

**From:** Jeff King <Jeff\_King@fws.gov>  
**To:** Dean Rundle/R6/FWS/DOI; Rick Coleman/R6/FWS/DOI  
**Subject:** Final comments  
**Date:** Thursday, March 24, 2011 10:43:22 AM  
**Attachments:** [jking\\_comments\\_AFA.PtstoAD.3.23.11.doc](#)

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Dean,

Below are some changes that I still feel strongly about before this is sent to Greg - included in my comments in the document.

NEPA lingo—it does not become a preferred alternative until the FONSI is signed. This term preferred alternative is 'predecisional' used in the context of the sentence.

(b)(5)

A large black rectangular redaction box covers the text in this section.

In my notes from our meeting in Denver, we all agreed that the biologist position was a 'core' leadership position that should remain with the Service. Rick and you both pointed out that it was important that we have a core Service staff so that if the AFA is again rescinded, for any reason, the refuge can function and the resource will not continue to pay the price. Also, I recommended in my comments on the AFA policy that retaining all core leadership positions, including the lead biologist, is fundamental to managing a refuge.

The Service should retain direct costs to ensure that FAR procurement and purchasing guidelines are followed. There seems to be a difference of opinion within FWS on whether any Tribe receiving federal funds are required to follow our purchasing regulations. This difference of opinion needs to be resolved before we begin negotiations.

Obviously, the final decision rest with you and Rick, but I'm making these suggested changes to not only reduce the risk of any further litigation but ensure that if for any reason a future AFA is rescinded, the NBR resources and programs will not continue to suffer or simply survive but move forward and build on any past successes to develop a consistent, innovative, and effective science based management program. That has always been my goal as a refuge manager and I don't think it should be any different on the National Bison Range.

Thanks,

jk









**From:** [Rick Coleman](#)  
**To:** [Dean Rundle](#); [Jeff King](#)  
**Subject:** Fw: AFA Negotiations  
**Date:** 06/08/2011 08:00 AM

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Rick Coleman  
ARD - Refugees/Partners for Fish and Wildlife  
  
303-236-4303

----- Forwarded by Rick Coleman/R6/FWS/DOI on 06/08/2011 08:00 AM -----

**Gregory  
Siekaniiec/NWRS/R9/FWS/DOI**

06/06/2011 06:17 AM

To Paul Steblein/NWRS/R9/FWS/DOI@FWS  
cc Jeff Rupert/NWRS/R9/FWS/DOI@FWS, Rick  
Coleman/R6/FWS/DOI@FWS, Jim  
Kurth/NWRS/R9/FWS/DOI@FWS  
Subject Re: Fw: AFA Negotiations 

Paul,

Thank you and please follow up with the Director level appeal being described in the policy. Also, let's make it clear in the policy that indirect costs are not required; however, there may be times when it is appropriate to facilitate successful implementation of the AFA. Are we doing Q&A's in the policy? Could be a good question to lay out the considerations you note.

greg

▼ [Paul Steblein/NWRS/R9/FWS/DOI](#)

**Paul  
Steblein/NWRS/R9/FWS/DOI**

06/03/2011 10:40 AM

To Jeff Rupert/NWRS/R9/FWS/DOI@FWS, Gregory  
Siekaniiec/NWRS/R9/FWS/DOI@FWS  
cc  
Subject Re: Fw: AFA Negotiations 

Hi Greg,

1) Dispute resolution - both the policy and AFA regs emphasize alternative dispute resolution and 3rd party resolution. The regs (25CFR1000.403 & 422) do not

prescribe a path or final appeal decision. Regs do say that appeal process is set by the bureau. This is not currently defined explicitly in the draft policy for disputes either. However, the draft policy emphasizes delegation of secretarial authorization thru the director to the regional director. So, the RD is the prime decision maker on AFA negotiation, the agreement, waiver of regulations. It follows suit that if alternative dispute resolution does not work or is not appropriate, the RD decides. Virtually all of the daily decisions on the agreement are made by the PL. It seems appropriate to have the Director as the final level of appeal. The other alternative is to have the regional chief as the first level of appeal, and keep the RD as final appeal level. Using the regional chief as the first line of appeal is consistent with how most regions deal with most issues. I agree with keeping it out of the secretarial level.

I will add a statement in the policy with a 2-level appeal terminating with the director. Once the policy and process is worked out further, it may warrant having Regional Directors delegate their decision authority to Regional Chiefs.

2) Indirect costs - the policy states that direct and indirect costs are eligible for funding under an AFA. I am aware of the differing opinions between regions and solicitors of whether indirect costs are *required*. I don't see that they are required, but we may pay a reasonable amount. There are important guidelines to follow if indirect costs are included in the AFA negotiation.

- a. Both our policy and regs say consult OMB circular A-87 to figure out how to calculate costs - both percentages or flat fees are allowed
- b. The Service cannot pay for duplicate costs - so if indirect, overhead, support costs are paid in the Service for an item, we cannot pay for them in the AFA
- c. If charges for indirect costs are too high, or reduces too much what can be done under the AFA, then the AFA is no longer cost effective (a key factor for evaluation) and can be denied.
- d. All funds provided to a tribe through an AFA must be used for accomplishment of work spelled out in the AFA. They cannot be used for non-refuge activities & purposes. This is in policy and reg.

I think I should follow-up with Pat Durham and solicitors to get a final reading on indirect costs.

Let me know if further questions.

Paul

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Paul Steblein  
Critical Issues & Policy  
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[www.fws.gov/refuges/](http://www.fws.gov/refuges/)

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▼ [Jeff Rupert/NWRS/R9/FWS/DOI](#)

**Jeff  
Rupert/NWRS/R9/FWS/DOI**

To Gregory Siekaniec/NWRS/R9/FWS/DOI@FWS  
cc Paul Steblein/NWRS/R9/FWS/DOI@FWS

06/02/2011 04:54 PM

Subject Re: Fw: AFA Negotiations 

Greg,  
Paul will need to chime in on this, but we may want to pay attention to item no. 2, indirect costs. The draft policy states we will only pay indirect cost associated with salary and benefits of employees performing activities. The AFA may not exceed the amount of funding the Service would have spent on the program in that year (as opposed to some negotiated overhead...). As Bud mentions, I think Pat Durham does feel strongly about this and I think Paul, and possibly R7 have come to the same conclusion as Pat.

▼ Gregory Siekaniec/NWRS/R9/FWS/DOI

**Gregory  
Siekaniec/NWRS/R9/FWS/DOI**

To Paul Steblein/NWRS/R9/FWS/DOI@FWS, Jeff  
Rupert/NWRS/R9/FWS/DOI@FWS

06/02/2011 04:19 PM

cc  
Subject Fw: AFA Negotiations

How does this work with the draft of the AFA policy?

greg

----- Forwarded by Gregory Siekaniec/NWRS/R9/FWS/DOI on 06/02/2011 04:18 PM -----

**Rick  
Coleman/R6/FWS/DOI**

To Gregory Siekaniec/NWRS/R9/FWS/DOI, Stephen  
Guertin/R6/FWS/DOI

06/02/2011 09:47 AM

cc Noreen Walsh/R6/FWS/DOI, Dean  
Rundle/R6/FWS/DOI  
Subject Fw: AFA Negotiations

We seek your advice on 2 items listed below.

#1: I recommend Director level, due to sovereignty status.

#2: I recommend a lump sum \$20K/year, due to SOL insisting that we have to pay indirect costs (I disagree).

Please let us know your ideas on these negotiation matters.  
Thank you.  
Rick

Rick Coleman  
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

----- Forwarded by Rick Coleman/R6/FWS/DOI on 06/02/2011 07:40 AM -----

**Dean Rundle/R6/FWS/DOI** To Rick Coleman/R6/FWS/DOI@FWS  
cc Bud Oliveira/R6/FWS/DOI@FWS  
06/01/2011 01:35 PM Subject AFA Negotiations

We had a brief conf. call with CSKT this morning. Due to a death in Jeff King's family (grandmother), Jeff had been out last week, and my Fish Springs issues had taken up time, we'd been unable to follow-up on some of the action items left over from our negotiation session on May 11/12. We will have another conf. call next Wednesday, June 8, and I am travelling to Pablo on June 13/14 to continue negotiations.

