c/ NWRS

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
FAX (406) 275-2806
www.cskt.org

A People of Vision

A Confederation of the Salish,
Upper Pend d'Oreilles
and Kootenai Tribes

TRIBAL COUNCIL MEMBERS:
E.T. "Bud" Moran – Chairman
Joe Durglo – Vice Chair
Steve Lozar – Secretary
Jim Malatare – Treasurer
Michel Kenmille
Carole Lankford
Reuben A. Mathias
Charles L. Morigeau
Terry L. Pitts
James Steele Jr.

November 10, 2010

Mr. Rowan Gould, Director
U.S. Fish & Wildlife Service
U.S. Department of the Interior
1849 C St., NW
Washington, D.C. 20240

Dear Director Gould,

In light of recent events, and after considerable deliberation, the Confederated Salish & Kootenai Tribes (CSKT) would like to request negotiations for a new Annual Funding Agreement (AFA) for National Bison Range Complex (NBRC) activities.

Over the past two years, we have been gratified by the depth of support within the Interior Department for the FY 2009-2011 AFA and the partnership it established. We have been especially pleased with the extensive support within the U.S. Fish & Wildlife Service (FWS). I understand that you had indicated that you were very pleased with the partnership at the NBRC during an August meeting with two CSKT Tribal Council Members and other Interior officials in Washington, D.C. We too have been pleased with the working relationship we have developed with FWS at the Bison Range. We believe that the cooperative approaches of Regional Director Stephen Guertin, Refuge Supervisor Dean Rundle and Refuge Manager Jeff King have been key to our joint success.

We were very disappointed with the September 28, 2010 Federal court decision rescinding the AFA based upon a finding of a procedural deficiency. We were pleased to hear from Assistant Secretary Larry EchoHawk, during his visit to our Reservation several weeks ago, that the Interior Department was going to be "speaking with one voice" with respect to its response to the court's decision.

Yesterday, our Tribal Council met with Mr. Rundle and Mr. King to discuss next steps. We were pleased to hear from Mr. Rundle that FWS and the Interior Department were supportive of entering into another AFA and taking steps to continue our Tribal-Federal cooperation in the interim. While our Tribal attorneys are continuing their litigation discussions with Department of Justice attorneys, we believe that it also makes sense to discuss new AFA negotiations and address interim cooperative efforts in order to best maintain our partnership. I believe we share

an interest in protecting our mutual investments in CSKT's NBRC staff, and returning them to work for the benefit of the NBRC.

During our discussion, Mr. Rundle had raised the issue of FWS' development of a Tribal Self-Governance policy. While we have been aware that FWS has been working on such a policy over past years, we do not believe that such policy development should impede us from timely resuming our Self-Governance partnership at the NBRC. We are confident that both efforts can effectively move forward independently.

Due to our concern for, and connection with, the natural resources of the NBRC, CSKT has long invested in this partnership effort. We look forward to working with you and FWS in building upon our joint accomplishments of the past couple of years. We would be happy to meet with you to further discuss this.

Sincerely,

E.T. "Bud" Moran, Chairman
Tribal Council

cc: Steve Doherty
Thomas Strickland
Larry EchoHawk
Jane Lyder
Will Shafroth
Greg Siekaniec
Del Laverdure
Michael Black
Stephen Guertin
Rick Coleman
Dean Rundle
Jeff King
Patrick Durham
Sharee Freeman

Griffin, Toni< toni_griffin@fws.gov>

Bison Range AFA conf call

1 message

Griffin, Toni< toni_griffin@fws.gov> Thu, Jan 9, 2014 at 6:39 PM
To: Dana Jacobsen <dana.jacobsen@sol.doi.gov>, Sharon Brenna <sharon.brenna@sol.doi.gov>, Brian Upton <brianu@cskt.org>

Dear Dana, Sharon, and Brian:

Will Meeks would like to schedule a call to discuss the Bison Range AFA EA. Would you please visit the doodle poll (link below) to let us know your availability Thurs and Fri next week?

http://doodle.com/9iyfxx3h62fk49ua

Thank you,

Toni Griffin
Acting Chief, Division of Refuge Planning
Mountain-Prairie Region
U.S. Fish & Wildlife Service
134 Union Blvd
Lakewood, CO 80228
Office Phone: 303-236-4378
Cell Phone: 303-594-4017

Griffin, Toni< toni_griffin@fws.gov>

Mailing address

1 message

Griffin, Toni< toni_griffin@fws.gov> Mon, Apr 28, 2014 at 4:35 PM
To: Brian Upton <brianu@cskt.org>

Dear Mr. Upton,

The draft environmental assessment for the draft Annual Funding Agreement will be distributed for Internal Review this week. We would like to send 15 copies of the draft EA to the Confederated Salish and Kootenai Tribes for review via Federal Express. If this is acceptable, can you provide me the physical mailing address for the documents?

Thank you,
Toni

Toni Griffin
Acting Chief, Division of Refuge Planning
Mountain-Prairie Region
U.S. Fish & Wildlife Service
134 Union Blvd
Lakewood, CO 80228
Office Phone: 303-236-4378
Cell Phone: 303-594-4017

Griffin, Toni< toni_griffin@fws.gov>

RE: Electronic copies of AFA EA

1 message

Brian Upton < brianu@cskt.org> Tue, May 6, 2014 at 2:56 PM
To: "Griffin, Toni" <toni_griffin@fws.gov>
Cc: Jeff King <jeff_king@fws.gov>, Will Meeks <will_meeks@fws.gov>

This one opens just fine, Toni – thanks for sending.

Brian

From: Griffin, Toni [mailto:toni_griffin@fws.gov]
Sent: Tuesday, May 06, 2014 2:53 PM
To: Brian Upton
Cc: Jeff King; Will Meeks
Subject: Re: Electronic copies of AFA EA

Hi Brian,

Sorry about that, the file is pretty large because of the maps. Here is a compressed version. It's not print quality so the maps may be a bit grainy. Let me know if this works for your purposes. If not, I can send the original file to you on a thumb drive.

Toni

Toni Griffin
Acting Chief, Division of Refuge Planning

Mountain-Prairie Region

U.S. Fish & Wildlife Service

134 Union Blvd

Lakewood, CO 80228

Office Phone: 303-236-4378

Cell Phone: 303-594-4017

On Tue, May 6, 2014 at 2:00 PM, Brian Upton <brianu@cskt.org> wrote:

Jeff and Will,

Thanks for passing on my request for an electronic copy of the draft EA.

Toni,

Thanks for the email. When I click on the pdf link in your email, it opens a page for a DOI sign-in with a user name and password required. Is there another avenue for you to convey an electronic copy of the PDF? CSKT attorneys and NRD officials would be the ones using it.

Thanks,

Brian

From: Griffin, Toni [mailto:toni_griffin@fws.gov]
Sent: Tuesday, May 06, 2014 9:37 AM
To: Jeff King; Brian Upton
Cc: Will Meeks
Subject: Re: Electronic copies of AFA EA

Jeff and Brian,

Per your request a pdf file of the Draft EA for the Draft Annual Funding Agreement is attached. Please keep the copy for your use only. Let me know if you have any difficulty downloading the file.

Thank you,

Toni

Toni Griffin
Acting Chief, Division of Refuge Planning

Mountain-Prairie Region

U.S. Fish & Wildlife Service

134 Union Blvd [redacted]

Lakewood, CO 80228

Office Phone: 303-236-4378

Cell Phone: 303-594-4017

On Mon, May 5, 2014 at 12:05 PM, Will Meeks <will_meeks@fws.gov> wrote:

Jeff,

I just sent a note to Toni to send you and Brian the e-copy. Please keep the copy for your use only. Thanks.

Will Meeks

U.S. Fish and Wildlife Service

R6 - Assistant Regional Director

NWRS and PFW

303-236-4303 (w)

720-541-0310 (c)

On May 2, 2014, at 9:18 AM, "King, Jeff" <jeff_king@fws.gov> wrote:

> Will and Toni,
>
> When I met with CSKT Council yesterday, Brian Upton their attorney, requested an electronic copy of the EA. I told him I would request a copy be sent to him.
>
> I too would like to request an electronic copy if that's OK with you.
>
> Thanks,

jk

Jeff King, Project Leader

National Bison Range Complex

58355 Bison Range Road

Moiese, MT 59824

(406) 644-2211, ext. 204



"Brian Upton"
<brianu@cskt.org>
08/21/2012 04:32 PM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: Got your message

Thanks Dean, and I appreciate the update. I'd like to touch base with you by phone tomorrow or Thursday. If you have any good or bad times, please advise.

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Tuesday, August 21, 2012 12:58 PM
To: brianu@cskt.org
Subject: Got your message

Brian: I got the message you left on Friday, just didn't get around to responding yesterday. Later this week will be fine to get your comments/suggestions - look forward to seeing those.

Just FYI too, Steve Guertin, our RD announced yesterday that he is leaving R6 in November. He's been selected to replace Greg Siekaniec as new Deputy Director for the Service. They are not transferring in a new RD, rather, that job will be advertised for competition this time.

Dean



"Brian Upton"
<brianu@cskt.org>
07/13/2012 03:55 PM

To Dean_Rundle@fws.gov
cc Jeff_King@fws.gov, tom@cskt.org
bcc
Subject Re: Got your message

Thanks Dean, that sounds good.

-----Original Message-----
From: Dean_Rundle@fws.gov
To: brianu@cskt.org
Cc: Jeff_King@fws.gov
Date: 07/13/12 03:13 PM
Subject: Got your message

Brian: I got your voice msg. I will plan to come up to visit Tribal Council on July 26 - if that is a good date for you. I'm travelling Monday/Tuesday next week to Helena, will be in ofc. on wednesday, and will call you then.

dean



"Brian Upton"
<brianu@cskt.org>
07/03/2012 11:22 AM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: Call today at 2:00

History: This message has been replied to and forwarded.

Thanks Dean. The call-in line sounds good; John Harrison and I will be on the call.

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Tuesday, July 03, 2012 10:41 AM
To: brianu@cskt.org
Cc: Jeff_King@fws.gov
Subject: Call today at 2:00

Brian: I think you're calling me at 2 this afternoon. Jeff is available to conference in at that time. If that works for you, we can use our Conf. call line

[redacted]

Cathy Willis said she couldn't get a way for you to access the Sharepoint site set up for the EA. But, yesterday, she loaded all of the scoping comments we received on a jump drive and we mailed that to you by overnight mail. Hopefully, you'll have that on Thursday.

We got the letter requesting an SOL opinion sent out this morning, I'll send you a copy of that.

Let me know if the call-in works.

dean



"Brian Upton"
<brianu@cskt.org>
06/21/2012 08:34 AM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject Rahall-Young letters

Attached is a copy of Congressmen Rahall and Young's 5-15-07 joint letter to the Interior Secretary, specifically saying that the NBRC AFA comports with both the Refuge Act and the Self-Governance Act.

Also attached are related letters from them and Montana's Senators.

Rahall-Young ltr 5-15-07.pdf
Rahall-Young Ltr 11-2-07.pdf
Rahall-Young Statement 6-19-08.pdf
Baucus Ltr 5-1-09.pdf
Tester Ltr 4-23-09.pdf



"Brian Upton"
<brianu@cskt.org>
05/03/2012 02:56 PM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: leave

Call anytime (after 8:30 is best, once I get kids off to school). Yes, cell # is best: [redacted]

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Thursday, May 03, 2012 2:39 PM
To: Brian Upton
Subject: Re: leave

Brian: Are you available tomorrow? cell no?

dean



"Brian Upton"
<brianu@cskt.org>
05/03/2012 10:27 AM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject public availability of comment

History: This message has been replied to.

Dean,

I really appreciated your, and everyone else's, time on Monday. Following up on our discussion, the notice about public availability of comments which I had referenced can be found in the November 29, 2011 Federal Register on p. 73789 (76 FR 73789). I would copy Cathy Willis on this, but I apparently lost her email address when my computer got upgraded.



"Brian Upton"
<brianu@cskt.org>
04/19/2012 02:39 PM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject brief



attached CSKT Reed MSJ Brief (amended).pdf



"Brian Upton"
<brianu@cskt.org>
04/17/2012 04:29 PM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject call tomorrow?

Dean,
I had intended to call you today but kept having other things arise. Do you have some time tomorrow (Wednesday) to talk for 7 or 8 minutes? Nothing big, but I have a few things I wanted to ask you about and update you on. Shouldn't take too long. If you have a few minutes, just let me know when would be the best time to call.

Thanks,
BU



"Brian Upton"
<brianu@cskt.org>
04/12/2012 02:02 PM

To "Brenna, Sharon" <Sharon.Brenna@sol.doi.gov>, <Dean_Rundle@fws.gov>
cc
bcc
Subject final revisions to draft AFA

Sharon,
Attached are final revisions to the draft AFA reflecting our discussion today. I standardized the reference to the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation. Let me know if you see any loose ends. Otherwise, this draft AFA should be ready for circulation and NEPA review.

[redacted]



"Brian Upton"
<brianu@cskt.org>

03/30/2012 03:01 PM

To Dean <Dean_Rundle@fws.gov>
cc
bcc
Subject news

History: This message has been replied to.

Here's a recent article on the relocation, in case you haven't seen it:
http://missoulanews.bigskypress.com/missoula/home-to-the-range/Content?oid=1543869



"Brian Upton" <brianu@cskt.org>
03/28/2012 02:56 PM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE:

History: This message has been replied to.

Thanks for the update Dean

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Wednesday, March 28, 2012 2:09 PM
To: Jeff_King@fws.gov; brianu@cskt.org
Subject:

Jeff/Brian: I have talked to Roxanna Hinzman who is currently on an ALDP detail performing liaison between the Director's Office and the Assistant Secretary's Office. She is also coordinating with the Governor's office and NPS.

Following is a draft itinerary for Greg Siekaniec and Rachel Jacobson's trip to MT next week. There are three travelling out from DOI: Greg, Rachel and Peggy O'dell, who is a Deputy Director of the National Park Service.

Roxanna is trying to finalize this itinerary, and will advise me when it is firmed up. Tentatively, the Party will arrive by the Governor's plane at the airport in Ronan (I have no idea where the airfield is in Ronan - but the Gov's pilot says he can land there) at approx. 12:00 noon on Tuesday, 4/3.

We need to have vehicle transportation at the Ronan airport to take 6 people from Ronan to NBR, then from NBR up to Pablo, and finally from Tribal HQ in Pablo back to the Ronan airport. The 6 are Greg, Rachel, Peggy, Gov., Gov's aide, Gov's bodyguard.

I'll send Clay Ronish/Mike Koole a message and see if they need to coordinate anything with the Gov's security detail.

I've told Roxanna that the best bet for lunch will be to pick up sandwiches at Ronan Subway on the way to NBR. Might be good if we just have some menus at the airfield and let people order and then maybe have an NBR staff pick up lunch and bring it down to NBR to eat.

You'll have about 2 hours on the ground at NBR for briefing/tour. Not enough time for the whole tour route, but perhaps you can look at the corral/handling facilities and Hardin Tract?

I haven't been able to determine if the trip is about selecting an alternative for working with Montana. Roxanna told me that the purpose is for Senior DOI/FWS/NPS leadership to get "familiar with the geography on the ground to see what might work and what doesn't work".

Our assumption at this time is that the Governor, AS, and DD and Dep. Dir. NPS will be meeting with the Tribal Council in Pablo at 3:00 p.m.

Hope this helps, and I'll keep you informed as things develop.

Dean

----- Forwarded by Dean Rundle/R6/FWS/DOI on 03/28/2012 01:36 PM -----

Roxanna Hinzman/R4/FWS/DOI

To Dean Rundle/R6/FWS/DOI@FWS

cc

03/28/2012 11:37 AM

Subject

DRAFT

Assumptions:
On Governor's plane – Governor plus 2, 2 pilots, Rachel, Peggy, Greg
All others involved meet at various locations – on their own for getting there.

Option 1: Trip to MT – Bison
April 1-5, 2012

The CSKT has council meeting on Tuesday – they are holding from 3-4 PM open for DOI and Governor to meet with them at council.

Sunday, April 1 – Rachel, Peggy and Greg, Fly into Helena, stay the night in Helena.

Monday, April 2

8:00-9:00AM Fly from Helena to Harlem airport
9:00-9:30AM Travel by ground approximately 30 miles into the Fort Belknap Reservation
9:30-11:00AM Tour Fort Belknap Reservation (no bison here yet correct? So shorter visit).
11:00-12:00PM Travel by ground approximately 30 miles to Harlem airport – grab lunch along the way
12:00-12:30PM Fly from Harlem airport to Poplar airport
12:30-1:00PM Travel by ground approximately 24 miles into the Fort Peck Reservation
1:00-3:30PM Tour Fort Peck Reservation
3:30-4:00PM Travel by ground approximately 24 miles to Poplar airport
4:00-5:30PM Fly from Poplar back to Bozeman
Stay the night in Bozeman

Tuesday, April 3

8:00-8:30AM Travel by ground approximately 25 miles to Ted Turner's Green Ranch.
8:30-10:30AM Tour Turner's Green Ranch
10:30-11:00AM Drive 25 miles back to Belgrade airport
11:00-12:00PM Fly from Belgrade airport to Ronan airport,
12:00-12:30PM Travel by ground approximately 18 miles to Moiese (National Bison Range), grab lunch along the way
12:30-2:30PM Tour NBR (CSKT technical staff in attendance?)
2:30-3:00PPM Travel by ground to CSKT

3:00-4:30PM G2G at CSKT Council (3-4 is being held open by tribes)
4:30-5:00PM Travel by ground approximately 18 miles Ronan airport
5:00-6:00PM Fly from Ronan airport to Bozeman (or is there an airport at Yellowstone?), drop off DOI
Governor returns to Helena
6:00-8:00PM DOI travel by ground to Yellowstone

Wednesday, April 4 (DOI only)
NPS sets up schedule (Dan Wenk)

Drive back to Bozeman either evening April 4 or early April 5

Thursday, April 5
Return flight Bozeman to D.C.
Option 2

Sunday, April 1 – Rachel, Peggy and Greg, Fly into Bozeman, stay the night in Bozeman.

Monday, April 2
Governor fly from Helena to Belgrade (Bozeman) airport, meet DOI
8:00-8:30AM Travel by ground approximately 25 miles to Ted Turner's Green Ranch.
8:30-10:30AM Tour Turner's Green Ranch
10:30-11:30AM Drive 25 miles back to Belgrade airport
11:30-12:30PM Fly from Belgrade airport to Ronan airport,
12:30-1:30PM Travel by ground approximately 18 miles to Moiese (National Bison Range), grab lunch along the way
1:30-5:30PM Tour NBR (CSK Tribes meet with us at NBR)
5:30-6:00PM Travel by ground approximately 18 miles Ronan airport
6:00-7:00PM Fly from Ronan airport to Helena airport
Spend the night in Helena

Tuesday, April 3
8:00-9:00AM Fly from Helena to Harlem airport
9:00-9:30AM Travel by ground approximately 30 miles into the Fort Belknap Reservation (no bison here yet correct? So shorter visit).
9:30-11:00AM Tour Fort Belknap Reservation
11:00-12:30PM Travel by ground approximately 30 miles to Harlem airport – grab lunch along the way
12:30-1:30PM Fly from Harlem airport to Poplar airport
1:30-2:00PM Travel by ground approximately 24 miles into the Fort Peck Reservation
2:00-4:0PM Tour Fort Peck Reservation
4:00-4:30PM Travel by ground to Poplar airport
4:30-6:0PM Fly from Poplar to Bozeman (or YNP airstrip?) and drop of DOI before Governor returns to Helena
6:00-8:00PM DOI Travel by ground to Yellowstone

Wednesday, April 4 (DOI only)
8:00-9:30AM Travel by ground Bozeman to Yellowstone (about 80 miles)
Schedule to be provided by Dan Wenk

Drive back to Bozeman either evening April 4 or early April 5

Thursday, April 5
Return flight Bozeman to D.C.

Roxanna Hinzman
U.S. Fish and Wildlife Service

On 60 day detail February 21-April 20
Liaison to Assistant Secretary for Fish, Wildlife and Parks
desk 202-208-6211
cell 404-697-1291
Room 3148 MIB

Southeast Regional Office
Division of Environmental Quality, Chief
USFWS Deepwater Horizon Oil Spill Response Lead
1875 Century Blvd. Ste. 200
Atlanta GA 30345
direct 404-679-4156
cell 404-697-1291
fax 404-679-7081
main office 404-679-7140
roxanna_hinzman@fws.gov

"I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel."
Maya Angelou



"Brian Upton"
<brianu@cskt.org>
03/28/2012 10:52 AM

To <Dean_Rundle@fws.gov>
cc <johnh@cskt.org>
bcc
Subject RE: April 3 VIP Visit to NBR/CSKT

Dean,
I'll make sure that Council is aware that they are welcome to participate in the tour/briefings at the NBR on Tuesday. Opportunity may be limited depending on the need for quorum for the Council session that day, but it's possible that one or two Council Members could attend the NBR events. I should emphasize that, even if there is Council Member presence at the NBR, the full Tribal Council would like to meet with the delegation (or as much of the delegation as possible) in Pablo during its Council session that afternoon. I wouldn't want anyone to equate meeting an individual Council Member or two at the NBR with meeting the full Council. I know you're well aware of the distinction and I assume the rest of the delegation is as well.

Thanks,
BU

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Wednesday, March 28, 2012 9:12 AM
To: Jeff_King@fws.gov; brianu@cskt.org
Subject: April 3 VIP Visit to NBR/CSKT

I have a little more information regarding the visit by Deputy Director Siekaniec, Acting Asst. Sec. Jacobson, and Gov. Schweitzer for next Tuesday.

Greg Siekaniec confirms that representatives from CSKT are welcome to participate in the tours/briefings that Jeff and staff are planning at the Bison Range for next Tuesday. I think it would be great if Tom McDonald can participate, and Brian, if any Tribal Council members would like to participate, they are welcome. I'll count on Jeff to coordinate with CSKT on the tour/briefings.

Greg Siekaniec appreciates the Tribal Council's willingness to meet, and has personally committed that he will be at Pablo to meet with the Council befweek 3 - 4 p.m. on Tuesday 4/3. He's 99% sure that Rachel Jacobson will also meet with the Council at that time. Greg does not know what the Governor's plans are regarding the meeting with the Tribal Council. We do not know what the Governor is going to do or say at this point. He has not said "no" to the last proposal we sent in to Washington, and he has not agreed either.

We do not know if Yellowstone NP Superintendent Wenk will be participating in a meeting with the Tribal Council.

I do not have any new information on timing/schedules/logisitics for this visit.

I'll be talking to Jeff later today, but we should plan for several contingencies:

1. That the group will arrive at NBR in the morning between 8:30 and 10:00 a.m and be there until

around 2:15 when they should get ready to travel to Pablo.

2. That the group will not arrive until noon/lunch time and only be at NBR for 90 - 120 minutes before needing to leave to meet with the tribal council.

Jeff, we have no requests for ground transport yet, but I would be prepared to have clean vehicles to transport the group in the local area, as needed. I will have a rental car.

I will continue to try to develop more information and will pass that along to you as soon as I can.

Dean



"Brian Upton"
<brianu@cskt.org>
03/28/2012 09:20 AM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: April 3 VIP Visit to NBR/CSKT

Thanks for the update Dean

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Wednesday, March 28, 2012 9:12 AM
To: Jeff_King@fws.gov; brianu@cskt.org
Subject: April 3 VIP Visit to NBR/CSKT

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I will continue to try to develop more information and will pass that along to you as soon as I can.

Dean



"Brian Upton"
<brianu@cskt.org>
03/26/2012 04:17 PM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: Next Tuesday with CSKT

Thanks Dean

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Monday, March 26, 2012 3:59 PM
To: brianu@cskt.org
Subject: Fw: Next Tuesday with CSKT

Brian: I got your phone msg. Thank you for arranging time with the Council next Tuesday. I sent the following message to Dep. RD Noreen Walsh and requested more infomation from Washington on the intent of the meeting with Council. We really do not know what has been said between the Governor and high level DOI/FWS officials to date. So, the Region's understanding of the purpose of this visit is imperfect. I will try to get as much information as I can and get it to you as early as I can. After we talked this morning, I asked Noreen about CSKT participation in the NBR tour/briefings on Tuesday morning. She was going to call Greg Siekaniec about that, but I haven't heard back. I'll ask again tomorrow.

Dean

----- Forwarded by Dean Rundle/R6/FWS/DOI on 03/26/2012 03:55 PM -----

Dean Rundle/R6/FWS/DOI

03/26/2012 03:55 PM

To Noreen_Walsh@fws.gov
cc Jeff King/R6/FWS/DOI@FWS, Bud Oliveira/R6/FWS/DOI@FWS
Subject Next Tuesday with CSKT

Noreen: The CSKT Tribal Council has scheduled time, 3:00 - 4:00 p.m. on Tuesday, April 3 to meet with Acting AS Jacobson, DD Siekaniec, and Gov Schweitzer. I told them I was not sure whether YNP Superintendent Wenk would be participating in the meeting with the Tribal Council, or not. CSKT is assuming that myself and Jeff King will accompany the senior officials to Council Chambers, so please find out and advise if that is also the intent of the visiting dignitaries.

If you can confirm the list of visitors participating, (confirm Superintendent Wenk if possible) that would be great, and I will pass that along to CSKT.

