

**BEFORE THE PHILLIPS CONSERVATION DISTRICT
BOARD OF ADJUSTMENT**

IN THE MATTER OF American Prairie
Reserve's Petition for Variance from Phillips
Conservation District Ordinance 2016-1

VARIANCE ORDER

The Phillips County Board of Adjustment (the "Board") convened on January 21, 2021, to consider the Joint Stipulation and Motion for Approval of Settlement Agreement and Issuance of Variance Order filed by Petitioner American Prairie Reserve, Respondent Phillips Conservation District, and Intervenor South Phillips County Co-operative State Grazing District and Phillips County Livestock Association (collectively, "the Parties").

Upon consideration of the Joint Stipulation; the settlement agreement entered into by the Parties ("Settlement Agreement"); the Hearing Examiner's Recommended Decision on Motions for Summary Judgment dated February 10, 2020; and the entire record of this proceeding, the Board hereby finds and orders as follows:

1. The Settlement Agreement is hereby approved.
2. Given that the parties reached a mutual settlement before a final hearing occurred, the Board is unable to render findings of fact based on the testimony at the hearing; however, based on contents of the Settlement Agreement, Joint Stipulation, and the factual findings in the Hearing Examiner's Recommended Decision on Motions for Summary Judgment, the Board finds that a variance is warranted under the criteria set forth in Mont. Code Ann. §§ 76-15-723 to -725.

3. Issuance to Petitioner American Prairie Reserve of a variance from sections 7(1)(b) and 7(1)(e) of Phillips Conservation District Ordinance 2016-1 on the terms set forth in the Settlement Agreement is necessary and proper under the circumstances.

4. Accordingly, pursuant to Mont. Code Ann. § 76-15-725 and Section 13 of Phillips Conservation District Ordinance 2016-1, a variance from sections 7(1)(b) and 7(1)(e) of Phillips Conservation District Ordinance 2016-1 is hereby granted to Petitioner American Prairie Reserve on the terms set forth in the Settlement Agreement, which are adopted and incorporated as conditions of the variance granted by this order. The terms of the Settlement Agreement, as adopted and incorporated in the variance granted by this order, will be enforceable pursuant to sections 8 through 11 of Ordinance 2016-1 and Mont. Code Ann. § 76-15-709.

DONE AND DATED this 21st day of January, 2021 by a unanimous vote.

BY ORDER OF THE PHILLIPS CONSERVATION DISTRICT BOARD OF
ADJUSTMENT.


JAY BODNER, MEMBER

DALE KRAUSE, MEMBER

DAVE HINMAN, MEMBER

3. Issuance to Petitioner American Prairie Reserve of a variance from sections 7(1)(b) and 7(1)(e) of Phillips Conservation District Ordinance 2016-1 on the terms set forth in the Settlement Agreement is necessary and proper under the circumstances.

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**BEFORE THE PHILLIPS CONSERVATION DISTRICT
BOARD OF ADJUSTMENT**

<p>IN THE MATTER OF American Prairie Reserve's Petition for Variance from Phillips Conservation District Ordinance 2016-1</p>	<p style="text-align:center">SETTLEMENT AGREEMENT</p>
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This Settlement Agreement is entered into by and between Petitioner American Prairie Reserve, Respondent Phillips Conservation District ("Conservation District"), and Intervenor South Phillips County Co-operative State Grazing District and Phillips County Livestock Association ("Intervenor") (collectively, "the Parties") concerning American Prairie Reserve's petition for a variance in this proceeding.

WHEREAS the Phillips Conservation District in June 2016 enacted "An Ordinance for the Protection of Soil and Water from All Bison/Buffalo Grazing in Phillips Conservation District" ("the Ordinance");

WHEREAS Section 7(1)(b) of the Ordinance provides that "All bison/buffalo must be tested and certified, by a state veterinarian to be disease free.";

WHEREAS Section 7(1)(e) of the Ordinance provides that "Bison/buffalo must be branded, tattooed, tagged or otherwise identified to track its health status.";

WHEREAS the American Prairie Reserve on October 28, 2016 submitted a petition for a variance from Sections 7(1)(b) and 7(1)(e) of the Ordinance;

WHEREAS the Montana Department of Natural Resources and Conservation convened a Board of Adjustment and appointed a Hearing Examiner to address and resolve the American Prairie Reserve's variance petition;

WHEREAS the Hearing Examiner on June 19, 2019 acknowledged intervention in the Board of Adjustment proceeding by the South Phillips County Co-operative State Grazing District and Phillips County Livestock Association;

WHEREAS the Hearing Examiner on February 10, 2020, issued a recommended decision to the Board of Adjustment that it grant the American Prairie Reserve's motion for summary judgment in the variance proceeding and issue the variance requested by American Prairie Reserve;

WHEREAS the Parties subsequently engaged in good-faith settlement negotiations in an effort to reach a mutually acceptable negotiated resolution in this matter; and

WHEREAS the Parties have now reached a settlement agreement to fully resolve the American Prairie Reserve's variance petition that they wish to present for consideration, approval, and entry of an appropriate order by the Hearing Examiner and Board of Adjustment;

NOW, THEREFORE, through their undersigned counsel, the Parties hereby agree and stipulate as follows:

1. Disease Identification and Management Plan – The American Prairie Reserve will, on an annual basis, consult with a Montana licensed veterinarian to develop or update a written disease identification and management plan based on prior test results and herd observations. As part of the plan, if an occurrence of disease is detected, as defined in paragraph 2.b, the American Prairie Reserve will take responsive action as recommended by a licensed veterinarian and/or directed by any state or federal regulatory agency with jurisdiction over the American Prairie Reserve's operations. The written disease identification and management plan and the results of disease testing will be shared with the Conservation District and Intervenors as described in paragraph 4, infra.