Two issues need your guidance on to report back to negotiations:

1. Level of "final" authority in dispute resolution:

In the prior AFA, we had a dispute resolution process that went from the Field, to my level, to the RD, to the Director, and then to the "DOI Leadership Team", on the FWS/DOI side. This was part of the Game Range Act charge in the PEER/BGA lawsuits - that the resolution of disputes went outside the Service to involve political appointees in the Department. (b) (5)

[REDACTED] we've agreed in negotiations that removing the "DOI Leadership Team" from the process is a good idea. CSKT initially proposed that their final appeal of a dispute would be to the AS FWP level. I countered that we would prefer the RD to have a final say in disputes for FWS. At our negotiations on May 11, CSKT said they would agree to the Director being the last level of appeal. I told them that we still prefer that disputes be resolved at the Regional level - that they've given up no sovereignty, can still go political whenever they want, and still have access to various courts. Personally, I can live with the Director level, but I need guidance on whether you, the RD and Director are also ok with that. If I can get an answer before our next call on June 8, that'd be great.

2. Indirect costs

CSKT contends, and Sharon Brenna agrees, that we are required to pay indirect costs. I think Sharon has gone over this with WO SOL. They disagree with Pat Durham, and he never provided me with the name of a SOL who says differently. I told the Tribe that we can't afford to pay the 18.24% rate that we paid in

2009/2010, and we need a new AFA to be cost neutral, or as close to cost neutral as possible. We paid about 96K in 2010, and it would have been \$112K in 2011 if the AFA had not been rescinded. CSKT acknowledges that since they do not have to provide office space, utilities, etc for their NBR employees, that a reduced rate might be acceptable. I told them at the last meeting that we'd look into the per capita level we pay ABA in our regional assessments, and perhaps they would be willing to accept that number. The last year that Pam Smart had the numbers for was FY 09, when the per capita (perm employees) cost paid to ABA from R6 refugees was \$640.00. Multiplied by a half dozen tribal employees, that'd only be around \$4K - a very significant reduction. I doubt if CSKT will go for that. Are you willing for me to offer a flat rate - say \$20K/year, offer the ABA rate of \$640/employee, or push back hard on paying any indirect costs?

FYI the tribe said on May 11, that they intend to pay the federal pay scale for their employees under a new AFA. They did not do that in 09/10 in order to not have pay disparity within Tom McDonald's other staff. They've decided that their recruiting difficulties at NBR and the pay disparity for their employees at NBR is a bigger issue. So, in the next AFA, if the slot is on the org chart as a GS-12 - they intend to pay GS-12 pay, and will not have "build-in" overhead and MC in the positions that we fund.

Dean

**From:** Stephen Guertin <Stephen\_Guertin@fws.gov>  
**To:** [Debbie\\_Schreiner@fws.gov](mailto:Debbie_Schreiner@fws.gov)  
**Subject:** Fw: draft briefing statement NBR AFA  
**Date:** Wednesday, November 03, 2010 2:36:24 PM  
**Attachments:** [NBRC.AFA.court.order.Secbrief.101810.b.doc](#)

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Debbie

Can you set up a conf call for 2:45 pm tomorrow (after I return from the site visit to the BOR Technical Services Center to see the Intake Dam model) with our folks and Greg Siekanic and / or Jim Kurth so we can get a better understanding of the WO position on the AFA and an update on their conversations / feedback from the DOI policy level. Thanks.

Steve Guertin

Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service----- Forwarded by Stephen Guertin/R6/FWS/DOI on 11/03/2010 02:32 PM -----

To: Stephen Guertin/R6/FWS/DOI@FWS, Gregory Siekaniec/NWRS/R9/FWS/DOI@FWS, Rick Coleman/R6/FWS/DOI@FWS, Jim Kurth/NWRS/R9/FWS/DOI@FWS  
cc: Bud Oliveira/R6/FWS/DOI@FWS, Noreen Walsh/R6/FWS/DOI@FWS, Jeff King/R6/FWS/DOI@FWS  
Subject: Fw: draft briefing statement NBR AFA

Dean Rundle/R6/FWS/DOI11/03/2010 11:41 AM

I was tasked to produce, this week, a new CATEX document, addressing the potential for extraordinary circumstances, for an AFA at the National Bison Range. It is unclear to me whether the R6 recommendation contained in the briefing statement attached to Noreen's message of Oct. 18, below, has been considered and either accepted or rejected by the Acting Director and or DOI.

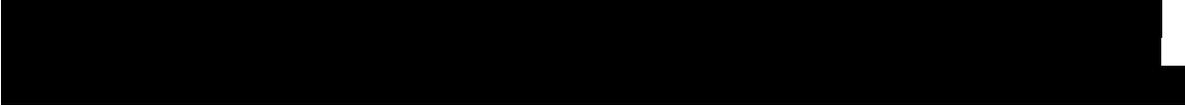
On Monday I met with the Regional Solicitor, and he told me that SOL is working to

(b) (5)  
[Redacted]

[Redacted]

[Redacted]

(b) (5)



It is unclear to me what happened to the R6 recommendations to provided in the DRD's message below? There is also another option that I have failed to effectively raise for your consideration.

Here is our situation as I see it.

1. NBR has 7 PFT FWS employees currently assigned. This is a larger staff than we had in 2007 following cancellation of the first AFA. This staff is sufficient to manage the refuge through the winter period.
2. By March/April, we will not have sufficient staff to conduct all refuge programs, and will need to augment the permanent staff. I do believe it is preferable to do that through a partnership with CSKT, as opposed to just hiring FWS seasonal employees.
3. It is unlikely, that the judge will make a ruling on a request to reconsider by March/April. Our experience in the initial lawsuit is that it will take the lawyers longer than that to file their motions/briefs, counters, etc. Hence is it unlikely that the rescinded AFA would be reinstated in time for the spring field season. I do not know how quickly CSKT can staff back up - uncertain if they will have to go through new hiring processes, etc.
4. It would be possible, but difficult to negotiate and brand new AFA and have it in place by the spring field season. Even if we had a new agreement negotiated by Christmas, the 90-day Congressional review period would mean we could not have anything in place before April 1. Then we would immediately be sued again, and face the possibility of having a new AFA thrown out again based on one of the other charges.
5. This issue has already "ground up" the lives and careers of many good FWS employees and now many good CSKT employees. We need to do everything we can to avoid further harm to good people on both sides, and I do not believe that hasty return to an AFA is in the best interest of the employees or a successful long-term partnership with CSKT.

I recommend that the Service/DOI pursue the following option:

1. Prepare new NEPA and Section 7 compliance documentation for a partnership arrangement for CSKT to conduct operations and maintenance at NBRC. The CATEX

and Section 7 will be written to apply to either a self-governance AFA, or a Cooperative Agreement.

2. Seek a Cooperative Agreement with CSKT for operations and maintenance for the remainder of FY 2011, and possibly for FY 2012. Some plaintiffs have made clear that they are perfectly fine with a Coop Agreement, and such an agreement is less likely to result in litigation. This is not the Service or CSKT ultimate goal, but will provide time to:

3. Promulgate Service policy for Self-Governance AFAs, including publication in the Federal Register, with public review and comment.

4. Negotiate a new AFA after policy is in place.

I believe the CSKT will want a self-governance AFA as soon as possible. But, I also believe that they will consider an "interim" cooperative agreement arrangement if:

1. Service/DOI leadership makes clear that we want/need time to do it right this time and there'll be no political pressure applied to "hurry up" an AFA, and

2. Establishment of a long-term partnership through Self-Governance AFAs continues to be the ultimate goal of the Service in an 18 - 30 month time period.

I will proceed with preparing a new CATEX by COB Friday. Unless directed otherwise, the CATEX will cover either an AFA or Cooperative Agreement. At this time, SOL informs they have not had discussions with OIG regarding the in-progress IG Inquiry at NBR. I would not recommend any line officer signing an EAM for a new CATEX until we are reasonably certain that the OIG reports will not contradict an analysis of potential "extraordinary circumstances".

Your consideration and guidance are appreciated.

Dean----- Forwarded by Dean Rundle/R6/FWS/DOI on 11/03/2010 09:49 AM -----

To Rick Coleman/R6/FWS/DOI@FWS  
 Bud Oliveira/R6/FWS/DOI@FWS, Dean  
 Rundle/R6/FWS/DOI@FWS, Gregory  
 Siekaniec/NWRS/R9/FWS/DOI@FWS, Jim  
 Kurth/NWRS/R9/FWS/DOI@FWS, Stephen  
 Guertin/R6/FWS/DOI@FWS

Noreen Walsh/R6/FWS/DOI 10/18/2010 04:57 PM cc

Subject Re: draft briefing statement NBR AFA

Steve, this looks fine to me. Do you have any comments or concerns before it moves forward?

