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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

NEIGHBORS AGAINST BISON
SLAUGHTER, *et al.*,

Plaintiffs,

v.

The NATIONAL PARK SERVICE, *et
al.*,

Defendants.

No. 1:19-cv-128-SPW

Judge Susan P. Watters

PLAINTIFFS' BRIEF IN SUPPORT
OF THEIR MOTION TO REOPEN

Oral Argument Requested

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1	Transcript Excerpts, <i>Montana v. Haaland</i> , No. CV-24-180-BLG-BMM (D. Mont. Apr. 17, 2025)	NA
2	Chris Geremia, <i>Status Report on the Yellowstone Bison Population to the Superintendent</i> (Oct. 2023)	NPS_0037243
3	Comments on NPS scoping from Bonnie Lynn, Neighbors, to Office of the Superintendent (Feb. 24, 2022)	NA
4	Letter from Jared Pettinato to Superintendent Cam Sholly (Sept. 22, 2023)	NA
5	National Park Service, Briefing Paper 3 (Apr. 10, 2023)	NPS_00002600
6	Interagency Bison Management Plan, Operations Plan (Oct. 29, 2024)	NA
7	YELL Bison Internal [FEIS] Cooperating Agency Review (May 13, 2024)	NPS_0018086
8	IBMP Subcommittee Assessment of Bison Carcass Removal in Beattie Gulch Area (July 29, 2020)	NPS_0037076

¹ This brief is attaching, as exhibits, some documents from the administrative record for the Park Service's 2024 Record of Decision.

TABLE OF ACRONYMS AND ABBREVIATIONS

2019 Operation Plan	[2019] Operating Procedures for the IBMP (Dec. 31, 2018), FS11258
APA	Administrative Procedure Act, 5 U.S.C. §§ 701-706
Environmental Impact Statement	EIS
IBMP	Interagency Bison Management Plan
Neighbors	Neighbors Against Bison Slaughter and Bonnie Lynn
NEPA	National Environmental Policy Act, 42 U.S.C. §§ 4321-4370m-12
Park Service	National Park Service
Record of Decision	ROD

INTRODUCTION

Six years after *Neighbors Against Bison Slaughter* and Bonnie Lynn (collectively, Neighbors) filed their Complaint, they request the Court to reopen this administratively closed case, so the Court can rule on the merits. Defendants the National Park Service, the United States Forest Service, the Secretary of the Interior, the Secretary of Agriculture, and the Superintendent of Yellowstone National Park (collectively, the Agencies) conceded National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. §§ 4321-4347, required further analysis, but the Forest Service completed no new analysis. And the Park Service left other claims unresolved. Neighbors' claims are ripe for review.

Five years ago, on the eve of summary judgment briefing, the Agencies requested remand, and the Court remanded without vacatur. On appeal, the United States Court of Appeals for the Ninth Circuit directed this Court to allow Neighbors to renew their claims if the Agencies failed to complete their analysis. *Neighbors v. Nat'l Park Serv.*, No. 21-35144, 2022 WL 1315302, at *1 (9th Cir. May 3, 2022). In July 2024, this Court issued an Amended Order that administratively closed this case. ECF No. 143. The Court specifically removed direction to the Clerk to issue a separate judgment. In effect, the Amended Order continued the administrative stay of this case that began with the Order re: Defs.' Mot. for Voluntary Remand (the Remand Order), ECF No. 107.

Since then, Neighbors had been waiting for the remand to ripen by the Forest Service completing some final agency action—by signing the Park Service’s FEIS or otherwise—on Yellowstone wild bison management. Neighbors have learned the Forest Service is taking no final agency action. *See* Tr. 50:19-20, *Montana v. Haaland*, No. CV-24-180-BLG-BMM (D. Mont. Apr. 17, 2025) (excerpts), Ex. 1. Thus, Neighbors claims have ripened because the Agencies have taken all actions they intend to take on remand—while leaving live, unresolved claims.

Neighbors seek the Agencies to make a decision that

1. Expands Tribal hunting;
2. Treats our National Mammal, the bison, with the respect it deserves; and
3. Ensures that the people of Montana, Gardiner, and the United States will be able to see Yellowstone wild bison on more public lands.

If the Agencies strove to satisfy the United States’ treaty obligations, Yellowstone wild bison would expand on the Custer-Gallatin National Forest and would decrease unsustainable pressures on Forest Service land at Beattie Gulch.