For logisitics planning purposes - Tribal HQ is in Pablo MT, and is about a 30 minute drive from NBR HQ.

Please advise whether we need to arrange FWS ground transport for the group from the refuge to Pablo, and also if we need to arrange to transport to NBR from an airport or hotel on the morning of April 3, and then again from Pablo to an airport or hotel at the end of the meeting with Council.



[redacted]

Dean



"Brian Upton" <brianu@cskt.org>
03/13/2012 03:14 PM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: PEER FOIA Info

History: This message has been replied to.

Thanks Dean – much appreciated. [redacted]

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Tuesday, March 13, 2012 2:49 PM
To: brianu@cskt.org
Subject: PEER FOIA Info

Brian: I got a CD with the documents that we provided PEER in response to their FOIA on hiring practices at NBR. Its going in the mail today to your attention at the Tribe's [redacted] Hope that helps. Let me know if you don't receive that in a few days.

Dean



"Brian Upton"
<brianu@cskt.org>
03/08/2012 11:12 AM

To <Dean_Rundle@fws.gov>
cc <Tomm@cskt.org>
bcc
Subject AFA revisions

History: This message has been replied to.

Dean,
Sorry for the delay in getting this to you – my computer has been down for the past couple of days. Attached is a revised AFA showing, in change-tracking format, the four most recent revisions we had agreed to. [redacted] Let me know if these changes are acceptable on your end.

[redacted] Those are the only changes I've made, other than putting today's date on the draft. Let me know if any questions.

Thanks,
[redacted]



"Brian Upton"
<brianu@cskt.org>

02/14/2012 11:33 AM

Please respond to
<brianu@cskt.org>

To <Dean_Rundle@fws.gov>, <Jeff_King@fws.gov>,
<Bob_Rebarchik@fws.gov>

cc

bcc

Subject revised AFA

History: This message has been forwarded.

Attached are: 1) a revised draft of the AFA, in change-tracking format, showing all of the agreed-upon revisions; and 2) a clean copy of the same document. In the interests of time, I haven't gone through the document to update internal citations, ensure term consistency, and correct format glitches, etc. Maybe next week we can discuss cleaning up the document to address those issues.

Dean, I believe you had confirmed awhile ago that Sharon had approved the new text in Sections 3.A.1 and 23.B. If that's not the case, let's discuss next week.

[redacted]



"Brian Upton" <brianu@cskt.org>
02/10/2012 10:44 AM

To Dean_Rundle@fws.gov
cc
bcc
Subject Re[2]: Tuesday

Sounds good. Thanks Dean.

-----Original Message-----
From: Dean_Rundle@fws.gov
To: "Brian Upton" <brianu@cskt.org>, Jeff_King@fws.gov
Date: 02/10/12 10:40 AM
Subject: Re: Tuesday

Thanks Brian: Lets talk AFA at 0900 on Tuesday morning, Feb. 14. We can use the refuge conf. call line:

[redacted]

Talk to you then.

Dean

"Brian Upton" <brianu@cskt.org>
02/10/2012 10:16 AM

To Dean <Dean_Rundle@fws.gov>
cc
Subject Tuesday

Dean,
Tom is available Tuesday morning, so let's nail down a time. Anytime after 8:30 will work on my end.



"Brian Upton"
<brianu@cskt.org>
02/10/2012 10:16 AM

To Dean <Dean_Rundle@fws.gov>
cc
bcc
Subject Tuesday

History: This message has been replied to.

Dean,
Tom is available Tuesday morning, so let's nail down a time. Anytime after 8:30 will work on my end.



"Brian Upton"
<brianu@cskt.org>

01/25/2012 04:35 PM

Please respond to
<brianu@cskt.org>

To <Dean_Rundle@fws.gov>
cc <tomm@cskt.org>
bcc
Subject latest draft

History: This message has been forwarded.

Dean,
Attached is the revised draft we just discussed and which reflects the revisions from our last negotiations call. This draft reflects current CSKT staff consensus, but I'll have to get back with you on Council approval. Let me know if any questions, or if you don't think the revisions reflect our discussion, etc.

[redacted]



"Brian Upton" <brianu@cskt.org>

01/24/2012 04:06 PM

Please respond to <brianu@cskt.org>

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: follow-up

History: This message has been replied to.

Dean –
I had intended to call you during the last two days to discuss a few things, but repeatedly got side-tracked. If there's a good time for you tomorrow, let me know and I'll call you then. Otherwise, I'll just plan on calling you tomorrow morning to see if you have some time to talk.

Thanks,
BU

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Friday, January 20, 2012 12:43 PM
To: Brian Upton
Subject: Re: follow-up

Thanks Brian - I appreciate you getting this and providing it to us. Can you tell me if the Council had input to this or endorses all of it?

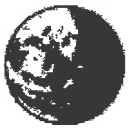
Dean

"Brian Upton" <brianu@cskt.org>

01/20/2012 09:52 AM

To Dean <Dean_Rundle@fws.gov>
cc
Subject follow-up

FYI - here is the response letter we had talked about



"Brian Upton"
<brianu@cskt.org>
01/20/2012 09:52 AM

To Dean <Dean_Rundle@fws.gov>
cc
bcc
Subject follow-up

History: This message has been replied to and forwarded.



FYI - here is the response letter we had talked about Ltr. to MT Gov re bison move to ntl. bison range.pdf



"Brian Upton"
<brianu@cskt.org>

01/09/2012 02:33 PM

Please respond to <brianu@cskt.org>

To <Dean_Rundle@fws.gov>
cc
bcc
Subject

History: This message has been replied to.

Dean,
Attached is the ITBC letter we had talked about several weeks ago. You have probably already seen it by now. I'll try to call you this week to pick back up on things. My office hours are a little compressed this week since my wife is out of town and I've got kid duty.



Schweitzer ITBC ltr 11-2-11.pdf

Dean Rundle/R6/FWS/DOI
03/28/2012 03:09 PM

To "Brian Upton" <brianu@cskt.org>
cc
bcc
Subject RE:

I just got a message from Washington that the Governor will accompany the DOI leader to the meeting with the Tribal Council.

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton" <brianu@cskt.org>
03/28/2012 02:56 PM

To <Dean_Rundle@fws.gov>
cc
Subject RE:

Thanks for the update Dean

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Wednesday, March 28, 2012 2:09 PM
To: Jeff_King@fws.gov; brianu@cskt.org
Subject:

Jeff/Brian: I have talked to Roxanna Hinzman who is currently on an ALDP detail performing liaison between the Director's Office and the Assistant Secretary's Office. She is also coordinating with the Governor's office and NPS.

Following is a draft itinerary for Greg Siekaniec and Rachel Jacobson's trip to MT next week. There are three travelling out from DOI: Greg, Rachel and Peggy O'dell, who is a Deputy Director of the National Park Service.

Roxanna is trying to finalize this itinerary, and will advise me when it is firmed up. Tentatively, the Party will arrive by the Governor's plane at the airport in Ronan (I have no idea where the airfield is in Ronan - but the Gov's pilot says he can land there) at approx. 12:00 noon on Tuesday, 4/3.

We need to have vehicle transportation at the Ronan airport to take 6 people from Ronan to NBR, then from NBR up to Pablo, and finally from Tribal HQ in Pablo back to the Ronan airport. The 6 are Greg, Rachel, Peggy, Gov., Gov's aide, Gov's bodyguard.

I'll send Clay Ronish/Mike Koole a message and see if they need to coordinate anything with the Gov's security detail.

I've told Roxanna that the best bet for lunch will be to pick up sandwiches at Ronan Subway on the way to NBR. Might be good if we just have some menus at the airfield and let people order and then maybe have

an NBR staff pick up lunch and bring it down to NBR to eat.

You'll have about 2 hours on the ground at NBR for briefing/tour. Not enough time for the whole tour route, but perhaps you can look at the corral/handling facilities and Hardin Tract?

I haven't been able to determine if the trip is about selecting an alternative for working with Montana. Roxanna told me that the purpose is for Senior DOI/FWS/NPS leadership to get "familiar with the geography on the ground to see what might work and what doesn't work".

Our assumption at this time is that the Governor, AS, and DD and Dep. Dir. NPS will be meeting with the Tribal Council in Pablo at 3:00 p.m.

Hope this helps, and I'll keep you informed as things develop.

Dean

----- Forwarded by Dean Rundle/R6/FWS/DOI on 03/28/2012 01:36 PM -----

Roxanna Hinzman/R4/FWS/DOI

03/28/2012 11:37 AM

To Dean Rundle/R6/FWS/DOI@FWS
cc
Subject

DRAFT

Assumptions:
On Governor's plane – Governor plus 2, 2 pilots, Rachel, Peggy, Greg
All others involved meet at various locations – on their own for getting there.

Option 1: Trip to MT – Bison
April 1-5, 2012

The CSKT has council meeting on Tuesday – they are holding from 3-4 PM open for DOI and Governor to meet with them at council.

Sunday, April 1 – Rachel, Peggy and Greg, Fly into Helena, stay the night in Helena.

Monday, April 2
8:00-9:00AM Fly from Helena to Harlem airport
9:00-9:30AM Travel by ground approximately 30 miles into the Fort Belknap Reservation

9:30-11:00AM Tour Fort Belknap Reservation (no bison here yet correct? So shorter visit).
11:00-12:00PM Travel by ground approximately 30 miles to Harlem airport – grab lunch along the way
12:00-12:30PM Fly from Harlem airport to Poplar airport
12:30-1:00PM Travel by ground approximately 24 miles into the Fort Peck Reservation
1:00-3:30PM Tour Fort Peck Reservation
3:30-4:00PM Travel by ground approximately 24 miles to Poplar airport
4:00-5:30PM Fly from Poplar back to Bozeman
Stay the night in Bozeman

Tuesday, April 3
8:00-8:30AM Travel by ground approximately 25 miles to Ted Turner's Green Ranch.
8:30-10:30AM Tour Turner's Green Ranch
10:30-11:00AM Drive 25 miles back to Belgrade airport
11:00-12:00PM Fly from Belgrade airport to Ronan airport,
12:00-12:30PM Travel by ground approximately 18 miles to Moiese (National Bison Range), grab lunch along the way
12:30-2:30PM Tour NBR (CSKT technical staff in attendance?)
2:30-3:00PPM Travel by ground to CSKT
3:00-4:30PM G2G at CSKT Council (3-4 is being held open by tribes)
4:30-5:00PM Travel by ground approximately 18 miles Ronan airport
5:00-6:00PM Fly from Ronan airport to Bozeman (or is there an airport at Yellowstone?), drop off DOI
Governor returns to Helena
6:00-8:00PM DOI travel by ground to Yellowstone

Wednesday, April 4 (DOI only)
NPS sets up schedule (Dan Wenk)

Drive back to Bozeman either evening April 4 or early April 5

Thursday, April 5
Return flight Bozeman to D.C.
Option 2

Sunday, April 1 – Rachel, Peggy and Greg, Fly into Bozeman, stay the night in Bozeman.

Monday, April 2
Governor fly from Helena to Belgrade (Bozeman) airport, meet DOI
8:00-8:30AM Travel by ground approximately 25 miles to Ted Turner's Green Ranch.
8:30-10:30AM Tour Turner's Green Ranch
10:30-11:30AM Drive 25 miles back to Belgrade airport
11:30-12:30PM Fly from Belgrade airport to Ronan airport,
12:30-1:30PM Travel by ground approximately 18 miles to Moiese (National Bison Range), grab lunch along the way
1:30-5:30PM Tour NBR (CSK Tribes meet with us at NBR)
5:30-6:00PM Travel by ground approximately 18 miles Ronan airport
6:00-7:00PM Fly from Ronan airport to Helena airport
Spend the night in Helena

Tuesday, April 3

8:00-9:00AM Fly from Helena to Harlem airport
9:00-9:30AM Travel by ground approximately 30 miles into the Fort Belknap Reservation (no bison here yet correct? So shorter visit).
9:30-11:00AM Tour Fort Belknap Reservation
11:00-12:30PM Travel by ground approximately 30 miles to Harlem airport – grab lunch along the way
12:30-1:30PM Fly from Harlem airport to Poplar airport
1:30-2:00PM Travel by ground approximately 24 miles into the Fort Peck Reservation
2:00-4:0PM Tour Fort Peck Reservation
4:00-4:30PM Travel by ground to Poplar airport
4:30-6:0PM Fly from Poplar to Bozeman (or YNP airstrip?) and drop of DOI before Governor returns to Helena
6:00-8:00PM DOI Travel by ground to Yellowstone

Wednesday, April 4 (DOI only)

8:00-9:30AM Travel by ground Bozeman to Yellowstone (about 80 miles)
Schedule to be provided by Dan Wenk

Drive back to Bozeman either evening April 4 or early April 5

Thursday, April 5
Return flight Bozeman to D.C.

Roxanna Hinzman
U.S. Fish and Wildlife Service

On 60 day detail February 21-April 20
Liaison to Assistant Secretary for Fish, Wildlife and Parks
desk 202-208-6211
cell 404-697-1291
Room 3148 MIB

Southeast Regional Office
Division of Environmental Quality, Chief
USFWS Deepwater Horizon Oil Spill Response Lead
1875 Century Blvd. Ste. 200
Atlanta GA 30345
direct 404-679-4156
cell 404-697-1291
fax 404-679-7081
main office 404-679-7140
roxanna_hinzman@fws.gov

"I've learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel."
Maya Angelou

Dean Rundle/R6/FWS/DOI
09/19/2012 08:56 AM

To "Brian Upton" <brianu@cskt.org>
cc
bcc
Subject Re: meeting

Thanks Brian. I passed along the information about the two Acting AS's visiting CSKT to my bosses. They are trying to discern whether myself or anyone else from FWS is "welcome". Its unclear whether the lack of information to us from DOI is because DOI doesn't want the bureau involved, or whether DOI perhaps is just waiting to firm up the meeting before advising us.

I talked to David Lucas this morning, and he said the bids from the two potential IDIQ contractors to review the EA and write the "environmental affects" portion of the EA are due tomorrow and Friday. So, we should have the contract issued in the next couple days and we'll know who the contractor will be.

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton" <brianu@cskt.org>
09/19/2012 08:49 AM

To <Dean_Rundle@fws.gov>
cc
Subject meeting

Just confirmed with Rachel Jacobson's assistant Wednesday October 17th for the meeting date.

Dean Rundle/R6/FWS/DOI
05/03/2012 01:12 PM

To "Brian Upton" <brianu@cskt.org>
cc Cathey Willis/R6/FWS/DOI@FWS
bcc
Subject Re: public availability of comment

Thanks Brian - I'm copying Cathy with that. We are working on the draft notice for scoping and I'll let you know before that goes out.

I also talked to Laurie Shannon about where to address the "significance factors" in a draft EA. My sense, based on that discussion is that the best place to do that is actually in the FONSI - assuming analysis leads us to the FONSI - itself. If the EA leads us to a decision that the proposed action has no significant effect on the human environment, then the FONSI document itself turns the proposed action into the preferred alternative and we would address the significance factors in that.

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton" <brianu@cskt.org>
05/03/2012 10:27 AM

To <Dean_Rundle@fws.gov>
cc
Subject public availability of comment

Dean,

I really appreciated your, and everyone else's, time on Monday. Following up on our discussion, the notice about public availability of comments which I had referenced can be found in the November 29, 2011 Federal Register on p. 73789 (76 FR 73789). I would copy Cathy Willis on this, but I apparently lost her email address when my computer got upgraded.

Dean Rundle/R6/FWS/DOI
03/13/2012 05:36 PM

To "Brian Upton" <brianu@cskt.org>
cc
bcc
Subject RE: PEER FOIA Info

Brian: I'm heading home now. I may try to call you in the morning to see if you have any response on the Yellowstone bison information I sent to you and Tom McDonald this morning. I apologize for the short fuse request on that - not a good way to consult - but seems like the fuse is always short on this issue.

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton" <brianu@cskt.org>
03/13/2012 03:14 PM

To <Dean_Rundle@fws.gov>
cc
Subject RE: PEER FOIA Info

Thanks Dean – much appreciated. The Tribes' P.O. Box is 278.

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Tuesday, March 13, 2012 2:49 PM
To: brianu@cskt.org
Subject: PEER FOIA Info

Brian: I got a CD with the documents that we provided PEER in response to their FOIA on hiring practices at NBR. Its going in the mail today to your attention at the Tribe's P. O. Box 287 address. Hope that helps. Let me know if you don't receive that in a few days.

Dean

Dean Rundle/R6/FWS/DOI
03/09/2012 11:02 AM

To "Brian Upton" <brianu@cskt.org>, Sharon.Brenna@exchange.sol.doi.gov
cc
bcc
Subject Re: Re[2]: AFA revisions

Brian: It would be great for me if you can work with Sharon to do a final "cleaning" of the document. But, maybe you should give her a call and see what her schedule/availability is. She sent me a note earlier this week and has been swamped with other urgencies and I don't know how much time she has available to work on AFA in the immediate future. If she cannot, then I'll do the best I can to work with you on it.

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton"
<brianu@cskt.org>
03/09/2012 10:54 AM

To Dean_Rundle@fws.gov
cc Jeff_King@fws.gov, Tomm@cskt.org
Subject Re[2]: AFA revisions

Dean,

[redacted]

I'll send out an AFA with the above corrections/revisions. Now that the substance has been agreed-upon, we'll just need to go through the document to clean up minor formatting glitches, correct internal citations that have changed due to the revisions, etc. Should I work with you or Sharon on this?

BU

-----Original Message-----
From: Dean_Rundle@fws.gov
To: "Brian Upton" <brianu@cskt.org>
Cc: Tomm@cskt.org, Jeff_King@fws.gov
Date: 03/09/12 10:35 AM
Subject: Re: AFA revisions

Brian: Thanks for providing this and I'm sorry I wasn't able to look it over before you went in to Council yesterday.

Dean Rundle/R6/FWS/DOI
03/09/2012 11:02 AM

To "Brian Upton" <brianu@cskt.org>, Sharon.Brenna@exchange.sol.doi.gov
cc
bcc
Subject Re: Re[2]: AFA revisions

Brian: It would be great for me if you can work with Sharon to do a final "cleaning" of the document. But, maybe you should give her a call and see what her schedule/availability is. She sent me a note earlier this week and has been swamped with other urgencies and I don't know how much time she has available to work on AFA in the immediate future. If she cannot, then I'll do the best I can to work with you on it.

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton"
<brianu@cskt.org>
03/09/2012 10:54 AM

To Dean_Rundle@fws.gov
cc Jeff_King@fws.gov, Tomm@cskt.org
Subject Re[2]: AFA revisions

Dean,

[redacted]

I'll send out an AFA with the above corrections/revisions. Now that the substance has been agreed-upon, we'll just need to go through the document to clean up minor formatting glitches, correct internal citations that have changed due to the revisions, etc. Should I work with you or Sharon on this?

BU

-----Original Message-----
From: Dean_Rundle@fws.gov
To: "Brian Upton" <brianu@cskt.org>
Cc: Tomm@cskt.org, Jeff_King@fws.gov
Date: 03/09/12 10:35 AM
Subject: Re: AFA revisions

Brian: Thanks for providing this and I'm sorry I wasn't able to look it over before you went in to Council yesterday.

The changes indicated on pages 18 and 25 are fine, and are as I understood when we talked ealier this week.

[redacted]

Let me know if that works for you.

Dean

"Brian Upton" <brianu@cskt.org>

03/08/2012 11:12 AM

To <Dean_Rundle@fws.gov>
cc <Tomm@cskt.org>
Subject AFA revisions

Dean,
Sorry for the delay in getting this to you - my computer has been down for the past couple of days. Attached is a revised AFA showing, in change-tracking format, the four most recent revisions we had agreed to. With

[redacted]

Thanks,
BU

Dean Rundle/R6/FWS/DOI
02/10/2012 10:39 AM

To "Brian Upton" <brianu@cskt.org>, Jeff King/R6/FWS/DOI@FWS
cc
bcc
Subject Re: Tuesday

Thanks Brian: Lets talk AFA at 0900 on Tuesday morning, Feb. 14. We can use the refuge conf. call line:

Call-In No. 866-723-0771
Code: 54784271

Talk to you then.

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton" <brianu@cskt.org>
02/10/2012 10:16 AM

To Dean <Dean_Rundle@fws.gov>
cc
Subject Tuesday

Dean,
Tom is available Tuesday morning, so let's nail down a time. Anytime after 8:30 will work on my end.

Dean Rundle/R6/FWS/DOI
01/20/2012 12:43 PM

To "Brian Upton" <brianu@cskt.org>
cc
bcc
Subject Re: follow-up

Thanks Brian - I appreciate you getting this and providing it to us. Can you tell me if the Council had input to this or endorses all of it?

Dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton" <brianu@cskt.org>
01/20/2012 09:52 AM

To Dean <Dean_Rundle@fws.gov>
cc
Subject follow-up



FYI - here is the response letter we had talked about Ltr. to MT Gov re bison move to ntl. bison range.pdf

Dean Rundle/R6/FWS/DOI	To	brianu@cskt.org
09/04/2012 06:13 AM	cc	
	bcc	
	Subject	EA status

Brian: I got the package of input you provided last week and read it all. That is very helpful - thank you. Made good progress on the EA last week, but I'll now be out of the office in travel or on leave until the 17th. Will try to work harder to wrap my sections up that week. Jeff reports good progress on Chapter 4 by the staff at NBR.

I got an e-mail from Sharon last week. She has completed a draft of the SOL opinion re. the BGA scoping comments and sent it to HQ for review. Sharon will also be on leave until the 17th.

I'll be at Red Rock Lakes this week and don't think I'll have cell coverage there. I will be home on Monday the 10th, before going into the backcountry for elk next week. If you need to visit before the 17th. Try me on the cell [redacted] on Monday the 10th.

Dean

Dean Rundle/R6/FWS/DOI	To	brianu@cskt.org
08/21/2012 12:58 PM	cc	
	bcc	
	Subject	Got your message

Brian: I got the message you left on Friday, just didn't get around to responding yesterday. Later this week will be fine to get your comments/suggestions - look forward to seeing those.

Just FYI too, Steve Guertin, our RD announced yesterday that he is leaving R6 in November. He's been selected to replace Greg Siekaniec as new Deputy Director for the Service. They are not transferring in a new RD, rather, that job will be advertised for competition this time.

Dean

Dean Rundle/R6/FWS/DOI	To	brianu@cskt.org
07/19/2012 01:14 PM	cc	Jeff King/R6/FWS/DOI@FWS
	bcc	
	Subject	Meeting next week

Brian: Got back yesterday and got your message. I have arrangments to travel to Missoula/Pablo next week and appreciate the opportunity to visti with Tribal Council at 1100 on Thursday, July 26. You can confirm that appointment. Jeff will also come up to Council with me. It will be great if I can also visit w/ the Mr. Killsbuck and Ira Newbreast at that time, and I'll have most of that day to visit with you, Tom, others re. AFA or DOI Bison Initiative issues.

Dean

Dean Rundle/R6/FWS/DOI	To	brianu@cskt.org
07/13/2012 03:13 PM	cc	Jeff King/R6/FWS/DOI@FWS
	bcc	
	Subject	Got your message

Brian: I got your voice msg. I will plan to come up to visit Tribal Council on July 26 - if that is a good date for you. I'm travelling Monday/Tuesday next week to Helena, will be in ofc. on wednesday, and will call you then.

dean

Dean Rundle/R6/FWS/DOI
06/20/2012 01:29 PM

To Brianu@cskt.org
cc
bcc
Subject Fw: Blue Goose Alliance

Brian: Attached below is a copy of the letter/scoping comments received from BGA. Their argument related to the legislative history of the Refuge Improvement Act of 1997 begins on the bottom of the first page, through the middle of the second page.

Cathy Willis is still working on getting the sharepoint site set up. We'll try to get you access, but if we cannot, I'll get all the scoping comments scanned and provide those to you.

Dean

----- Forwarded by Dean Rundle/R6/FWS/DOI on 06/20/2012 01:25 PM -----



Tammy Bybee/R6/FWS/DOI
06/20/2012 01:20 PM

To Dean Rundle/R6/FWS/DOI@FWS
cc
Subject Blue Goose Alliance



BLUE GOOSE ALLIANCE_20120620130725.pdf

Tammy Bybee
HR/Payroll Specialist
U.S. Fish & Wildlife Service
134 Union Blvd., Suite 300
Lakewood, CO 80228
303-236-4365
303-236-4792 (fax)

Dean Rundle/R6/FWS/DOI
05/04/2012 12:19 PM

To brianu@cskt.org, tomm@cskt.org
cc Jeff King/R6/FWS/DOI@FWS, Cathey Willis/R6/FWS/DOI@FWS
bcc
Subject Draft NOI

Brian/Tom: Attached is a draft Notice of Intent and request for public scoping comments for our EA on the new AFA. Cathy Willis and Jeff King will finish this up next week and get it released through our external affairs office. I think its pretty good and accurate - but let us know if you see any errors or feel we've mischaracterized any thing we've said about CSKT. Please contact Jeff or Cathy directly with comments. Thanks.

Dean



Notice of Intent To Prepare an.dr1.doc

Dean Rundle/R6/FWS/DOI
03/28/2012 03:54 PM

To brianu@cskt.org
cc
bcc
Subject latest itinerary

Brian - here's the latest I've got - developed after DOI has had discussions with Gov's office:

Assumptions: On Governor's plane – Governor plus 2, 2 pilots, Rachel, Peggy, Greg
All others involved meet at various locations – on their own for getting there.
Trip to MT – Bison – Based on attending Confederated Salish and Kootenai Tribes Council on Tuesday at 3:00PM
April 1-5, 2012
The CSKT has council meeting on Tuesday – they are holding from 3-4 PM open for DOI and Governor to meet with them at council.