Noreen-----Noreen E. Walsh Deputy Regional Director Mountain-Prairie Region U. S. Fish and Wildlife Service 134 Union Blvd. Lakewood, CO 80228 303 236 7920  
 phonenoreen\_walsh@fws.gov LCCs: Providing needed information so we can all improve conservation delivery for maximum results. Mission FIRST, Safety ALWAYS.

To Noreen Walsh/R6/FWS/DOI@FWS, Stephen Guertin/R6/FWS/DOI@FWS  
 Jim Kurth/NWRS/R9/FWS/DOI@FWS, Dean

Rick Coleman/R6/FWS/DOI110/18/2010 04:44 PM

cc

Rundle/R6/FWS/DOI@FWS, Bud  
Oliveira/R6/FWS/DOI@FWS, Gregory  
Siekaniiec/NWRS/R9/FWS/DOI@FWS

Subject draft briefing statement NBR AFA

attached is a draft briefing paper on the National Bison Range AFA.

According to Kevin Kilcullin, Div.of Refuges, Assistant Sec. Strickland has requested an update on this situation.

Rick Coleman

ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

**United States Department of the Interior  
Fish and Wildlife Service**

**INFORMATION MEMORANDUM FOR THE SECRETARY**

**From:** Stephen Guertin, Regional Director, Mountain-Prairie (Region Six)

**Through:** Rowan Gould, Acting Director

**Subject:** Court Order Regarding National Bison Range Annual Funding Agreement

**Summary: Background:**

United States District Court for the District of Columbia issued an order on September 28, 2010 rescinding the Annual Funding Agreement between the Fish and Wildlife Service (Service) and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation (CSKT) and the National Bison Range (NBR), due to a violation of the National Environmental Policy Act. The National Bison Range assumed full authority for management of refuge biological, maintenance, fire management and visitor services on the refuge. The annual bison roundup at NBR, scheduled for October 4-7, 2010, proceeded as planned without any concerns and included the assistance of 7 CSKT temporary employees hired by NBR for the purpose of completing these roundup activities.

Post-roundup and winter operations are underway at NBR using reduced winter Service staffing.

**Background:** Following an earlier, unsuccessful AFA in FY 2005-2006, the Service entered government-to-government negotiations with the CSKT in January 2008 to establish a new agreement, pursuant to the Tribal Self-Governance Act of 1994. The Tribal Self-Governance Act amended the Indian Self Determination and Education Assistance Act of 1975 and authorizes the Secretary of the Interior to enter into annual funding agreements with qualified Indian tribes to have them perform programs, functions, services, or activities, that are of special geographic, historical, or cultural significance to the participating tribe.

Negotiations for the current AFA were successfully completed in June 2008, and the agreement was effective on October 1, 2008. The AFA provides for an on-the-ground partnership and management of full programs by the CSKT on four NBR units located within the exterior boundaries of the Flathead Indian Reservation.

The Service disbursed approximately \$1.7M to CSKT in FY09, including a \$650K ARRA-funded bridge replacement project. Approximately \$986K was provided to the CSKT for operations in FY 10.

Under direction of the Service's refuge manager at the NBR, CSKT assumed management of refuge biological, maintenance, fire management and portions of the visitor services program in January, 2009. CSKT staffed the positions for which they contracted under the AFA with well-qualified wildlife and conservation professionals, and CSKT staff participated in a variety of

Service-sponsored training aimed at enhancing their performance under the AFA. Performance and teamwork between the partners in the first year of AFA implementation was excellent.

**Discussion:** In late 2008, Public Employees for Environmental Responsibility (PEER) and the Blue Goose Alliance, joined by other individuals, filed suit in U.S. District Court for District of Columbia, alleging the AFA violated provisions of the National Environmental Policy Act, the National Wildlife Refuge Administration Act and other laws.

On September 28, 2010, the court ruled that the 2009-2011 AFA between the U.S. Fish and Wildlife Service and the CSKT be set aside and rescinded. The court order and the accompanying memorandum opinion cited deficiencies with the Service's NEPA documentation as the basis for the ruling and granted the plaintiff's motion for summary judgment. During the AFA negotiations in 2008, the Service relied on legal advice that the Categorical Exclusion and Environmental Action Memorandum signed prior to the first AFA in 2004 were sufficient to comply with NEPA. The District Court disagreed and indicated that, based on reported CSKT performance deficiencies under the first AFA, extraordinary circumstances may have existed that warranted further environmental review. The Court ruled that the Service was arbitrary and capricious in applying the 2004 Categorical Exclusion to the 2009-2011 AFA.

It is important to note that the order denied without prejudice the plaintiff's other claims, including contentions related to the Endangered Species Act and National Wildlife Refuge System Improvement Act. In other words, those items remain unresolved in a legal context and, theoretically, could be revisited by the current plaintiffs or other parties in future litigation.

**Main Decision/Message:** This ruling represents a significant setback to the Service's, and the Department of the Interior's, efforts to work with Indian people to implement ISDEAA and foster effective partnerships that advance conservation of trust fish and wildlife resources. This ruling also poses significant legal and policy questions for Service and Department leadership to consider, including whether an appeal of the current ruling is an appropriate course of action and whether the Service should develop and adopt national policy guidance for any future negotiations for AFAs affecting Service programs, services, functions and activities to ensure any such AFAs are legally defensible.

**Preferred Option:**

- Complete the NEPA compliance for the 2008-2011 AFA, which could possibly be a Categorical Exclusion with evaluation of extraordinary circumstances.
- Move swiftly to complete Service policy on Annual Funding Agreements. Having the policy in place is important to provide clear guidance outstanding issues (e.g., such as those raised in the litigation but not ruled on) and provide a framework for national consistency.
- We understand that the SOL office is recommending that the government move now to request the District Judge to reconsider her remedy, reinstating the AFA while the Service completes NEPA compliance on the existing AFA. If the request to reconsider is

DRAFT

DRAFT

DRAFT

granted, the current AFA could remain in place while NEPA compliance proceeds and through the expiration at the end of FY11.

- If the request to reconsider is denied, the Service would immediately begin work on negotiating with CSKT a new AFA with new terms/conditions, with appropriate evaluation under NEPA. We don't object to this path suggested by the SOL office, however, the best possible situation is that a new CSKT AFA **follow national policy** on AFAs so that it could be informed and supported by the national policy. Once a new AFA is negotiated, it would be submitted to Congress for a 90-day review.

**Prepared by:** Dr. Richard Coleman, Assistant Regional Director, NWRS  
(303) 236-4303; rick\_coleman@fws.gov

**Date:** October 18, 2010

**From:** Jeff King  
**To:** Rick Coleman/R6/FWS/DOI@FWS  
**Subject:** Fw: Need to schedule conference call - Draft Briefing Statement NBR AFA  
**Date:** Thursday, November 04, 2010 8:51:05 AM  
**Attachments:** [NBRC.AFA.court.order.Secbrief.101810.b.doc](#)

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Rick. Any chance to reschedule this for tomorrow. I'm traveling today and I understand Dean is off.

Jk

Sent from Jeff's BlackBerry

----- Original Message -----  
From: Debbie Schreiner Sent: 11/03/2010 02:45 PM MDT  
To: Gregory Siekaniec; Rick Coleman; Jim Kurth; Bud Oliveira; Jeff King  
Subject: Need to schedule conference call - Draft Briefing Statement NBR AFA

Steve would like to have a conference call on this tomorrow at 2:45 p.m. (Mountain Time). The call should take 30 minutes. Please let me know ASAP if you are available.

To: Stephen Guertin/R6/FWS/DOI@FWS, Gregory Siekaniec/NWRS/R9/FWS/DOI@FWS, Rick Coleman/R6/FWS/DOI@FWS, Jim Kurth/NWRS/R9/FWS/DOI@FWS  
cc: Dean Rundle/R6/FWS/DOI11/03/2010 11:41 AM, Bud Oliveira/R6/FWS/DOI@FWS, Noreen Walsh/R6/FWS/DOI@FWS, Jeff King/R6/FWS/DOI@FWS  
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(b)(5)  
[Redacted]

[Redacted]

[Redacted]

(b)(5)

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Dean----- Forwarded by Dean Rundle/R6/FWS/DOI on 11/03/2010 09:49 AM -----

To Rick Coleman/R6/FWS/DOI@FWS  
Bud Oliveira/R6/FWS/DOI@FWS, Dean  
Rundle/R6/FWS/DOI@FWS, Gregory  
Noreen Walsh/R6/FWS/DOI 10/18/2010 04:57 PM cc Siekaniec/NWRS/R9/FWS/DOI@FWS, Jim  
Kurth/NWRS/R9/FWS/DOI@FWS, Stephen  
Guertin/R6/FWS/DOI@FWS  
Subject Re: draft briefing statement NBR AFA

Steve, this looks fine to me. Do you have any comments or concerns before it moves forward?