Neighbors seek routine, administrative reopening, so they can finally obtain a ruling on the merits of their claims. They are concurrently filing a motion for partial summary judgment. Neighbors brought claims under NEPA, under applicable Forest Service statutes and regulations, and under Article II of the United States Constitution. The time has come to end the Agencies’ “game of administrative keep-away.” *In re Core Commc’ns, Inc.*, 531 F.3d 849, 859 (D.C.

Cir. 2008) (quotations omitted). Reopening will allow this Court finally, after five years of delay, to rule on the merits of Neighbors' claims.

LEGAL BACKGROUND

II. Administrative closures do not terminate cases, but merely stay cases.

Although the Federal Rules of Civil Procedure contain no rule for allowing stays, each district court has “broad discretion to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*, 520 U.S. 681, 706 (1997). That inherent, incidental power authorizes each district court to stay proceedings “to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (cited approvingly by *Clinton*, 520 U.S. at 706-07).

When courts administratively close cases using their “inherent power to manage their docket,” those closures operate as the “practical equivalent of a stay.” *Sarkar v. Garland*, 39 F.4th 611, 618 (9th Cir. 2022) (quotations omitted). Courts use them when “awaiting action from another forum related to the subject case.” *Id.* Administrative closure allows courts to “shelve pending, but dormant, cases” without final adjudications. *Id.* (quotations omitted). “In layman’s terms, the case is asleep but not dead.” *Id.*; see *Native Ecosystems Council v. Tidwell*, No. CV 08-92-M-DWM, 2009 WL 10701988, at *1 n.1 (D. Mont. July 21, 2009) (“As practitioners in this Court are aware (or should be) motions are routinely filed in

closed cases when appropriate. The administrative closing of a case has no legal effect.”). It remains on the docket, and upon a party’s request or the court’s own motion, courts reopen administratively closed cases. *Sarkar*, 39 F.4th at 618.

This procedure differs from Federal Rule of Civil Procedure 60(b). When reopening administratively closed cases, “the time parameters specified in Rule 60(b) do not apply.” *Lehman v. Revolution Portfolio LLC*, 166 F.3d 389, 392 (1st Cir. 1999) (cited approvingly by *Sarkar*, 39 F.4th at 618). To open an administratively closed case, the moving party needs to prove nothing “more than a desire to litigate issues that had become ripe for review.” *Patterson v. Santini*, 631 F. App’x 531, 531, 534-35 (10th Cir. 2015). Upon that showing, courts abuse their discretion by denying the motion. *Id.*

III. Remand orders require agencies to act.

Remand without vacatur “is not an invitation to do nothing.” *Black Oak Energy, LLC v. FERC*, 725 F.3d 230, 244 (D.C. Cir. 2013). It merely indefinitely “stay[s] the effectiveness of a court’s decision.” *NRDC v. EPA*, 489 F.3d 1250, 1262-64 (D.C. Cir. 2007) (Randolph, J., concurring) (preferring “a stay with time limits” to keep “the burden . . . on the losing agency”).

IV. The National Environmental Policy Act

NEPA “is our basic national charter for protection of the environment.” *Churchill Cnty. v. Norton*, 276 F.3d 1060, 1072 (9th Cir. 2001) (quotations

omitted). It requires federal agencies to consider the environmental effects of their actions before acting—instead of “act[ing] on incomplete information, only to regret [their] decision[s] after it is too late to correct.” *Id.* 1073 (quotations omitted). NEPA serves as an “action-forcing device” that requires agencies to consider information at the “earliest possible time to [e]nsure that planning and decisions reflect environmental values” *Andrus v. Sierra Club*, 442 U.S. 347, 351 (1979) (quotations omitted). Courts have a duty to “[e]nsure that the agency has taken a ‘hard look’ at environmental consequences.” *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

After completing an EIS, NEPA requires agencies to remain “alert to new information.” *Friends of Clearwater v. Dombeck*, 222 F.3d 552, 557 (9th Cir. 2000). Whenever later information shows the remaining activity will affect the environment in a significant manner or to a significant extent not already considered, NEPA requires the agency to complete a supplemental EIS. *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 374 (1989). In particular, NEPA requires agencies to issue a supplemental EIS for continuing major federal actions if either (a) it makes substantial changes to the action or (b) significant new circumstances

or information relevant to environmental concerns and bearing on the proposed action or its impacts. 40 C.F.R. § 1502.9(c)(1)(i), (ii) (2019).²

Even when an agency is in the middle of acting, the duty to complete a supplemental EIS arises at the time the new circumstances or new information develops. *Marsh*, 490 U.S. at 371-72, 372 n.15. At that point, NEPA requires the agency to complete a supplemental EIS before continuing with the action—“notwithstanding the fact that the project was initially approved and . . . commenced” *Id.* at 372 n.15; *see Ross v. FHWA*, 162 F.3d 1046, 1048, 1055 (10th Cir. 1998) (upholding “a permanent injunction enjoining further action on a [highway segment] pending the completion of a supplemental [EIS]”).