2. Disease Testing and Tagging – The American Prairie Reserve agrees to conduct disease testing of bison in its herd as follows:

a. During the five (5) years following the effective date of this agreement, the American Prairie Reserve will conduct bison-handling operations at each of the properties where it holds bison. During those operations, the American Prairie Reserve will conduct disease testing on an aggregate total of 325 bison. Testing will be conducted for the following diseases (“monitored diseases”):

- Blue tongue
- Bovine viral diarrhea (BVD) types 1 and 2
- Parainfluenza-3 virus (PI3)
- Brucellosis
- Anaplasmosis
- Johne’s disease
- Infectious bovine rhinotracheitis (IBR)
- Leptospirosis

Testing will also be conducted for epizootic hemorrhagic disease (EHD), provided that the number of bison tested for EHD will be consistent with APR’s level of testing for this disease during the five (5) years preceding this agreement. All test samples will be collected by a Montana licensed veterinarian and submitted to the Montana State Diagnostic Lab for evaluation. Testing will be stratified by herd, age, and gender and will focus on testing animals that have never been tested or have not been tested in the last three (3) years. All tested animals will be retained on American Prairie Reserve deeded and/or leased property pending review and evaluation of test results and therefore will be capable of prompt relocation in the event of a test result that necessitates such action. The American Prairie Reserve will invite representatives of the Conservation District and Intervenors to attend and observe all testing events conducted pursuant to this provision.

b. If no occurrence of disease is detected by the conclusion of this initial five-year testing effort described in paragraph 2.a, the American Prairie Reserve will conduct disease testing for the monitored diseases on an aggregate total of 150 bison over the following five years. “Occurrence of disease” shall mean infection with one of the monitored diseases. As to brucellosis, infection will be established by a positive diagnosis based on laboratory testing as determined by the Montana State Veterinarian’s office. For other monitored diseases, infection will be established by both development of typical clinical signs as confirmed by a Montana-licensed veterinarian and a confirmed laboratory test result as determined by the Montana State Veterinarian’s office. If an occurrence of disease is detected during the duration of this agreement, the resulting response, including any additional monitoring beyond the levels set forth in this agreement, will be established by applicable regulatory authority (e.g., Montana Department of Livestock) if a regulatory response is triggered, or otherwise pursuant to recommendation by a Montana-licensed veterinarian retained by the American Prairie Reserve. The American Prairie Reserve will invite representatives of the Conservation District and Intervenors to attend and observe all testing events conducted pursuant to this provision.

c. The American Prairie Reserve will, on an ongoing basis for the duration of this agreement, observe its bison herd for signs of disease two days per year with American Prairie Reserve staff and a Montana licensed veterinarian present. If the veterinarian deems a bison suspect of any monitored disease through observation, American Prairie Reserve staff will immobilize the bison and the veterinarian will collect samples for testing. All samples will be submitted to the Montana State Diagnostic Lab for evaluation. Immobilization is contingent on acceptable environmental conditions and impacts on animal health. Observation dates will be determined by the availability of American Prairie Reserve staff and the veterinarian. The

American Prairie Reserve will invite representatives of the Conservation District and Intervenor to attend and observe all activities conducted pursuant to this provision.

d. With respect to bison that escape from American Prairie Reserve deeded and/or leased property and, in the judgment of responsible American Prairie Reserve staff, must be chemically immobilized to be returned to American Prairie Reserve deeded and/or leased property, the American Prairie Reserve will, on an ongoing basis for the duration of this agreement, test such bison for monitored diseases, provided that a Montana licensed veterinarian is available to collect testing samples. In addition, if the escaped bison are off of American Prairie Reserve deeded and/or leased property for more than 24 hours and observed to be in close contact with other livestock (in the same confined area or within 200 feet), at least one of the bison will be captured or chemically immobilized and a sample will be collected for testing for monitored diseases, provided that a Montana licensed veterinarian is available to collect testing samples. All samples will be submitted to the Montana State Diagnostic Lab for evaluation. The results of any testing conducted on escaped bison will be shared with the Conservation District, Intervenor, and the landowner(s) whose deeded or leased property was occupied by any such escaped bison.

e. All bison that are tested or otherwise handled by the American Prairie Reserve pursuant to this agreement or for any other reason as part of the American Prairie Reserve's ongoing operations will, on an ongoing basis for the duration of this agreement, be individually identified and tagged.