Noreen-----Noreen E. Walsh  
Deputy Regional Director  
Mountain-Prairie Region  
U. S. Fish and Wildlife Service  
134 Union Blvd.  
Lakewood, CO 80228  
303 236 7920  
phonenoreen\_walsh@fws.gov  
LCCs: Providing needed information so we can all improve conservation delivery for maximum results. Mission FIRST, Safety ALWAYS.

To Noreen Walsh/R6/FWS/DOI@FWS, Stephen Guertin/R6/FWS/DOI@FWS  
Jim Kurth/NWRS/R9/FWS/DOI@FWS, Dean  
Rundle/R6/FWS/DOI@FWS, Bud  
Noreen Walsh/R6/FWS/DOI 10/18/2010 04:44 PM cc Oliveira/R6/FWS/DOI@FWS, Gregory

Siekaniec/NWRS/R9/FWS/DOI@FWS  
Subject draft briefing statement NBR AFA

attached is a draft briefing paper on the National Bison Range AFA.

According to Kevin Kilcullin, Div.of Refuges, Assistant Sec. Strickland has requested an update on this situation.

Rick Coleman

ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

**United States Department of the Interior  
Fish and Wildlife Service**

**INFORMATION MEMORANDUM FOR THE SECRETARY**

**From:** Stephen Guertin, Regional Director, Mountain-Prairie (Region Six)

**Through:** Rowan Gould, Acting Director

**Subject:** Court Order Regarding National Bison Range Annual Funding Agreement

**Summary: Background:**

United States District Court for the District of Columbia issued an order on September 28, 2010 rescinding the Annual Funding Agreement between the Fish and Wildlife Service (Service) and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation (CSKT) and the National Bison Range (NBR), due to a violation of the National Environmental Policy Act. The National Bison Range assumed full authority for management of refuge biological, maintenance, fire management and visitor services on the refuge. The annual bison roundup at NBR, scheduled for October 4-7, 2010, proceeded as planned without any concerns and included the assistance of 7 CSKT temporary employees hired by NBR for the purpose of completing these roundup activities.

Post-roundup and winter operations are underway at NBR using reduced winter Service staffing.

**Background:** Following an earlier, unsuccessful AFA in FY 2005-2006, the Service entered government-to-government negotiations with the CSKT in January 2008 to establish a new agreement, pursuant to the Tribal Self-Governance Act of 1994. The Tribal Self-Governance Act amended the Indian Self Determination and Education Assistance Act of 1975 and authorizes the Secretary of the Interior to enter into annual funding agreements with qualified Indian tribes to have them perform programs, functions, services, or activities, that are of special geographic, historical, or cultural significance to the participating tribe.

Negotiations for the current AFA were successfully completed in June 2008, and the agreement was effective on October 1, 2008. The AFA provides for an on-the-ground partnership and management of full programs by the CSKT on four NBR units located within the exterior boundaries of the Flathead Indian Reservation.

The Service disbursed approximately \$1.7M to CSKT in FY09, including a \$650K ARRA-funded bridge replacement project. Approximately \$986K was provided to the CSKT for operations in FY 10.

Under direction of the Service's refuge manager at the NBR, CSKT assumed management of refuge biological, maintenance, fire management and portions of the visitor services program in January, 2009. CSKT staffed the positions for which they contracted under the AFA with well-qualified wildlife and conservation professionals, and CSKT staff participated in a variety of

Service-sponsored training aimed at enhancing their performance under the AFA. Performance and teamwork between the partners in the first year of AFA implementation was excellent.

**Discussion:** In late 2008, Public Employees for Environmental Responsibility (PEER) and the Blue Goose Alliance, joined by other individuals, filed suit in U.S. District Court for District of Columbia, alleging the AFA violated provisions of the National Environmental Policy Act, the National Wildlife Refuge Administration Act and other laws.

On September 28, 2010, the court ruled that the 2009-2011 AFA between the U.S. Fish and Wildlife Service and the CSKT be set aside and rescinded. The court order and the accompanying memorandum opinion cited deficiencies with the Service's NEPA documentation as the basis for the ruling and granted the plaintiff's motion for summary judgment. During the AFA negotiations in 2008, the Service relied on legal advice that the Categorical Exclusion and Environmental Action Memorandum signed prior to the first AFA in 2004 were sufficient to comply with NEPA. The District Court disagreed and indicated that, based on reported CSKT performance deficiencies under the first AFA, extraordinary circumstances may have existed that warranted further environmental review. The Court ruled that the Service was arbitrary and capricious in applying the 2004 Categorical Exclusion to the 2009-2011 AFA.

It is important to note that the order denied without prejudice the plaintiff's other claims, including contentions related to the Endangered Species Act and National Wildlife Refuge System Improvement Act. In other words, those items remain unresolved in a legal context and, theoretically, could be revisited by the current plaintiffs or other parties in future litigation.

**Main Decision/Message:** This ruling represents a significant setback to the Service's, and the Department of the Interior's, efforts to work with Indian people to implement ISDEAA and foster effective partnerships that advance conservation of trust fish and wildlife resources. This ruling also poses significant legal and policy questions for Service and Department leadership to consider, including whether an appeal of the current ruling is an appropriate course of action and whether the Service should develop and adopt national policy guidance for any future negotiations for AFAs affecting Service programs, services, functions and activities to ensure any such AFAs are legally defensible.

**Preferred Option:**

- Complete the NEPA compliance for the 2008-2011 AFA, which could possibly be a Categorical Exclusion with evaluation of extraordinary circumstances.
- Move swiftly to complete Service policy on Annual Funding Agreements. Having the policy in place is important to provide clear guidance outstanding issues (e.g., such as those raised in the litigation but not ruled on) and provide a framework for national consistency.
- We understand that the SOL office is recommending that the government move now to request the District Judge to reconsider her remedy, reinstating the AFA while the Service completes NEPA compliance on the existing AFA. If the request to reconsider is

DRAFT

DRAFT

DRAFT

granted, the current AFA could remain in place while NEPA compliance proceeds and through the expiration at the end of FY11.

- If the request to reconsider is denied, the Service would immediately begin work on negotiating with CSKT a new AFA with new terms/conditions, with appropriate evaluation under NEPA. We don't object to this path suggested by the SOL office, however, the best possible situation is that a new CSKT AFA **follow national policy** on AFAs so that it could be informed and supported by the national policy. Once a new AFA is negotiated, it would be submitted to Congress for a 90-day review.

**Prepared by:** Dr. Richard Coleman, Assistant Regional Director, NWRS  
(303) 236-4303; rick\_coleman@fws.gov

**Date:** October 18, 2010

**From:** [King, Laura](#)  
**To:** [Noreen Walsh](#); [Debbie Schreiner](#); [Dean Rundle](#); [Jeff King](#)  
**Subject:** Presentation and schedule  
**Date:** Tuesday, May 14, 2013 3:33:14 PM  
**Attachments:** [for Noreen\\_Bison Range Environmental Assessment AFA Briefing.pdf](#)  
[for Noreen Proposed AFA EA schedule.docx](#)

---

Hi Noreen,

Attached is a .pdf version of the presentation I gave today. I've also attached the draft schedule we share with the CSKT. As I mentioned, we're behind about 6-8 weeks primarily due to the complexity of this project and the other demands and duties associated with the teams 'other jobs'. We did do a more thorough review with the SOL office than we anticipated, which might expedite their second scheduled review. We are prepared to schedule the environmental consequences analysis workshop with our contractor, which is what I highlighted in the schedule. We wanted to conduct this briefing and hear your thoughts before we proceeded.

I can create a revised schedule and give that to you today or tomorrow if that would be useful for your discussions.

Thank you again for your time. It was greatly appreciated.