FACTUAL BACKGROUND

I. Yellowstone wild bison migrate north every year.

Yellowstone National Park’s wild bison do not remain in Yellowstone year-round. Most winters, Yellowstone wild bison search for forage and migrate west

² Although some agencies have issued new NEPA regulations, *see, e.g.*, [NEPA], 90 Fed. Reg. 29,632, 29,670 (July 3, 2025), recent changes to NEPA regulations do not affect the Agencies’ NEPA obligations when Neighbors filed their 2019 Complaint because Congress did not give any agency authority to make NEPA regulations retroactive. *See Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). Regardless of which regulations apply, the NEPA statute itself requires supplemental EISes. *Marsh*, 490 U.S. at 371-74.

and north from Yellowstone. FS4462 (map); FS294.³ When Yellowstone wild bison leave north, they migrate through a Forest-Service-owned “quarter-mile-square” “bottleneck” at the “mouth of Beattie Gulch.” FS9116; FS10701.

Since the Forest Service signed the 2000 Record of Decision (ROD), FS4247, substantially new facts and circumstances have arisen. The Park Service identified 72 new, changed circumstances and information developments. NPS FEIS 147-152, *available at* parkplanning.nps.gov/showFile.cfm?sfid=740681&projectID=94496.

The EIS had analyzed alternatives that would have allowed hunting up to only 85 wild Yellowstone bison—split between West Yellowstone and the northern area that includes Beattie Gulch. FS4392. Since 2012, the kills had vastly exceeded 85. In 2017, hunters killed 486 bison. NPS8172 (389 + 97). Since the Remand, the situation has intensified to kill 1,382 % of 85 Yellowstone wild bison analyzed in the 2000 EIS. In the 2022-2023 winter, the Tribes and state-licensed hunters shot 1,175 Yellowstone wild bison on land managed by the Forest Service, which includes Beattie Gulch. Chris Geremia, *Status Report on the Yellowstone Bison Population to the Superintendent* 11 (Oct. 2023) (1,133 + 42), Ex. 2. The Forest

³ This brief cites administrative record pages as FSXXX and NPSXXX where XXX denotes the page number. The Agencies lodged supplemental administrative records on July 7, 2020. Notice of Lodging of the Supp. Admin. R., ECF No. 86.

Service has done nothing to help the Tribes exercise their treaty rights on other land managed by the Forest Service.

II. The Amended Complaint demanded further analysis from both Agencies.

Neighbors filed their complaint in 2019. Compl., ECF No. 1. They sought both Agencies to complete further analysis of Yellowstone wild bison based on the substantial new circumstances and information developments since 2000.

Neighbors still seek a win for the Yellowstone wild bison, for the Tribes, for the people of Montana, and for their neighborhood.

The Amended Complaint names the Park Service and the Forest Service and officers as separate defendants. ECF No. 81. It alleged specific Forest Service violations of Forest Service statutes. *Id.* ¶¶ 63-66. It also claimed the Agencies violated several federal laws and the United States Constitution Article II in approving the 2019 Winter Operation Plan and in failing to issue a supplemental EIS. *Id.* ¶¶ 64-81. When Neighbors filed the complaint, nineteen years had passed since the Park Service and the Forest Service issued the 2000 EIS and ROD.

PROCEDURAL BACKGROUND

In 2021, this Court remanded Neighbors' claims to the Forest Service and the Park Service to complete additional analyses. Remand Order. On appeal, the Ninth Circuit clarified that it expected this Court to rule on those claims if the remand did not moot them. *Neighbors*, 2022 WL 1315302, *1.