3. Vaccination – The American Prairie Reserve will, on an ongoing basis for the duration of this agreement, vaccinate for brucellosis any pre-yearling heifers that are imported to the American Prairie Reserve's herd.

4. Information Sharing – The American Prairie Reserve will, on an annual basis for the duration of this agreement, share information with the Phillips Conservation District as follows:

a. The American Prairie Reserve will coordinate with the Conservation District and Intervenors to jointly schedule a meeting at which representatives of the American Prairie Reserve will provide an update on American Prairie Reserve operations, including sharing the American Prairie Reserve's disease identification and management plan and/or any updates to that plan; all disease testing results from that year; current bison ear tag and/or other identification data; any fence maintenance or construction on American Prairie Reserve property; and any imports or exports of bison to or from the American Prairie Reserve's herd.

b. The American Prairie Reserve will provide the Conservation District and Intervenors with a written report of any bison escapes from its property, including the location and details of any such escape; any remedial measures undertaken; and the results of any disease testing conducted at any time on escaped animals. During the annual meeting provided for in Section 4.a, supra, the American Prairie Reserve will discuss with representatives of the Conservation District and Intervenors any escape incidents and any proposals for additional remedial or preventive measures.

c. The American Prairie Reserve will invite representatives of the Conservation District and Intervenors on a tour of the American Prairie Reserve's year-round bison grazing pastures, which will include observation of range conditions and discussion of any concerns regarding range conditions in American Prairie Reserve's bison grazing pastures.

5. Joint Proposal for Variance Order – The Parties will submit a joint proposal to the Board of Adjustment for entry of an order pursuant to Mont. Code Ann. § 76-15-725 and Section

13 of Phillips County Ordinance 2016-1 granting to the American Prairie Reserve a variance from sections 7(1)(b) and 7(1)(e) of the Ordinance on the terms set forth in this agreement. This joint proposal will include stipulated findings as to the requirements for entry of a variance order set out in Mont. Code Ann. § 76-15-725 and section 13 of the Ordinance. Further, the joint proposal will provide that the terms of the Parties' settlement agreement, as embodied in the proposed variance order, will be enforceable pursuant to sections 8 through 11 of Ordinance 2016-1 and Mont. Code Ann. § 76-15-709. The stipulated findings are limited to this variance proceeding. By stipulating to these findings no party waives any future claim or argument as to the Ordinance except as specified in this settlement agreement.

6. Duration – The Parties agree that, except as provided in paragraph 12, infra, this agreement and the stipulations thereto shall be in effect for a term of ten (10) years.

7. Future Conduct – After the effective date of this agreement and for the duration of this agreement, the American Prairie Reserve agrees to forego any further challenge to sections 7(1)(b) and 7(1)(e) of the Ordinance. After the effective date of this agreement and for the duration of this agreement, the Conservation District and Intervenors agree to forego any further proposals or attempts to enact land use regulations imposing animal disease-testing or identification requirements that are inconsistent with the terms of this settlement agreement.

8. Changed Circumstances – If there is a change in the circumstances upon which this agreement is based, the Parties will meet and attempt to negotiate in good faith an amendment to the foregoing agreed terms.

9. Entire Agreement – This Settlement Agreement contains all of the agreement between the Parties, and is intended to be the final and sole agreement between them. The Parties agree that any prior or contemporaneous representations or understanding not explicitly


contained in this written agreement, whether written or oral, are of no further legal or equitable force or effect.

10. Authorization to Act – The undersigned representatives of each party certify that they are fully authorized by the party they represent to enter into the terms of this agreement and do hereby agree to its terms.

11. Choice of Law – The laws of the State of Montana shall govern the interpretation of this agreement.

12. Effective Date – The effective date of this agreement shall be the date upon which the Board of Adjustment issues an order granting to the American Prairie Reserve a variance from sections 7(1)(b) and 7(1)(e) of the Ordinance on the terms set forth in this agreement. If, for any reason, the Board of Adjustment rejects or otherwise fails to grant to the American Prairie Reserve a variance from sections 7(1)(b) and 7(1)(e) of the Ordinance on the terms set forth in this agreement, or if such variance is invalidated or otherwise terminated for any reason, then this agreement will become null and void and the American Prairie Reserve may resume efforts to advance its petition for variance in this proceeding.

Dated: December 11, 2020



Timothy J. Preso
Counsel for American Prairie Reserve

Dated: December 11, 2020

Caitlin Overland
Counsel for Phillips Conservation District

Dated: December 11, 2020

Jack G. Connors
Counsel for South Phillips County Co-operative State Grazing District and Phillips County Livestock Association


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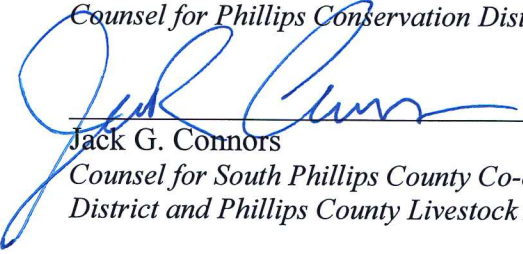
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