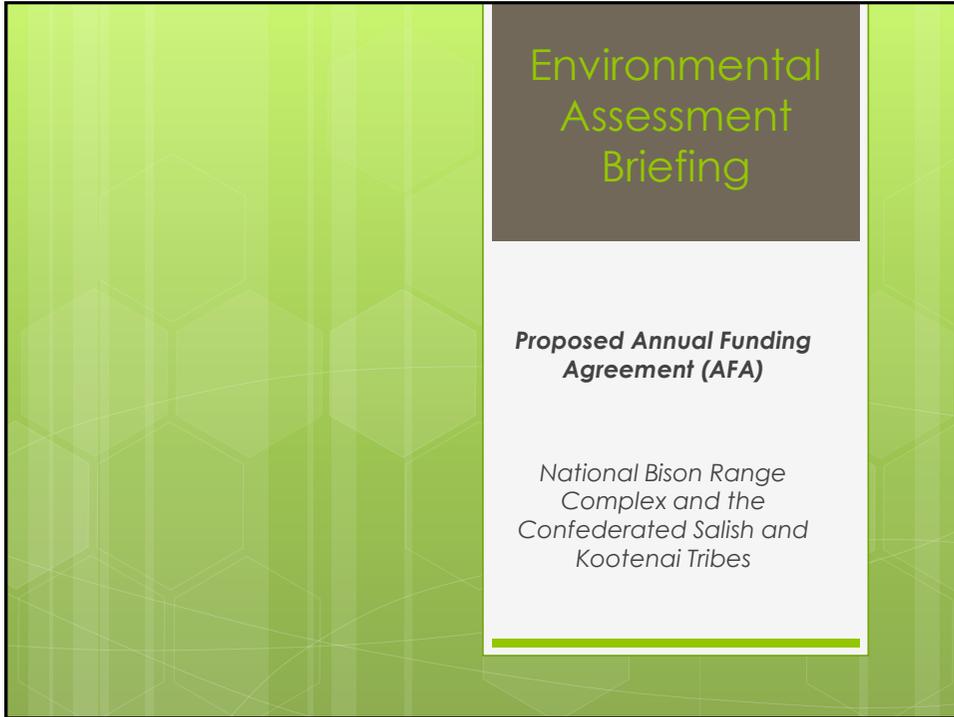
Laura

***Laura King, Refuge Program Specialist***

U.S. Fish and Wildlife Service, Division of Refuge Planning  
58355 Bison Range Rd.  
Moiese, MT 59824  
phone, 406-644-2211, ext. 210  
fax, 406-644-2863

**Proposed AFA EA schedule:**

<b>Step in Process</b>	<b>Draft Version</b>	<b>Completion Date</b>	<b>Person(s) responsible</b>	<b>Related Chapter</b>
<b>Meet with Team, discuss progress</b>	First	November 29, 2012, 1 p.m.	All	All
<b>Prepare List of Issues</b>	First	December 4, 2012	Dean and Laura	2
<b>Create Law/Policies Section</b>	First	December 4, 2012	Dean	3
<b>Biological and physical resources</b>	First	December 4, 2012	Brendan	3
<b>Visitor Services Program</b>	First	December 4, 2012	Jeff	3
<b>Alternatives Table</b>	First	December 4, 2012	Laura	4
<b>Alternatives Descriptions</b>	First	December 4, 2012	Laura	4
<b>Cultural Resources</b>	First	December 4, 2012	Jeff	3
<b>Team Reviews First Draft</b>	First	12/5--12/17, 2012	All	All
<b>Team revises based on comments</b>	Second	12/17--1/11/2013	All	All
<b>Team Reviews revised chapters</b>	Second	1/14--17, 2013	All	All
<b>Team completes final revisions</b>	Third	1/18--1/28, 2013	All	All
<b>Compile and edit EA</b>	Third	1/29--2/8/2013	Laura	All
<b>Solicitor reviews EA</b>	Third	2/11--2/22/2013	Dean (provide copy)	All
<b>Team meets with solicitor</b>	Third	2/25/2013	All	All
<b>Team makes agreed upon revisions</b>	Fourth	2/26--3/8/2013	All	All
<b>Provide contractor with draft (ready to proceed)</b>	Fourth	March 14, 2012	Laura	All
<b>Environmental Consequences workshop</b>	Fourth	March 26--28, 2012	Laura (set up meeting)	4
<b>Contractor provides consequences section</b>	Fourth	April 10, 2013	Contractor	4
<b>Team reviews environmental consequences</b>	First	4/11--17, 2013	All	4
<b>Laura combines team comments, sends to contractor</b>	First	April 23, 2013	Laura	4
<b>Contractor provides final version</b>	Second	May 2, 2013	Contractor	4
<b>Solicitor reviews draft EA</b>	Fourth	5/6--5/13/2013	Dean (provide copy)	All
<b>Prepare and submit NOA</b>	Final	May 14, 2013	Laura	NA
<b>Prepare final draft EA for printer</b>	Fifth	5/14--17, 2013	Laura	All
<b>Distribute EA to the public (NOA)</b>	Fifth	May 20, 2013	Laura	All
<b>30-day public review</b>	Fifth	5/30--6/28, 2013	Laura	All
<b>Team reviews public comments</b>	NA	July 9, 2013	All	All
<b>Team revises document based on substantive comments</b>	Sixth	7/10--7/24/2013	All	All
<b>Request RD to sign FONSI (if possible)</b>	Sixth	July 29, 2013	Dean (set up briefing)	All
<b>Team releases decision to public--FONSI or EIS (NOA)</b>	Final	August 2, 2013	Laura	NA

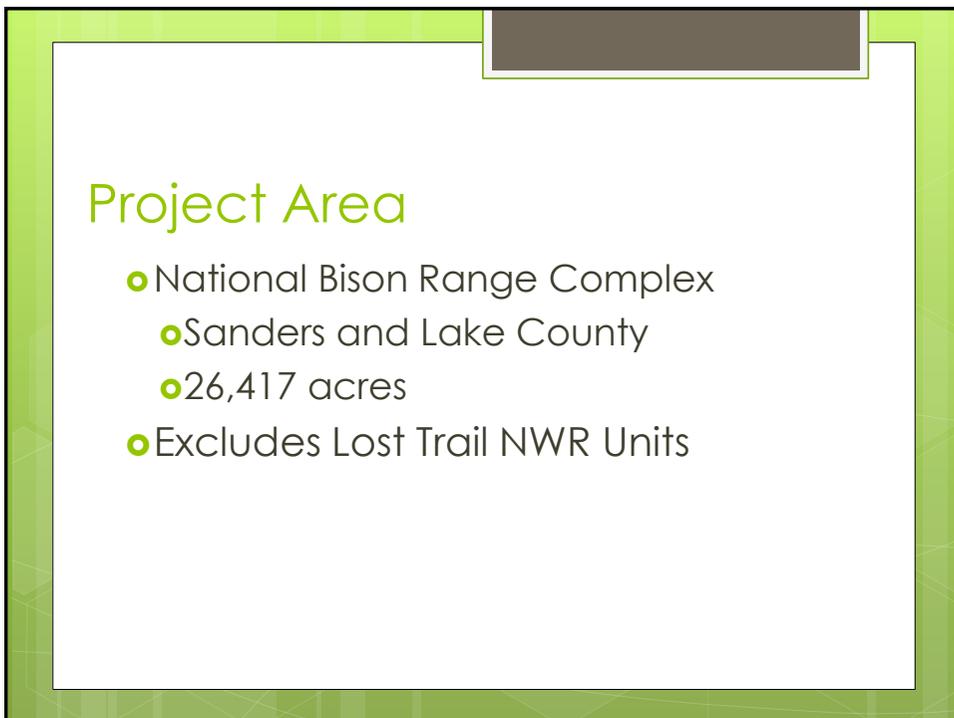


The slide features a green background with a faint hexagonal pattern. On the right side, there is a dark brown rectangular box containing the title "Environmental Assessment Briefing" in green text. Below this box is a white rectangular box containing the subtitle "Proposed Annual Funding Agreement (AFA)" in bold black text, and the project name "National Bison Range Complex and the Confederated Salish and Kootenai Tribes" in black text. A thin green horizontal line is positioned at the bottom of the white box.