This Court has never ruled on the merits of Neighbors’ claims. On the eve of summary judgment briefing in 2020, when the Agencies foresaw this Court holding that they violated NEPA by failing to complete any supplemental EIS, they requested this Court to issue a remand, so they could complete that mandatory action. Joint Mot. to Extend Case Mgmt. Deadlines, ECF No. 79; [Defs.’] Mot. for Voluntary Remand or Stay of Proceedings, ECF No. 84. At the time, Neighbors “support[ed] the Agencies’ request for remand” Pls.’ Resp. to Fed. Defs.’ Mot. for Voluntary Remand 1 (Pls.’ Remand Br.), ECF No. 103. Neighbors knew NEPA prohibited the Park Service and the Forest Service from changing Yellowstone wild bison management without more analysis, and they therefore requested supplemental EISes in their Complaint. Am. Compl. ¶¶ 74-75.

In 2020, Neighbors anticipated delays and pursued a deadline for the Forest Service and the Park Service to comply with NEPA. Pls.’ Remand Br. 42-44. “[A]gencies often delay or decline to take action” when courts remand without vacatur. *Am. Great Lakes Ports Ass’n v. Schultz*, 962 F.3d 510, 519 (D.C. Cir. 2020). Neighbors sought a deadline of two years. Pls.’ Remand Br. 42. The Court recognized “that this case has endured an extended timeline,” but it found no “evidence that the delay was unreasonable” Remand Order at 11. Therefore, it declined to issue a deadline. *Id.* The Ninth Circuit also declined to issue “a

deadline because not enough time has passed for [it] to find that agency action has been ‘unreasonably delayed.’” *Neighbors*, 2022 WL 1315302, *1.

The Ninth Circuit recognized that this Court “retain[ed] jurisdiction to adjudicate these claims if they are not mooted by Defendants’ actions on remand.” *Id.* The Ninth Circuit also recognized that this Court “did not enter a judgment when it issued the remand order, nor did it indicate that Plaintiffs’ [Administrative Procedure Act (APA), 5 U.S.C. §§ 701-706] § 706(1) claim was dismissed with prejudice.” *Id.* at *1 n.4. It expected this Court would “provide[] an avenue for Plaintiffs to renew their claim challenging the timeliness of agency action, at a later date, should they believe that Defendants have excessively delayed completion of the new EIS.” *Id.* at *1. It also expected the Agencies “to provid[e] the district court ‘with regular status reports during the NEPA process.’” *Id.*

The Agencies began filing status reports in May 2022. *See* Status Report, ECF No. 113. In February 2024, this Court issued an Order for “a status report from the parties on whether this case should be closed.” ECF No. 137. The Parties filed separate status reports. ECF Nos. 138, 139.

During the EIS process, *Neighbors* actively urged the Forest Service to join the EIS to comply with its NEPA obligations. They commented, “[t]he U.S. Forest Service, Custer Gallatin National Forest, should participate in the supplemental EIS as a lead agency with the NPS rather than as a cooperating agency.”

Comments on NPS scoping from Bonnie Lynn, Neighbors, to Office of the Superintendent 2 (Feb. 24, 2022), Ex. 3.⁴ Until Neighbors saw the FEIS and ROD, they expected the Forest Service would join in the NEPA analysis.

But the Agencies did not issue a joint EIS and ROD. In 2024, only the Park Service issued an EIS and a ROD. [Defs.'] Status Report, ECF No. 141. Four days after the Agencies' status report stated the Park Service completed an EIS and ROD, this Court administratively closed this case. *Compare* [Defs.'] Status Report, ECF No. 141, *with* Order, ECF No. 142. The Court quickly amended that Order to ensure it did *not* issue a final judgment. *Compare* Order, ECF No. 142, *with* Am. Order (amending to remove the words "enter judgment"), ECF No. 143.

This Court expected the Park Service would "re-examine the decisions to adopt IBMP [the Interagency Bison Management Plan] in light of information gained from the past twenty years" Remand Order 5. The Park Service never intended to do that. In April 2023, the Park Service stated it "will continue working

⁴ During the comment period on the Park Service's FEIS, another commenter explained, "The Forest Service's jurisdiction requires its participation and a reasonable range of alternatives based on its authority, as well." Letter from Jared Pettinato to Superintendent Cam Sholly 29-31 (Sept. 22, 2023) (cc: Mary Erickson, Custer-Gallatin National Forest Supervisor), Ex. 4. That letter stated plainly, "The Forest Service signed [the 2000] ROD, too, and NEPA requires it to comply with NEPA, too." *Id.* at 30. The commenter sent that objection letter to the Forest Service. *Id.* at 31.

within the IBMP framework after the EIS process is completed.” Park Service, Briefing Paper 3 (Apr. 10, 2023), Ex. 5.

