

MEMORANDUM OF UNDERSTANDING
BETWEEN
MONTANA FISH, WILDLIFE & PARKS,
MONTANA DEPARTMENT OF LIVESTOCK,
AND
TURNER ENTERPRISES, INC.

February 16, 2010

This Memorandum of Understanding (MOU) is entered into between Montana Fish, Wildlife and Parks (MFWP), the Montana Department of Livestock (MDOL), and Turner Enterprises, Inc. (TEI) on this 16th day of February, 2010.

WHEREAS the bison is a keynote species that has important biological, cultural, and recreational values; and,

WHEREAS the Quarantine Feasibility Study (QFS) was developed by cooperating agencies for the purpose of determining whether it is possible to develop quarantine procedures, using the best available science and adaptive research strategies, to certify that individual or groups of YNP bison are free from brucellosis, including latent infections of brucellosis; and,

WHEREAS MFWP desires to finish the QFS by proceeding to Phase IV under the criteria and conditions developed in the 2005 Quarantine Feasibility Study EA for continued monitoring within contained facilities with the desire that the QFS bison and/or their offspring could be available for conservation purposes at completion of Phase IV;

WHEREAS MFWP is nearing completion of Phase III of the QFS and requires a location to hold up to 88 research bison and any offspring born over a five-year monitoring period to enable continued brucellosis testing of these bison through Phase IV of the QFS;

WHEREAS these QFS bison have been tested numerous times for brucellosis, and have repeatedly tested negative for brucellosis;

WHEREAS TEI submitted a proposal and exhibited the desire to maintain and manage QFS bison with the longer-term objective of restoring and conserving bison;

WHEREAS MDOL is the agency charged with disease control and prevention for livestock in Montana;

THEREFORE, the parties enter into this Memorandum of Understanding to effect the transfer of 88 bison from the QFS facility to the TEI Green Ranch pursuant to the provisions of this MOU and the October 29, 2009 proposal submitted by TEI to MFWP attached hereto and incorporated into this MOU as Exhibit A.

Term. The parties enter into this Agreement for five (5) years commencing at the date of the last signature below and ending November 15, 2014.



Early Relocation. MFWP reserves the right to relocate the surviving, original QFS bison and its share of the offspring before the expiration of the five (5) year term; provided that MFWP gives a one (1) year written notice to TEI, or provides written notice to TEI of the commencement of the MFWP's MEPA process for the relocation of the bison, in which event the notice period need only be nine (9) months. Any early relocation shall only occur ~~on~~^{by} November 15 of any such year of early relocation. At the expiration of the five (5) year term, or an earlier time as allowed by this provision, MFWP will relocate, at its sole expense, all of the surviving, original QFS bison and MFWP's 25% share of the offspring to a location determined by MFWP. In the event of any early relocation by MFWP, TEI may, subject to its responsibilities under this MOU to maintain its share of the offspring in a separate, closed herd, reduce the amount of acreage dedicated to its share of the QFS offspring.

TEI Responsibilities.

1. TEI will transport the 88 QFS bison from the Quarantine facilities near Gardiner, Montana directly to the Green Ranch, the boundaries of which are set forth in Figure 1 of Exhibit A. Risk of loss, with respect to the transport of the bison from Gardiner to Green Ranch, shall remain with MFWP.
2. TEI shall care for and maintain the bison transferred to the Green Ranch from the Quarantine facilities near Gardiner, Montana, and any subsequent offspring, in a closed herd with appropriate fencing to assist MFWP and USDA APHIS in completing the QFS as proposed in the October 29, 2009 proposal at Exhibit A. TEI shall use proper husbandry and appropriate care accepted in the industry for its custodianship of the QFS bison, but shall not be liable for any loss of bison, except for loss resulting from reckless or intentional breaches of the applicable standard of care.
3. TEI shall keep the QFS bison epidemiologically separate and distinct from other livestock and bison herds to prevent any potential disease transmission between QFS bison and other livestock, as per requirements of the QFS and TEI's proposal at Exhibit A.
4. TEI shall develop a system for marking and keeping records sufficient for MFWP to identify original QFS bison, their offspring, deaths and additions, and to ensure, to the satisfaction of USDA APHIS and MDOL, through TEI's Standard Operating Procedure (SOP), that there has been no potential for mixing of other livestock and bison and the QFS bison. TEI shall make those records available to MFWP or MDOL within 10 business days upon request.
5. All QFS bison and their offspring remain the property of the State of Montana during the term of the MOU. At the expiration of the 5-year term or earlier relocation pursuant to the terms of this MOU, TEI shall return to MFWP all the surviving, original QFS bison and 25% of their offspring, which offspring shall be sorted first by age and gender, with each age and gender classification then divided proportionately between TEI and MFWP.

6. TEI shall allow state and federal employees access to the QFS bison and offspring during the term of the MOU for purposes of monitoring compliance with conditions and criteria of this MOU and the protocol required by the QFS, subject to the requirement that MFWP give reasonable, advance notice, as further defined below. In the event state or federal employees desire access to the QFS bison and offspring during the term of the MOU for purposes other than those set forth above, the state or federal employee shall request permission, in writing, summarizing the purpose(s) for the access, which permission shall not be unreasonably withheld.

7. In the event that QFS bison or their offspring test positive for *B. abortus*, at any time during the term of this MOU, TEI assumes a risk that some, or the entire herd, might be slaughtered. If a positive brucellosis test occurs during the term of the MOU, and the entire herd is slaughtered, MFWP is not responsible, either through monetary compensation or legal transfer of offspring, for TEI's care and maintenance of the QFS bison.