**Environmental Assessment Briefing**

**Proposed Annual Funding Agreement (AFA)**

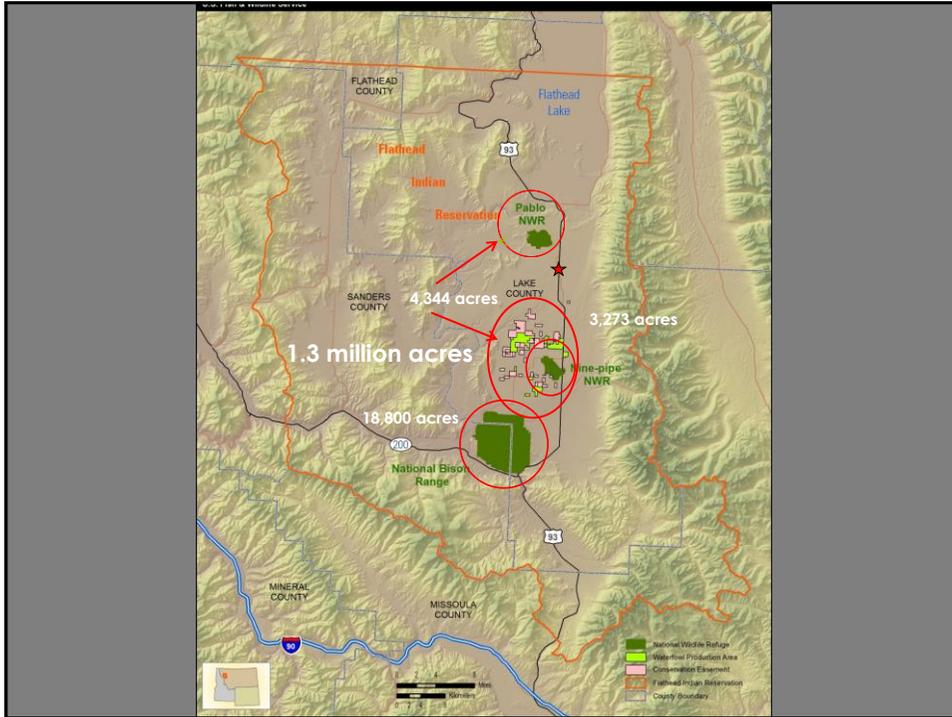
*National Bison Range Complex and the Confederated Salish and Kootenai Tribes*



The slide features a green background with a faint hexagonal pattern. On the right side, there is a dark brown rectangular box. The main content is a white rectangular box with a thin green border. Inside this box, the title "Project Area" is written in green text. Below the title is a bulleted list with three items, each preceded by a green circle.

**Project Area**

- National Bison Range Complex
  - Sanders and Lake County
  - 26,417 acres
- Excludes Lost Trail NWR Units



## Tribal Self-Governance Act, 1994

- Amendment to the Indian Self Determination and Education Assistance Act, 1975
- Title IV created authority for
  - eligible self-governance tribes to request negotiations with [non-BIA DOI agencies] for AFAs
    - Programs, services, functions, and activities, or portions thereof which are of special geographic, historical, or cultural significance to the participating Indian tribe

## Definitions

- **Geographical**--all lands presently "on or near" an Indian reservation, and all other lands within "Indian country,"
- **Historical**--programs or lands having a particular history that is relevant to the Tribe.
  - particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.
- **Cultural**--programs, sites, or activities as defined by individual Tribal traditions and may include, for example:
  - (1) Sacred and medicinal sites;
  - (2) Gathering of medicines or materials such as grasses for basket weaving; or
  - (3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

## Limitations to AFAs

Section 403(k), Title IV Amendment

- May not include functions that are inherently Federal and...
  - where the statute establishing the existing program does not authorize the type of participation sought by the Tribe
    - e.g. Game Range Act—prohibits co-management of refuges
- 25 CFR § 1000, Subpart F, section 137 (c)
- "The AFA may not exceed the amount of funding the bureau would have spent for direct operations and indirect support and management of that program in that year. "
  - Excluding allowable indirect costs

### Service AFA Policy

- Draft policy
- Sent out for DOI SOL review, including Indian Affairs
- Unknown status

## Other non-BIA AFAs

- 8 total (primarily with BOR)
  - None with the Service
  - Yukon Flats AFA not renewed
    - Lack of funding
- Region 3 currently negotiating
  - Mille Lacs band of the Minnesota Chippewa Tribe
    - Rice Lake National Wildlife Refuge
  - Chose not to do an AFA
    - Too cumbersome
    - MOA
    - Only negotiating for vacant positions
    - Maintenance position
      - directed by refuge manager
      - supervised by the tribal natural resources office
    - No Service employees assigned to work for the Tribe

## Previous National Bison Range AFAs

2005 and 2008

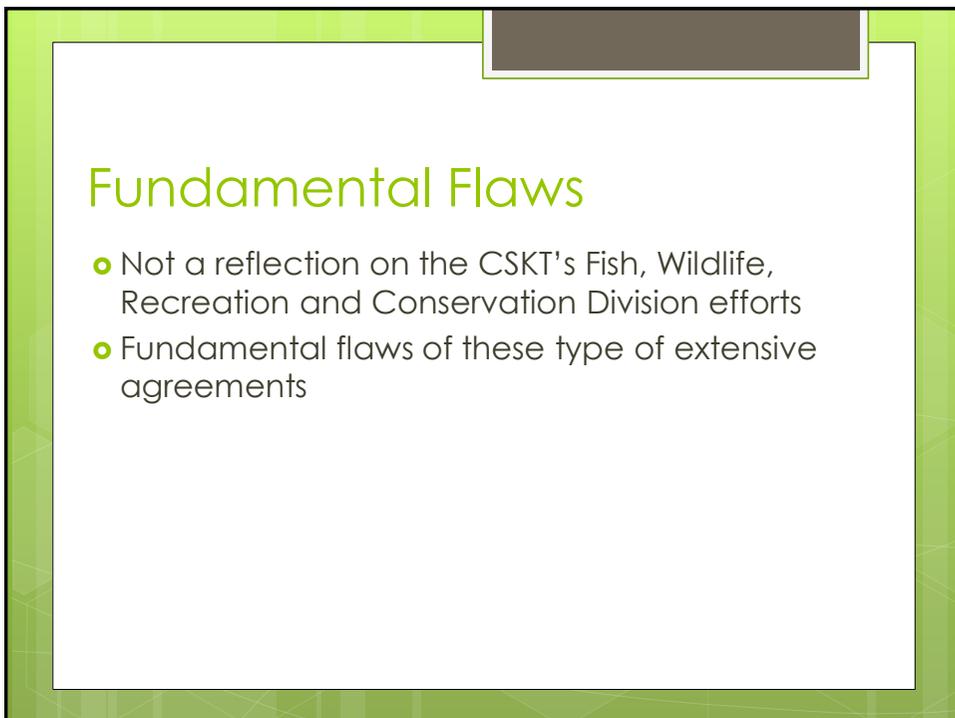
## 2005-2006 AFA

- First Annual Funding Agreement
  - DOI was heavily involved in the negotiations
    - Political appointees pressured Service negotiators to concede issues to CSKT
  - CSKT provided 10 positions
    - Affected Service staff given the following options:
      - work for CSKT under an IPA agreement (2 Service employees)
      - retire (2 Service employees)
      - resign (1 Service employee)
      - work for CSKT with Federal or CSKT benefits (none)
      - RIF (none)
      - reassignment (6 Service employees)
  - December 2006, AFA cancelled by Regional Director
    - Allegations of poor performance and conduct
    - Grievances filed by Service staff and settled
    - Additional employees transferred
      - 800k relocation costs

## 2008 AFA

- Directed by the Assistant Secretary to renegotiate
  - Initiated in January 2008
- Top down directives from DOI
  - Heavy handed political oversight of negotiations
- All programs and associated funding transferred to CSKT
  - Biology, maintenance, fire, and visitor services
  - CSKT eventually recruited 16 employees
- Remaining 5 Service employees required to sign an IPA
  - Excluding refuge manager and deputy
  - One individual declined—reassigned to Lee Metcalf
- GS-12 CSKT Deputy Manager
  - directed day to day activities of all CSKT and IPA Service staff
- 2009 lawsuit filed (Blue Goose Alliance and Peer)
  - 2010 judge ruled in favor of plaintiff, Service violated NEPA
  - 7 other charges dismissed without prejudice
- 16 CSKT employees leave NBR that day
  - 6 Service staff remain





## Fundamental Flaws

- Inability to recruit & retain experienced, qualified staff
  - Stigma and uncertainty of AFA
    - Even CSKT employees chose not apply for positions
  - Majority of employees had no affiliation with the CSKT FWRC Department
  - CSKT positions equivalent to term appointments (soft money)
    - CSKT does not guarantee employment if the AFA is cancelled
  - No relocation costs offered to applicants
    - All 16 CSKT employees were local hires
  - Service received 2-7 times more applications
    - e.g. lead biologist
  - 5 CSKT employees, including lead biologist, resigned during AFA
- Minimal Service influence over employee selections
  - No interaction with the Service's human resources office

## Fundamental Flaws

- Lack of land management experience
  - Steep learning curve
    - Including leadership positions
      - Still required to abide by all the laws, regulations, and Service policies
    - Significant training required
      - Plus, OJT provided by remaining Service staff
  - Only 1 of the 16 CSKT employees had any refuge experience
- Lack of leadership and supervisory experience
  - Created tension in the office
  - Low morale
- Unable to supervise CSKT staff
  - Address conduct or performance issues
  - No Service process to evaluate CSKT employees work performance