Sunday, April 1 – Rachel, Peggy and Greg, Fly into Helena, stay the night in Helena
(Need Hotel in Helena, cab to and from hotel)

Monday, April 2
8:00-9:00AM Fly from Helena to Harlem airport
9:00-9:30AM Travel by ground approximately 30 miles into the Fort Belknap Reservation
9:30-11:00AM Tour Fort Belknap Reservation
Objective: See potential bison holding locations; discuss opportunities, concerns, needs
11:00-12:00PM Travel by ground approximately 30 miles to Harlem airport – grab lunch along the way
12:00-12:30PM Fly from Harlem airport to Poplar airport
12:30-1:00PM Travel by ground approximately 24 miles into the Fort Peck Reservation
1:00-3:30PM Tour Fort Peck Reservation
Objective: See potential bison holding locations; discuss opportunities, concerns, needs
3:30-4:00PM Travel by ground approximately 24 miles to Poplar airport
4:00-5:30PM Fly from Poplar back to Bozeman
Stay the night in Bozeman

Tuesday, April 3
8:00-8:30AM Travel by ground approximately 25 miles to Ted Turner's Green Ranch
8:30-10:30AM Tour Turner's Green Ranch
Objective: See quarantine facility, discuss health and genetics testing with vet
10:30-11:00AM Drive 25 miles back to Belgrade airport
11:00-12:00PM Fly from Belgrade airport to Ronan airport
12:00-12:30PM Travel by ground approximately 18 miles to Moiese (National Bison Range),
12:30-2:30PM Tour NBR (Confederated Salish and Kootenai Tribes (CSKT) technical staff in attendance?)
Objective: Objective: See potential bison holding locations; discuss herd management objectives; SOW for moving T bison to NBR discuss opportunities, concerns, needs. Other topics: status of APA
2:30-3:00PPM Travel by ground to CSKT

3:00-4:30PM ***G2G at CSKT Council (3-4 is being held open by tribes)***
Expectation for discussion: CSKT view on moving MT bison and herd management; status of APA; other?)

4:30-5:00PM Travel by ground approximately 18 miles Ronan airport
5:00-6:00PM Fly from Ronan airport to Bozeman, drop off DOI
Governor returns to Helena
6:00-8:00PM *DOI travel by ground to Yellowstone (NPS provides lodging for the night)*

Wednesday, April 4 (DOI only)
NPS sets up schedule (Dan Wenk)
Drive back to Bozeman evening April 4 *(need hotel in Bozeman)*

Thursday, April 5
Return rental car and fly from Bozeman to D.C.

I bolded up the line on expectations for discussion with Tribal Council. DOI leaders will be interested in the Council's views on moving bison and herd management status. I assume the reference to "APA" is a typo for "AFA"- so that is on their radar screen, as well.

I expect this itinerary to be finalized tomorrow and will advise you of any changes.

When you get an idea about who from CSKT, either Council or staff who may come down to NBR on Tuesday afternoon, please let me know.

Dean

Dean Rundle/R6/FWS/DOI
03/26/2012 03:59 PM

To brianu@cskt.org
cc
bcc
Subject Fw: Next Tuesday with CSKT

Brian: I got your phone msg. Thank you for arranging time with the Council next Tuesday. I sent the following message to Dep. RD Noreen Walsh and requested more infomation from Washington on the intent of the meeting with Council. We really do not know what has been said between the Governor and high level DOI/FWS officials to date. So, the Region's understanding of the purpose of this visit is imperfect. I will try to get as much information as I can and get it to you as early as I can. After we talked this morning, I asked Noreen about CSKT participation in the NBR tour/briefings on Tuesday morning. She was going to call Greg Siekaniec about that, but I haven't heard back. I'll ask again tomorrow.

Dean

----- Forwarded by Dean Rundle/R6/FWS/DOI on 03/26/2012 03:55 PM -----

Dean Rundle/R6/FWS/DOI
03/26/2012 03:55 PM

To Noreen_Walsh@fws.gov
cc Jeff King/R6/FWS/DOI@FWS, Bud Oliveira/R6/FWS/DOI@FWS
Subject Next Tuesday with CSKT

Noreen: The CSKT Tribal Council has scheduled time, 3:00 - 4:00 p.m. on Tuesday, April 3 to meet with Acting AS Jacobson, DD Siekaniec, and Gov Schweitzer. I told them I was not sure whether YNP Superintendent Wenk would be participating in the meeting with the Tribal Council, or not. CSKT is assuming that myself and Jeff King will accompany the senior officials to Council Chambers, so please find out and advise if that is also the intent of the visiting dignitaries.

If you can confirm the list of visitors participating, (confirm Superintendent Wenk if possible) that would be great, and I will pass that along to CSKT.

For logisitics planning purposes - Tribal HQ is in Pablo MT, and is about a 30 minute drive from NBR HQ.

Please advise whether we need to arrange FWS ground transport for the group from the refuge to Pablo, and also if we need to arrange to transport to NBR from an airport or hotel on the morning of April 3, and then again from Pablo to an airport or hotel at the end of the meeting with Council.

Also, Council has requested, through staff, any information Region 6 may have regarding the intent of the meeting. They were informed of the Region's last proposal to WO, to accept up to 30 Yellowstone bison at a time into the NBR herd/Service metapopulation. Council is interested to know whether that is still the proposal on the table, whether there is something else on the table, or whether the visit Tuesday is strictly a courtesy call. Obviously they do not want to be blind-sided by a new proposal directly from the Governor and/or AS. I understand that our knowledge here in Lakewood is vague, but any information that we are able share with Council, prior to the meeting, would be very much appreciated.

Dean

Dean Rundle/R6/FWS/DOI	To	brianu@cskt.org
03/13/2012 02:49 PM	cc	
	bcc	
	Subject	PEER FOIA Info

Brian: I got a CD with the documents that we provided PEER in response to their FOIA on hiring practices at NBR. Its going in the mail today to your attention at the Tribe's P. O. Box 287 address. Hope that helps. Let me know if you don't receive that in a few days.

Dean

Dean Rundle/R6/FWS/DOI
02/22/2012 11:50 AM

To <brianu@cskt.org>
cc "'Jacobsen, Dana'" <Dana.Jacobsen@sol.doi.gov>, "'King, Jeff'" <jeff_king@fws.gov>, "'Brenna, Sharon'" <Sharon.Brenna@sol.doi.gov>
bcc
Subject RE: Can we conference at 2:30?

2:30 works for me too. talk to you soon.

dean

"Brian Upton" <brianu@cskt.org>



"Brian Upton"
<brianu@cskt.org>
02/22/2012 10:54 AM
Please respond to <brianu@cskt.org>

To "'Brenna, Sharon'" <Sharon.Brenna@sol.doi.gov>, "'Rundle, Dean'" <dean_rundle@fws.gov>, "'King, Jeff'" <jeff_king@fws.gov>
cc "'Jacobsen, Dana'" <Dana.Jacobsen@sol.doi.gov>
Subject RE: Can we conference at 2:30?

2:30 works on my end

From: Brenna, Sharon [mailto:Sharon.Brenna@sol.doi.gov]
Sent: Wednesday, February 22, 2012 10:21 AM
To: Rundle, Dean; King, Jeff; 'brianu@cskt.org'
Cc: Jacobsen, Dana; Brenna, Sharon
Subject: Can we conference at 2:30?

Dean/Jeff/Brian:

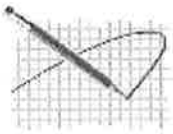
Something has come up on this end—is 2:30 ok instead of 2:00? Let me know!

Sharon

Dean Rundle/R6/FWS/DOI	To	brianu@cskt.org
02/22/2012 11:49 AM	cc	
	bcc	
	Subject	RD Briefing

Brian: I briefed the RD yesterday and he's good to go with the AFA. Please pass that along to the Council.

Dean



Dean Rundle/R6/FWS/DOI
01/24/2012 08:31 PM

To <brianu@cskt.org>
cc
bcc
Subject RE: follow-up

Brian: I got a Dr. appt. in morning and won't be in office until about 10. I've got from 10 - 12 and then probably 3-5 in pm. Got a couple other calls to make. Try anytime between 10 - 12. may play phone tag a little, but we'll catch up. I'm swamped.

In the words of Master Yoda "Too old for this I am getting."

Talk to you tomorrow.

dean

-----"Brian Upton" <brianu@cskt.org> wrote: -----

To: <Dean_Rundle@fws.gov>
From: "Brian Upton" <brianu@cskt.org>
Date: 01/24/2012 04:06PM
Subject: RE: follow-up

Dean –

I had intended to call you during the last two days to discuss a few things, but repeatedly got side-tracked. If there's a good time for you tomorrow, let me know and I'll call you then. Otherwise, I'll just plan on calling you tomorrow morning to see if you have some time to talk.

Thanks,

BU

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Friday, January 20, 2012 12:43 PM
To: Brian Upton
Subject: Re: follow-up

Thanks Brian - I appreciate you getting this and providing it to us. Can you tell me if the Council had input to this or endorses all of it?

Dean

"Brian Upton" < brianu@cskt.org >

01/20/2012 09:52 AM

To Dean <Dean_Rundle@fws.gov>
cc
Subject follow-up

FYI - here is the response letter we had talked about

Dean Rundle/R6/FWS/DOI
01/12/2012 03:08 PM

To <brianu@cskt.org>
cc
bcc
Subject Re:

Brian: Thanks very much for finding and sending this letter. I had not seen it and this is new and good information for us. It's interesting that the Gov. is blasting us for poor management in the press, but remarks about NBR "management expertise" in his letter to ITBC. He is also talking about different nos. of animals than he has talked to the Secretary about and the proposal that MT gets 25% of progeny is also a "new" idea to us. If he has made such a specific proposal to anyone in DOI, we're not aware of it in R6 Refuges.

Sorry I didn't get back to you quicker, been swamped this week preparing a response to a letter we got from MT FWP Director Joe Maurier regarding bison and other wildlife movements out of NBR for the past 30 years. I'll send you a copy of what eventually goes out. The drama with MT/NBR/Yellowstone Bison continues. Do you know if ITBC or any member tribes made any formal response to Gov. Schweitzer's letter?

I got the news that Joe Durglo was elected as the new Chairman, and while I will personally miss James, Charlie and Bud on the Council, I'm happy that the Chair has been part of the Council during the past few years as our relationship has improved so much.
"Brian Upton" <brianu@cskt.org>



"Brian Upton"
<brianu@cskt.org>
01/09/2012 02:33 PM
Please respond to
<brianu@cskt.org>

To <Dean_Rundle@fws.gov>
cc
Subject

Dean,
Attached is the ITBC letter we had talked about several weeks ago. You have probably already seen it by now. I'll try to call you this week to pick back up on things. My office hours are a little compressed this week since my wife is out of town and I've got kid duty.[attachment "Schweitzer ITBC ltr 11-2-11.pdf" deleted by Dean Rundle/R6/FWS/DOI]



"Brian Upton"
<brianu@cskt.org>
04/02/2012 08:49 AM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject order



attached Filed McKeon Order Granting TRO.pdf



"Brian Upton"
<brianu@cskt.org>
09/17/2012 10:05 AM

To <Dean_Rundle@fws.gov>
cc
bcc
Subject RE: Wind River Bison Resolution

I had not seen this yet – thanks for forwarding.

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Monday, September 17, 2012 8:37 AM
To: brianu@cskt.org
Subject: Fw: Wind River Bison Resolution

Brian: You may already have this, but if not, you and the CSKT Tribal Council may be interested. The Joint Northern Arapaho and Eastern Shoshone at Wind River have officially requested the Yellowstone/Turner Ranch bison for the Wind River Reservation.

----- Forwarded by Dean Rundle/R6/FWS/DOI on 09/17/2012 08:34 AM -----

Stephen Torbit/R6/FWS/DOI

09/14/2012 09:03 AM

To Noreen_Walsh@fws.gov, Jeff Rupert/NWRS/R9/FWS/DOI@FWS
cc Dean Rundle/R6/FWS/DOI@FWS
Subject Wind River Bison Resolution

The tribes passed a joint resolution asking for assistance in translocation of the Turner Bison to Wind River.

It is attached.

ST

Looking for leader code

2 messages

Will Meeks <will_meeks@fws.gov> Thu, Jan 16, 2014 at 10:07 AM
To: Brian Upton <brianu@cskt.org>, Jeff King <jeff_king@fws.gov>, Sharon Brenna <sharon.brenna@sol.doi.gov>, Dana Jacobsen <dana.jacobsen@sol.doi.gov>

If we can't find it soon, I'll send out a note with a different call-in.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

King, Jeff <jeff_king@fws.gov> Thu, Jan 16, 2014 at 10:09 AM
To: Will Meeks <will_meeks@fws.gov>
Cc: Brian Upton <brianu@cskt.org>, Sharon Brenna <sharon.brenna@sol.doi.gov>, Dana Jacobsen <dana.jacobsen@sol.doi.gov>

I'm on the call. Listening to the music.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

[Quoted text hidden]



Meeks, Will <will_meeks@fws.gov>

call?

1 message

Brian Upton <brianu@cskt.org> Thu, Jan 16, 2014 at 10:09 AM
To: will_meeks@fws.gov

Are we doing the call today?



Meeks, Will <will_meeks@fws.gov>

NEW CALL IN NUMBER/PASSCODE

3 messages

Will Meeks <will_meeks@fws.gov> Thu, Jan 16, 2014 at 10:12 AM
To: Brian Upton <brianu@cskt.org>
Cc: Jeff King <jeff_king@fws.gov>, Sharon Brenna <sharon.brenna@sol.doi.gov>, Dana Jacobsen <dana.jacobsen@sol.doi.gov>

PLEASE USE THIS NEW NUMBER:

[redacted]

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Jan 16, 2014, at 10:10 AM, Brian Upton <brianu@cskt.org> wrote:

> Are we doing the call today?

King, Jeff <jeff_king@fws.gov> Thu, Jan 16, 2014 at 10:36 AM
To: Will Meeks <will_meeks@fws.gov>

are u there

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

On Thu, Jan 16, 2014 at 10:12 AM, Will Meeks <will_meeks@fws.gov> wrote:

> PLEASE USE THIS NEW NUMBER:

1-866-707-0507
code - 8942490

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Jan 16, 2014, at 10:10 AM, Brian Upton <brianu@cskt.org> wrote:

Are we doing the call today?

Will Meeks <will_meeks@fws.gov> Thu, Jan 16, 2014 at 10:39 AM
To: "King, Jeff" <jeff_king@fws.gov>

yes

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Jan 16, 2014, at 10:37 AM, "King, Jeff" <jeff_king@fws.gov> wrote:

are u there

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
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(406) 644-2211, ext. 204

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PLEASE USE THIS NEW NUMBER:

1-866-707-0507
code - 8942490

Will Meeks

U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Jan 16, 2014, at 10:10 AM, Brian Upton <brianu@cskt.org> wrote:

> Are we doing the call today?

Call back

2 messages

Will Meeks <Will_Meeks@fws.gov> Mon, Feb 3, 2014 at 2:15 PM
To: Brian Upton <brianu@cskt.org>

Brian,

I am slammed for the rest of today and will be in a meeting at Fort Collins tomorrow. But I will call you tomorrow at a break or when I can slip away.

Thanks for the kind words when you met with the Director and others last week.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

Brian Upton <brianu@cskt.org> Mon, Feb 3, 2014 at 2:58 PM
To: Will Meeks <Will_Meeks@fws.gov>

Will,

No problem. I will be unavailable tomorrow morning from 9:45-10:30am, and then for most of the afternoon, but should otherwise be around. Talking on Wednesday would be fine if that works better on your end, I just want to debrief about last week's meetings, activities, etc.

BU

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Monday, February 03, 2014 2:16 PM
To: Brian Upton
Subject: Call back

Brian,

I am slammed for the rest of today and will be in a meeting at Fort Collins tomorrow. But I will call you tomorrow at a break or when I can slip away.

Thanks for the kind words when you met with the Director and others last week.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

CSKT testimony on S.919

3 messages

Brian Upton <brianu@cskt.org> Mon, Feb 10, 2014 at 10:11 AM
To: will_meeks@fws.gov
Cc: Tomm@cskt.org, dale@cskt.org

Will,
Attached is Chairman Trahan's written testimony for S. 919, the Tribal Self-Governance Act amendments, including the referenced attachments. The attachments may be the most interesting part for you if you haven't already seen them. As I mentioned on the phone, let me know if there is anything related to the testimony about which you have questions or otherwise want to discuss.

During our phone call, I had forgotten to mention that Senator Tester had asked Chairman Trahan for a progress report on the Bison Range effort in late spring or early summer. The Chairman indicated that he would be happy to provide that update, and that we would talk to FWS about providing the update to him jointly. I assume that FWS would be willing to do that, but let me know if otherwise.

I'm copying Tom McDonald and Dale Becker on this email to keep them in the loop.

BU

4 attachments

CSKT S.919 Testimony - Final.docx
37K

CSKT Att#1 - NWF Ltr.pdf
80K

CSKT Att#2 -Rahall-Young Ltr.pdf
612K

CSKT Att#3 -NYTeditorial.pdf
231K

Will Meeks <will_meeks@fws.gov> Mon, Feb 10, 2014 at 10:15 AM
To: Brian Upton <brianu@cskt.org>
Cc: "Tomm@cskt.org" <Tomm@cskt.org>, "dale@cskt.org" <dale@cskt.org>

Thanks Brian. Yes, I'd be happy to join Chairman Trahan in the update, perhaps even Noreen. Just let us know when.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Feb 10, 2014, at 10:11 AM, Brian Upton <brianu@cskt.org> wrote:

> Will,
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> I'm copying Tom McDonald and Dale Becker on this email to keep them in the loop.
>
> BU
>
> <CSKT S.919 Testimony - Final.docx>
> <CSKT Att#1 - NWF Ltr.pdf>
> <CSKT Att#2 -Rahall-Young Ltr.pdf>
> <CSKT Att#3 -NYTeditorial.pdf>

Brian Upton <brianu@cskt.org> Mon, Feb 10, 2014 at 10:50 AM
To: Will Meeks <will_meeks@fws.gov>

Thanks Will - we'll keep in contact about it.

---Original Message---
From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Monday, February 10, 2014 10:15 AM
To: Brian Upton
Cc: Tomm@cskt.org; dale@cskt.org
Subject: Re: CSKT testimony on S.919

Thanks Brian. Yes, I'd be happy to join Chairman Trahan in the update, perhaps even Noreen. Just let us know when.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

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let me know if otherwise.
>
> I'm copying Tom McDonald and Dale Becker on this email to keep them in the loop.
>
> BU
>
> <CSKT S.919 Testimony - Final.docx>
> <CSKT Att#1 - NWF Ltr.pdf>
> <CSKT Att#2 -Rahall-Young Ltr.pdf>
> <CSKT Att#3 -NYTeditorial.pdf>

Meeks, Will <will_meeks@fws.gov>

Meeting dates and times

5 messages

King, Jeff <jeff_king@fws.gov> Thu, Feb 13, 2014 at 11:03 AM
To: Brian Upton <brianu@cskt.org>, Will Meeks <Will_Meeks@fws.gov>

Brian,

I know I owe you a call on this but wanted to also include an email to make sure I'm accurate on Will's availability.

I talked to Will this morning and it looks like Feb. 25 or 27 can work for both of us but depends on the timing of the meeting. Will and I are available late afternoon (2:30 pm MST or later) on the 25th. On the 27th we are available in the morning or late afternoon (3 pm MST or later).

I think these times are accurate but Will can reply if not.

Let me know if you have any questions. I'm going into a meeting at 1:30 and it will probably last for the rest of the day.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

Brian Upton <brianu@cskt.org> Thu, Feb 13, 2014 at 11:37 AM
To: "King, Jeff" <jeff_king@fws.gov>, Will Meeks <Will_Meeks@fws.gov>

Thanks Jeff; I'm coordinating with Sharon Silberman (Council scheduler) now and I'll get back with you. Either day/time is fine with me.

From: King, Jeff [mailto:jeff_king@fws.gov]
Sent: Thursday, February 13, 2014 11:03 AM
To: Brian Upton; Will Meeks
Subject: Meeting dates and times

Brian,

I know I owe you a call on this but wanted to also include an email to make sure I'm accurate on Will's availability.

I talked to Will this morning and it looks like Feb. 25 or 27 can work for both of us but depends on the timing of the meeting. Will and I are available late afternoon (2:30 pm MST or later) on the 25th. On the 27th we are available in the morning or late afternoon (3 pm MST or later).

I think these times are accurate but Will can reply if not.

Let me know if you have any questions. I'm going into a meeting at 1:30 and it will probably last for the rest of the day.

Thanks,

jk

Jeff King, Project Leader

National Bison Range Complex

58355 Bison Range Road

Moiese, MT 59824

(406) 644-2211, ext. 204

Will Meeks <Will_Meeks@fws.gov> Fri, Feb 21, 2014 at 9:48 AM
To: Brian Upton <brianu@cskt.org>, Jeff King <jeff_king@fws.gov>

Brian,

That still works for me. Just provide a call-in number. Have a good weekend.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, February 18, 2014 5:07 PM
To: 'King, Jeff'; 'Will Meeks'
Subject: RE: Meeting dates and times

Jeff and Will,

Sorry for the delay. I was finally able to lock in time with the Council. You're scheduled for 10:00-10:30am on Thursday, February 27th. Jeff, my understanding is that you'd be able to come up and meet with Council in person and we'd patch in Will by speakerphone. Let me know if otherwise.

I'll be in Missoula for a meeting all day tomorrow (Wednesday), so please call my cell phone if you want to reach me tomorrow.

Thanks,

BU

From: King, Jeff [mailto:jeff_king@fws.gov]
Sent: Thursday, February 13, 2014 11:03 AM
To: Brian Upton; Will Meeks
Subject: Meeting dates and times

Brian,

I know I owe you a call on this but wanted to also include an email to make sure I'm accurate on Will's availability.

I talked to Will this morning and it looks like Feb. 25 or 27 can work for both of us but depends on the timing of the meeting. Will and I are available late afternoon (2:30 pm MST or later) on the 25th. On the 27th we are available in the morning or late afternoon (3 pm MST or later).

I think these times are accurate but Will can reply if not.

Let me know if you have any questions. I'm going into a meeting at 1:30 and it will probably last for the rest of the day.

Thanks,

jk

Jeff King, Project Leader

National Bison Range Complex

58355 Bison Range Road

Moiese, MT 59824

(406) 644-2211, ext. 204

Brian Upton <brianu@cskt.org> Fri, Feb 21, 2014 at 10:06 AM
To: Jeff King <jeff_king@fws.gov>, Will Meeks <Will_Meeks@fws.gov>

Thanks Will. You'll be the only one participating by phone, so we can just call you and put you on speakerphone. Let me know what number we should use.

> -----Original Message-----
> From: "Will Meeks" <Will_Meeks@fws.gov>
> To: "Brian Upton" <brianu@cskt.org>, "Jeff King" <jeff_king@fws.gov>
> Date: 02/21/14 09:48 AM

Subject: RE: Meeting dates and times

Brian,

That still works for me. Just provide a call-in number. Have a good weekend.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, February 18, 2014 5:07 PM
To: 'King, Jeff'; 'Will Meeks'
Subject: RE: Meeting dates and times

Jeff and Will,

Sorry for the delay. I was finally able to lock in time with the Council. You're scheduled for 10:00-10:30am on Thursday, February 27th. Jeff, my understanding is that you'd be able to come up and meet with Council in person and we'd patch in Will by speakerphone. Let me know if otherwise.

I'll be in Missoula for a meeting all day tomorrow (Wednesday), so please call my cell phone if you want to reach me tomorrow.

Thanks,

BU

From: King, Jeff [mailto:jeff_king@fws.gov]
Sent: Thursday, February 13, 2014 11:03 AM
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Thanks,

jk

Jeff King, Project Leader

National Bison Range Complex

58355 Bison Range Road

Moiese, MT 59824

(406) 644-2211, ext. 204

Will Meeks <will_meeks@fws.gov> Fri, Feb 21, 2014 at 10:15 AM
To: Brian Upton <brianu@cskt.org>
Cc: Jeff King <jeff_king@fws.gov>

Let's use my cell phone number - 720-541-0310.

If I find myself at a landline, I will send in that number later.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Feb 21, 2014, at 10:06 AM, Brian Upton <brianu@cskt.org> wrote:

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> From: "Will Meeks" <Will_Meeks@fws.gov>
> To: "Brian Upton" <brianu@cskt.org>, "Jeff King" <jeff_king@fws.gov>
> Date: 02/21/14 09:48 AM
> Subject: RE: Meeting dates and times
>
> Brian,
>
> That still works for me. Just provide a call-in number. Have a good weekend.
>
> Will Meeks
>
> U.S. Fish and Wildlife Service
>
> Mountain-Prairie Region
>
> Assistant Regional Director
>
> NWRS and PFW
>
> 303-236-4303 (work)
>
> 720-541-0310 (cell)

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Sent: Tuesday, February 18, 2014 5:07 PM
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Subject: RE: Meeting dates and times

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Thanks,

jk

Jeff King, Project Leader

National Bison Range Complex

58355 Bison Range Road

Moiese, MT 59824

(406) 644-2211, ext. 204

Call me at 720-541-0310 when ready. Thanks.