ARGUMENT

I. The Amended Order administratively closed the case, and courts reopen cases when a plaintiff seeks to further litigate their claims.

Neighbors seek to reopen this administratively closed case, so the Court can rule on the merits of their six-year-old claims via summary judgment. The Ninth Circuit expected this Court would rule on Neighbors’ claims if the remand did not moot those claims. *Neighbors*, 2022 WL 1315302, *1. Courts reopen administrative closures “at the request of a party.” *Lehman*, 166 F.3d at 392; *Sarkar*, 39 F.4th at 618. Because the Agencies have apparently completed all actions on remand that they intend to complete, Neighbors claims are ripe and that ripeness gives them a right to reopen this case. *See Patterson*, 631 F. App’x at 534.

The Amended Order effected an administrative closure of this case because it merely stated, “the Clerk of Court is directed to close this matter.” Orders “merely directing that a case be marked closed constitutes an administrative closing that has no legal consequence other than to remove that case from the district court’s active docket.” *Penn W. Assocs., Inc. v. Cohen*, 371 F.3d 118, 128 (3d Cir. 2004). In *Penn West*, the United States Court of Appeals for the Third Circuit held that a district court had only administratively closed a case, and had not dismissed it, when the order stated, “It is hereby ordered that the Clerk of the Court mark the

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above captioned matter closed.” *Id.* at 121 (capitals removed). That language and the Amended Order’s language differ in no material way. Therefore, the Amended Order resulted in the same administrative-closure effect. This case was “asleep but not dead.” *See Sarkar*, 39 F.4th at 618.

Interpreting the Amended Order as an administrative closure would follow the Ninth Circuit’s directions on the appeal in this case. *Neighbors*, 2022 WL 1315302, *1. Now, the Forest Service has admitted it will do nothing on remand. “[T]he Forest Service is not undertaking any supplemental NEPA right now.” Tr. 50:19-20 (Apr. 17, 2025), *Montana*, No. CV-24-180-BLG-BMM (excerpts). The facts have ripened, so this Court can rule on the merits of Neighbors’ claims. Because this Court merely administratively closed this case, Neighbors have a right to reopening because they desire to “reactivate it” and to litigate their claims on the merits. *See Lehman*, 166 F.3d at 392; *Patterson*, 631 F. App’x at 535. Declining to reopen this case would abuse this Court’s discretion because it would be unclear when Neighbors could reopen this case, and that would result in effective dismissal without complying with the Federal Rules of Civil Procedure. *See Patterson*, 631 F. App’x at 531.

Remand orders merely stay cases pending the completion of the remand, so the Remand Order confirms the administrative closure. ECF No. 107. That order effectively stayed this case while the Parties waited for the Agencies to complete

remand. Remand orders generally are not final decisions. *Alsea Valley All. v. Dep't of Com.*, 358 F.3d 1181, 1185 (9th Cir. 2004). Courts wait for “the eventual outcome of the district court’s decision” to see if “the action taken by the [agency] on remand will provide the [plaintiff] with all the relief it seeks.” *Id.* Remand without vacatur, in effect, “indefinite[ly] stay[s] the effectiveness of [a] court’s decision” until the agency can bring itself into compliance with the law. *NRDC*, 489 F.3d at 1262-64 (Randolph, J., concurring); *Ctr. for Food Safety v. Regan*, 56 F.4th 648, 672 (9th Cir. 2022) (Miller, J., concurring in part and dissenting in part); *In re Core Commc'ns*, 531 F.3d at 862 (Griffith, J., concurring); *Ctr. for Biological Diversity v. Burgum*, No. 3:23-CV-00150-AN, 2025 WL 2781718, at *22 (D. Or. Sept. 29, 2025). The Agencies’ actions after this Court’s Remand Order did not give Neighbors all of the relief they seek, so Neighbors’ claims remained live.

This Court never resolved this case on the merits. No order under Rule 12 or Rule 41 dismissed Neighbors’ claims. No order ruled on summary judgment under Rule 56, and the Court held no trial that led to judgment. The Court specifically declined to issue a separate Rule 58 judgment. *See* Am. Order. Now, the Forest Service disclaims any intent to act further on remand. *See* Tr. 50:19-20, *Montana*, No. CV-24-180-BLG-BMM. But it and the Park Service never resolved Neighbors’ claims. Neighbors request routine reopening of this case based on the ripened facts, so they can finally advance the merits of their claims.