## Fundamental Flaws

- Turning full programs over to the CKST
  - Biology, fire, visitor services, and maintenance
    - All project funding transferred to CSKT
  - Requires the use of an IPA agreement
    - CSKT directs the activities of all program staff
    - IPA program purpose: to facilitate the movement of employees, for short periods of time, when this movement serves a sound public purpose
  - Theory: everything comes across manager's desk
  - Reality: difficult to run a refuge like this
    - Program leaders typically have the skills and experience to independently design programs and make decisions

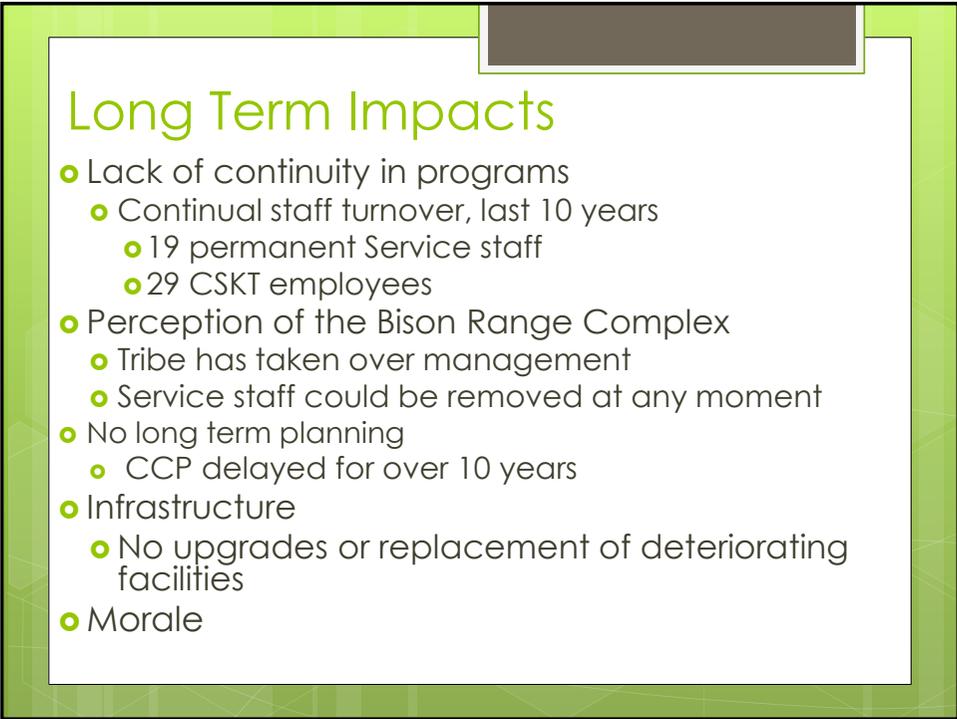
## Overall Consequence

Inability to maintain control of our mission and operations



Ongoing  
Negotiations  
& Failed  
Annual  
Funding  
Agreements

Long Term Impacts



## Long Term Impacts

- Lack of continuity in programs
  - Continual staff turnover, last 10 years
    - 19 permanent Service staff
    - 29 CSKT employees
- Perception of the Bison Range Complex
  - Tribe has taken over management
  - Service staff could be removed at any moment
- No long term planning
  - CCP delayed for over 10 years
- Infrastructure
  - No upgrades or replacement of deteriorating facilities
- Morale



## Negotiated AFA

- 5-year agreement
- Service retains refuge manager, deputy manager, and law enforcement officer positions
- CSKT provided full programs and associated staff
  - Biology, fire, maintenance, and visitor services
  - Service retains project funding
  - CSKT employees provided full salary provided by the Service
- Service staff would be requested to sign an IPA
  - 5 affected Service employees
    - ORP excluded
    - Voluntary—cannot be forced or used as an adverse personnel action
    - Unknown consequences should they choose not to sign
      - CSKT told that these Service staff might be provided new positions at NBR
- Vacated Service positions (including ORP) would be transferred
- CSKT provided funding to recruit a GS-11 wildlife refuge specialist
  - New position
  - Direct day-to-day activities of all program staff
- 2-8 temporary seasonal positions provided to CSKT
- 2 term Service staff
  - The Term appointment will not be renewed
  - positions and funding will be provided to CSKT for recruitment

## Environmental Assessment

## Environmental Assessment

- Initiated in Summer 2012
- Conducted public scoping, June 2012
  - Notice of Intent
    - News release in statewide media
    - MT Congressional delegation
    - Service websites
    - 30 day comment period
  - Draft AFA provided to public
  - 16 comments (including PEER and Blue Goose Alliance)
    - Majority opposed to another AFA
  - Tribe given copies of all comments
    - provided responses

## Current Status

- First four chapters prepared
- Developed 3 additional alternatives
  - In addition to negotiated AFA and No Action
  - Most resolve many of the fundamental flaws
  - Do not meet the CSKT's desire to manage full programs
  - CSKT have not reviewed the other alternatives
    - On the advice of the SOL office
- Provided draft EA to Denver SOL office for review
  - Revised based on SOL comments
- Hired contractor
  - Assist with environmental analysis of consequences

## Remaining EA Process

- Conduct environmental analysis of consequences
- Conduct internal review of EA
- Revise document
- Select proposed action
  - May require additional negotiations with CSKT
- Release Draft EA to the public
  - NOA
  - 30 day review
  - No public meetings planned at this time
- RO briefing
- Select preferred alternative
- Sign FONSI or recommend preparation of EIS

Concerns and  
Recommendations

## Concerns

- Current negotiated AFA does not resolve the fundamental flaws
  - Exception: the Service will retain the operating budget
  - EA team cannot support the negotiated AFA as the proposed action
- No viable options for Service employees who choose not to sign a voluntary IPA agreement
- Cost
  - 100k--New CSKT wildlife refuge specialist
- Barry Roth, DOI Solicitor
  - Ex (b)(5) AC [REDACTED]
  - [REDACTED]
  - [REDACTED]
  - [REDACTED]

## Recommendations

- Allow EA process to continue & drive the decision
- Conduct environmental analysis of consequences
  - Including negotiated AFA
  - Select a proposed action
    - With assistance from Noreen and/or Will
- Renegotiate with CSKT following this analysis
  - Use proposed action as negotiating platform
  - Assign Jeff King as lead negotiator
  - Give lead negotiator the authority to say 'no'
- Ideally, re-negotiated AFA would be preferred alternative

## CSKT's expectations

- The negotiated AFA will be the preferred alternative.
  - Rachel Jacobson, Acting Assistant Secretary, DOI
- Adding new positions for CSKT is possible
- Will participate in the internal review
  - Correct

**From:** [Dean Rundle](#)  
**To:** [Rick Coleman](#)  
**Cc:** [Bud Oliveira](#)  
**Subject:** AFA Negotiation Brief  
**Date:** 03/25/2011 09:45 AM  
**Attachments:** [AFANegotiatoin.Brif.AD.3.25.11.doc](#)

---

Rick: The initial negotiations are scheduled for April 13/14 in Pablo. That delay gave us a little more time to work on this. I made changes you indicated on Monday morning, and also revised based on comments from Jeff and other NBR staff. This has not gone to 4th floor, when I learned you'd be back today, decided to hold for your final review. Let me know when you want to talk about it. Jeff and I had a long talk about the biologist position and I need your final decision on that. If we can get it off to WO today that'd be good. Monday would work.

Dean



AFANegotiatoin.Brif.AD.3.25.11.doc









**From:** [Rick Coleman](#)  
**To:** [Stephen Guertin](#); [Noreen Walsh](#)  
**Cc:** [Dean Rundle](#); [Bud Oliveira](#)  
**Subject:** AFA Negotiation Brief  
**Date:** 03/25/2011 03:03 PM  
**Attachments:** [AFA32511.doc](#)

---

Steve and Noreen,  
Attached is a draft memo and draft brief we prepared to send to AD-Refuges regarding the next AFA negotiations. The initial negotiations are scheduled for April 13/14 in Pablo. Please let us know what changes are needed and how we should send this to the AD-RF.

Thank you.  
Rick



AFA32511.doc

Rick Coleman  
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303









**From:** [Jeff King](#)  
**To:** [Dean Rundle](#)  
**Subject:** Fw: Negotiating a new AFA  
**Date:** 03/21/2011 02:23 PM  
**Attachments:** [AFA.PtstoAD.PatJ\\_comments.doc](#)

---

Pat's comments.

jk

**AMERICA'S NATIONAL WILDLIFE REFUGES...**  
*where wildlife comes first!*



**Jeff King, Project Leader**  
National Bison Range  
58355 Bison Range Road  
Moiese, Montana 59824  
phone: (406) 644-2211, ext. 204  
fax: (406) 644-2661

----- Forwarded by Jeff King/R6/FWS/DOI on 03/21/2011 02:22 PM -----

**Pat**  
**Jamieson/R6/FWS/DOI** To: Jeff King/R6/FWS/DOI@FWS  
cc  
03/21/2011 02:08 PM Subject: Re: Fw: Negotiating a new AFA

Hi Jeff

attached is the AFA negotiation document and my comments.