2 messages

Will Meeks <will_meeks@fws.gov> Thu, Feb 27, 2014 at 9:38 AM
To: Jeff King <jeff_king@fws.gov>, Brian Upton <brianu@cskt.org>

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

Brian Upton <brianu@cskt.org> Thu, Feb 27, 2014 at 9:45 AM
To: Will Meeks <will_meeks@fws.gov>

Will do - it may be a few minutes after 10:00am before we get everything in order to call, but we'll call you at that number.
[Quoted text hidden]

Tribal Council agenda

3 messages

Brian Upton <brianu@cskt.org> Tue, Mar 4, 2014 at 10:42 AM
To: will_meeks@fws.gov
Cc: Jeff_King@fws.gov, Tomm@cskt.org, dale@cskt.org

Will,

I confirmed that you're on Tribal Council's agenda from 10:00am-11:00am on Thursday, March 27th for the AFA/EA progress report, and I've let people know that you're planning on being here in person.

BU

Will Meeks <will_meeks@fws.gov> Tue, Mar 4, 2014 at 10:45 AM
To: Brian Upton <brianu@cskt.org>
Cc: "Jeff_King@fws.gov" <Jeff_King@fws.gov>, "Tomm@cskt.org" <Tomm@cskt.org>, "dale@cskt.org" <dale@cskt.org>

Thanks Brian; looking forward to it.

Can you send me the physical address of the meeting site? Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, Mar 4, 2014 at 10:51 AM
To: Will Meeks <will_meeks@fws.gov>

The physical address of the Council Chambers is 42487 Complex Blvd., Pablo, MT 59855. That is a relatively new address (created when the building was completed 7 or 8 years ago). If you're plugging the address into a GPS, you could also try 51383 U.S. Highway 93 North. That will get you to the same general place and, once you're here, you'll probably recognize the newer tribal building where you visited with Council in December (it's the only new building in this little complex here).

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, March 04, 2014 10:46 AM
To: Brian Upton

Cc: Jeff_King@fws.gov; Tomm@cskt.org; dale@cskt.org
Subject: Re: Tribal Council agenda

[Quoted text hidden]

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

Thursday

2 messages

Brian Upton <brianu@cskt.org> Mon, Mar 24, 2014 at 12:04 PM
To: will_meeks@fws.gov
Cc: Jeff_King@fws.gov, richj@cskt.org, Tomm@cskt.org, dale@cskt.org

Will,
We've got you scheduled before Tribal Council from 10:00-11:00 this Thursday. I'll look for you there in Council Chambers unless you want to meet or discuss anything beforehand.

BU

---

will_meeks@fws.gov <will_meeks@fws.gov> Mon, Mar 24, 2014 at 2:30 PM
To: Brian Upton <brianu@cskt.org>
Cc: "Jeff_King@fws.gov" <Jeff_King@fws.gov>, "richj@cskt.org" <richj@cskt.org>, "Tomm@cskt.org" <Tomm@cskt.org>, "dale@cskt.org" <dale@cskt.org>

Works for me. See you then.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)
[Quoted text hidden]

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

tomorrow

4 messages

Brian Upton <brianu@cskt.org> Wed, Mar 26, 2014 at 12:11 PM
To: will_meeks@fws.gov

If there are any developments with the EA that would warrant some discussion in advance of the Council briefing, or if you would otherwise like to meet or talk ahead of the briefing, let me know. Otherwise, I'll just look for you at Chambers just before 10:00am tomorrow.

Thanks,

BU

Will Meeks <will_meeks@fws.gov> Wed, Mar 26, 2014 at 12:18 PM
To: Brian Upton <brianu@cskt.org>

Likely not needed. We are in final edit mode prior to internal review; going well and can relay that information. I would like to visit afterwards for a brief time if that works for you. My goal of this meeting is to give an update, but more importantly meet with new Council members and answer any questions they may have.

If you'd like to meet prior, I am happy to arrive a little earlier however.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)
[Quoted text hidden]

Brian Upton <brianu@cskt.org> Wed, Mar 26, 2014 at 12:25 PM
To: Will Meeks <will_meeks@fws.gov>

Meeting afterward sounds good to me. I'll let Tom and Dale know as well in case they can join.

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Wednesday, March 26, 2014 12:19 PM
To: Brian Upton
Subject: Re: tomorrow

[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Wed, Mar 26, 2014 at 12:27 PM
To: Brian Upton <brianu@cskt.org>

That would be great. I'd like to talk about potential grant and student opportunities with them.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)
[Quoted text hidden]

Scott Aikin News Release

2 messages

Will Meeks <Will_Meeks@fws.gov> Fri, Mar 28, 2014 at 8:10 AM
To: Brian Upton <brianu@cskt.org>

Good seeing you yesterday. Here is a link to the FWS Native American Liaison news release.

http://www.fws.gov/news/ShowNews.cfm?ID=B27890D9-B8E2-129E-9CFC0C095BBA8A2D

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

Will Meeks <Will_Meeks@fws.gov> Fri, Mar 28, 2014 at 9:10 AM
To: Brian Upton <brianu@cskt.org>

None to date. Let me know how the call goes.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Friday, March 28, 2014 8:43 AM
To: Will Meeks
Subject: Re: Scott Aikin News Release

Thanks Will - we'll contact Scott. Have you had any sort of conversation with him regarding the Bison Range?

[Quoted text hidden]

Lease in UT

2 messages

Will Meeks <Will_Meeks@fws.gov> Fri, Mar 28, 2014 at 4:11 PM
To: Brian Upton <brianu@cskt.org>

Brian,

Yes we did have a lease re: Ouray NWR with the tribe. However, due to some other FWS related issues (ESA, etc.) the lease was never renewed. I have no doubt we will renew it since the issues they had with FWS were ESA related and I think they are working on a resolution to the issue currently.

So, the short answer is yes, we had a lease and no, we don't have a current one. The one Dean gave you is the most recent version.

Have a good weekend.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

Brian Upton <brianu@cskt.org> Fri, Mar 28, 2014 at 6:37 PM
To: Will Meeks <Will_Meeks@fws.gov>

Thanks for the info Will. Have a good weekend down there too.

[Quoted text hidden]

Meeks, Will <will_meeks@fws.gov>

Call Brian Upton

1 message

Will_Meeks@fws.gov <Will_Meeks@fws.gov> Fri, Apr 4, 2014 at 9:41 AM
To: Brian Upton <brianu@cskt.org>

invite.ics
2K



Meeks, Will <will_meeks@fws.gov>

Attendee "'Brian Upton'" accepted an invitation for: Call Brian Upton

1 message

Brian Upton <brianu@cskt.org> Fri, Apr 4, 2014 at 10:04 AM
To: "Will_Meeks@fws.gov" <will_meeks@fws.gov>

This is an alternative representation of a text/calendar MIME object

Title: Call Brian Upton
Time: 2014/04/07 12:00 - 12:30
Location:
Organizer: "Will_Meeks@fws.gov" <will_meeks@fws.gov>
Category:
Note:

---

invite.ics
2K

Monday call

2 messages

Brian Upton <brianu@cskt.org> Fri, Apr 4, 2014 at 10:06 AM
To: Will Meeks <Will_Meeks@fws.gov>

I just got a disappearing email from you, but I think I accepted a request for a noon-12:30 phone call on Monday (4/7). I'll calendar it.

Will Meeks <will_meeks@fws.gov> Fri, Apr 4, 2014 at 10:46 AM
To: Brian Upton <brianu@cskt.org>

Yes. I'm slammed today and needed to schedule a time to give you the followup call.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)
[Quoted text hidden]

EA

7 messages

Will Meeks <will_meeks@fws.gov> Tue, Apr 29, 2014 at 9:56 AM
To: Brian Upton <brianu@cskt.org>

Brian,

We have the EA for internal review. Would you prefer these FedEx'd to you or hand delivered by Jeff King on Thursday?

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

Will Meeks <will_meeks@fws.gov> Tue, Apr 29, 2014 at 2:38 PM
To: Brian Upton <brianu@cskt.org>

I think it would be nice to have Jeff deliver them to Council on Thursday if that works.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

> On Apr 29, 2014, at 2:14 PM, Brian Upton <brianu@cskt.org> wrote:
>
> I'll be traveling on Friday, so it'd be good to make sure we get the draft no later than Thursday. If Jeff can drop it off, that'd be great - or I can pick it up from him if it's easier. Will it be possible to pick it up from Jeff (or someone else at NBRC) tomorrow? I know there are CCP meetings in progress, so just let me know. I just had a Council Member ask me this morning if we had received the draft EA yet.
[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Tue, Apr 29, 2014 at 3:04 PM
To: Brian Upton <brianu@cskt.org>
Cc: "ssilberman@cskt.org" <ssilberman@cskt.org>

Thanks Brian. I think if we can get 5 minutes that should be fine.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)

720-541-0310 (c)

> On Apr 29, 2014, at 2:48 PM, Brian Upton <brianu@cskt.org> wrote:
>
> Will,
> That's fine with me if it works for Council. I know that the Council is not able to meet next week, so I'm not sure whether or not they will be backed up this Thursday. I'm copying Sharon Silberman on this email since she may be able to advise regarding the Council agenda.
>
> Sharon, could you check with the Chairman and let Will and I know whether there's room to schedule Jeff King for a delivery of the draft NBRC EA this Thursday (5/1)?
>
> Thanks,
> BU
>
> ---Original Message---
> From: Will Meeks [mailto:will_meeks@fws.gov]
[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Tue, Apr 29, 2014 at 4:00 PM
To: Jeff King <jeff_king@fws.gov>

Jeff,

See the thread below. I also left a message as such on your mobile.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

---Original Message---
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, April 29, 2014 2:48 PM
To: 'Will Meeks'
Cc: ssilberman@cskt.org
Subject: RE: EA

Will,
That's fine with me if it works for Council. I know that the Council is not able to meet next week, so I'm not sure whether or not they will be backed up this Thursday. I'm copying Sharon Silberman on this email since she may be able to advise regarding the Council agenda.

Sharon, could you check with the Chairman and let Will and I know whether there's room to schedule Jeff King for a delivery of the draft NBRC EA this Thursday (5/1)?

Thanks,
BU

---Original Message---

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, April 29, 2014 2:39 PM
To: Brian Upton
Subject: Re: EA

[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Wed, Apr 30, 2014 at 10:16 AM
To: Jeff King <jeff_king@fws.gov>

Conducting interviews. Let's plan on catching one another first thing tomorrow morning before you head that direction. Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

---Original Message---
From: Sharon Silberman [mailto:ssilberman@cskt.org]
Sent: Wednesday, April 30, 2014 10:09 AM
To: 'Brian Upton'; 'Will Meeks'
Subject: RE: EA

I have Will scheduled at 10:00 tomorrow. Please come around 9:45 just in case we are running early. Thank you, sharon

---Original Message---
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, April 29, 2014 2:48 PM
To: 'Will Meeks'
Cc: ssilberman@cskt.org
Subject: RE: EA

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Thanks,
BU

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From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, April 29, 2014 2:39 PM
To: Brian Upton
Subject: Re: EA

[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Wed, Apr 30, 2014 at 10:17 AM
To: ssilberman@cskt.org, Brian Upton <brianu@cskt.org>

Thanks Sharon. Jeff King will be attending for me.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
[Quoted text hidden]
----Original Message-----
From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, April 29, 2014 2:39 PM
To: Brian Upton
Subject: Re: EA

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Wed, Apr 30, 2014 at 10:33 AM
To: ssilberman@cskt.org, Will Meeks <will_meeks@fws.gov>

Thanks Sharon - I'll be there.

---Original Message----
From: Sharon Silberman [mailto:ssilberman@cskt.org]
Sent: Wednesday, April 30, 2014 10:09 AM
To: 'Brian Upton'; 'Will Meeks'
Subject: RE: EA

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Sent: Tuesday, April 29, 2014 2:48 PM
To: 'Will Meeks'
Cc: ssilberman@cskt.org
Subject: RE: EA

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Sharon, could you check with the Chairman and let Will and I know whether there's room to schedule Jeff King for a delivery of the draft NBRC EA this Thursday (5/1)?

Thanks,
BU

---Original Message----
From: Will Meeks [mailto:will_meeks@fws.gov]

Sent: Tuesday, April 29, 2014 2:39 PM
To: Brian Upton
Subject: Re: EA

[Quoted text hidden]

Electronic copies of AFA EA

9 messages

King, Jeff <jeff_king@fws.gov> Fri, May 2, 2014 at 9:18 AM
To: Will Meeks <Will_Meeks@fws.gov>, Toni Griffin <toni_griffin@fws.gov>

Will and Toni,

When I met with CSKT Council yesterday, Brian Upton their attorney, requested an electronic copy of the EA. I told him I would request a copy be sent to him.

I too would like to request an electronic copy if that's OK with you.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

Will Meeks <Will_Meeks@fws.gov> Mon, May 5, 2014 at 10:54 AM
To: Toni Griffin <toni_griffin@fws.gov>

Toni,

I am heading out for the week. Please share an electronic copy to both Brian Upton and Jeff King.

Please note that the document is for their use and not to be shared due to the internal nature at this point.

Also, I mentioned to Marla about the need for a comm plan, etc. Get with her so we meet timelines. Also, what do we need to be doing relative to the NOA right now?

Thanks.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: King, Jeff [mailto:jeff_king@fws.gov]
Sent: Friday, May 02, 2014 9:18 AM
To: Will Meeks; Toni Griffin
Subject: Electronic copies of AFA EA

[Quoted text hidden]

Toni Griffin <toni_griffin@fws.gov> Mon, May 5, 2014 at 12:01 PM
To: Will Meeks <Will_Meeks@fws.gov>

Okay, got it. Laura is working on the Comm plan and NOA. We'll have them ready in a day or two and will start them through the routing process. Have a good trip--T.

Sent from my iPhone
[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Mon, May 5, 2014 at 12:05 PM
To: "King, Jeff" <jeff_king@fws.gov>
Cc: Toni Griffin <toni_griffin@fws.gov>

Jeff,

I just sent a note to Toni to send you and Brian the e-copy. Please keep the copy for your use only. Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)
[Quoted text hidden]

Griffin, Toni <toni_griffin@fws.gov> Tue, May 6, 2014 at 9:36 AM
To: Jeff King <jeff_king@fws.gov>, Brian Upton <brianu@cskt.org>
Cc: Will Meeks <will_meeks@fws.gov>

Jeff and Brian,

Per your request a pdf file of the Draft EA for the Draft Annual Funding Agreement is attached. Please keep the copy for your use only. Let me know if you have any difficulty downloading the file.

Thank you,
Toni

[redacted]

Toni Griffin
Acting Chief, Division of Refuge Planning
Mountain-Prairie Region
U.S. Fish & Wildlife Service
134 Union Blvd
Lakewood, CO 80228
Office Phone: 303-236-4378
Cell Phone: 303-594-4017

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, May 6, 2014 at 2:00 PM
To: "Griffin, Toni" <toni_griffin@fws.gov>, Jeff King <jeff_king@fws.gov>
Cc: Will Meeks <will_meeks@fws.gov>

Jeff and Will,

Thanks for passing on my request for an electronic copy of the draft EA.

Toni,

Thanks for the email. When I click on the pdf link in your email, it opens a page for a DOI sign-in with a user name and password required. Is there another avenue for you to convey an electronic copy of the PDF? CSKT attorneys and NRD officials would be the ones using it.

Thanks,

Brian

From: Griffin, Toni [mailto:toni_griffin@fws.gov]
Sent: Tuesday, May 06, 2014 9:37 AM
To: Jeff King; Brian Upton
Cc: Will Meeks
Subject: Re: Electronic copies of AFA EA

[Quoted text hidden]

Griffin, Toni <toni_griffin@fws.gov> Tue, May 6, 2014 at 2:45 PM
To: Brian Upton <brianu@cskt.org>

Cc: Jeff King <jeff_king@fws.gov>, Will Meeks <will_meeks@fws.gov>

Hi Brian,

Sorry about that, the file is pretty large because of the maps.

Toni Griffin
Acting Chief, Division of Refuge Planning
Mountain-Prairie Region
U.S. Fish & Wildlife Service
134 Union Blvd
Lakewood, CO 80228
Office Phone: 303-236-4378
Cell Phone: 303-594-4017

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NBR-AFA-DRAFT-EA_04-25-14.zip
22966K

Griffin, Toni <toni_griffin@fws.gov> Tue, May 6, 2014 at 2:52 PM
To: Brian Upton <brianu@cskt.org>
Cc: Jeff King <jeff_king@fws.gov>, Will Meeks <will_meeks@fws.gov>

Hi Brian,

Sorry about that, the file is pretty large because of the maps. Here is a compressed version. It's not print quality so the maps may be a bit grainy. Let me know if this works for your purposes. If not, I can send the original file to you on a thumb drive.

Toni

Toni Griffin
Acting Chief, Division of Refuge Planning
Mountain-Prairie Region
U.S. Fish & Wildlife Service
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On Tue, May 6, 2014 at 2:00 PM, Brian Upton <brianu@cskt.org> wrote:
[Quoted text hidden]

NBR-AFA-DRAFT-EA_04-25-14.pdf
5062K

Brian Upton <brianu@cskt.org> Tue, May 6, 2014 at 2:56 PM
To: "Griffin, Toni" <toni_griffin@fws.gov>
Cc: Jeff King <jeff_king@fws.gov>, Will Meeks <will_meeks@fws.gov>

This one opens just fine, Toni – thanks for sending.

Brian

From: Griffin, Toni [mailto:toni_griffin@fws.gov]
Sent: Tuesday, May 06, 2014 2:53 PM
To: Brian Upton
Cc: Jeff King; Will Meeks

[Quoted text hidden]

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THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
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A Confederation of the Salish, Pend d' Oreilles and Kootenai Tribes

TRIBAL COUNCIL MEMBERS:
Joe Durglo - Chairman
Carole Lankford - Vice Chair
Reuben A. Mathias - Secretary
Ron Trahan - Treasurer
Leonard W. Gray
Lloyd D. Irvine
Steve Lozar
Jim Malatare
James Bing Matt
Terry Pitts

November 14, 2013

Ms. Noreen Walsh, Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
134 Union Blvd.
Lakewood, CO 80228

Via facsimile no.: (303) 236-8295 original to follow by U.S. mail

Dear Ms. Walsh,

I am writing to express the Tribal Council's disappointment with the latest timeline that FWS recently provided us concerning preparation of an Environmental Assessment (EA) for the draft Annual Funding Agreement (AFA) which we had negotiated with the U.S. Fish & Wildlife Service (FWS) regarding the National Bison Range Complex. This most recent draft timeline now anticipates the completion of the EA process, and a subsequent decision, in late October 2014 at the earliest.

As you know, this is the fourth time over the last two years that FWS has delayed and extended the EA process. It has now been more than three years since a federal court rescinded our last AFA after finding that FWS had not complied with the National Environmental Policy Act. While we have consistently, and patiently, supported a quality process over a quick one for the EA, we believe that further delays are neither acceptable nor necessary for preparing an effective and comprehensive document. Over the last few months, our patience has turned to frustration as well as concern over our perception that the delays in EA development may be due to changes in FWS' position regarding the draft AFA upon which we had jointly agreed.

I have extended an invitation to Will Meeks to meet with the Tribal Council next month. We hope to find a mutually-agreeable path forward, but we request that you revisit the latest draft timetable developed by FWS. I would appreciate your response and, as always, we welcome any opportunity to discuss this issue with you.

Sincerely,

Joe Durglo, Chairman
Tribal Council

cc: Dan Ashe
Will Meeks
Jeff King

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A People of Vision

A Confederation of the Salish,
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Jim Malatare
James Bing Matt
Terry Pitts

November 14, 2013

Mr. William Meeks, Assistant Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
134 Union Blvd.
Lakewood, CO 80228

Via facsimile no.: (303) 236-4792 original to follow by U.S. mail

Dear Mr. Meeks,

On behalf of the Confederated Salish and Kootenai Tribes, I would like to invite you to meet with the Tribal Council this December. I understand that, during your recent meeting in Denver with some of our Tribal Council Members, there was discussion about a visit to Pablo. I also understand that you may not be available during the first two weeks of December.

Our Tribal Council convenes on Tuesday and Thursday of each week. Please advise whether you would be able to meet with the Council on either Tuesday, December 17th or Thursday, December 19th.

As you know, we have concerns regarding the status of our efforts to secure a new Tribal Self-Governance agreement for the National Bison Range Complex. Since neither I nor some of the other Tribal Council Members were able to travel to Denver for the meeting last month, we would appreciate the opportunity to discuss this with you in Pablo next month.

Sincerely,

Joe Durglo, Chairman
Tribal Council

cc: Jeff King

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

CCP lawsuit?

2 messages

Will Meeks <Will_Meeks@fws.gov> Mon, Apr 7, 2014 at 1:54 PM

[redacted]

[redacted]

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

Will Meeks <Will_Meeks@fws.gov> Mon, Apr 7, 2014 at 2:22 PM
To: Brian Upton <brianu@cskt.org>

See thread below. May or may not be useful.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)



Testimony of Ronald Trahan, Chairman, Confederated Salish and Kootenai Tribes before the Senate Committee on Indian Affairs

January 29, 2014
Washington, D.C.

Greetings Chairwoman Cantwell, Vice-Chairman Barrasso, Senator Tester and Committee members. My name is Ron Trahan and I serve as the Chairman of the Confederated Salish and Kootenai Tribes ("CSKT" or "Tribes").

On behalf of the Confederated Salish and Kootenai Tribes, I thank you for the opportunity to provide our views on S. 919, including proposed revisions to the bill that are under Committee consideration. CSKT supports the legislation.

This legislation, which would amend the Tribal Self-Governance Act's Interior Department provisions, found in Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA), has a long history. Ten years ago, in 2004, one of my predecessors, Chairman D. Fred Matt, testified before this Committee on an earlier version of S. 919 (S.1715). Seven years ago, in 2007, another of my predecessors, James Steele, Jr., also testified here on draft legislation to amend the Tribal Self-Governance Act.

The success and resilience of the Tribal Self-Governance Act, and Self-Governance tribes, is unquestioned. The record of success built by Self-Governance tribes is a testament to the foresight and wisdom of tribal and congressional leaders. The late CSKT Chairman Michael ("Mickey") T. Pablo, had fiercely fought for enactment of Tribal Self-Governance legislation and policies. As we have stated before, the record built by CSKT, and Indian country, in administering federal programs would make Mickey proud. Mickey was instrumental in CSKT becoming one of the first ten tribes in the country to participate in the Tribal Self-Governance Demonstration Project in the late 1980's, and he was a key player in the subsequent permanent establishment of Tribal Self-Governance as federal policy.

I would also like to acknowledge the essential contributions of this Committee, and its leadership under former Co-Chairmen Daniel K. Inouye and John McCain, in establishing Tribal Self-Governance as permanent federal policy. The manner in which Congress worked with tribal leaders to develop, test, and then permanently enact the Tribal Self-Governance paradigm is an outstanding model for how policy should be formulated.

CSKT has long asserted that ISDEAA and its 1994 amendments, known as the Tribal Self-Governance Act (Title IV of ISDEAA), have been two of the most important and successful pieces of federal Indian legislation in history. They are a logical progression from the Indian Reorganization Act of 1934, which first set the stage under federal law for tribal governments to once again determine our own affairs, protect our own communities, and provide for our own people in concert with our respective cultures and traditions – something we have done since time immemorial. Fully implementing Tribal Self-Governance is a pivotal step in realizing the federal policy of Indian Self-Determination that was ushered in almost forty years ago.

CSKT's Self-Governance Background

General Background

CSKT has been one of the most active of the many Self-Governance tribes and, as mentioned above, is one of the original ten Self-Governance tribes. We have found the system of Self-Governance contracting, through compacts and annual funding agreements (AFA's), to be highly effective in: 1) increasing the efficiency and integrity of federal services to tribes and tribal members; 2) increasing tribal autonomy and self-sufficiency; 3) strengthening the government-to-government relationship between the United States and tribal governments; and 4) developing our Tribal economy. All of these are among the principal objectives identified by Congress in its policy rationale for ISDEAA:

> [T]he United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.
>
> 25 U.S.C. § 450a(b)

As Congress later stated in enacting the Tribal Self-Governance Act of 1994:

> The Tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations[. . . .] It is the policy of the Tribal Self-Governance Act to permanently establish and implement self-governance . . . [t]o permit each Tribe to choose the extent of its participation in self-governance.
>
> 25 C.F.R. § 1000.4(a)(1), (b)(2)

Currently, the CSKT Tribal government annually administers approximately: $25 million in Self-Governance funds; $150 million in contracts and grants; and $44 million in Tribal revenue. Our government alone has 1,000 full-time employees. We are the largest employer on the Flathead Reservation, the largest employer in northwestern Montana, and we contribute over $30 million in payroll and over $50 million in purchasing to the local economy. A report funded by the State of Montana several years ago showed that CSKT contributed $317 million to the Montana economy annually.[1] It is important to remember, however, that the Indian unemployment rate on our Reservation is still much higher than that of the general area population. This is an indicator that we have a long way to go in building our Tribal and Reservation economies. To this end, the Tribal Self-Governance Act remains a vital tool for us.

