OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR

KRISTEN JURAS
LT. GOVERNOR

July 1, 2024

The Honorable Deb Haaland
U.S. Department of Interior
1849 C Streent NW
Washington, DC 20240

National Park Service Director Charles Sams III
U.S. Department of Interior
1849 C Street NW
Washington, DC 20240

Re: Yellowstone National Park (YNP) Bison Management Plan (BMP)

Secretary Haaland and Director Sams:

With the recent release of the Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) for the YNP BMP, I take this opportunity to highlight and describe to you the abysmal process the State of Montana recently experienced as a "cooperating" agency. Setting aside the problems with the decision itself, which the State looks forward to detailing in a separate forum, the State's experience as a "cooperating" agency has been nothing short of superficial box-checking.

For over 20 years, the State of Montana (State) has been the National Park Service's (NPS) partner in the Interagency Bison Management Plan (IBMP). Developed as a product of litigation between the State and NPS, the IBMP has served as a tool to coordinate respective actions taken by the State and NPS in relation to transitory bison dispersing from YNP. Coordination and management are critical, given that YNP bison carry *Brucella abortis* (brucellosis). Brucellosis causes abortion in livestock and undulant fever in humans that become infected.

NPS is required to collaborate "to the fullest extent possible" with all "cooperating agencies" having jurisdiction or specialized expertise in relation to the subject of a National Environmental Policy Act (NEPA) process.[1] To that end, when NPS began the process of preparing a new plan in 2020, NPS extended "cooperating agency" status to the State. At every turn in the NEPA process, however, NPS failed to uphold its cooperative responsibilities.

[1] 43 C.F.R. §§ 46.225, 46.230.

STATE CAPITOL • P.O. BOX 200801 • HELENA, MONTANA 59620-0801
TELEPHONE: 406-444-3111 • FAX: 406-444-5529 • WEBSITE: WWW.MT.GOV

In the 2020 memorandum entered into by NPS and the State outlining each entity's obligations in the "cooperative" relationship, NPS agreed to "communicate candidly about the relevant substantive and procedural aspects of the forthcoming EIS work and attempt to resolve disagreements on issues." NPS also recognized "a shared interest in routine and regular communication of relevant and timely information." To that end, NPS agreed, in part, to:

> Seek meaningful input from the cooperating agency at key junctures in the EIS process, including the scoping phase, creation of a draft EIS and while drafting a ROD.
>
> Keep all parties—primarily via teleconference calls—informed about the timeframes for public scoping, public comments and alternatives under consideration.
>
> Let the cooperating agency know specifically how and where cooperating agency data, information, or input was incorporated into, or considered in, the EIS, and how it may have influenced the decisions of the lead agency.
>
> Allow the cooperating agency to review analysis relevant to the information it provided and give meaningful consideration to comments it submitted so that relevant information can be incorporated or changed in the draft EIS before it is released to the public.

To be clear, the NPS did ***not*** solicit meaningful input from, or collaborate with, my administration prior to the publication of its January 28, 2022, *Notice* outlining the alternatives for consideration. The State saw the proposed alternatives for the first time on January 10, 2022, a little over two weeks before publication in the Federal Register. In its February 28, 2022, comment, the State explained its frustration and asked that the alternatives be withdrawn in favor of meaningful consultation. The State's request for joint meetings, collaboration, and consultation was repeated multiple times, both in writing and verbally to the Department of the Interior and YNP employees, over the course of 2022 and into 2023. It was not until June 29, 2023, that YNP employees finally met with the State to discuss the technical substance of the alternatives.

On July 10, 2023, NPS gave "cooperating" agencies like the State the opportunity to review the DEIS and provide comments. NPS sent the 147-page DEIS and gave the State **11 days** to review and provide comment.[2] Again, the State did its best to participate, providing an abbreviated comment on July 21, 2023. At no point was the State told how or where its 2022 or 2023 "input"

[2] In the FEIS' *Comment Response Report*, NPS states that "As a cooperating agency, the state was not constrained by the review timeline for the internal draft plain/EIS because the NPS has communicated that it will always accept the state's comments, even after the public comment period closes." FEIS at 240. This statement is completely unfounded, as each communication conveying documents for review set unequivocal deadlines by which the State's comments were to be submitted. For example, the July 10, 2023 email conveying the DEIS for cooperating agency review stated comments should be submitted to NPS "no later than **COB July 29, 2023**." A subsequent email "push[ed] back" the "due date" to July 21, 2023. Neither correspondence indicated that NPS would consider comments submitted after the due date.

had been incorporated into the DEIS and, upon reviewing the substance of the document, the State can only conclude that its input was ***not*** incorporated, let alone considered.

The DEIS was released for public review on August 10, 2023, and established a 45-day public comment period. I wrote to YNP the very next day, registering my disappointment at their failure to genuinely collaborate with the State and requesting a 60-day extension of the comment opportunity. The comment period was extended **15 days**.