II. This Court has jurisdiction over Neighbors’ claims, so it has no basis for denying this motion to reopen.

The Ninth Circuit already recognized that Neighbors have a right to their day in court on the merits of their claims, and its directions control here. *See Neighbors*, 2022 WL 1315302, at *1. When a federal court has jurisdiction over a case, it has a duty to rule on the merits. “[A] federal court’s obligation to hear and decide cases within its jurisdiction is virtually unflagging.” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (quotations omitted); *Bell v. Hood*, 327 U.S. 678, 681-82 (1946) (recognizing that, when courts have jurisdiction, they “must entertain the suit”); *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 358 (1989); *Hyde v. Stone*, 61 U.S. 170, 175 (1857) (“[T]he courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends.”). Nothing has extinguished Neighbors’ claims. As in another case, “Plaintiffs are entitled to have their complaint decided on the merits, particularly given the fact that [defendant agencies] continue to rely on the challenged [agency actions] as if they were lawfully enacted.” *NRDC v. Norton*, No. 1:05CV01207 OWW LJO, 2007 WL 14283, at *16 (E.D. Cal. Jan. 3, 2007).

The Amended Order did not divest this Court of jurisdiction over Neighbors’ claims. *See Dees v. Billy*, 394 F.3d 1290, 1294 (9th Cir. 2005) (“An order administratively closing a case is a docket management tool that has no
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jurisdictional effect.”). In other cases, the United States has “concede[d] that a remand order from a district court to the agency is not a final determination of the civil action and that the district court retains jurisdiction to review any determination rendered on remand.” *Sullivan v. Hudson*, 490 U.S. 877, 887 (1989) (quotations omitted). Therefore, in “many remand situations” after a remand order, courts “retain jurisdiction over the action pending the [new] decision and its filing with the court.” *Id.* at 886. Thus, nothing has lessened this Court’s virtually unflagging obligation to rule on the merits of Neighbors’ claims.

Although Judge Brian Morris denied a motion to reopen another case on Yellowstone wild bison, the procedural and factual history differ from this case in operative ways. Order 6, *Cottonwood Env’tl. L. Ctr. v. Bernhardt* (the *Cottonwood Order*), No. CV-18-12-BU-BMM, ECF No. 289. It carries no weight because the orders in this case effected a simple administrative closure. *See Penn W.*, 371 F.3d at 120 (overturning a district court that “mistook its administrative closure of the case as a final decision, which mistakenly led it to treat [the] motion to re-open the case and list it for trial as one under Federal Rule of Civil Procedure 60(b).”).

Prior *Cottonwood* orders suggest Judge Sam E. Haddon intended to dismiss that case and to require refiling after remand. His order that granted remand and closed the case had cited authorities that required refiling after remand. *See Order 6 n.25, Cottonwood*, ECF No. 253 (Haddon, J.). In stark contrast, no order in this case

even obliquely referenced any need to refile after remand. *Neighbors*, 2022 WL 1315302 at *1 n.4. Instead, the Ninth Circuit directed what would happen after the remand, and that serves as the law of the case. *See id.*; *United States v. Gartenlaub*, No. 22-55799, 2024 WL 4987258, at *1 (9th Cir. Dec. 5, 2024) (“Under the law of the case doctrine, a court is ordinarily precluded from reexamining an issue previously decided by the same court, or a higher court, in the same case.” (quotations omitted)). For these reasons, the *Cottonwood* Order carries no weight here. *See Camreta v. Greene*, 563 U.S. 692, 709 n.7 (2011) (“A decision of a federal district court judge is not binding precedent in either a different judicial district, the same judicial district, or even upon the same judge in a different case.” (quotations omitted)).

Because *Neighbors* are merely asking for reopening to litigate their claims, nothing requires them to prove their claims in this motion. Courts do not review the merits of a party’s administratively closed case when deciding whether to reopen it, but only ask if the party seeks to reactivate the case and if the reasons for the closing no longer apply. *See Lehman*, 166 F.3d at 392. Yet the *Cottonwood* Order reached beyond the motion to reopen to address the substance of that plaintiff’s claims—without the benefit of any filed administrative record or any notice that it intended to address those claims on the merits. The *Cottonwood* Order denied the motion to reopen because the plaintiff had “fail[ed] to identify

any major federal action by” the Forest Service that would have required it “to conduct its own NEPA analysis.” *Cottonwood* Order 6.