The following is a list of just several examples of CSKT's successes in administering programs through ISDEAA and Self-Governance:

---

[1] "Monetary Contributions of Reservations to the State of Montana", prepared by Eleanor YellowRobe, Bureau of Business and Economic Research, University of Montana (submitted to State Tribal Economic Development Commission, Montana Department of Commerce - November 2007) pp. 1, 9-10.

• In 1986, we signed a contract to take over control and management of the electrical utility on our reservation, then known as the Electrical Division of the Flathead Indian Irrigation Project. We renamed it Mission Valley Power (MVP). This utility serves every home and business on the reservation, Indians and non-Indians alike. It also provides power to the National Bison Range. It is considered one of the best-run utilities in the state of Montana. Since the Tribes took over, MVP has replaced and updated much of the utility's infrastructure yet managed to retain some of the lowest rates in the region. MVP has been 638-contracted and has not been included in subsequent Self-Governance agreements due to the prohibition found in 25 U.S.C. § 458cc(b)(4)(C). CSKT supports S. 919's deletion of this prohibition.

• Since 1996, CSKT has contracted the operation of the Bureau of Indian Affairs' (BIA) Land Title Recording Office (LTRO) for the Flathead Indian Reservation. We are aware of only a few other tribes that contract or compact the LTRO program in its entirety. Through Tribal control, we have: greatly decreased waiting time for requested documents; more nimbly adjusted priorities to respond to different needs regarding appraisals, mortgages, leases, etc.; and increased budget efficiencies for a program that is severely underfunded by the federal government. Tribal operation of LTRO functions has also been a key factor in CSKT's record of proactive land acquisitions and reduction of land fractionation through Tribal acquisition of fractionated interests.

• In 1989, CSKT contracted the BIA's Safety of Dams (SOD) program. One of the main objectives of this program is to eliminate or remediate structural and/or safety concerns at 17 locations on the Flathead Indian Reservation as identified by the Department of Interior National Dams - Technical Priority Rating listing. CSKT's SOD Program provides investigations, designs and SOD modifications to resolve the concerns of the dams on the list. The Tribes' SOD Program has been extremely successful and, under our administration, Reservation dams have been modified at a cost significantly lower than originally estimated by the Bureau of Reclamation. Past examples include completion of Black Lake Dam in November 1992 at a savings of approximately $1.3 million below Bureau of Reclamation estimates. The Pablo Dam Modification Project was completed in February 1994 at a savings of nearly $140,000.

• In fiscal years 1997 and 1998 respectively, CSKT began compacting for administration of the Individual Indian Monies (IIM) program for the Flathead Reservation. As of the January 23, 2013 Federal Register listing of Tribal Self-Governance agreements with non-BIA agencies, CSKT is the only tribe that currently has such an agreement with the Office of Special Trustee (OST) for these functions.

National Bison Range Complex

With respect to non-BIA programs, the Interior Department has not established a very encouraging record regarding Tribal Self-Governance agreements. As this Committee is well aware, for almost twenty years CSKT has been working to secure a stable funding agreement with the U.S. Fish & Wildlife Service (FWS) for programs at the National Bison Range Complex (NBRC), which is almost entirely located within the Flathead Indian Reservation. The NBRC

includes two ancillary National Wildlife Refuges that are located on Tribally-owned land in the center of the Reservation (the Ninepipe and Pablo Refuges).

While the effort has been unnecessarily expensive, frustrating and resource-intensive, it is worth the fight. In addition to the National Bison Range's physical location in the center of our Reservation, the NBRC's bison herd has its origins with the bison herd started and grown by Tribal members in the late 1800's and early 1900's, when bison were threatened with extinction. The NBRC's Ninepipe and Pablo Refuges are the result of Tribal requests in the 1910's and 1920's for the federal government to put the areas around two irrigation reservoirs into protected status for bird conservation. After several years, the United States responded by issuing two Executive Orders designating the areas as Refuges. In 1948, Congress acquired a perpetual easement from CSKT for such Refuge uses at Ninepipe and Pablo, while also recognizing the Tribes' reserved rights on the properties.[2] Collectively, the National Bison Range and the Ninepipe and Pablo Refuges occupy a unique place within our Reservation, our history, our culture, and our hearts.

As this Committee is aware, the CSKT has executed two multi-year AFA's with FWS for programs at the NBRC. The first AFA was signed in 2004, and the second was signed in 2008 at a Washington, D.C. ceremony attended by Interior Secretary Dirk Kempthorne and Montana Senators Jon Tester and Max Baucus. Unfortunately, both of these agreements came to premature ends.

With the negotiation and implementation of the 2008 AFA for NBRC programs, which covered fiscal years 2009-2011, CSKT and FWS built a highly constructive relationship both on the ground and at the policy-maker level. That relationship was reflected in many ways, including: positive status reports; successful annual bison round-ups; positive visitor feedback; and increased general communication and coordination between federal and tribal staffs.

Unfortunately, two non-governmental organizations[3] who have consistently opposed the federal-tribal partnership, challenged the agreement in a federal court action, stating that it violated a number of federal statutes such as the Tribal Self-Governance Act and the National Wildlife Refuge System Administration Act. The court did not rule on any of those substantive claims, but it did find that FWS failed to properly explain its invocation of a categorical exclusion under the National Environmental Policy Act when it approved the AFA, so the court rescinded the agreement on the basis of that procedural violation. The court decision was handed down in September 2010. In the three and a half years since that decision, CSKT has negotiated a new draft agreement with FWS and the agency then began preparing an Environmental Assessment for the draft agreement. It is still in the process of preparing that Assessment.

CSKT is pleased to have a wide pool of support for an NBRC Self-Governance agreement, including from conservation groups such as the National Wildlife Federation (*see attached letter from NWF submitted in response to FWS' 2012 request for scoping comments regarding the*

[2] Act of May 25, 1948, 62 Stat. 269, at Section 5(b).
[3] Public Employees for Environmental Responsibility (PEER) and the Blue Goose Alliance.

Environmental Assessment). As stated by then-Chairman and Ranking Member of the House Natural Resources Committee, Congressmen Nick Rahall and Don Young:

> Working with Tribal governments . . . under the authorization of the Tribal Self-Governance Act should not be viewed any differently than partnering with State governments especially in this instance where the tribe owns the land on which the ancillary facilities of the NBRC National Bison Range Complex [*sic*] are located.[4]

While we have been very frustrated with the length of time that this process is taking, we are hopeful that the improved relationship between CSKT and FWS will result in a satisfactory agreement that will return CSKT staff to the National Bison Range soon so we can continue what was widely-acknowledged to be an effective partnership. As the New York Times said in a September 3, 2003 editorial addressing the Bison Range partnering efforts, "if the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it." (*copy of editorial attached to this testimony*).

To this end, I would like to extend the CSKT Tribal Council's sincere appreciation for our friends in Congress who have long supported a Self-Governance partnership at the NBRC.

Provisions of S. 919

As mentioned at the outset of this testimony, CSKT supports S. 919, including the proposed revision currently under the Committee's consideration. Making Titles IV and V of ISDEAA (Interior Self-Governance and Indian Health Service Self-Governance, respectively) more consistent has long been a goal for Self-Governance tribes. CSKT agrees with S. 919's approach of leaving intact much of the existing statute, while amending some of the current provisions and adding new ones.

CSKT greatly appreciates the inclusion in S. 919 of specific recognition that 50% of costs incurred by a tribe's governing body are reasonable and allowable for purposes of contract support cost determinations. Including this provision in the statute would bring an end to past uncertainties as to whether the federal government would continue this past practice. This has a significant impact on the budget of CSKT and many other tribes. [*§ 104 of S. 919, as introduced*]

CSKT particularly supports S. 919's definition for the term "inherent Federal function". While the term is already so defined in Title V, having the definition specifically included for Interior programs is a positive step towards eliminating the confusion over this term during field-level negotiations. [*§ 201(a)("401(6)") of S. 919, as introduced*]

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[4] May 15, 2007 letter to Interior Secretary Dirk Kempthorne from House Natural Resources Committee Chairman Nick Rahall and Ranking Minority Member Don Young, p. 2 (*copy attached to this testimony*).

As the only tribe currently with a Self-Governance agreement with the OST, we also support S. 919's explicit incorporation of the OST with respect to mandatory Self-Governance agreements. [*§ 201(c)(1)("(a)(2)"*]

CSKT appreciates S. 919's inclusion of specific authority for multi-year funding agreements, as this is an issue for which we have encountered some resistance from federal agencies in the past. We have been able to resolve the disagreements successfully, but statutory clarification will prevent needless disagreements on the issue in the future. [*§ 201(c)(1)("(p)(4)"*]

CSKT strongly supports the statutory clarification of tribal ability to carry-over funding. This is also an area in which we have had disagreements with federal agencies and we welcome the clarification. [*§ 201(d)("408(k)"*]

With respect to contract support funding, it is important that S. 919 retains the existing statutory language mandating funding for contract support costs (25 U.S.C. § 458cc(g)(3)). Payment of contract support costs is a prerequisite for realizing the full potential of Tribal Self-Governance objectives. Stronger efforts to secure adequate appropriations for this area are badly needed. In our testimony on prior versions of this legislation, CSKT has repeatedly raised this issue. We have consistently maintained that Congress did not intend for Self-Determination or Self-Governance contracting to be money-losing propositions, yet that is what they have become as long as the federal government refuses to pay tribes what they are due under the law for administration of the programs. Since our last testimony regarding this legislation, the Supreme Court has confirmed, in its *Salazar v. Ramah Navajo Chapter* opinion,[5] that the federal government is legally obligated to fully pay these costs. We were very disappointed in the Obama Administration's effort to cap contract support cost payments for fiscal year 2014, thereby preventing tribes from pursuing legal claims for full payment. CSKT very much appreciates Congress' rejection of that approach in the FY '14 budget, and we appreciate the leadership of a number of Senators on this Committee in advocating for tribes on this issue.

CSKT supports S. 919's approach of maintaining the existing statutory authority for contracting Interior programs, outside of the BIA, that are of geographic, historical or cultural significance to tribes. It is through the lens of our experiences involving the NBRC that we evaluate the non-BIA provisions of S. 919. The legislation would leave untouched the statutory authority for NBRC contracting, found at 25 U.S.C. § 458cc(c). CSKT supports this since we have negotiated multiple agreements under this authority and do not want to see it diminished or impaired in any way. Section 202 of S. 919, both as introduced and in the Committee's proposed amended version, further clarifies that nothing in this legislation would modify this aspect of non-BIA contracting authority. CSKT would strongly oppose any changes or amendments to non-BIA contracting authority that could be used by opponents of tribal contracting to further hamper or prevent Self-Governance partnerships such as those we have built at the NBRC.

CSKT believes more should be done to encourage, rather than discourage, these partnerships. The United States is rapidly falling far behind countries such as Canada and Australia when it comes to federal-tribal partnerships in the management of protected areas such as refuges and

[5] 132 S.Ct. 2181 (2012).

parks. CSKT believes that Tribal Self-Governance policies and agreements have been, and can be, strong vehicles for constructive collaboration between the United States and Indian tribes.

Two areas of continuing concern for CSKT which S. 919 does not currently address include the following:

Federal Tort Claims Act (FTCA) coverage. Presently, liability coverage for tribal contractors, including FTCA coverage, is addressed in Title I of ISDEAA at 25 U.S.C. § 450f(c). In past AFA negotiations, CSKT has expended a disproportionate amount of time and energy over the issue of whether FTCA coverage existed for tribal volunteers who perform work for a contracted federal program. CSKT has long maintained that tribal volunteers performing federal program work should enjoy the same FTCA coverage as federal volunteers performing such work. Unfortunately, we have not resolved this issue and, as a result, the BIA has agreed to purchase liability insurance to cover Tribal volunteers under our last two NBRC AFA's. While we have found agreement with our position from Interior solicitor offices, we understand that opposition emanates from the U.S. Department of Justice (DOJ). We are generally concerned with what seems to be an increasing practice by the DOJ to narrowly interpret FTCA coverage in circumstances involving tribal contractors, as well as in other situations. This unfortunately has had negative impacts on CSKT's ability to recruit volunteers for contracted programs and/or explain to existing or prospective volunteers the scope of their liability coverage. In plain terms, we believe we have lost potential, and past, volunteers at the NBRC due to this issue. We encourage Committee attention to this ongoing problem.

Full funding of programs. CSKT has been on record with equating the issue of full program funding to effective implementation of ISDEAA and Tribal Self-Governance objectives. Without Congressional commitment to fully funding the federal programs being contracted by Self-Governance tribes, we cannot overcome the resource limitations to making the programs as successful as they need to be. Dwindling, or stagnant, federal funding results in tribes having to supplement federal programs with tribal dollars. This serves as a disincentive to contract under ISDEAA and Tribal Self-Governance. Just a couple of the many examples relevant to Title IV contracts include:

· The recently completed third independent assessment and report on the status of Indian forests and forestry finds that BIA funding for Indian trust forest management is $2.82 per acre – an amount which is only one-third of the funding level for the U.S. Forest Service, which is $8.57 per acre.

· Per capita spending on law enforcement in Native American communities is roughly 60 percent of the national average.

Similar disparities exist for almost all Indian programs contracted under Title IV. While this is an appropriations issue and somewhat of a separate issue from the Self-Governance provisions of S. 919, it is materially related to achieving the goals of the Act

and is thus a proper subject for this Committee's attention. Congressional rectification of this issue would be a solid investment into more effective program delivery and better administration of the federal trust responsibility.

Conclusion

The Confederated Salish and Kootenai Tribes are one of many tribes that successfully partner with the federal government under the Tribal Self-Governance rubric. Work remains to be done towards: 1) eliminating disincentives and removing barriers to Self-Governance participation; and 2) encouraging non-BIA Self-Governance activity. The proposed legislation is a good start towards accomplishing those ends.

On behalf of CSKT, thank you for the opportunity to provide testimony and I would like to thank this Committee, its Members, and staff, for your support of Self-Governance. I would be happy to answer any questions.

Attachments:
1) National Wildlife Letter (undated) to U.S. Fish & Wildlife Service (*submitted in May 2012*);
2) May 15, 2007 letter to Interior Secretary Kempthorne from Congressmen Nick Rahall and Ranking Minority Member Don Young; and
3) September 3, 2003 New York Times editorial: "The National Bison Range"



Jeff King, Refuge Manager
National Bison Range
58355 Bison Range Road
Moiese, MT 59824

Via Mail and Email to nbrcomments@fws.gov

RE: Scoping Comments – Notice of Intent to Prepare an Environmental Assessment Regarding the Interest of the Confederated Salish and Kootenai Tribes to enter into an Annual Funding Agreement with the U. S. Fish and Wildlife Service ("The Service"), for the Operation and Management of Programs at the National Bison Range Complex

Dear Mr. King,

Thank you for the opportunity to provide comments concerning your notice of intent to prepare an Environmental Assessment regarding the Annual Funding Agreement (AFA) with Confederated Salish and Kootenai Tribes (CSKT) and the National Bison Range (NBR). The National Wildlife Federation (NWF) is America's largest conservation organization and has over 4 million supporters and 47 state affiliates. NWF has a long history of partnering with Native American Tribes to conserve and protect wildlife for our children's future and currently partners with the CSKT on numerous wildlife, habitat and environmental issues.

NWF strongly believes that a partnership between the Service and the CSKT should be formalized through a new self-governance AFA that would contract with the CSKT to operate eligible refuge programs and perform specific day-to-day activities of the NBR consistent with the National Wildlife Refuge System Administration Act ("NWRSAA"). NWF has supported this partnership since it was originally proposed in 2004.

On May 17, 2012, the CSKT's received NWF's National Government Conservation Achievement Awards for their outstanding commitment to preserving, protecting and restoring wildlife and habitat for future generations.[1] The CSKT is unparalleled in their methods, efforts, conservation ethic and follow through to achieve sustainable conservation outcomes. Known throughout the country for their scientific and cultural knowledge, their partnerships with other governments and long history of conserving, managing and restoring wildlife habitat, the CSKT Division of Fish, Wildlife, Conservation and Recreation are more than qualified to partner with the Service to manage NBR's resources.

As you know, the CSKT's have a long history of managing wildlife and wild lands in partnership with local, state and Federal governments. For example, they have,

[1] Missoulian, http://missoulian.com/news/state-and-regional/salish-kootenai-tribes-win-national-conservation-award/article_0e02a208-9fc2-11e1-9d9d-0019bb2963f4.html

- Signed a historic landmark agreement in 1990 between the Tribes and the state of Montana governing bird hunting and fishing on the Flathead Indian Reservation.
- Successfully managed 97,000 acres of primitive areas
- Acquired and managed over 11,000 acres of fish and wildlife habitat through the Tribal Wildlife Management Program.
- Acquired over 4,600 acres of land, including 27 miles of streams and lake habitat to offset impacts to fisheries.

The National Bison Range is an outstanding and important resource for all Americans and the CSKT are outstanding land and wildlife managers that preserve and protect wildlife in one of the most important ecosystems in North America. The Tribes helped save the bison in the 19th and early 20th centuries and will continue to protect the bison and other wildlife species and natural resources on the NBR for future generations.

We believe that this partnership will produce numerous long-term benefits to the Tribes, the Service and all Americans. The agreement will utilize the best abilities and resources of the Tribes and the Federal government to manage NBR's resources and better serve the people that utilize the land. This partnership will also facilitate the achievement of Departmental and Congressional objectives for both its NWRS and Tribal Self-Governance programs. The Tribe is in a strong legal position to participate in the AFA. The Tribal Self-Governance Act of 1994 gives qualified Indian tribes the right to request funding agreements to perform activities administered by the Department of Interior that are of special geographic, historic or cultural significance to the requesting tribe. It is well known that the NBR has a very high level of cultural, historic and geographic significance to the CSKT and all units of the NBR under consideration for an AFA are located within the Flathead Reservation. Many of the bison that reside on the NBR are descendants from a herd originally saved by Tribal members in the late 19th century, and which originated on the reservation.

We look forward to working with the Service and CSKT on the Environmental Assessment for the AFA. If you have any questions, please contact NWF's Tribal Lands Partnerships National Program Director, Garrit Voggesser, Voggesser@nwf.org, or 303-441-5161.

Sincerely,



Larry Schweiger, President and CEO
National Wildlife Federation
11100 Wildlife Center Dr.
Reston, VA 20011

NICK J. RAHALL, II, WV
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LOUIE GOHMERT, TX
TOM COLE, OK

Under the Act, the Department is required to publish annually a list of non-BIA Interior programs that are eligible for compacting under Self-Governance. Currently, of the 546 refuges that exist in this country, the FWS list identifies only 18 in the lower 48 states and 16 in Alaska as eligible. Three of the 18 are wholly located within the Flathead Indian Reservation and are part of the NRBC. Since enactment of the Act, 13 years ago, there have been only two AFAs with the FWS: the first involving the Council of Athabascan Tribal Governments exclusively for project work at the Yukon Flats National Wildlife Refuge in Alaska; and the second being the CSKT-FWS AFA for the NBRC. In short, a very small percent of the Refuge System is listed as even being eligible for contracting, and of those 34 refuges, only two have tribal contracts associated with them.

The National Wildlife Refuge Administration Act (the Administration Act) does not prohibit the delegation of management activities to non-federal entities. To the contrary, the Administration Act makes multiple references to working with State governments on refuge programs: mandates that the Interior Secretary ensure coordination, interaction, and cooperation with adjacent landowners and State fish and wildlife agencies; requires the Interior Secretary to cooperate and collaborate with Federal agencies and State fish and wildlife agencies when managing refuges; and specifically authorizes FWS to "enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." (16 U.S.C. § 668dd (b)(4)) (*emphasis added*). Working with Tribal governments in the same manner under the authorization of the Tribal Self-Governance Act should not be viewed any differently than partnering with State governments especially in this instance where the tribe owns the land on which the ancillary facilities of the NRBC National Bison Range Complex are located.

Some critics of the AFA have said that the principle of the 1976 amendments to the Administration Act was that there should never be any attempt to establish a second National Wildlife Refuge System by delegating FWS authorities to non-federal entities. We do not believe allowing CSKT to help manage the NBRC is creating a second refuge system. To the contrary, we see it as a logical partnership under both the Administration Act and the Tribal Self-Governance Act. Although the Refuge System's organic Act was significantly amended by the 1997 National Wildlife Refuge System Improvement Act, this law did not prohibit Tribal Self-Governance agreements.

This type of partnership is even encouraged by Executive Order 12996, entitled "Management and General Public Use of the National Wildlife Refuge System." Section 2(c) says:

"Partnerships. America's sportsmen and women were the first partners who insisted on protecting valuable wildlife habitat within wildlife refuges. Conservation partnerships with other Federal agencies, State agencies, Tribes, organizations, industry, and the general public can make significant contributions to the growth and management of the Refuge System."

As we are both strong supporters of the Refuge System, we would be concerned if the NBRC AFA could serve as a precursor to privatization of refuges. Yet we are convinced that this is not the

case. Agreements with other governments — be they State or Tribal — are not comparable to privatization schemes where for-profit entities take over federal programs. A Tribal government is not a corporate entity any more than a federal, state or local government is a corporate entity. Under the AFA and the Tribal Self-Governance Act, the NBRC remains a federally-owned Refuge and all applicable federal statutes and regulations that apply to the Refuge System continue to apply under the AFA. In the absence of compliance with this requirement, we would not support the NBRC AFA.

The CKST have demonstrated a high level of performance in contracting a wide variety of other federal programs. Under their AFA, CSKT has stated repeatedly its commitment to operate the NBRC pursuant to the laws and regulations applicable to all refuges. In fact, the Act contains safeguards that protect against any jeopardy to natural resources or other federal assets. We understand that CSKT is the first tribe to designate an official wilderness: the Mission Mountain Tribal Wilderness Area. Their efforts have led to that area being one the few places in Montana where there are grizzly bears. The CSKT also manage a large herd of Bighorn sheep, and they worked with the FWS to reintroduce the Trumpeter Swan to the Flathead Valley. In short, CSKT has excellent credentials to manage wildlife-related programs at the NBRC.

We also understand that, beyond the scope of work required of it through the AFA, the CSKT has devoted extensive tribal resources to the NBRC. At a time when the overall National Wildlife Refuge System budget has suffered, CSKT employees and volunteers literally worked thousands of hours at the NBRC. If a new AFA, with broader tribal management, might result in a continuation of that degree of tribal supplementation at a federal refuge, we would think the Department would do everything in its power to make it happen.

Finally, we are concerned to hear of the recent development wherein the FWS is proposing to radically downsize the number of staff and bison at the NBRC. The proposed reduction from 20 full time staff down to 6 staff is no way for the FWS to treat the refuge it recently referred to as the Refuge System's "Crown Jewel" nor does it make sense to reduce the number of bison from over 300 animals down to 100. Such cuts are not merely the NBRC's proportionate share of agency wide reductions, rather, they have every appearance of being proposals intended to make the CSKT disinterested in future management of the NBRC. We hope you will immediately reverse these proposed reductions.

We hope you agree that promoting a fair implementation of a Tribal Self-Governance AFA at the National Bison Range furthers important congressional and federal objectives as identified in both the Administration Act and the Tribal Self-Governance Act.

Sincerely,

NICK J. RAHALL, II
Chairman

DON YOUNG
Ranking Member

The New York Times
ON THE WEB

Editorials/Op-Ed

September 3, 2003

The National Bison Range

Later this week Native Americans representing the Salish and Kootenai tribes will meet in Denver with officials of the Interior Department and the federal Fish and Wildlife Service. They will be trying to negotiate an agreement to take over management of the National Bison Range, an 18,500-acre prairie reserve in northwestern Montana. If negotiations end successfully, this would be the first time a tribe has taken over the management of such a property since 1994, when the Tribal Self-Governance Act authorized such arrangements.

One purpose of the Tribal Self-Governance Act was to diminish the role of federal paternalism — often inefficient and sometimes corrupt — in the lives of Native Americans. The Confederated Salish and Kootenai Tribes have been among the first to seize the opportunity to run programs that were formerly administered by the government, and run them well. But the thought of Native Americans' managing the National Bison Range has some environmental groups and local residents worried. Even the Fish and Wildlife Service has seemed reluctant, if only because it has a high regard for its own management tradition. Yet virtually no one disputes the excellent management and conservation record of the Salish and Kootenai.

With one strong condition, we think this plan makes a lot of sense. The Salish and Kootenai have a deep historical connection with the particular bison herd on this refuge — quite apart from the conventional associations of Indians and buffalo — and a strong cultural or historical link is one of the legal conditions for enacting an agreement of this kind, which would basically employ the tribes to manage the federal program. The National Bison Range is wholly enclosed by the reservation the Salish and Kootenai live on, and the tribes would be obliged to manage the refuge according to plans established by the Fish and Wildlife Service.

But such an agreement, erected on the basis of unique historical and geographical circumstances, must not become the basis for the wholesale privatization of federal parks, monuments or reserves. The National Bison Range is an unusual case. It offers a rare convergence of public and tribal interests. If the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it.

Council

2 messages

Brian Upton <brianu@cskt.org> Wed, Sep 4, 2013 at 10:07 AM
To: will_meeks@fws.gov

Will,

I'm scheduled to brief Council tomorrow about our discussion and FWS' offer to come up to Pablo. I expect to get back with you by tomorrow's end.

Thanks,
BU

Will Meeks <will_meeks@fws.gov> Wed, Sep 4, 2013 at 10:15 AM
To: Brian Upton <brianu@cskt.org>

Thanks Brian.

