National Park, identifies the hierarchy of authorities that designate this power to NPS; similar authority should also be applied to USFS:

Property Clause of the U.S. Constitution (Article IV, Section 3, Clause 2) states that “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”

Additional support for federal authority over wildlife on federal property comes from case law.

In 1928, *Hunt v. United States* confirmed that the federal government had the right to protect federal lands from damage by wildlife.

In the 1969 case *New Mexico State Game Commission v. Udall*, the court held that the Secretary has the authority to kill deer to protect a park property in the future, and that damage need not have occurred in order to take such action.

In 1976, *Kleppe v. New Mexico*, the court held that the federal government has the right to manage wildlife on federal public land under the Property and the Supremacy clauses of the U.S. Constitution, and that this right was not limited solely to property damage as interpreted in *Hunt v. United States*. (This is the strongest case law upholding federal rights over wildlife on federal public land).

In 1995, a tort claim against the National Park Service for the value of cattle shot and killed at Bandelier National Monument by park staff was denied under the Federal Tort Claims Act. The claim by the New Mexico Livestock Board alleged that the National Park Service should compensate the Board for the value of the cattle since they were strays. The DOI Office of the Solicitor denied the case on the grounds that the National Environmental Policy Act (NEPA) process had been correctly applied, and that several laws including the Organic Act and *New Mexico State Game Commission v. Udall* upheld Bandelier’s actions. (excerpted from NPS Briefing Statement, date unknown)

Arizona law does not attempt to usurp this authority from USFS. Under Arizona law, these

animals are not considered “Wildlife,” but instead are defined as “Stray” animals. ARS 3-1401 defines a “stray animal”:

"Stray animal" as used in this article means livestock, bison or raptures whose owner is unknown or cannot be located, or any such animal whose owner is known but permits the animal to roam at large on the streets, alleys, roads, range or premises of another without permission, except that this section does not apply to livestock where the principles of a federal permit, federal allotment or federal lease are in dispute. (ARS 3-1401)

The Arizona Revised Statutes also include definitions of “Wild” and “Wildlife,” which do not apply to the bison-hybrids because they are not “normally found in a state of nature” and therefore not “Wild”:

21. “Wild” means, in reference to mammals and birds, those species which are normally found in a state of nature.

22. “Wildlife” means all wild mammals, wild birds and the nests or eggs thereof, reptiles, amphibians, mollusks, crustaceans, and fish, including their eggs or spawn.

The Arizona Game and Fish Department (AGFD) identified bison as an introduced, and therefore non-wild, species in previous versions of its hunt data booklet, saying “these animals are not native to Arizona.” (Hunt Arizona 2015 Edition: Survey, Harvest and Hunt Data for Big and Small Game, p. 144)

A 1950 Memorandum of Understanding (MOU) between AGFD, Kaibab National Forest, Bureau of Land Management, and ranchers dedicated an allotment in House Rock Valley to the keeping of the state-owned bison-hybrids. In that document, AGFD agreed, “To maintain an adequate fence on the north boundary of the buffalo allotment on the Kaibab National Forest and to keep the buffalo confined to their designated range on the Kaibab National Forest.” AGFD failed to adhere to this MOU.

A 1973 MOU between AGFD and USFS adds that, “The (AGFD) Commission agrees... To neither make nor sanction any release, introduction or establishment of wildlife, excluding fish, which may affect National Forest management until a joint investigation has been made and a mutual agreement reached regarding its possible effect upon all other resources.” (AGFD, USFS. 1973. Memorandum of Understanding between Arizona Game and Fish Commission, State of Arizona, and United States Forest Service Department of Agriculture. 4 pp.). AGFD cannot release the newly imported bison from HRWA without “a joint investigation”, and in fact should not have imported the bison to HRWA without such an investigation.

Based on the above laws, case law, and MOU agreements, the bison-hybrids that roam on the Kaibab National Forest outside of House Rock Valley and all bison in Grand Canyon National Park should be considered “stray animals.” According to ARS 3-1402, those who find stray animals on their land are to notify the owner, who should recover the animal; if the owner fails to recover the animal, a livestock officer or inspector is to capture it and sell it at auction. However, Arizona has a specific statute regarding buffalo and buffalo meat. According to ARS 17-233, the bison-hybrids can be sold or given away by AGFD Commission to public or charitable institutions:

17-233. Acquisition and disposition of buffalo and buffalo meat.

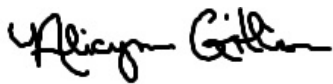
The commission may purchase, sell, barter, or give away buffalo or buffalo meat provided the same may be given only to public institutions or charitable institutions and monies derived therefrom shall be deposited in the game and fish fund. (ARS 17-233)

All of this is especially applicable considering that, in 2014, after National Park Service and state officials were successful in experimentally corralling and transporting 18 bison-hybrids off the plateau using well-proven bison ranching techniques, the bison were later intentionally released from the State's HRWA. AGFD has shown no interest in keeping the bison-hybrids and is well aware of their status as strays.

Finally, this is an inappropriate use of a categorical exclusion due to the potential harm from these bison and their impact on the efforts to control stray bison-hybrids. The difficulty of getting stray animals off the Kaibab Plateau and out of Grand Canyon National Park means there should be a full analysis of this action. AGFD's lack of preparedness does not create conditions where an action with such wide ranging cumulative impacts should qualify for a categorical exclusion. Please declare that there will be no introduction of more non-native species in this region and reinforce the need to remove stray animals from the Kaibab Plateau.

Please keep us all informed of the status of this project.

Sincerely,



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