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**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA**

_____)	
RENEAU, <i>et al.</i> ,)	
Plaintiffs,)	
)	
v.)	
)	CASE NO. 1:16-cv-00966-TSC
UNITED STATES FISH AND)	
WILDLIFE SERVICE, <i>et al.</i> ,)	FEDERAL DEFENDANTS’ ANSWER TO
)	PLAINTIFF’S COMPLAINT
Federal Defendants.)	
)	
)	
)	
_____)	

Federal Defendants United States Fish and Wildlife Service (“FWS”) and Director Dan Ashe (collectively, “Federal Defendants”), by and through the undersigned attorneys, answer the claims and allegations in Plaintiff’s Complaint for Declaratory and Injunctive Relief, Dkt. No. 1

(“Complaint”), as set forth below. The numbered paragraphs in the answer correspond to the numbered paragraphs in the Complaint.

1. The allegations in the first sentence of Paragraph 1 are Plaintiffs’ description of the nature of their suit. To the extent a response is deemed required, Federal Defendants deny the allegations. Federal Defendants deny that they have announced a legislative proposal to transfer the National Bison Range (“NBR”) out of the National Wildlife Refuge System (“NWRS”). The remaining allegations in the second sentence of Paragraph 1 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations. Federal Defendants deny the allegations in the third sentence of paragraph 1 and aver that there currently is no Comprehensive Conservation Plan (“CCP”) for the NBR. The remaining allegations in the third sentence of Paragraph 1 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

2. The allegations in Paragraph 2 are Plaintiffs’ description of the nature of their suit and requires no response.

3. The allegations in Paragraph 3 are Plaintiffs’ description of the nature of their suit and requires no response.

4. The allegations in Paragraph 4 are Plaintiffs’ description of the nature of their suit and requires no response.

5. The allegations in Paragraph 5 are Plaintiffs’ description of the nature of their suit and requires no response.

6. The allegations in Paragraph 6 state legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

7. The allegations in Paragraph 7 state legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

8. Federal Defendants lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 8, and deny these allegations on that basis. The allegations in the sixth sentence of Paragraph 8 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

9. Federal Defendants admit that Robert Fields is a retired FWS employee who served in multiple positions at several refuges, but lack information and knowledge sufficient to form a belief as to the truth of the remaining allegations in the first through third sentence of Paragraph 9, including the exact dates of Mr. Fields employment, and deny these allegations on that basis. The allegations in the fourth sentence of Paragraph 9 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

10. Federal Defendants admit that Marvin Kaschke was a Refuge Manager at the NBR, Sheldon Hart Mountain Refuge and was an Assistant Refuge Manager at the Charles M Russell Refuge, but lack information and knowledge sufficient to form a belief as to the truth of the remaining allegations in first and second sentence of Paragraph 10, including the exact dates of Mr. Kaschke's employment, and deny these allegations on that basis. The allegations in the third sentence of Paragraph 10 are a description of the nature of Plaintiffs' suit and contain legal

conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

11. Federal Defendants admit that Joseph Mazzoni was a Refuge Manager at the NBR in the late 1960s, but lack information and knowledge sufficient to form a belief as to the truth of the remaining allegations in the first and second sentence of Paragraph 11, including the exact dates of Mr. Mazzoni's employment and various job titles, and deny these allegations on that basis. The remaining allegations in Paragraph 11 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

12. Federal Defendants admit that Jon Malcolm was a Refuge Manager at the NBR, but lack information and knowledge sufficient to form a belief as to the truth of the remaining allegations in the first through fourth sentence of Paragraph 12, including the exact dates of Mr. Malcolm's employment, and deny these allegations on that basis. The allegations in the fifth sentence of Paragraph 12 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

13. Federal Defendants admit that Delbert Palmer worked in the maintenance department at the NBR and is now retired, but lack information and knowledge sufficient to form a belief as to the truth of the allegations in the first through fourth sentence of Paragraph 13, including the exact dates of Mr. Palmer's employment or retirement, and deny these allegations on that basis. Federal Defendants admit the allegation in the fifth sentence of Paragraph 13 that there was an Annual Funding Agreement with the Confederated

Salish/Kootenai Tribes (“CSKT”), which speaks for itself and is the best evidence of its contents. Federal Defendants deny Plaintiffs’ characterization of the agreement to the extent inconsistent with its plain language, meaning or context. Federal Defendants lack information and knowledge sufficient to form a belief as to the truth of the allegations in the six through eighth sentence of Paragraph 13 and deny these allegations on that basis. The allegations in the ninth sentence of Paragraph 13 are a description of the nature of Plaintiffs’ suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

14. Federal Defendants admit that Marvin Plenert served in the capacities he alleges therein, but lack information and knowledge sufficient to form a belief as to the truth of the allegations in the first through fourth sentence of Paragraph 14, including the exact dates of Mr. Plenert’s employment and various postings, and deny these allegations on that basis. The allegations in the fifth sentence of Paragraph 14 are a description of the nature of Plaintiffs’ suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

15. Federal Defendants admit that Don Redfearn served in the capacities he alleges therein, but lack information and knowledge sufficient to form a belief as to the truth of the remaining allegations in the first through seventh sentence of Paragraph 15, including the exact dates of Mr. Redfearn’s employment and various postings, and deny these allegations on that basis. The allegations in the eighth through ninth sentence of Paragraph 15 are a description of the nature of Plaintiffs’ suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations. Federal Defendants deny the allegations in the tenth sentence of Paragraph 15.