Whether it's here or Pablo, I look forward to it.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Re: meeting

1 message

Will Meeks <will_meeks@fws.gov> Thu, Sep 5, 2013 at 5:30 PM
To: Brian Upton <brianu@cskt.org>
Cc: "Tomm@cskt.org" <Tomm@cskt.org>, "DaleB@cskt.org" <DaleB@cskt.org>, Dean Rundle <dean_rundle@fws.gov>

Thanks Brian. I can check with the RD's office first thing in the morning and get back with you regarding the 9th. I am cc'ing Dean as well to bring him in on the discussion.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Sep 5, 2013, at 5:06 PM, Brian Upton <brianu@cskt.org> wrote:

> Will,
>
> I briefed the Tribal Council about our phone discussion from Tuesday morning, and relayed your offer to come up to Pablo. The Council would like to meet in Denver, and would like to have Dean Rundle in the meeting since he has been the primary contact for us on the NBRC AFA negotiation and EA issues, and consequently has critical institutional knowledge. Given Dean's retirement on October 3rd, we are interested in meeting at the earliest date possible.
>
> Tribal Council Chairman Joe Durglo advised that he had received a voicemail from the Regional Director late yesterday afternoon. The Council session today went long, and they were still in session when I left a few minutes ago. Since most Tribal government offices are closed on Fridays due to our four-tens work week, Chairman Durglo asked whether it would be possible to schedule a call with Noreen for next Monday afternoon (9/9). Is that something that we could arrange through you, or should I contact someone else within the Regional Director's office to see if that time would work?
>
> I will be leaving the office soon but I work a five-eights schedule, and so have a standard work week. If you'd like to talk tomorrow, feel free to call my cell [redacted]
>
> I'm copying on this email Tom McDonald, Manager of the Wildlife, Recreation and Conservation Division of CSKT's Natural Resources Department, as well as Dale Becker, Manager of the Wildlife Program. They have been involved in NBRC AFA negotiations and discussions since 2008 and have worked closely with both Dean Rundle and Jeff King.

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

RD call to Chairman

2 messages

Rundle, Dean <dean_rundle@fws.gov> Fri, Sep 6, 2013 at 1:16 PM
To: Brian Upton <brianu@cskt.org>
Cc: Will Meeks <will_meeks@fws.gov>

Brian: Don't know if you've been able to close the loop with Chairman Durglo. I'm taking off in about an hour this afternoon and it'd be good if we can get that information - time and phone no. to Noreen today. If you don't have confirmation by 2:00 .m., I think it'd be fine for you to send that directly to the RD and Noreen_Walsh@fws.gov.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

Brian Upton <brianu@cskt.org> Fri, Sep 6, 2013 at 2:03 PM
To: "Rundle, Dean" <dean_rundle@fws.gov>
Cc: Will Meeks <will_meeks@fws.gov>

Dean,
I'd emailed you confirmation just a few minutes before you'd sent the email below. If you haven't received that email, it confirms that 2:00pm (Montana time) works for the Chairman, and the phone number to call is [redacted] Let me know if you get this email.

BU

> [Quoted text hidden]

RE: scheduling

1 message

Will Meeks <Will_Meeks@fws.gov> Tue, Sep 10, 2013 at 4:34 PM
To: Brian Upton <brianu@cskt.org>

Thanks Brian. I am trying to get Noreen's schedule nailed down and will reach out to you very soon.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, September 10, 2013 3:21 PM
To: will_meeks@fws.gov
Subject: scheduling

Will,

When I spoke with Dean last Friday he said that you were still out sick. I hope you're feeling better. During the Chairman's conference call yesterday with Regional Director Walsh, she said that she would ask you to contact me to try to schedule a meeting in Denver for FWS and CSKT to discuss the NBRC AFA and EA status. I wanted to let you know that I'll be on leave starting tomorrow through Monday (9/16). Next Tuesday/Wednesday (9/17-18) I'm scheduled to be at a legal seminar in Helena. I don't want to hold up any progress in scheduling a meeting, so please feel free to contact me at any time during those dates. Unfortunately, I won't have email access during those days so please call my cell phone [redacted] in order to reach me.

Thanks,

BU

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

10/1 meeting

3 messages

Brian Upton <brianu@cskt.org> Tue, Sep 24, 2013 at 11:20 AM
To: Dean_Rundle@fws.gov
Cc: will_meeks@fws.gov

Deăn and Will,

Unfortunately, Chairman Durglo and Tom McDonald cannot make the 10/1 meeting and Dale Becker is on leave. The folks attending for CSKT are as follows:

1) Ron Trahan, Council Member and Tribal Council Treasurer
2) Reuben Mathias, Council Member and Tribal Council Secretary
3) Steve Lozar, Council Member
4) Jim Malatare, Council Member
5) Terry Pitts, Council Member
6) Myself

Please let me know who we should call when we get to your Lakewood offices. It's my understanding that we are scheduled for 9:00am-noon.

Thanks,

BU

Brian Upton <brianu@cskt.org> Tue, Sep 24, 2013 at 1:53 PM
To: Dean_Rundle@fws.gov, will_meeks@fws.gov

I forgot to ask in my email below – is Kim Greenwood available to attend the 10/1 meeting? If so, we'd appreciate her presence.

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, September 24, 2013 11:20 AM

To: Dean_Rundle@fws.gov
Cc: will_meeks@fws.gov
Subject: 10/1 meeting

[Quoted text hidden]

Rundle, Dean <dean_rundle@fws.gov> Tue, Sep 24, 2013 at 3:03 PM
To: Brian Upton <brianu@cskt.org>
Cc: Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>

Brian: Thanks for the information - unfortunate that the Chairman and Tom cannot make it.

Kim Greenwood is no longer with R6, she left last winter. Ivy Allen is the new Tribal Liaison in the external affairs office. I'll check with Will and see if she is available.

We are scheduled for 0900 - noon on Tuesday. You can call me at 303/236-4306 when you get here and I'll come get you in the door - I'll probably just be down there waiting on you.

My hopes budget action are waning. We may have to connect on Thursday or Friday as we get additional instructions from HQ on what we will have to do if appropriations lapse on Monday at midnight. I don't want to postpone this meeting, but also don't want you and the Council travelling here on Monday if we are shut down and ordered not to work on Tuesday. Let's hope for a CR later this week and if there isn't one, we'll have to discuss options.

Will is travelling through Thursday this week, but will be in the office on Friday. We'll circle back to you then if there is no appropriation.

Dean

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306
[Quoted text hidden]

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

10/7 meeting

5 messages

Brian Upton <brianu@cskt.org> Mon, Sep 30, 2013 at 10:08 AM
To: Dean_Rundle@fws.gov, will_meeks@fws.gov

Dean and Will,

I just updated the Chairman and Council about rescheduling our meeting to Monday, October 7th. They would like to confirm that meeting date. They are going to check their calendars to figure out which of them may be able to attend the meeting, so I'll follow up with them and hopefully get back with you by later this afternoon with a headcount. Steve Lozar will definitely be able to attend. It sounds like Leonard Gray will stay here to volunteer at the Bison Range Round-Up, which is scheduled for the same time.

Please let me know when the meeting would be scheduled on 10/7. As I'd mentioned in a voicemail to Dean, the earlier the better on our end. The Council Members need to fly back that evening for the 10/8 Council session.

BU

Will Meeks <will_meeks@fws.gov> Mon, Sep 30, 2013 at 3:46 PM
To: Brian Upton <brianu@cskt.org>
Cc: "Dean_Rundle@fws.gov" <Dean_Rundle@fws.gov>

Brian,

Thanks for the note about the meeting on 10/7. I just visited with the Regional Director and we are good for 9:00 am to noon on October 7th. We will plan on meeting in the Regional Director's Conference Room.

All of this is contingent upon the pending government shutdown, of course. But I am hopeful we'll have resolution soon.

Thanks again.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Tue, Oct 1, 2013 at 12:47 PM
To: Brian Upton <brianu@cskt.org>
Cc: Dean Rundle <dean_rundle@fws.gov>

Thanks Brian. I am considered an "Excepted" employee and working during the partial shutdown. If you need anything, please say so. Take care.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, October 01, 2013 9:37 AM
To: 'Will Meeks'
Cc: Dean_Rundle@fws.gov
Subject: RE: 10/7 meeting

Will and Dean,

Thanks for scheduling the meeting on the morning of 10/7. Sorry for the delay in my response, but the Council Members were all trying to check/coordinate schedules to see who would be able to attend the 10/7 meeting, and we also had the expected questions about whether the FWS offices would even be open on that day given the shutdown.

There may be some changes, and Chairman Durglo is still trying to ascertain whether he can also attend, but the following Council Members are planning on attending the 10/7 meeting:

1) Ron Trahan, Council Member and Tribal Council Treasurer
2) Reuben Mathias, Council Member and Tribal Council Secretary
3) Steve Lozar, Council Member
4) Jim Malatare, Council Member
5) Leonard Gray, Council Member
6) James Bing Matt, Council Member

If the federal government is still shutdown as of mid-late afternoon on Friday (10/4), we will cancel our travel on

the theory that the FWS offices will be unlikely to be open on Monday. If that ends up being the case, we would be interested in scheduling a meeting when you both, and the Regional Director, would next be available.

Let me know if any questions or changes on your end.

Thanks,

BU

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Monday, September 30, 2013 3:46 PM
To: Brian Upton
Cc: Dean_Rundle@fws.gov
Subject: Re: 10/7 meeting

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, Oct 1, 2013 at 1:06 PM
To: Will Meeks <Will_Meeks@fws.gov>
Cc: Dean Rundle <dean_rundle@fws.gov>

Thanks Will – good to know. I'm sure you'll be having an interesting week. Am I correct in my understanding that, even if you and Noreen and Dean were in the office on 10/7 during a continued government shutdown, that you cannot hold meetings with non-federal parties? Or is that incorrect?

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Tuesday, October 01, 2013 12:48 PM
To: Brian Upton
Cc: Dean Rundle
Subject: RE: 10/7 meeting

[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Tue, Oct 1, 2013 at 1:13 PM
To: Brian Upton <brianu@cskt.org>

Nope, it's correct. We are closed essentially and can't conduct those types of activities. (As strange as that sounds.)

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, October 01, 2013 1:06 PM
To: 'Will Meeks'

[Quoted text hidden]

[Quoted text hidden]

Seems we have to postpone

1 message

Will Meeks <will_meeks@fws.gov> Fri, Oct 4, 2013 at 10:19 AM
To: Brian Upton <brianu@cskt.org>

Brian,

With the continued gridlock in Washington and the government shutdown, it seems most prudent to postpone our meeting on Monday.

I know this isn't ideal, but I don't believe we have another option.

We'll be in contact after the government is back on-line.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Monday

2 messages

Brian Upton <brianu@cskt.org> Sat, Oct 5, 2013 at 3:46 PM
To: will_meeks@fws.gov

Will,
I received your messages. We cancelled our travel yesterday and will be interested in rescheduling as early as possible. Please advise with any dates that would work for you, Noreen and Dean after Dean's return from Italy.

thanks,
BU

Will Meeks <will_meeks@fws.gov> Sat, Oct 5, 2013 at 4:45 PM
To: Dean Rundle <dean_rundle@fws.gov>

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Begin forwarded message:

> **From:** Brian Upton <brianu@cskt.org>
> **Date:** October 5, 2013, 3:46:26 PM MDT
> **To:** <will_meeks@fws.gov>
> **Subject: Monday**

[Quoted text hidden]

meeting attendees

3 messages

Brian Upton <brianu@cskt.org> Thu, Oct 24, 2013 at 3:52 PM
To: will_meeks@fws.gov

Will,

In addition to me, I believe the Tribal Council attendees for the 10/31 meeting next week will be as follows: Ron Trahan, Steve Lozar, Leonard Gray, and James "Bing" Matt. I'll let you know if there are any changes to that list.

BU

Will Meeks <will_meeks@fws.gov> Mon, Oct 28, 2013 at 2:32 PM
To: Dean Rundle <dean_rundle@fws.gov>

Call Jeff too please. Also see if Laura scheduled a call with us.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Begin forwarded message:

> **From:** Brian Upton <brianu@cskt.org>
> **Date:** October 24, 2013, 3:52:06 PM MDT
> **To:** <will_meeks@fws.gov>
> **Subject: meeting attendees**
>
> Will,
>
> In addition to me, I believe the Tribal Council attendees for the 10/31 meeting next week will be as follows: Ron Trahan, Steve Lozar, Leonard Gray, and James "Bing" Matt. I'll let you know if there are any changes to that list.
>
> BU

Will Meeks <will_meeks@fws.gov> Tue, Oct 29, 2013 at 9:56 AM
To: Noreen Walsh <noreen_walsh@fws.gov>
Cc: Matt Hogan <Matt_Hogan@fws.gov>, Dean Rundle <dean_rundle@fws.gov>

For later this week.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Begin forwarded message:

From: Brian Upton <brianu@cskt.org>
Date: October 24, 2013, 3:52:06 PM MDT
To: <will_meeks@fws.gov>
Subject: meeting attendees

Will,

In addition to me, I believe the Tribal Council attendees for the 10/31 meeting next week will be as follows: Ron Trahan, Steve Lozar, Leonard Gray, and James "Bing" Matt. I'll let you know if there are any changes to that list.

BU

rescheduling

15 messages

Brian Upton <brianu@cskt.org> Thu, Oct 17, 2013 at 9:52 AM
To: Will Meeks <will_meeks@fws.gov>

Will,
Do you have any proposed dates for rescheduling our meeting with you, Regional Director Walsh, and Dean? I understand that Dean is overseas until October 27th but, if you and he had discussed any potential meeting dates after his return, please advise. This meeting is a high priority for the Tribal Council and I'd like to be able to propose some dates for them as soon as possible.

Thanks,
Brian

——Original Message——
From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Friday, October 04, 2013 10:19 AM
To: Brian Upton
Subject: Seems we have to postpone

Brian,

With the continued gridlock in Washington and the government shutdown, it seems most prudent to postpone our meeting on Monday.

I know this isn't ideal, but I don't believe we have another option.

We'll be in contact after the government is back on-line.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Will Meeks <Will_Meeks@fws.gov> Thu, Oct 17, 2013 at 10:35 AM
To: Brian Upton <brianu@cskt.org>

Brian,

I just met with Noreen and we will be discussing scheduling of high priority meetings such as this tomorrow at 8:30 am.

I will contact you as soon as that meeting adjourns.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)
[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Fri, Oct 18, 2013 at 1:27 PM
To: Brian Upton <brianu@cskt.org>
Cc: Dean Rundle <dean_rundle@fws.gov>, Jeff King <jeff_king@fws.gov>, Debbie Schreiner <debbie_schreiner@fws.gov>

Brian,

I spoke with Noreen this morning and the only time she has available prior to Dean's new retirement date is the afternoon of 10/31/13.

Can you let me know if this works? We could meet here from 1:00 pm - 4:00 pm.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

---Original Message---
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Thursday, October 17, 2013 9:52 AM
To: 'Will Meeks'
Subject: rescheduling

[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Fri, Oct 18, 2013 at 1:29 PM
To: Sharon Brenna <sharon.brenna@sol.doi.gov>, Dana Jacobsen <dana.jacobsen@sol.doi.gov>

Sharon and Dana,

See note below. I'll let you know if CSKT will make this date. Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

----Original Message----
From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Friday, October 18, 2013 1:28 PM
To: 'Brian Upton'
Cc: Dean Rundle; Jeff King; Debbie Schreiner
Subject: RE: rescheduling

Brian,

I spoke with Noreen this morning and the only time she has available prior to Dean's new retirement date is the afternoon of 10/31/13.

Can you let me know if this works? We could meet here from 1:00 pm - 4:00 pm.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

----Original Message----
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Thursday, October 17, 2013 9:52 AM
To: 'Will Meeks'
Subject: rescheduling

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Fri, Oct 18, 2013 at 4:09 PM
To: Will Meeks <Will_Meeks@fws.gov>

Thanks Will. I'll touch base with the Chairman and Council on Monday morning and see whether 10/31 would work. Unless I hear otherwise from you, I'll assume that Dean is available too. Can you tell me his new retirement date?
[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Fri, Oct 18, 2013 at 4:11 PM
To: Brian Upton <brianu@cskt.org>

Thanks. His new date is 11/1/13.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Sun, Oct 20, 2013 at 11:53 AM
To: Dean Rundle <dean_rundle@fws.gov>

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Begin forwarded message:

> **From:** Brian Upton <brianu@cskt.org>
> **Date:** October 18, 2013, 4:09:10 PM MDT
> **To:** Will Meeks <Will_Meeks@fws.gov>
> **Subject: Re[2]: rescheduling**

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Mon, Oct 21, 2013 at 11:28 AM
To: Will Meeks <will_meeks@fws.gov>

Will,
The Chairman directed me to confirm the meeting with you, Ms. Walsh, and Dean for the afternoon of 10/31. He and the Council are in the process of trying to decide who all may be able to attend on that day, so I'll have to get back with you to confirm the attendees other than myself.

Thanks,
BU

---Original Message----
From: Will Meeks [mailto:will_meeks@fws.gov]
[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Mon, Oct 21, 2013 at 11:55 AM
To: Brian Upton <brianu@cskt.org>

Brian,

Confirmed on our end. Thank you.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

---Original Message----

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Monday, October 21, 2013 11:29 AM
To: 'Will Meeks'
[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Mon, Oct 21, 2013 at 11:56 AM
To: Noreen Walsh <noreen_walsh@fws.gov>
Cc: Matt Hogan <Matt_Hogan@fws.gov>, Debbie Schreiner <debbie_schreiner@fws.gov>

Noreen,

Meeting confirmed with CSKT. Their attendees TBD.

Can we reserve your conf. room from 1-4?

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

---Original Message---
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Monday, October 21, 2013 11:29 AM
To: 'Will Meeks'
[Quoted text hidden]

Rundle, Dean <dean_rundle@fws.gov> Mon, Oct 28, 2013 at 2:31 PM
To: Will Meeks <Will_Meeks@fws.gov>

Did you hear back from Brian on this for Thursday? Is Jeff coming?

dean

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306
[Quoted text hidden]

Will Meeks <Will_Meeks@fws.gov> Wed, Oct 30, 2013 at 1:38 PM
To: Brian Upton <brianu@cskt.org>

Thanks. I don't anticipate any (at least let's hope not).

When you arrive at the front door, please call or text me on my cell at
720-541-0310. Thanks.

Will Meeks
U.S. Fish and Wildlife Service

Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

---Original Message---
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Wednesday, October 30, 2013 1:10 PM
To: Will Meeks
Subject: Re[4]: rescheduling

Will,

I'll be in a meeting for the rest of the day, but I wanted to touch base with you. The four Tribal Councilmen and I will plan on getting to the FWS offices just before 1:00pm tomorrow.

If there are any changes or developments regarding the meeting, please call my cell phone (406.471.7405) as I won't have email access.

thanks,
BU

---Original Message---
> From: "Will Meeks" <Will_Meeks@fws.gov>
> To: "Brian Upton" <brianu@cskt.org>
[Quoted text hidden]

Brenna, Sharon <sharon.brenna@sol.doi.gov> Wed, Oct 30, 2013 at 2:08 PM
To: Will Meeks <Will_Meeks@fws.gov>
Cc: Dana Jacobsen <dana.jacobsen@sol.doi.gov>

Are we still scheduled for this meeting, Will?

Sharon L. Brenna
Attorney-Advisor
DOI Office of the Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215
303-231-5353, x 338
[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Wed, Oct 30, 2013 at 2:29 PM
To: "Brenna, Sharon" <sharon.brenna@sol.doi.gov>
Cc: Dana Jacobsen <dana.jacobsen@sol.doi.gov>

Yep. Tomorrow in RDs Conf room at 1:00 pm. We are also briefing Noreen prior - at 9:00 am. Want to join us?

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Brenna, Sharon <sharon.brenna@sol.doi.gov> Wed, Oct 30, 2013 at 2:36 PM
To: Will Meeks <will_meeks@fws.gov>
Cc: Dana Jacobsen <dana.jacobsen@sol.doi.gov>

Thanks--I will come for the briefing.

Sharon L. Brenna
Attorney-Advisor
DOI Office of the Solicitor
Rocky Mountain Region
755 Parfet Street, Suite 151
Lakewood, CO 80215
303-231-5353, x 338

[Quoted text hidden]

Thank you

2 messages

Will Meeks <Will_Meeks@fws.gov> Fri, Nov 1, 2013 at 12:50 PM
To: Brian Upton <brianu@cskt.org>

Brian,

Thank you and the Tribal Council members for taking the time to meet with us yesterday.

I am looking forward to working with you and remain committed to forging a strong partnership with CSKT.

Have a good weekend.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

Will Meeks <Will_Meeks@fws.gov> Fri, Nov 1, 2013 at 2:31 PM
To: Brian Upton <brianu@cskt.org>

Brian,

The week of December 16th would be the best for me. While I haven't heard from Laura on workshop dates, I'd be happy to come up to meet. I have conflicts the first two weeks that would preclude me from coming up. If it works for you and Council, I will make time that week. Just let me know.

Thanks.

letters

5 messages

Brian Upton <brianu@cskt.org> Tue, Nov 19, 2013 at 12:14 PM
To: will_meeks@fws.gov

Will,

Thanks for the call. Attached are the two letters that went out to you and Noreen Walsh. Let me know when would be a good time for you to talk later this week.

BU

2 attachments

CSKT-Meeks ltr 11-14-13.pdf
59K

CSKT-Walsh ltr 11-14-13.pdf
70K

Will Meeks <will_meeks@fws.gov> Tue, Nov 19, 2013 at 1:11 PM
To: Brian Upton <brianu@cskt.org>

Brian,

Thank you as well. Would 3 pm tomorrow work for you?

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

<CSKT-Meeks ltr 11-14-13.pdf>

<CSKT-Walsh ltr 11-14-13.pdf>

Will Meeks <will_meeks@fws.gov> Tue, Nov 19, 2013 at 1:12 PM
To: Noreen Walsh <noreen_walsh@fws.gov>
Cc: Matt Hogan <Matt_Hogan@fws.gov>

FYI

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director

NWRS and PFW
303-236-4303

Begin forwarded message:

> **From:** Brian Upton <brianu@cskt.org>
> **Date:** November 19, 2013, 12:14:41 PM MST
> **To:** <will_meeks@fws.gov>
> **Subject: letters**
>
> Will,
>
> Thanks for the call. Attached are the two letters that went out to you and Noreen Walsh. Let me know when would be a good time for you to talk later this week.
>
> BU

---

2 attachments

CSKT-Meeks ltr 11-14-13.pdf
59K

CSKT-Walsh ltr 11-14-13.pdf
70K

Will Meeks <Will_Meeks@fws.gov> Tue, Nov 19, 2013 at 3:55 PM
To: Jim Kurth <jim_kurth@fws.gov>, Cynthia Martinez <cynthia_martinez@fws.gov>

Jim/Cynthia,

FYI. Note that the letter to Noreen was cc'd to Dan A.

I've been communicating well with Brian Upton (CSKT's attorney) and can provide you an update after my meeting with them next month.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, November 19, 2013 12:15 PM
To: will_meeks@fws.gov
Subject: letters

Will,

Thanks for the call. Attached are the two letters that went out to you and Noreen Walsh. Let me know when would be a good time for you to talk later this week.

BU

2 attachments

CSKT-Meeks ltr 11-14-13.pdf
59K

CSKT-Walsh ltr 11-14-13.pdf
70K

Will Meeks <will_meeks@fws.gov> Wed, Nov 20, 2013 at 9:30 AM
To: Brian Upton <brianu@cskt.org>

That works well. Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Nov 20, 2013, at 8:36 AM, Brian Upton <brianu@cskt.org> wrote:

> Yes, 3:00pm today works. I'll call you then on your office phone unless a different arrangement or number would work better for you.
>
> **From:** Will Meeks [mailto:will_meeks@fws.gov]
> **Sent:** Tuesday, November 19, 2013 1:11 PM
> **To:** Brian Upton
> **Subject:** Re: letters
>
> [Quoted text hidden]



Meeks, Will <will_meeks@fws.gov>

Council meeting

1 message

Brian Upton <brianu@cskt.org> Mon, Nov 25, 2013 at 3:31 PM
To: will_meeks@fws.gov

Will,

Per our most recent discussion, the Council scheduler has you tentatively on the Tribal Council's agenda for 10:00am on Thursday, December 19th.

While you're up here that week, it would be good if we could also arrange a meeting for you with some of our NRD officials/staff. When we talk on 12/2, let's see whether you may be able to schedule time for that.

BU

Re: reschedule call?

3 messages

Will Meeks <will_meeks@fws.gov> Mon, Dec 2, 2013 at 10:19 AM
To: Brian Upton <brianu@cskt.org>

Brian,

Sorry for missing your call just now. I was meeting with a staff member on another issue.

Yes, we can reschedule. I think it would be important to hear your discussion with her; especially about the concern you have on the draft narrative section.

I will be out of the office through the rest of the week. We can play it by ear or perhaps have a call on Monday the 9th?