AFA.PtstoAD.PatJ\_comments.doc

One typo but my main comment is in point 1 of the proposed negotiation issues, in regards to FWS employees not losing their jobs. Technically speaking, it can be argued (and has been) that Skip Palmer and others did not lose their federal job, just their ability to be at the Bison Range. Many past NBR employees went on to other FWS jobs (willingly or otherwise). (Also, I added maintaining career ladder but that may/may not be feasible.)

I hope this helps.

Pat Jamieson, Outdoor Recreation Planner  
National Bison Range  
58355 Bison Range Road, Moiese, MT 59824  
406/644-2211 extension 207  
pat\_jamieson@fws.gov











**From:** Dean Rundle <Dean\_Rundle@fws.gov>  
**To:** [Jeff\\_King@fws.gov](mailto:Jeff_King@fws.gov); [Rick\\_Coleman@fws.gov](mailto:Rick_Coleman@fws.gov)  
**Cc:** [Bud\\_Oliveira@fws.gov](mailto:Bud_Oliveira@fws.gov)  
**Subject:** Negotiating a new AFA  
**Date:** Thursday, March 17, 2011 1:22:11 PM  
**Attachments:** [AFA.PtstoAD.3.17.11.doc](#)

---

Jeff/Rick: Attached is a draft memo to Greg Siekaniec and draft negotiating platform for your review and comment - and Rick's ultimate approval. I was going to send this to Jeff for comment first, but now realize that I'm on leave this afternoon and tomorrow, and Rick is travelling next week. It would be good if we can get this to Washington early next week. I will try to call Brian Upton this afternoon to determine if the Tribal Council has met to approve their negotiating platform, and see if they are ready to schedule a time for us to meet and start this process. I don't want to meet with the tribe until we know if the WO supports our position.

If you can comment back to me, I'll try to contact Rick early next week with a final draft, and would be able to send it to WO (I think I'm acting for Rick/Bud on M - W next week - if Meg Van Ness goes to Quivera).

Jeff, I'll leave it to you if you want to share this draft with anyone on your staff for their comments.

Let me know what you think.

Dean









**From:** [Rick Coleman](#)  
**To:** [Gregory Siekaniec](#)  
**Cc:** [Bud Oliveira](#); [Dean Rundle](#); [Jeff King](#); [Jim Kurth](#); [Noreen Walsh](#)  
**Subject:** Re: Draft AFA platform  
**Date:** 04/07/2011 07:31 AM

---

Thank you Greg.

Rick Coleman  
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

▼ [Gregory Siekaniec/NWRS/R9/FWS/DOI](#)

**Gregory  
Siekaniec/NWRS/R9/FWS/DOI**

04/07/2011 05:53 AM

To Rick Coleman/R6/FWS/DOI@FWS  
cc Bud Oliveira/R6/FWS/DOI@FWS, Dean Rundle/R6/FWS/DOI@FWS, Jeff King/R6/FWS/DOI@FWS, Jim Kurth/NWRS/R9/FWS/DOI@FWS, Noreen Walsh/R6/FWS/DOI@FWS

Subject Re: Draft AFA platform 

Rick,

Thank you for the update and indicated direction on negotiating a new AFA with the Confederated Salish and Kootenai Tribes. I believe you have captured the sense of our last meeting in DC and agree with your general direction recognizing there will be difficulty in a couple of areas. The retraction of available positions will be an issue to CSKT and will make negotiations difficult. I feel there is a sense that CSKT recognizes that the "Deputy" position is what will send us back to court and there is likely room to discuss how this position/issue can be resolved or administered. I'm uncertain how the other positions that have again been filled with Service permanent hires will be viewed. I can only surmise that CSKT will want those all on the table during negotiations. Also, the flat rate overhead will likely be a issue that is important to CSKT as well as us.

I do not see anything in your platform that is unworthy of negotiating recognizing there is interest in CSKT to engage and bring a successful AFA to fruition. I also recognize that some of the issues will be difficult; however, CSKT and their representatives recognize the desire to put in place an agreement that does not end up back in court and that we do not put employees through the turmoil of on-again-off-again employment and the uncertainty that comes with such an arrangement. I believe you have room to negotiate a successful agreement and CSKT has great respect and faith in Dean Rundle as your negotiator.

greg

▼ Rick Coleman/R6/FWS/DOI

**Rick  
Coleman/R6/FWS/DOI**

To Gregory Siekaniec/NWRS/R9/FWS/DOI  
cc Jim Kurth/NWRS/R9/FWS/DOI, Dean  
Rundle/R6/FWS/DOI, Jeff King/R6/FWS/DOI@FWS,  
Noreen Walsh/R6/FWS/DOI, Bud Oliveira/R6/FWS/DOI  
Subject Draft AFA platform

04/05/2011 05:04 PM

Greg,

It is our understanding in Region 6 that yourself, Jim Kurth, Barry Roth and other senior DOI and SOL officials met on February 10, 2011 with Confederated Salish and Kootenai Tribes (CSKT) Tribal Council Member James Steele, Jr, and CSKT lobbyist George Waters. I know that you had a good phone conversation prior to this meeting with Dean Rundle, and that R6 provided written briefing materials prior to the meeting. Specific issues raised in those verbal and written communications included: Concern about continuing to have a “co-equal” tribal deputy refuge manager in a future AFA; not including the Outdoor Recreation Planner position in a future AFA; and the CSKT good effort, but ultimate inability to recruit and retain a well qualified lead biologist under the last prior AFA.

We have decided we will prepare an Environmental Assessment prior to implementing any new AFA. This was the desire of the CSKT Tribal Council and was also strongly advised by the DOJ attorneys who defended the AFA lawsuit. Before we can begin writing a draft EA, we need to negotiate a new draft AFA to be put forward as a proposed action. There is an expectation that we will begin formal negotiations with the CSKT during the week of April 11.

In the absence of completed national policy on AFAs, R6 requests your review and comment of our negotiating interests and positions.  
see below:

(b)(5) [Redacted]

[Redacted]





(b)(5)

We look forward to your review and comments.  
Rick

Rick Coleman  
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

**From:** [Jeff King](#)  
**To:** [Dean Rundle](#)  
**Cc:** [Bud Oliveira](#); [Rick Coleman](#)  
**Subject:** Re: Negotiating a new AFA  
**Date:** 03/21/2011 02:23 PM  
**Attachments:** [JKing\\_edits\\_AFA.PtstoAD.3.17.11.doc](#)

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Dean,

Attached are my edits/comments. Hope this helps.

I'm sending Pat Jamieson's comments in a separate email and Tim Miller is reviewing now. Hope to send his in later today or tomorrow morning.

Thanks,

jk



JKing edits AFA.PtstoAD.3.17.11.doc

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**AMERICA'S NATIONAL WILDLIFE REFUGES...**  
*where wildlife comes first!*



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▼ [Dean Rundle/R6/FWS/DOI](#)

**Dean  
Rundle/R6/FWS/DOI**

03/17/2011 01:22 PM

To: Jeff King/R6/FWS/DOI@FWS, Rick  
Coleman/R6/FWS/DOI@FWS  
cc: Bud Oliveira/R6/FWS/DOI@FWS  
Subject: Negotiating a new AFA

Jeff/Rick: Attached is a draft memo to Greg Siekaniec and draft negotiating platform for your review and comment - and Rick's ultimate approval. I was going to send this to Jeff for comment first, but now realize that I'm on leave this afternoon and tomorrow, and Rick is travelling next week. It would be good if we can get this to Washington early next week. I will try to call Brian Upton this afternoon to determine if the Tribal Council has met to approve their negotiating platform, and see if they are ready to schedule a time for us to meet and start this process. I don't want to meet with the tribe

until we know if the WO supports our position.

If you can comment back to me, I'll try to contact Rick early next week with a final draft, and would be able to send it to WO (I think I'm acting for Rick/Bud on M - W next week - if Meg Van Ness goes to Quivera).

Jeff, I'll leave it to you if you want to share this draft with anyone on your staff for their comments.

Let me know what you think.

Dean

[attachment "AFA.PtstoAD.3.17.11.doc" deleted by Jeff King/R6/FWS/DOI]