8. In the event of litigation concerning or relating to this MOU, the QFS, or MFWP's "Bison Translocation, Bison Quarantine Phase IV Environmental Assessment Decision Notice" of February, 2010, MFWP agrees to defend and hold harmless TEI from any and all expenses, excluding TEI's attorneys fees, incurred as a result of the litigation. In the event that a court orders the removal of QFS bison and offspring from the TEI Green Ranch, MFWP shall be solely responsible for all costs of relocation. If a court orders the removal of all or a portion of the QFS bison, MFWP is not responsible for compensation to TEI for care and maintenance of the QFS bison, except the collection of genetic material, as set forth below.

9. TEI shall allow MFWP the sole discretion to relocate, at MFWP's sole cost, all of the surviving, original QFS bison and MFWP's share of their offspring from the Green Ranch to an appropriate alternative location prior to the expiration of the 5-year term of this MOU pursuant to the terms of this MOU.

MFWP Responsibilities.

1. MFWP will coordinate with TEI and APHIS to facilitate the transfer of 88 QFS bison to the TEI Green Ranch for care and maintenance over the term of the MOU.

2. MFWP will transfer to TEI, with sufficient legal documentation, at the expiration of the 5-year term of this MOU, title to seventy-five percent (75%) of the offspring of the original, surviving QFS bison in exchange for the proper care and maintenance of the QFS bison and offspring during the term of this MOU. Additionally, in the event of early relocation of the bison pursuant to this MOU, MFWP will at the expiration of the 5-year term of this MOU also transfer title to any offspring from the offspring that remained under TEI's care after the early relocation of the QFS bison.

3. In the event of MFWP's early relocation of the surviving, original QFS bison and its share of their offspring, or in the event a court orders MFWP to relocate all or a portion of the surviving, original QFS bison and its percentage share of the offspring prior to the end of the 5-year term of this MOU, MFWP will allow TEI to collect an amount of genetic material (semen, ova, and/or zygotes) that has the potential to result in an equal number of offspring to TEI as would have resulted at the expiration of the 5-year term. TEI is not authorized to collect genetic material for any other reason. Any collection of genetic material for any reason allowed by this MOU must be done with the welfare of the animals in mind and in compliance with appropriate husbandry standards.

4. MFWP will give 24-hour notice to TEI's liaison, identified below, either orally or in writing, for access to the QFS bison and offspring.

5. At the expiration of the term of this MOU or early relocation pursuant to this MOU, MFWP will, at its sole expense, transfer the original, surviving QFS bison and its percentage share of their offspring to a location chosen by MFWP, pursuant to the relocation criteria developed for the QFS in the 2005 EA.

Assurance for Brucellosis Status. Contingent upon TEI's compliance with the terms of this MOU, its proposal at Exhibit A, and the SOP, MDOL will use best efforts to contain any response to a positive test for brucellosis to solely the QFS bison and their offspring on the Green Ranch, as more particularly described on Figure 1 of Exhibit A, and not to other livestock, bison or real property owned or managed by TEI.

Indemnification.

TEI agrees to protect, defend, and save MFWP and MDOL and their elected and appointed officials, agents, and employees, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, against MFWP or MDOL and their elected and appointed officials, agents, and employees on account of bodily or personal injuries, death, or damage to property arising out of the negligent acts or omissions of TEI and its shareholders, directors, officers, employees, representatives, agents, subcontractors, successors-in-interest and assigns.

MFWP and MDOL agree to protect, defend, and save TEI and its shareholders, directors, officers, employees, representatives, agents, subcontractors, successors-in-interest and assigns, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, against TEI and its shareholders, directors, officers, employees, representatives, agents, subcontractors, successors-in-interest and assigns, on account of bodily or personal injuries, death, or damage to property arising out of the negligent acts or omissions of MFWP and MDOL and their elected and appointed officials, agents, and employees.

Liaison and Service of Notices. All project management and coordination on behalf of MFWP shall be through a single point of contact designated below. TEI shall designate a liaison that will provide the single point of contact for management and coordination of



activities contemplated in this MOU. All work performed pursuant to this MOU shall be coordinated between each party's liaison.

MFWP: Ken McDonald
P. O. Box 200701
Helena, MT 59620-0701
Phone: 406-444-5645
E-mail: kcdonald@mt.gov


TEI:
Danny Johnson, Manager
Flying D Ranch
5048 Gateway South Road
Gallatin Gateway, MT 59730
Phone: 406.763.4930
Email: danny.johnson@retranches.com

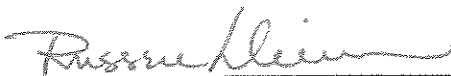
MDOL Dr. Martin Zaluski
Montana Department of Livestock
P.O. Box 202001-2001
Helena, MT 59620

The MFWP, MDOL, and TEI's liaisons may be changed by written notice to the other parties. Written notices, requests, or complaints will first be directed to the liaison.

Execution.

The parties through their authorized agents have executed this MOU on the dates set out below.


Date: 2/16/10
Joe Maurier, Director
Montana Fish, Wildlife and Parks
P.O. Box 200701
Helena, MT 59620


Date: 2/16/10
Russell Miller, Vice President
Turner Enterprises, Inc.
1123 Research Drive
Bozeman, Montana 59718

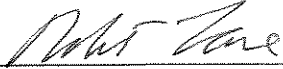




Date: 2/16/10

Christian Mackay, Executive Officer
Montana Department of Livestock
P.O. Box 202001-2001
Helena, MT 59620

Approved as to Legal Content for MFWP:



Robert Lane