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Dec 2, 2013, at 8:58 AM, Brian Upton <brianu@cskt.org> wrote:

> Hi Will,
>
> I'm in the process of scheduling a time to talk with Dana later this week. Would you like to move the call that you and I had scheduled today for 10:00am to this Thursday afternoon or Friday morning so we'd have the benefit of her input re: the issues we had discussed on our last call? If so, anytime Thursday afternoon or Friday before 2:30 would work for me.
>
> BU

Will Meeks <Will_Meeks@fws.gov> Mon, Dec 2, 2013 at 10:58 AM
To: Brian Upton <brianu@cskt.org>

I may have a meeting at 10:00 am with Scott Talbot (WY Game and Fish) in Cheyenne at that same time on Monday. I can call from the road, however. Does (9:00 am or 9:30 am) work?

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Monday, December 02, 2013 10:52 AM
To: 'Will Meeks'
Subject: RE: reschedule call?

Let's plan on talking at 10:00am next Monday (12/9) unless that time doesn't work for you.

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Monday, December 02, 2013 10:20 AM
To: Brian Upton
Subject: Re: reschedule call?

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Mon, Dec 2, 2013 at 11:19 AM
To: Will Meeks <Will_Meeks@fws.gov>

Those times won't work on my end. I would be open anytime later that day. If you have any blocks of time in the late morning or afternoon, we could lock that in.

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Monday, December 02, 2013 10:58 AM
To: Brian Upton
Subject: RE: reschedule call?

[Quoted text hidden]

next week

11 messages

Brian Upton <brianu@cskt.org> Fri, Dec 6, 2013 at 9:23 AM
To: Will Meeks <Will_Meeks@fws.gov>

Will,
I just spoke with Dana Jacobson and Sharon Brenna yesterday and Dana said she was going to try to talk to you on Monday. Why don't you and I try to schedule a time to talk once you get back from Wyoming and you have spoken with Dana? I've scheduled a follow-up call with Dana/Sharon for next Tuesday morning (12/10) at 11:00am. If it would work for you to be part of that call, that'd be great.
BU

-----Original Message-----
From: "Will Meeks" <Will_Meeks@fws.gov>
To: "Brian Upton" <brianu@cskt.org>
Date: 12/02/13 10:59 AM
Subject: RE: reschedule call?

I may have a meeting at 10:00 am with Scott Talbot (WY Game and Fish) in Cheyenne at that same time on Monday. I can call from the road, however. Does (9:00 am or 9:30 am) work?

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Monday, December 02, 2013 10:52 AM
To: 'Will Meeks'
Subject: RE: reschedule call?

Let's plan on talking at 10:00am next Monday (12/9) unless that time doesn't work for you.

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Monday, December 02, 2013 10:20 AM
To: Brian Upton
Subject: Re: reschedule call?

Brian,

Sorry for missing your call just now. I was meeting with a staff member on another issue.

Yes, we can reschedule. I think it would be important to hear your discussion with her; especially about the concern you have on the draft narrative section.

I will be out of the office through the rest of the week. We can play it by ear or perhaps have a call on Monday the 9th?

Thanks.

Will Meeks

U.S. Fish and Wildlife Service

R6 - Assistant Regional Director

NWRS and PFW

303-236-4303

On Dec 2, 2013, at 8:58 AM, Brian Upton <brianu@cskt.org> wrote:

> Hi Will,
>
> I'm in the process of scheduling a time to talk with Dana later this week. Would you like to move the call that you and I had scheduled today for 10:00am to this Thursday afternoon or Friday morning so we'd have the benefit of her input re: the issues we had discussed on our last call? If so, anytime Thursday afternoon or Friday before 2:30 would work for me.
>
> BU

Will Meeks <will_meeks@fws.gov> Mon, Dec 9, 2013 at 5:42 AM
To: Dana Jacobsen <dana.jacobsen@sol.doi.gov>, Sharon Brenna <sharon.brenna@sol.doi.gov>

Dana,

Would it be possible to join the call tomorrow. Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Begin forwarded message:

> **From:** Brian Upton <brianu@cskt.org>
> **Date:** December 6, 2013, 9:23:49 AM MST
> **To:** Will Meeks <Will_Meeks@fws.gov>
> **Subject: next week**

[Quoted text hidden]

Jacobsen, Dana <dana.jacobsen@sol.doi.gov> Mon, Dec 9, 2013 at 6:37 AM
To: Will Meeks <will_meeks@fws.gov>
Cc: Sharon Brenna <sharon.brenna@sol.doi.gov>

I am pretty open this morning, though I have a 7:30 upstairs with FWS IT staff (should take an hour or so), and a 1:00. I don't have my schedule in front of me, but I do think I am available.
[Quoted text hidden]
–
Dana Jacobsen
Assistant Regional Solicitor
Rocky Mountain Regional Office
Office of the Solicitor
755 Parfet, Suite 151
Lakewood, CO 80215
(303) 231-5353 x 336

Will Meeks <will_meeks@fws.gov> Mon, Dec 9, 2013 at 7:33 AM
To: "Jacobsen, Dana" <dana.jacobsen@sol.doi.gov>
Cc: Sharon Brenna <sharon.brenna@sol.doi.gov>

I'm on my way to NER with Noreen. I could perhaps take a call from the road before 10 or after noon today.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Jacobsen, Dana <dana.jacobsen@sol.doi.gov> Mon, Dec 9, 2013 at 9:18 AM
To: Will Meeks <will_meeks@fws.gov>

Cc: Sharon Brenna <sharon.brenna@sol.doi.gov>

Shall we talk today, say 3:00?

And then yes, please join the call at 11:00 tomorrow!! I can circulate a dial-in number.
[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Mon, Dec 9, 2013 at 9:03 PM
To: Brian Upton <brianu@cskt.org>

Brian,

I can't make the call tomorrow, though I previously thought I could. I will be in Minneapolis on T-Th and can try to catch up on Friday. Are you available?

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, Dec 10, 2013 at 12:58 PM
To: Will Meeks <will_meeks@fws.gov>

Will,
I think this Friday afternoon should be open. Early on Friday (before 9:30am) may work, but afternoon should be clearer.

Any thoughts on whether you may be able to sit down with CSKT NRD officials next week? I need to let them know any times you may have open so they can check their schedules. It would likely be Tom McDonald (Division Head for Fish, Wildlife, Recreation and Conservation) and Dale Becker (Wildlife Program Manager), and possibly Rich Janssen, NRD Department Head.

I don't think you and I talked about it, but I've assumed that Jeff King would accompany you during your meeting with Tribal Council. Let me know if that's not the case.

BU

> -----Original Message-----
> From: "Will Meeks" <will_meeks@fws.gov>
> To: "Brian Upton" <brianu@cskt.org>
> [Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Tue, Dec 10, 2013 at 1:23 PM
To: Brian Upton <brianu@cskt.org>

Brian,

I have a 1-3 pm meeting on Friday . . . could we have a call prior (though I don't want to impose on your lunch time). I could also make early Friday work.

To confirm the meeting with Council is 10:00 am on Thursday the 19th? Yes, Jeff will accompany me. Is there

any possibility to set up a meeting with CSKT NRD on Wednesday afternoon?

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, Dec 10, 2013 at 1:34 PM
To: Will Meeks <will_meeks@fws.gov>

We could talk at 12:30 on Friday if that works for you. I wouldn't be able to schedule earlier than that because I think an 11:00 meeting that I have may well go into the lunch hour.

I think Wednesday afternoon would work on NRD's end for a meeting, but I'll check with them. If you can keep it penciled in for now, that'd be good. It would be great if Jeff were able to accompany you to that meeting too.

Re: the Council meeting, Thursday (12/19) at 10:00am was the last I'd heard from Sharon (Council scheduler); I'll confirm with her that we're still assuming that will be the time. I'll let you know if any changes/developments.

> -----Original Message-----
> From: "Will Meeks" <will_meeks@fws.gov>
> To: "Brian Upton" <brianu@cskt.org>
> [Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Tue, Dec 10, 2013 at 1:40 PM
To: Brian Upton <brianu@cskt.org>

That works. I'll call you at 12:30 pm on this Friday.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, Dec 10, 2013 at 2:08 PM
To: Will Meeks <will_meeks@fws.gov>

Ok; please call my cell (406.471.7405) since I'll be in Missoula on Friday.

I also checked with NRD and Wednesday afternoon at 1:00 would work for them to meet with you. We could meet at Dale Becker's office on Sixth Street in Polson. Jeff will know where it is, but let me know if you'd like a street address or directions. If that meeting time/location doesn't work, please drop me a line.

> -----Original Message-----
> From: "Will Meeks" <will_meeks@fws.gov>

To: "Brian Upton" <brianu@cskt.org>
[Quoted text hidden]

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

Good evening

4 messages

Will Meeks <will_meeks@fws.gov> Mon, Dec 16, 2013 at 6:00 PM
To: Brian Upton <brianu@cskt.org>

As an update we made it through day 1 of our analysis and are making good progress. I would like to take you up on your offer to get together for lunch on Wednesday if possible prior to our one o'clock meeting. Do you have a suggestion for a place? At your discretion, please include any from our afternoon meeting if needed.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

Brian Upton <brianu@cskt.org> Tue, Dec 17, 2013 at 11:57 AM
To: Will Meeks <will_meeks@fws.gov>

Lunch on Wednesday sounds good. If you can get together as early as 11:30, I'd suggest the restaurant at the Ninepipe Lodge on Highway 93. It's about 6-7 miles south of Pablo and just a couple miles south of where the road from the Bison Range meets the highway to Pablo/Polson.

If 11:30 is too early, or if you'd otherwise rather just have lunch closer to our 1:00 meeting at Dale Becker's office in Polson, then we could meet at a Mexican place in Polson called Fiesta en Jalisco, which is right on Flathead Lake. If you'd rather not have Mexican for lunch, we can find someplace else.

I'll check with Tom and Dale on their availability.

[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Tue, Dec 17, 2013 at 1:36 PM
To: Brian Upton <brianu@cskt.org>

Mexican sounds great. Let's meet at the Mexican place at 11:30. Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, Dec 17, 2013 at 1:46 PM
To: Will Meeks <will_meeks@fws.gov>

Sounds good. See you there at 11:30 tomorrow.

----Original Message----
From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, December 17, 2013 1:37 PM
To: Brian Upton
[Quoted text hidden]

Re: conf call

1 message

Will Meeks <will_meeks@fws.gov> Mon, Jan 6, 2014 at 12:14 PM
To: Brian Upton <brianu@cskt.org>
Cc: Toni Griffin <toni_griffin@fws.gov>

Brian,

Thanks for the note; I did have a good holidays and hope you enjoyed them as well. I have not been able to track them down with the holidays however. I've cc'd Toni G (acting planning chief) to see if she can help arrange a call for next week. I am traveling for work this week.

Is there any news on a new Tribal chair?

Thanks again.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

On Jan 6, 2014, at 2:09 PM, Brian Upton <brianu@cskt.org> wrote:

> Hi Will,
>
> Hope you had good holidays. Have you had a chance to check with Dana/Sharon to see when we could all talk about the EA issues we'd discussed while you were up here?



Meeks, Will <will_meeks@fws.gov>

call?

1 message

Brian Upton <brianu@cskt.org> Thu, Jan 16, 2014 at 10:09 AM
To: will_meeks@fws.gov

Are we doing the call today?

Call back

2 messages

Will Meeks <Will_Meeks@fws.gov> Mon, Feb 3, 2014 at 2:15 PM
To: Brian Upton <brianu@cskt.org>

Brian,

I am slammed for the rest of today and will be in a meeting at Fort Collins tomorrow. But I will call you tomorrow at a break or when I can slip away.

Thanks for the kind words when you met with the Director and others last week.

Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (work)

720-541-0310 (cell)

Brian Upton <brianu@cskt.org> Mon, Feb 3, 2014 at 2:58 PM
To: Will Meeks <Will_Meeks@fws.gov>

Will,

No problem. I will be unavailable tomorrow morning from 9:45-10:30am, and then for most of the afternoon, but should otherwise be around. Talking on Wednesday would be fine if that works better on your end, I just want to debrief about last week's meetings, activities, etc.

BU

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Monday, February 03, 2014 2:16 PM
To: Brian Upton
Subject: Call back

[Quoted text hidden]

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

JUN 29 2011

In Reply Refer To:
FWS/ANRS-NRCP/048405

E.T. "Bud" Moran
Chairman Tribal Council
The Confederated Salish and Kootenai Tribes
of the Flathead Nation
P.O. Box 278
Pablo, Montana 59855

Dear Chairman Moran:

Thank you for your letter of May 16, 2011, regarding our development of a draft U.S. Fish and Wildlife Service (Service) policy on Tribal Annual Funding Agreements (AFA). Values our relationship with the Salish and Kootenai Tribes as well as other tribal governments and appreciate the opportunity to respond to your questions.

The Service is the proposing draft AFA policy as a Service Manual chapter, which is the primary form for establishing Service policy. Our Service Manual provides guidance to Service staff based on established laws, regulations, and other policies. In this case, the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638), National Wildlife Refuge System Administration Act (16 U.S.C. 668dd-668cc, as amended), National Environmental Policy Act (NEPA) 42 U.S.C.4321 et seq. (Executive Order 13175), and the Service's Native American Policy (June 28, 1994) will set the foundation of the draft AFA policy. The draft AFA policy will serve as step-down direction for Service staff in establishing successful and long-lasting AFAs with Native American tribal governments.

The draft AFA policy is going through internal review, and it is considered a pre-decisional document; therefore, it is not appropriate for us to share it for comments outside of the Service. Once the draft Service Manual chapter has been vetted through our Directorate, we will be seeking input from tribal governments prior to publishing it in the Federal Register for public comment.
Current negotiations are based on existing laws, regulations, and approved policies, and that the draft policy will not affect negotiations.

TAKE PRIDE® IN AMERICA

Regarding the referenced Executive Order No. 13175 and November 5, 2009 Presidential Memorandum, the Service fully participated in the development of the Department's "Policy on Consultation With Indian Tribes." The Draft of this policy is open for a public comment period that began on May 17, 2011 and will end on July 18, 2011. The draft policy has been published in the Federal Register, and is available at: http://www.gpo.gov/fdsys/pkg/FR-2011-05-17/pdf/2011-11971.pdf . Please send your comments regarding the draft policy to consultation@doi.gov on or before July 18.

The Service shares your view that the relationship between the Confederated Salish and Kootenai Tribes and the National Bison Range Complex has greatly improved over the years and we seek to strengthen that relationship.

Sincerely,

Gregory E. Siekaniec

Acting Deputy Director

cc: Stephen Guertin
Rick Coleman
Dean Rundle
Jeff King
Patrick Durham
Sharee Freeman

NBR Science and Management Symposium

April 29-May 1, 2014
Ninepipes Lodge, Charlo MT

Tuesday April 29th

8:30 COFFEE, FRUIT, AND PASTRIES

9:00 – 10:20 MORNING SESSION 1: INTRODUCTION AND SETTING THE STAGE

9:00 Welcome and Introductions – ***Brendan Moynahan*** *(Supervisory Wildlife Biologist, National Bison Range Complex)*

9:20 NBR Biological Program: Building Resiliency – ***Brendan Moynahan***

9:40 The Comprehensive Conservation Plan Process: Pre Planning Strategies – **Laura King** (Planner, USFWS Region 6 Planning Team)

10:00 Making Conservation Decisions for the National Bison Range –***Mike Mitchell*** *(Assistant Professor and Cooperative Wildlife Research Unit Leader, University of Montana)*

10:20-10:40 BREAK

10:40-12:00 MORNING SESSION 2: RANGELAND AND INVASIVE PLANT MANAGEMENT

10:40 Thinking Beyond Treatment: Rangeland Resiliency and Restoration – ***Jane Mangold*** *(Asst. Professor of Land Resources and Environmental Sciences, Montana State University)*

11:00 Strategic Planning for Invasive Plant Management – ***Lindy Garner*** *(Program Manager, USFWS Regional Strike Team)*

11:20 Invasive Plant Management on the NBR – ***Amy Lisk*** *(Biologist, NBR Complex)*

11:40 Wrap Up and Group Discussion

12:00-1:15 LUNCH ON YOUR OWN

1:20 – 2:20 AFTERNOON SESSION 1: BIG-PICTURE AWARENESS – HISTORY, THE PUBLIC, AND THE VALLEY-WIDE CONTEXT

1:20 A Managers Perspective on the NBR – ***Bill West*** *(Refuge Manager, Red Rock Lake National Wildlife Refuge; past NBR Refuge Manager)*

1:40 Conservation Networks in the Mission Valley –***Dean Vaughan*** *(Wildlife Biologist, USFWS Partners for Fish and Wildlife Program)*

2:00 Our Future is in the Hands of Our Public - ***Pat Jamieson*** *(Outdoor Recreation Planner, NBR)*

2:20-2:40 BREAK

2:40 – 4:30 AFTERNOON SESSION 2: LEARNING FROM OTHERS: PERSPECTIVES ON LONG-TERM PROGRAMS

2:40 Managing a successful wildlife program –***Dale Becker*** *(Wildlife Program Manager, Confederated Salish and Kootenai Tribes)*

3:00 The USFWS Inventory and Monitoring Program – ***Jeff Warren*** *(Zone Wildlife Biologist, USFWS Inventory and Monitoring Program)*

3:20 Incorporating Data Management into Early Stages of Planning – ***JoAnn Dullum*** *(Zone Data Manager, USFWS Inventory and Monitoring Program)*

3:40 Biologists perspective on CCP implementation –***Randy Matchett*** *(Supervisory Wildlife Biologist, CMR National Wildlife Refuge) and* ***Vanessa Fields*** *(Wildlife Biologist, Benton Lake National Wildlife Refuge)*

4:00 Wrap Up and Group Discussion

Wednesday April 30th

8:30 COFFEE, FRUIT, AND PASTRIES

9:00 TO 10:20 MORNING SESSION 1: THE IMPORTANCE OF THE NBR AND MISSION VALLEY TO BIRDS

9:00 Welcome and overview from Tuesday – ***Amy Lisk and Brendan Moynahan***

9:10 Projects and Partnerships for Landbirds, Shorebirds, and Waterbirds – ***Janene Lichtenburg*** *(Salish and Kootenai College – Wildlife and Fisheries Program Director) and* ***Amy Cilimburg*** *(Director of Bird Conservation – Montana Audubon)*

9:40 Short-eared Owl Conservation and Research – ***Denver Holt*** *(Owl Research Institute*)

10:00 Long-eared Owl Conservation and Research – ***Matt Larson*** *(Owl Research Institute)*

10:20-10:40 BREAK

10:40 – 12:00 MORNING SESSION 2: LEARNING FROM OTHERS: PERSPECTIVES ON LONG-TERM PROGRAMS

10:40 Wildlife Health Programs – ***Lee Jones*** *(Wildlife Biologist, USFWS Wildlife Health Office)*

11:00 Bison Genetics – ***Lee Jones***

11:20 Contemporary approaches to Conservation Genetics - ***Gordon Luikart*** *(Associate Professor of Conservation Ecology, University of Montana)*

11:40 Wrap Up and Group Discussion

12:00 -1:15 LUNCH ON YOUR OWN

1:20 – 2:40 AFTERNOON SESSION 1: CURRENT APPROACHES TO GRAZING AND RANGELAND MANAGEMENT

1:20 Bison and Grazing Management on the NBR –***Amy Lisk***

1:40 Planning for climate change on Rangelands – ***Brady Allred*** *(Assistant Professor of Rangeland Ecology, University of Montana)*

2:00 Range condition surveys; ESDs; evolving approaches to stocking rate/rotation systems, with application to NBR - ***Walter Lujan*** *(Rangeland Management Specialist- Natural Resource Conservation Service)*

2:20 Approaches to range management; changes in range inventory and evaluation techniques- ***Doug Dupuis*** *(Rangeland Specialist- Confederated Salish and Kootenai Tribes)*

2:40 BREAK

3:00 – 4:30 AFTERNOON SESSION 2: LONG-TERM PERSPECTIVES ON STUDYING HERBIVORES ON THE NATIONAL BISON RANGE

3:00 NBR Plants and Herbivores in the Face of Climate Change - ***Gary Belovsky*** *(Professor of Community Ecology and Conservation Biology, Notre Dame University)*

3:20 30 years of pronghorn research on the NBR – ***John Byers*** *(Professor of Animal Behavior, University of Idaho)*

3:40 Ungulate reproduction under climate change: concepts and management implications – ***Jack Hogg*** *(Director, Montana Conservation Science Institute)*

4:00 Wrap Up and Group Discussion

5:00 – 6:00 PM EVENING RECEPTION

Hors d'oeurves provided; no-host full service bar and dinner menu available

Thursday May 1st

8:30 COFFEE, FRUIT, AND PASTRIES

9:00 – 12:00 WORKGROUP SESSION 1: FACILITATED BY AMY AND BRENDAN

Bag lunches from Mission General Store offered for $8 per person

1:00 - 4:00 WORKGROUP SESSION 2: FACILITATED BY AMY AND BRENDAN

Notes

MAX BAUCUS
MONTANA

WASHINGTON, DC
(202) 224-2651

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1-800-332-6106

INTERNET:
max@baucus.senate.gov
http://www.senate.gov/~baucus

United States Senate

WASHINGTON, DC 20510-2602

May 1, 2009

The Honorable Ken Salazar
Secretary
Department of the Interior
1849 C Street NW
Washington, D.C. 20240-0002

The Honorable Thomas Strickland
Assistant Secretary for Fish, Wildlife and Parks
Department of the Interior
1849 C Street NW
Washington, D.C. 20240-0002

Dear Secretary Salazar and Assistant Secretary Strickland:

I write to express my strong and continued support for the Annual Funding Agreement between the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation and the U.S. Fish and Wildlife Service (FWS) for programs at the National Bison Range Complex (NBRC). As you may know, the National Bison Range (NBR), a National Wildlife Refuge, is located in the middle of the Flathead Indian Reservation in Montana. CSKT is the beneficial landowner of two of the NBRC's ancillary refuges, the Ninepipe and Pablo National Wildlife Refuges, which are located on federally-held trust land within the Reservation.

On June 19, 2008, I had the honor of attending and speaking at the signing ceremony held in the penthouse of the Interior Department Building when the Annual Funding Agreement (AFA) was signed by the CSKT Tribal Council Chairman, the FWS Director, the Assistant Secretary for the Fish, Wildlife and Parks, and the Acting Assistant Secretary for Indian Affairs. Additional speakers at the event included Secretary Kempthorne, Deputy Secretary Scarlett and Tribal Chairman James Steele, Jr. This ceremony had been a long time in coming and had followed various meetings that Senator Tester and I had with Interior officials, wherein we lent our support to the agreement as did our House colleague, Denny Rehberg.

The Tribal Self-Governance Act of 1994 (TSGA) authorizes the Interior Secretary to contract with qualified tribes who demonstrate a significant cultural, geographic or historical connection to programs managed by the Department of the Interior, including National Wildlife Refuges. CSKT satisfies all three criteria in their highly unique relationship and history with the NBRC and its bison. In a report accompanying TSGA legislation, the House Natural Resources Committee stated that it intends for the TSGA "to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in [a] Self-Governance funding agreement." (House Report #103-653). Consistent with that presumption, FWS has always identified NBRC programs as being eligible for Self-Governance contracting in annual notices published in the Federal Register. I am pleased that, with the current FY 2009-2011 AFA, FWS has been able to meet its stated goal of entering into more Self-Governance agreements.

BILLINGS (406) 657-6790 | BOZEMAN (406) 586-6104 | BUTTE (406) 782-8700 | GREAT FALLS (406) 761-1574 | HELENA (406) 449-5480 | KALISPELL (406) 756-1150 | MISSOULA (406) 329-3123

While the CSKT is assuming a substantive role in NBRC operations under the AFA, the National Bison Range remains a federally-owned Refuge administered by FWS. The NBRC Refuge Manager remains a FWS employee and has final decision-making authority on management direction, approval of plans, refuge uses and priorities.

This emerging partnership is a progressive example of government-to-government relations authorized under the TSGA and the National Wildlife Refuge System Administration Act (NWRSAA). I am attaching copies of a May 15, 2007 letter from Chairman Nick Rahall and former Ranking Republican Member Don Young of the House Natural Resources Committee, as well as a later press release from them, strongly supporting this AFA. Their Committee has jurisdiction over both the TSGA and the NWRSAA, and no one is better situated than they to know what Congress intended by each Act, how the Acts inter-relate and how the current AFA fulfills both Acts' federal objectives.

On September 15, 2006, Mitch King, the former Regional Director of the Fish and Wildlife Service wrote, "I have worked directly with the CSKT's Wildlife Program and I rank them among the best in Tribal Programs and as good as many State Fish and Wildlife agencies. I have no doubt that the CSKT Wildlife Program can do a good job in managing the National Bison Range." The CSKT and the FWS have long partnered on many different projects, both on and off the NBRC. This Annual Funding Agreement is a natural extension and successor to that cooperative relationship. As the New York Times stated in a September 3, 2003 editorial on CSKT's efforts to manage the NBRC, "[i]f the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it."

I believe that your strong and active support for this AFA is crucial. To that end, please let me know if I can provide you with any additional information or assistance regarding this federal-tribal partnership.

Sincerely,

Enclosures

cc: Rowan Gould, Acting FWS Director



June 11, 2012

Comments of the Blue Goose Alliance on the proposed Environmental Assessment on the draft proposed Annual Funding Agreement between the U.S. Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes For the National Bison Range Complex, Montana

Introduction: the draft funding agreement would violate Refuge System laws.

Both parties to the Annual Funding Agreement (AFA) at the Bison Range Complex have attempted for the past decade to find authorizing provisions of the National Wildlife Refuge System Administration Act (NWRSAA; 16 U.S.C. 668dd-ee). No such provisions exist.