This Court has no basis for reaching the merits of Neighbors’ claims in the context of this motion. But even if it did, Neighbors have made the showings that the *Cottonwood* plaintiff did not. Neighbors’ partial summary judgment brief addresses the merits issues and shows that they have ripe claims. And contrary to the *Cottonwood* Order’s rationale, Neighbors can show the Forest Service took at least three actions, and it violated NEPA by failing to analyze the environmental effects of each action before acting.

First, the Agencies issue operation plans every year. NEPA requires analysis before approving those operation plans if new information shows the plans will affect the environment in a significant manner or to a significant extent not already considered. *See Marsh*, 490 U.S. at 371-74. For six years, Neighbors have claimed the Forest Service signed the 2019 Operation Plan, FS11258, and every subsequent plan without complying with NEPA. Am. Compl. ¶¶ 4, 40, 62, 66 (“The Forest Service never analyzed the impacts of the government-sanctioned bison hunt on private property owners, neighbors, and visitors before issuing the 2019 Operation Plan.”), 71, 72; *see also* Operations Plan 8 (Oct. 29, 2024), Ex. 6. The Agencies admit they are acting: “Defendants’ annual monitoring, hazing, and capture operations help ensure that the bison herd stays within healthy population targets,

away from livestock, and within State- implemented tolerance zones.” Defs.’

Reply in Supp. of Mot. for Voluntary Remand 8, ECF No. 105. NEPA requires a supplemental EIS, and both Agencies’ delegations of their authority to the IBMP compel review.

Second, the Forest Service made an unwritten, secret “handshake agreement” with Montana not to enforce the Forest Service’s food storage order. YELL Bison Internal [FEIS] Cooperating Agency Review (May 13, 2024), Ex. 7. The Forest Service regulations authorize closing areas for “[p]ublic health or safety” and for protecting property. 36 C.F.R. § 261.53(e); *see* 43 U.S.C. § 1732(b). The food storage order requires “[a]nimal carcasses [to] be acceptably stored . . . when located . . . within 200 yards of a Forest Road or Trail.” FS1152 (or “½ mile of a . . . sleeping area.”). But shooters in Beattie Gulch leave behind hundreds of “gut piles,” each weighing hundreds of pounds “near roads and residences” and “quite close to the homes.” *See* FS4715 (estimating bison weigh 900-1,100 pounds, and hunters take only 60 % by weight); NPS7283; NPS7226. They have been as close as “within 50 meters from the road.” NPS5171.

The Park Service has recognized “the very high level of concentrated animal remains are an attractive nuisance for native wildlife in the area,” and that includes grizzly bears, so “a hazard will exist in areas near residents along the Old Yellowstone Trail.” NPS5186. The Agencies admitted the Forest Service is not

currently “[e]nforc[ing] and adher[ing] to current USFS food storage restrictions” in Beattie Gulch. IBMP Subcommittee Assessment of Bison Carcass Removal in Beattie Gulch Area (July 29, 2020), Ex. 8. Instead, it has a “handshake agreement” with Montana not to enforce the Forest Service’s food storage order. YELL Bison Internal [FEIS] Cooperating Agency Review. That secret, unwritten “handshake agreement” qualifies as a final agency action for which NEPA required Forest Service analysis. The Forest Service’s administrative record shows no NEPA analysis of that secret final agency action.

Third, in 2000, the Forest Service authorized several actions on land it manages for the United States: “Management actions within Zone 2 [including Beattie Gulch] could include tolerating, hazing, capturing and testing, vaccinating, removing bison to quarantine, removing for use in jointly approved research and lethally removing bison as set forth in this plan.” FS4231-32. It planned to monitor Yellowstone wild bison “behavior and movements . . . to assure [sic] all bison remain west of the Yellowstone River at all times.” FS4232. Even if the Forest Service decided to change course and take fewer supporting actions, that decision requires compliance with the APA and NEPA. *See Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (“an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change . . .”). Because each of these three actions requires further

NEPA analysis, the *Cottonwood* Order has no weight for deciding whether to reopen this case.

Neighbors brought claims over which this Court has jurisdiction, and they ripened since the Amended Order. Neighbors have a right to reopening to obtain a merits ruling.

III. No event has mooted Neighbor's claims, so they remain live.

The Ninth Circuit also required this Court to rule on Neighbors' claims if the remand did not moot Neighbors' claims. *Neighbors*, 2022 WL 1315302, at *1. No final agency actions have mooted all of Neighbors' claims. The Park Service's 2024 EIS and ROD mooted none of Neighbors' claims against the Forest Service, and it did not moot Neighbors' claims against the Park Service that the 2019 Operation Plan violates Article II of the Constitution.