The State submitted extensive comment registering the substantive deficiencies in the DEIS and YNP's NEPA process on October 10, 2023. The State heard nothing from YNP until May 1, 2024, when it, as a "cooperating" agency, received an advanced copy of the FEIS. At that time, the State was given a paltry 15 days to review over 230 pages of content and provide additional comment.[3] The State was also informed that if it "would like to have a meeting with the NPS regarding the FEIS," it could request one by May 24, 2024. Unable to accommodate such a short and impromptu comment timeframe, I referred YNP back to each and every comment, correspondence, and meeting between my administration and YNP on the BMP. I declined YNP's offer to meet, noting the irony of NPS' offer after years of avoiding any collaboration.

In the FEIS' *Comment Response Report,* YNP provided a lengthy, albeit revisionist, history of its "engagement" with the State and meetings with my office. Struggling to identify examples of collaboration, NPS states "Park staff also considered previous planning exercises with the state, such as those held from 2014 to 2016, while developing the preliminary alternatives in the NOI."[4] The very fact that NPS relies on stale discussions occurring ***a decade ago,*** prior to my administration, as an example of meaningful engagement underscores the dishonesty and insincerity of their dealings.

The facts speak for themselves. YNP has avoided substantive, collaborative discussions with the State's scientists and technical advisors at every turn on this issue, offering meetings only when documents and decisions were fully cooked. These repeated and consistent failures to be transparent, meaningfully engage with the State early or often, or even respond to State requests, violate NPS' commitments and destabilize the long-standing cooperative relationship shared by the State and NPS. Such behavior leads the State to one conclusion: the alternative was chosen, and the course pre-plotted, before NEPA even started…"cooperating agencies" like the State were little more than a box to be checked along the way. While this patronizing behavior has certainly been characteristic of the Biden administration, it has clearly pervaded the agencies at every level.

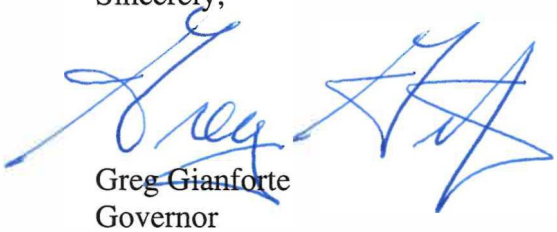
I close with an observation that should concern you. The condescending and disingenuous methods of NPS, and other agencies, is forcing a new day in the West. Gone are the opportunities for States and affected stakeholders to show up and earnestly engage in collaborative processes. Repeated and continuous procedural abuses, like those outlined above, have hardened those who once believed in fair play. Instead, states like Montana will now show

---

[3] The email conveying the FEIS for cooperating agency review identified a comment deadline "no later than COB **May 15, 2024**." The email contained no indication that NPS would consider comments submitted after the due date.
[4] FEIS at 224.

up prepared for marginalized participation, short-changed processes, dishonest brokerage and, ultimately, litigation.

Sincerely,



Greg Gianforte
Governor

Cc: YNP Superintendent Cam Sholly
Congressman Ryan Zinke
Congressman Matt Rosendale
Senator Jon Tester
Senator Steve Daines
Congressman Bruce Westerman
Congressman Doug Lamborn
Congressman Rob Wittman
Congressman Tom McClintock
Congressman Paul Gosar
Congressman Garret Graves
Congresswoman Amata Coleman Radewagen
Congressman Doug LaMalfa
Congressman Daniel Webster
Congresswoman Jenniffer González-Colón
Congressman Russ Fulcher
Congressman Pete Stauber
Congressman John Curtis
Congressman Tom Tiffany
Congressman Jerry Carl
Congresswoman Lauren Boebert
Congressman Cliff Bentz
Congresswoman Jen Kiggans
Congressman Jim Moylan
Congressman Wesley Hunt
Congressman Mike Collins
Congresswoman Anna Paulina Luna
Congressman John Duarte
Congresswoman Harriet Hageman
Congressman Raúl Grijalva
Congresswoman Grace Napolitano
Congressman Gregorio Kilili Camacho Sablan
Congressman Jared Huffman
Congressman Ruben Gallego
Congressman Joe Neguse
Congressman Mike Levin
Congresswoman Katie Porter
Congresswoman Teresa Leger Fernández
Congresswoman Melanie Stansbury
Congresswoman Mary Peltola
Congresswoman Alexandria Ocasio-Cortez
Congressman Kevin Mullin

Congresswoman Val Hoyle
Congresswoman Sydney Kamlager-Dove
Congressman Seth Magaziner
Congresswoman Nydia Velázquez
Congressman Ed Case
Congresswoman Debbie Dingell
Congresswoman Susie Lee