16. Federal Defendants admit that William Reffalt served in the capacities he alleges therein, but lack information and knowledge sufficient to form a belief as to the truth of the allegations in the first through twelfth sentence of Paragraph 16, including the exact dates of Mr. Reffalt's employment and various postings, and deny these allegations on that basis. The allegations in the thirteenth sentence of Paragraph 16 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

17. Federal Defendants admit that David Wiseman served in the capacities he alleges therein, but lack information and knowledge sufficient to form a belief as to the truth of the allegations in the first through sixth sentence of Paragraph 17 including the exact dates of Mr. Wiseman's employment and various postings, and deny these allegations on that basis. The remaining allegations in Paragraph 17 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

18. Federal Defendants lack information and knowledge sufficient to form a belief as to the truth of the allegations in Paragraph 18, and deny these allegations on that basis.

19. The allegations in Paragraph 19 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

20. Federal Defendants admit the allegations in Paragraph 20, but aver that FWS complies with all applicable federal laws.

21. Federal Defendants admit that Dan Ashe is the Director of the FWS. The remaining allegations in Paragraph 21 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

22. The allegations in Paragraph 22 are a description of the nature of Plaintiffs' suit and contain legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

23. The allegations in Paragraph 23 purport to characterize the National Environmental Policy Act ("NEPA") and its implementing regulations, which speak for themselves and provide the best evidence of their contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute and regulations.

24. The allegations in Paragraph 24 purport to characterize NEPA, which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute.

25. Federal Defendants admit that NEPA's implementing regulations were promulgated by the Council on Environmental Quality. The remaining allegations in Paragraph 25 purport to characterize 40 C.F.R. § 1500.1(b), which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the regulations.

26. The allegations in Paragraph 26 purport to characterize 40 C.F.R. § 1506.1, which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the regulations.

27. The allegations in Paragraph 27 purport to characterize 40 C.F.R. § 1506.8(a), which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the regulations.

28. The allegations in Paragraph 28 purport to characterize the Administrative Procedure Act (“APA”), which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute.

29. The allegations in Paragraph 29 purport to characterize the APA, which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute.

30. Federal Defendants admit that the National Wildlife Refuge System Administrative Act (“Refuge Act”) governs management of the NWRS and was amended by Congress in 1976. The remaining allegations in Paragraph 30 purport to characterize the Refuge Act, which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute.

31. Federal Defendants admit that the National Wildlife Refuge System Improvement Act revised portions of the Refuge Act. The remaining allegations in Paragraph 31 purport to characterize the National Wildlife Refuge System Improvement Act, which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute.

32. The allegations in Paragraph 32 purport to characterize the National Wildlife Refuge System Improvement Act, which speaks for itself and provides the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute.

33. The allegations in Paragraph 33 purport to characterize Congressional policy, the National Wildlife Refuge System Improvement Act and its implementing regulations, which speak for themselves and provides the best evidence of their contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the policy and statute.

34. Federal Defendants admit the allegations in the first two sentences of Paragraph 34. Defendants deny the allegations in the third sentence of Paragraph 34 and aver that President Theodore Roosevelt established the NBR on May 23, 1908, when he signed legislation authorizing funds to purchase suitable land for the conservation of bison. Defendants further aver that it was the first time that Congress appropriated tax dollars to buy land specifically to conserve wildlife. Federal Defendants admit the allegations in the fourth sentence. Defendants deny the remaining allegations in Paragraph 34 and aver that NBR origin bison provide a healthy, genetically diverse and important population of bison for future conservation and restoration efforts. However, NBR bison have shown some indications of cattle introgression and cannot be considered “genetically pure” bison at this point in time.

35. Federal Defendants admit the allegations in Paragraph 35.

36. Federal Defendants lack information and knowledge sufficient to form a belief as to the allegations in the first sentence of Paragraph 36, including the remaining amounts of Palouse prairie grasslands. Federal Defendants deny the remaining allegations in Paragraph 36

and aver that the NBR remnant of Palouse prairie is not within the Palouse core and there are also other tracts of Palouse prairie under federal protection.

37. The allegations in Paragraph 37 purport to characterize the implementing regulations of the National Wildlife Refuge System Administration Act, Executive Order 3596 and an unspecified 2005 document which appears to be an excerpt from “Management of Bison in the National Wildlife Refuge System, U.S. Fish and Wildlife Service”, which speak for themselves and provide the best evidence of their contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the statute and executive order.

38. Federal Defendants deny the allegations in Paragraph 38 and aver that the FWS has a goal of managing bison under its jurisdiction according to the metapopulation concept. There is no specific “plan” for such management.