	Count 1	Count 2	Count 3	Count 4	Count 5
	Violated the Bison Clause, 16 U.S.C. § 36	Violated Forest Service Statutes by Approving the 2019 Operation Plan	Violated NEPA by issuing the 2019 Operation Plan without analyzing its environmental effects under NEPA	Violated NEPA by failing to issue a supplemental EIS	Violated the United States Constitution Article II by delegating authority to the IBMP
Park Service	New final agency action issued.	N/A	New final agency action issued.	Neighbors prevailed.	Unresolved
Forest Service	N/A	Unresolved	Unresolved	Unresolved	Unresolved

Claims qualify as moot “when events in the world overtake those in the courtroom and the plaintiffs obtain all the relief they might have won in the litigation,” and that occurs only “when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *J. N. ex rel. Cisneros v. Or. Dep’t of Educ.*, No. 24-2080, 2025 WL 1863189, at *1-2 (9th Cir. July 7, 2025) (citation modified) (overturning a district court when it dismissed a case as moot because the government action did not “fully address[. . . Plaintiffs’ alleged harms.”). Neighbors sought more judicial relief that they did not obtain and that they can yet obtain. Nothing has caused their claims to become moot.

Neighbors are filing for partial summary judgment on three unresolved claims against the Forest Service only and one against both Agencies. First, Neighbors *Neighbors Against Bison Slaughter v. Nat’l Park Serv.*, No. 1:19-cv-128-SPW Pls.’ Br. in Supp. of Their Mot. to Reopen

claimed the Forest Service violated the APA by failing to analyze the impacts of killing Yellowstone wild bison in Beattie Gulch under the 2019 Operation Plan. Am. Compl. ¶¶ 63-66. Second, they claimed the Agencies (including the Forest Service) violated NEPA and the APA “by acting without completing the environmental analysis of that action.” *Id.* ¶¶ 67-72. Third, they claimed the Agencies’ Yellowstone wild bison management causes environmental impacts outside the scope of the 2000 EIS and requires both Agencies to issue a supplemental EIS. *Id.* ¶¶ 73-75. Fourth, they claimed both Agencies unconstitutionally delegated decision-making authority to a non-federal entity, the IBMP. *Id.* ¶¶ 76-81. The Park Service’s EIS and ROD did not moot all of these claims.

For some examples of relief, the Court can set aside the 2019 Operation Plan and declare it unlawful, and require future compliance with NEPA. *See* Am. Compl. ¶ 82.a, ¶ 82.e.⁵ It can direct the Forest Service to complete a supplemental EIS. *Id.* ¶¶ 74-75. It can declare the Agencies violated Article II, section 3, of the United States Constitution by failing to independently evaluate decisions made by

⁵ Although this challenge focuses on the 2019 Operation plan, nothing moots Neighbors’ claim because it is capable of repetition yet evading review. The IBMP issues these operation plans every year, and one year is too short for an entire legal case. *See NRDC v. Evans*, 316 F.3d 904, 910 (9th Cir. 2003); Operations Plan (Oct. 29, 2024).

the IBMP committee; it can set aside IBMP decisions that violate the Constitution; and it can enjoin the Agencies from future delegations to non-federal committees.

Id. ¶ 82.i, l. Because this Court still can issue relief, remand did not moot

Neighbors' claims. The Ninth Circuit directed this Court to address those claims.

CONCLUSION

Because the Agencies have apparently completed all of the actions they intend to take on remand, the situation has ripened. Neighbors seek to reopen this case, so they can finally litigate the merits of their claims. This Court still has jurisdiction over Neighbors' claims, and the Ninth Circuit directed this Court to allow Neighbors "to renew their claim challenging the timeliness of agency action, at a later date, should they believe that Defendants have excessively delayed completion of the new EIS." *Neighbors*, 2022 WL 1315302 at *1. Neighbors request routine administrative reopening.

Dated November 14, 2025, /s/ Jared S. Pettinato
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CERTIFICATE OF COMPLIANCE

I certify that this brief contains 5,677 words, excluding the caption, certificate of compliance, tables of contents authorities, and exhibit index, which complies with L.R. 7.1(d)(2)(A). I relied on the word count in MS Word.

Dated November 14, 2025,

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