39. Federal Defendants admit the allegations in the first and second sentence of Paragraph 39. Defendants deny the allegations in the third sentence and aver that the FWS has relocated NBR bison to other refuges to begin building satellite herds of bison and continue to add diversity to these existing satellite herds.

40. Federal Defendants admit that the percentages Plaintiffs cite in the first sentence of Paragraph 40 are an approximate calculation. Federal Defendants deny the remaining allegations in Paragraph 40, but aver that the NBR bison are an important source of genetically diverse bison to include in conservation and restoration efforts in the future. NBR bison are genetically diverse, but have shown some signs of cattle introgression.

41. Federal Defendants admit that a February 6, 2016 meeting was set between FWS and the CSKT. Federal Defendants otherwise deny the allegations in Paragraph 41.

42. Federal Defendants deny the allegations in the first and second sentence of Paragraph 42. The allegations in the third sentence of Paragraph 42 purport to characterize a judicial opinion, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations inconsistent with its plain language and meaning.

43. Federal Defendants admit that Noreen Walsh and Cynthia Martinez, staff members for FWS emailed the CSKT in February of 2016. The remaining allegations in Paragraph 43 purport to characterize emails sent by Noreen Walsh and Cynthia Martinez, which speak for themselves and are the best evidence of their contents. Federal Defendants deny any allegations inconsistent with their plain language, meaning or context.

44. Federal Defendants deny the allegations in the first sentence of Paragraph 44 and aver that Congressman Zinke's office requested that FWS brief them on the history of the NBR. Cynthia Martinez, responding to this request, met with the Congressman's staff on February 16, 2016. As a courtesy, the FWS offered briefings for staff from the offices of the two Senators from Montana. Federal Defendants admit that on February 18, 2016, Cynthia Martinez met with staff from Senator Daines' and Senator Tester's offices.

45. Federal Defendants admit that FWS Director Dan Ashe sent an e-mail on February 18, 2016 related to the NBR, but the aver that the remaining allegations in Paragraph 45 purport to characterize an e-mail sent by FWS Director Dan Ashe, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning or context of the emails.

46. Federal Defendants admit that FWS Director Ashe had a telephone conversation with Mr. Ralph Webber on April 1, 2016. Defendants deny the remaining allegations in the first sentence of Paragraph 46 and aver that FWS Director Ashe commented to Mr. Webber that the conservation goals for the bison at the NBR had been achieved. Defendants deny the allegations in the second sentence and aver that Director Ashe did not state that FWS “initiated” a transfer of the NBR. FWS Director Ashe stated that FWS’ position was to support the CKST’s proposal for legislation. Defendants further aver that Director Ashe commented to Mr. Webber that Congress is not subject to NEPA.

47. Federal Defendants deny the allegations in Paragraph 47.

48. Federal Defendants admit that the NBR does not have a CCP. Federal Defendants aver that a CCP was proposed in 1997. The remaining allegations in Paragraph 48 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny each of the allegations.

49. Federal Defendants incorporate by reference the answers to the preceding paragraphs.

50. The allegations in Paragraph 50 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

51. The allegations in the first sentence of Paragraph 51 purport to characterize the APA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny all allegations inconsistent with the plain language, meaning or context of the statute. The remaining allegations in Paragraph 51 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

52. Federal Defendants incorporate by reference the answers to the preceding paragraphs.

53. The allegations in Paragraph 53 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

54. The allegations in the first sentence of Paragraph 54 purpose to characterize the APA, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegations inconsistent with the plain language, meaning and context of the statute. The remaining allegations in Paragraph 54 are legal conclusions that require no response. To the extent a response is deemed required, Federal Defendants deny the allegations.

RESPONSE TO REQUEST FOR RELIEF

The remaining paragraphs of Plaintiff's Complaint consist of its request for relief, to which no response is required; to the extent a response is required, Defendants deny that Plaintiffs are entitled to the requested relief, or any relief whatsoever.

GENERAL DENIAL

Federal Defendants deny any allegations of Plaintiff's Complaint, whether express or implied, that are not expressly admitted, denied, or qualified herein.

AFFIRMATIVE DEFENSES

1. One or more of Plaintiff's claims fails to state a claim for which relief can be granted.
2. One or more of Plaintiff's claims are moot.

3. One or more of Plaintiff's claims are not ripe for review.
4. One or more of Plaintiff's claims are barred by the statute of limitations.
5. This court is the improper venue for some or all of Plaintiff's claims.
6. Some or all of Plaintiff's claims in this action are barred by reason of the failure to exhaust administrative remedies.

7. To the extent Plaintiff presents to the Court any issue or contention which is contrary to any position taken by Plaintiff in prior litigation or administrative proceedings, Plaintiff has waived or is estopped from presenting any such issue, or contention or claim.

WHEREFORE, Federal Defendants respectfully pray that this Court deny in all respects Plaintiff's Prayer for Relief, dismiss the Complaint, enter judgment for the Defendants, and grant such other relief as may be appropriate.

Dated: 21st day of September, 2016.

Respectfully Submitted,

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