During those attempts, some have suggested that the absence of a prohibition to delegate authority to other entities should be interpreted as implied authorization. To the contrary, however, is a long history in administering the National Wildlife Refuge System (NWRS) of an overarching policy, founded upon Congressional guidance and support, that refuge areas are to be considered "closed until explicitly opened to uses or activities by commercial users, the public, or others." Interpreting the absence of an authority in refuge law to mean that Congress intended to restrict the degree and manner in which the agency handed over management of National Wildlife Refuges to others is consistent with that policy. Further, such an interpretation comports with the "exclusionary rule" of statutory construction.[1]

Proponents of the National Bison Range AFA have suggested that Section 4(b)(4) of the NWRSAA *implies* authority in the FWS to negotiate such agreements with Tribal governments, in spite of the express language in the law. Section 4(b)(4) solely authorizes FWS to enter into cooperative agreements with State fish and game agencies for the management of programs on a refuge. Throughout the history of our Nation, the States and the Federal Government have implemented the Constitutionally-based duties and responsibilities for the myriad tasks required to conserve fish, wildlife, plant and habitat resources, and thereby make them available to provide broad public benefits.

[1] That rule provides that the express allowance of one thing in a statute should be considered to mean the intentional exclusion of all other things.

The legislative history of Section 4(b)(4) strongly supports the exclusionary approach. The final language of that Section evolved from Section 4(b)(4) of H.R. 1675, originally introduced on June 27, 1995.[2] The original language of that Section was also included in H.R. 511 introduced by Congressman Don Young on February 4, 1997, replacing H.R. 1675 in the 105th Congress. That language stated:

> "Subject to standards established by and the overall management oversight of the Director, enter into cooperative agreements with State fish and wildlife agencies **and other entities** for the management of programs on**, or parts of,** a refuge." (Bold type added)

The words in bold type were deleted in H.R. 1420, the House Bill that served as the basis for the final NWRS Improvement Act of 1997. Objections to the language in the earlier versions of the bill had been submitted to the Committee in Secretary Bruce Babbitt's 1996 comments on H.R. 1675. Those comments raised concerns from the agency and within many NGO organizations regarding repeated attempts by the Department of the Interior to transfer refuge management responsibilities to states and others. The changes made to the final statutory language were intended to preclude such transfers, or future joint management schemes, and to limit the scope of future cooperative agreements. The legislative history of the NWRSIA (passed in 1997) concretely, and without ambiguity, supports an exclusionary interpretation of Section 4(B)(4), and Refuge System law in general.

The disclaimer clause of the 1994 Indian Self-Governance Act (25 U.S.C. 450-450n, as amended by Section 204 of the Tribal Self Governance Act of 1994) specifies:

> *Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe...."*

The primary refuge system authorizing statutes do not authorize the type of participation sought by Confederated Salish and Kootenai Tribes.

The AFA doesn't mention achieving the primary purposes of the NBRC refuges

The highest priority mandates for a refuge in the NWRSAA is achievement of the major purposes for which it was established and assisting in achieving the mission of the refuge system. Any contract for management of refuge functions or activities should be aimed to help achieve those primary goals. Instead, the AFA mentions other objectives regarding cooperation, and working with others—which are stated goals of the FWS at large; whereas the refuge system purposes are statutory mandates. The refuge system is noted among the federal conservation land system for its unique "wildlife first" mandate, and the National Bison Range has been ranked among the flagship refuge areas for its focused efforts to that end. The ramifications of modifying the orientation of the work at the NBRC should be amply discussed in an EIS, and the

[2] See HOR Report 104-218, July 31, 1995, to accompany H.R. 1675, 104th Congr. 1st Sess., pp. 9 and 12.

effects upon its unique complex of habitats and animals analyzed. Deviation from the primary purposes of the refuges is a major divergence from the statutory directions from congress.

The legislation establishing the National Bison Range is unique in the laws creating refuges. The statute (35 Stat. L., 251, 262,267) states, "*The President is hereby directed to reserve and except from the unallotted lands now embraced in the Flathead Indian Reservation, in the State of Montana, ... [lands] near the confluence of the Pend d'Orielle and Jocko rivers, for a permanent national bison range for the herd of bison to be presented by the American Bison Society.*" Once the President had signed the bill into law he no longer retained discretion not to establish the refuge on the Flathead Reservation in the vicinity specified. The normal congressional delegation to the President for establishing reserves is to "authorize" the executive, at his discretion, to establish the unit. In this instance, the Congress dictated the situation, as well as the conditions of establishment, including the specific manner for appraising the lands involved. The bison that were presented to the federal government by the American Bison Society were purchased from a private rancher near Kalispell, Montana, using donations from private citizens across America (thus, a gift from many Americans to all the people of American in perpetuity). The goal was to save the American Bison from impending extinction. For the past 100 years that purpose has guided management of the Bison Range, and it is now as vitally important as ever that it continue to be the guiding objective. Possible deviation from placing top priority on achieving the primary purposes of each of the refuge units covered by the AFA, and the environmental consequences of such deviation must be fully explained and analyzed by the FWS in the kind of detail normally found in an EIS.

Lack of mandatory NBRC Comprehensive Conservation Plan a major deficiency

The 1997 NWRS Improvement Act required all refuges to complete a Comprehensive Conservation Plan (CCP) by 2012. None of the refuge units in the Bison Range Complex have complied with that mandate, nor have they started that planning process. Such plans, based upon strong public outreach with input of suggestions from all interested stakeholders and analyses of those expectations is intended to provide the basic guide for refuge programs over the ensuing 15 years. The implementation of an AFA as part of the overall management should be analyzed as part of the CCP process as one of the alternatives, otherwise the full implementation of the CCP could be in jeopardy as the AFA is currently written, since it does not emphasize that the established management protocols of the CCP will be followed. This could render the CCP virtually useless. Absence of that comprehensive effort leaves the NBRC Refuge Manager to devise an *ad hoc* annual program rather than completing key elements toward known objectives, and then assessing the progress as a means of setting future priorities and requesting needed resources.

Attempting to install an untested program with untrained employees having divergent motivations and uncertain supervision aimed at achieving cultural and social goals rather than the "wildlife first" mandate of the refuges represents a major deviation in the normal operation of every refuge in the national system. As such, the NEPA documents must carefully elaborate the differences, the uncertainties, and the potentially differing outcomes from such a precedent. In addition, the NEPA document should present several alternatives, each retaining major parts of continued federally-managed programs while analyzing the alternative costs and more certain

outcomes from those alternatives. For example, one alternative should have the NBRC retain the biological program in its entirety, and another alternative might retain the planning and supervision for the biological program, but permit contracting some of the various activities required to accomplish the program objectives each year.

It is a basic fact that the biological program on refuges is at the core of the inherently federal functions to be performed. Thus, the senior biologist position on refuges (and in most cases the senior ecologist, botanist, and specialists in related disciplines) should be identified as inherently federal—or as a "critical function" as defined by the Office of Management and Budget in its Policy Letter 11-01 guidance issued September 12, 2011. (FR Vol. 76, No. 176, pp. 56227-56242) Retaining adequate federal control of the biological program on refuges is essential to assure that any National Wildlife Refuges involved in contracting portions of programs, functions, services, and activities continue to achieve their Congressionally delegated mission, while meeting the standards in the guiding legislation and the expectations of the interested public.

Similarly, the NEPA documentation should include alternatives that would retain full federal control and supervision of the public use programs on the refuges. As was found by the federal court in *Trustees for Alaska v. Watt*,[3] the NWRSAA requires the Secretary of the Interior to administer the National Wildlife Refuge System through the Director of the Fish and Wildlife Service. The court found that to "administer" a refuge is to "manage" it, and the Service's duty to manage required it "to control and direct the Refuge by regulating human access in order to conserve the entire spectrum of wildlife found in the Refuge.[4] Given the previous discussion regarding appropriateness of an exclusionary reading of the NWRSAA provisions, it is the strong belief of the BGA that refuge law does not allow the Director to delegate such major core activities as the biological program or the public use program to "other entities."

The NEPA documents prepared by the FWS should present and analyze the costs, benefits, and environmental impacts of alternatives that retain total and partial federal control of the public use programs, including the environmental education outreach to public schools in the Mission Valley and in nearby communities such as Missoula. The Alliance also believes that the federal position of Supervisory Outdoor Recreation Planner should be retained as a federal position.

Lack of updated Habitat Management Plan and Integrated Pest Management Plan for each NBRC refuge unit is another major deficiency, and reason not to experiment with an AFA

Without having completed a CCP for the NBRC, normal step-down plans are certain to be dated (because they would normally follow the completion of a CCP). This places the Complex in a seriously weakened position with many new, less-experienced employees attempting to accomplish unfamiliar work which may or may not be the most appropriate in the current circumstances. Prior to installing the first AFA at the Complex (*circa* 2000), the refuge staff was much larger (up to 21 federal employees and a number of active volunteers). That group of federal workers had many years of experience in their work assignments, and in working as a team. That has now changed. The NBRC federal employees at this time are, with two

[3] 524 F. Supp. 1303 (D. Alaska 1981), *aff'd*, 690 F.2d 1279 (9th Cir. 1982)
[4] 524 F. Supp. At 1309.

exceptions, newcomers (*i.e.* less than 5 years in the position). The exceptions are the Supervisory Outdoor Recreation Planner and the Refuge Foreman, both of whom have two decades or more of experience at the complex.

Thus, the seasonal work routines are relatively new to the Refuge Manager, the Deputy, and the Law Enforcement Officer now on duty at the NBRC and they may at any time encounter new, unfamiliar situations and difficulties. With current existing plans used as guidance having an element of uncertainty for what, where, when and how major activities affecting the habitats, animals (including threatened and endangered species), and visiting public are to be accomplished, the lack of experience by employees becomes an added uncertainty and possibly deficiency. Attempting to write annual work plans without updated fundamental plans, including the CCP as a primary blueprint, offers a substantial challenge and possibility of being unrealistic. As with the items discussed above, the NEPA documents by the FWS should describe these situations and potential for variations, and analyze the effects of less than fully successful attempts by the newly employed CSKT employees, and the supervisors.

As an example, the use of grazing and prescribed burning to maintain control of invasive plant species has in the past been especially important in the effort to keep the sensitive Palouse Prairie habitats found on the National Bison Range in healthy condition for the populations of large mammal species found there. Similarly those management tools have been used on the two other National Wildlife Refuges and the wetlands production areas to keep invasives in check and guard against serious wildfires. The timing of the prescribed burns, and the special conditions needed to assure a good burn without danger of getting out of control require trained and experienced wildlands fire managers and personnel. Similarly, the timing and intensity of grazing on those units requires experienced range specialists. Chemical applications, as an alternative, require trained and experienced personnel, careful timing, and the presence of one or more persons capable of identifying endangered plant species that may be present.

FWS NEPA documents would be remiss not to contain thorough discussions of these factors, and the environmental consequences of incomplete achievement, or even failure—as well as setting standards with which to measure degrees of success in application of these practices.

Evaluating major undertakings on the refuges is vital to future work plans and budgeting.

Following the decision by FWS to terminate the first AFA, and the resulting debates and recriminations, the CSKT insisted that all evaluations by NBRC federal staff be stopped. It is apparent in the draft AFA that no evaluation of work is called for except as considered necessary for budget development. Thus, the degree of completion, relative success or lack of success in the undertaking, the amounts involved such as acres of habitat or invasive plants actually treated (as opposed to acreage planned) and the estimated extent of control achieved are not likely to be available. The type of reporting outlined in the draft AFA is inadequate. In addition, provisions in the draft permitting CSKT to "redesign and reallocate" activities and funding (Sec. 6 B.); seek waiver of regulations (Sec. 10. B); substitute performance standards of its own design (Sec. 10. E) offer stark contradictions of statements in the document of intent to abide by refuge policies, practices, regulations, and standards. If that intent is fact, then provisions permitting deviations should be removed from the document.

The section entitled "*Activity Record*s," (Sec. 11. B) lacks a strong and effective evaluation concept. Without an accumulation of factual information regarding the degree of completion of important tasks, and relative compliance with normal standards for accomplishment, an evaluation by the leadership team, or the Refuge Manager will not be useful to future work planning, budgeting and evaluation of the merits of the contract process for completing programs, functions, services or activities, or portions thereof, on the NBRC.

The BGA urges the FWS to establish and maintain a strong standard of evaluation and disclosure regarding any cooperative agreement, or AFA, or other contract for work on any National Wildlife Refuge.

Lack of National Policy regarding Annual Funding Agreements on National Wildlife Refuges should be unacceptable to the FWS and DOI after more than 10 years.

The Alliance and other NGOs have been informed on more than one occasion over the past decade that FWS was in process of developing a national policy for development and implementation of AFAs on refuges. No such policy has been issued. The current list of potential refuges available for negotiating future AFAs includes at least 31 National Wildlife Refuges, and could involve about 80% of the upland areas in the NWRS. With that enormous potential impact upon the Nation's only land conservation system devoted to the wildlife and habitats of native animals and plants, it is deplorable that no national policy has been issued. Refuge managers and supervisors are left with no guidance, no suggestions, and a current precedential template that, in fact, would violate refuge system laws.

The BGA urges the Director of the FWS to withhold signing any AFA until the agency has finalized a National Policy on AFAs on Refuges, released it for broad public comment followed by agency analyses and a final decision document. That policy should, at the outset, require that any funding agreement, cooperative agreement, or contract to perform work on refuges must be legal, cost effective (must cost no more than continued federal refuge management), must not involved Inherently Governmental (or Inherently Federal) functions, must not cause trained and experienced federal employees their jobs, and must provide a demonstrable benefit to the wildlife, plants and habitats of the NWRS. Many other details should be addressed in the FWS policy document.

CEQ regulations and DOI manual guidance supports an EIS for this proposal

The proposed AFA, covering three National Wildlife Refuges and an entire Wetlands Management District is precedential. Numerous issues of concern are raised by the provisions in the AFA. The failed attempt to install a management program on the NBRC pursuant to an AFA is cause for concern. The evidence is abundant and clear. Controversy, federal employee complaints of severe harassment, several investigations, reviews by DOI appeals boards, and a record of incomplete, unsatisfactory work caused the FWS Director to terminate the AFA.

The record, as discussed in the Federal District Court decision and order halting the second attempted AFA in 2010, cited the performance problems which brought the FWS to cancel the AFA. Examples of documented issues included unacceptable biological data collection and reporting resulting in unusable statistics which caused gaps in long-term trends, weakening later interpretations; non-compliance with explicit protocols for bison management which threatened long-planned, and important transfers of bison to improve the overall genetic integrity of federal bison herds; and negligence in maintenance and upkeep of federal equipment, vehicles and range facilities. Reports had raised concerns about the absence of safe conditions for refuge employees and the general public. The workplace situation had reached a point that one investigator with over 30 years of experience in federal investigations characterized it as the worst he had ever encountered, including intimidating, offensive, and oppressive behavior on the part of the CSKT employees. Specific allegations included obscenity, as well as threats of violence and retaliation against federal workers.

The Federal Court rejected arguments against NEPA analyses that included such historical information, in spite of the denials of the FWS reports and findings by CSKT. The Court found that NEPA analysis was necessary. The BGA believes that such analyses including cumulative impacts are essential for agency decision-making and for general public understanding of the potential ramifications from attempting to operate the Bison Range Complex under an AFA containing provisions currently found in the draft AFA. The BGA urges the FWS to analyze in detail potential environmental impacts that could result from a new AFA based on the records of the past decade.

Absence of a written report and evaluation of the 2009-2011 AFA, has left the public wondering if the problems encountered in the first AFA were resolved, or merely covered up by CSKT's insistence that no records be kept. Outside reports by locals in the Mission Valley have raised concerns about deteriorating Palouse Prairie habitats within the National Bison Range due to inadequate control of exotic species and lack of consistent rotation of the bison herd within the Range's grazing units. Other reports have claimed inadequate attention to the many endangered species found within the refuge lands and waters. Although unsubstantiated due to lack of agency reporting and openness, the fact remains that FWS and CSKT have failed to demonstrate a successful program under the funding agreement concept.

The precedential nature of AFAs, and the burdensome conditions placed upon federal managers and supervisors of NWRS units; the amount of controversy these issues have raised; and the very real prospect that the installation of an AFA on the NBRC will result in less than full achievement of the major purposes for which the refuges were created constitute sufficient reason for a full and complete Environmental Impact Statement under the CEQ guidelines and the Departmental Manual guidance as well.

The potential scope of future AFAs needs to be addressed in a programmatic EIS

The potential to include similarly worded AFAs (i.e. to use the CSKT AFA as a "template" for all other AFAs on national wildlife refuges) as the basis for negotiations on all 16 National Wildlife Refuges in Alaska, including the Arctic National Wildlife Refuge, and another 15

National Wildlife Refuges outside of Alaska (thereby encompassing about 80% of the uplands portion of the Refuge System), has not been addressed by the FWS either in policy or an Environmental Impact Statement. Many of these refuges play key roles in meeting treaty obligations of the United States with countries around the world (each Alaska refuge has a specific statutory purpose: "to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats.") The Migratory Bird Treaty Acts alone involve Japan, Russia, Canada, and Mexico. Other treaties involve wetlands of international importance, endangered species (including plants, mollusks, invertebrates, marine mammals, wilderness, and more) and relationships with nations around the world. Only the Federal Government has Constitutional authority to be involved with treaty commitments and obligations. Thus, when units having migratory birds, endangered species, wetlands of special importance, polar bears, and other natural resources subject to treaty commitments, may be managed in a manner divergent with the policies and practices developed over decades and integrated with other management arrangements great care must be taken to assure that the inherently federal functions, and the "critical functions" recently defined and described by the Office of Management and Budget in Policy Letter 11-01, are carefully delineated and understood. NEPA analyses, including thoroughly presented cumulative impact analyses and discussion, in a fully developed programmatic EIS is the most appropriate way to present these complex issues and analyses to the interested public, and for the FWS administrators to use in future decision making.

Provisions in the draft AFA would deviate from the traditional refuge manager decision-making arrangement at the field level, by creating a 4 person committee to "collaborate" (*i.e.* to develop and use consensus decision-making) in writing the annual work plan for the refuge, setting work priorities, preparing periodic status reports, and other reports. Even then, the CSKT AFA would permit the Tribes to initiate an elaborate, and burdensome, appeals process that would take considerable time and effort simply because they didn't agree with a decision by the Refuge Manager. In all normal contracting, the contracting party has the final say in how the job is to be done. Why should an AFA be different?

Lacking a programmatic EIS to describe, analyze, and evaluate the environmental impact of a much larger group of refuges being operated under AFAs similar to the template being developed by the CSKT, any refuge AFA should be subjected to an EIS of its own.

General disclosure and FOIA accountability require greater FWS consideration and action

Any time the government enters into a process that will significantly change the management or administration of a program it is incumbent upon that agency to be open and transparent with the American people regarding the proposed changes. The NEPA outlines such a process requiring public disclosure and input, plus a thorough analysis of all the alternatives. This is as much an ethical issue as it is a legal one.

The development and implementation of the AFA, as it currently stands, would be a violation of this need for transparency with the American public. The American people are in the end the owners of these lands that have been entrusted to the FWS and the NWRS to manage for the benefit of the American people. The use of an AFA is a significant change in the administration

and management of the lands encompassing NBRC and requires a complete disclosure and thorough analysis as found in the development of an EIS and as part of the CCP process. The manner in which this AFA proposal is managed will be precedent setting for the FWS and other Federal land management agencies and it is critical that it be done in the most transparent way.

Attorney General Eric Holder, in a March 19, 2009 memorandum on the topic of FOIA compliance, stated:

> "First, an agency should not withhold information simply because it may do so legally. I strongly encourage agencies to make discretionary disclosures of information. An agency should not withhold records merely because it can demonstrate, as a technical matter that the records fall within the scope of a FOIA exemption.
> "Second, whenever an agency determines that it cannot make full disclosure of a requested record, it must consider whether it can make partial disclosure. Agencies should always be mindful that the FOIA requires them to take reasonable steps to segregate and release nonexempt information. Even if some parts of a record must be withheld, other parts either may not be covered by statutory exemption, or may be covered only in a technical sense unrelated to the actual impact disclosure."

The FWS is certainly aware of the full range of information and desired details of matters on National Wildlife Refuges normally sought by informally or requested under FOIA. As the AFA is now written, it is apparent that the CSKT will readily exercise its perceived exemption to FOIA requests as regards all records maintained solely by CSKT under the provisions of the agreement. The Alliance believes that the FWS has an affirmative responsibility to the public to take whatever steps necessary to assure that they have at hand all information on the operation and management of the NBRC that would normally be available under the FOIA on any unit of the NWRS. If that requires FWS to maintain a greater detail of records than outlined in the AFA, then the AFA should be modified. If this responsibility requires FWS to maintain additional federal employees on the Complex in order to collect and file such records, then that is what should be done. As discussed below, the guidance provided by the Office of Management and Budget (OMB) on all contracting by the Federal Government, and the identification and protection by federal agencies of the ability to achieve their specific missions, and insure that all Inherently Governmental (or Inherently Federal) functions are performed and maintained solely by properly trained and experienced federal employees. The FOIA is a responsibility placed upon federal agencies that is so closely associated with Inherently Federal functions that it cannot be withheld or avoided by agencies under the guise of an AFA.

Costs should be revealed to the public and compared among alternatives

The draft AFA refers to appendices containing information on the amount of funds to be transferred to CSKT but none are present. Previous AFAs also lacks disclosure of all costs to the refuge and the FWS deriving from negotiating and installing an AFA on the Bison Range Complex, leaving the public without vital information by which to evaluate the type of participation proposed by the CSKT. Such information should be developed and disclosed by the FWS in its NEPA documents, presenting all costs associated with AFA development and operations at the complex, and doing similar analyses for each of the proposed alternatives, including those recommended in these comments.

Among other aspects to be discussed in a chapter on costs would be the ability of the FWS to identify and obtain return of necessary funding in the event that CSKT recedes parts of its responsibilities to the refuge or in the event that FWS determines it to be necessary that they reassume control of parts of the responsibilities assigned to CSKT under the AFA. The proposal is quite sketchy in its treatment of the respective responsibilities of the two parties to maintain expenditure records that would permit accurate identification of the funds spent on each project undertaken by CSKT, the degree of completion of the planned work in that regard, and the residual funds available to complete the projects, if any remain.
Another discussion in the Costs section of the NEPA document prepared by FWS should address the proposal in Sec. 11. C 2 indicating that CSKT intends to retain any funds not expended by the end of the Fiscal Year, and even consider establishing a "carry-over" fund to assure its capability to cover payroll and other costs should the government not have an appropriation at the very beginning of the new Fiscal Year. Such a practice would be precedential and holds great potential for CSKT to assume inherent federal responsibilities (*i.e.* exercising discretion in applying Federal Government authority or making value judgments regarding monetary transactions under the annual appropriation made by Congress to the Complex. Generally, money not expended by the end of the Fiscal Year must be returned to the Treasury and, unless specifically provided in the law granting appropriations to the FWS, not retained in a non-government account. In order for CSKT to set aside funds for the type of account described in this section of the draft AFA, it would have to exercise independent judgment regarding priorities established by the Refuge Manager, an either utilize alternative approaches to doing assigned tasks, or even decide not to perform the task at all in order to have money left at the end of the Fiscal Year. In addition, except in the unlikely event that the Congress intends to "shut down" the federal government, they have a practice of passing a "Continuing Resolution" that enables the agencies to obligate funds to cover basic operating costs, at the same approximate rate of expenditure that they established in the previous Fiscal Year. Thus, the event cited by CSKT in the draft AFA is highly unlikely to occur. Still, this proposal clearly deserves close scrutiny by the FWS for its potential to have CSKT assuming inherently federal functions.

Dispute resolution process is burdensome, and likely intrudes improperly on the decision authority that must remain with the Refuge Manager

The Blue Goose Alliance has raised concerns about the elaborate, but inefficient and time-consuming resolution process that can be invoked by CSKT at any time, and for any Refuge Manager decision with which it doesn't agree. In spite of CSKT claims to the contrary, the process they have designed effectively removes Refuge Manager authority and implants an ever-present "sword of Damocles," hanging precariously by a single hair, with potential to affect every decision made. We continue to believe the entire section of the AFA containing dispute resolution should be excised from the document.

So long as it is in the draft document to be analyzed by FWS in the NEPA documents, it deserves to be fully discussed and its ramifications to all decisions rendered by the Refuge Manager and the potential environmental consequences of the process being invoked and causing lengthy delay and uncertainty to all refuge and CSKT staff, should be set forth.

Inherently Federal / Critical Functions and positions need to be identified by FWS

FWS needs to explicitly name the inherently federal functions performed on the NBRC and list the positions considered essential (*i.e.* "critical") in performance of those tasks. In keeping with the guidance from the OMB Policy Letter 11-01, the FWS should identify the "Critical Functions" that are so closely associated with the inherently federal functions as to generally require they be performed by fully trained and experienced federal employees, supervised within the normal federal chain of command. It is a FWS responsibility to make these determinations rather than leave it to CSKT to make such judgments.

Specifically, the OMB Office of Federal Procurement Policy, in their notice publishing the final policy letter (Policy Letter 11-01) on September 12, 2011 stated:

> "A function is not appropriately performed by a contractor where the contractor's involvement is or would be so extensive, or the contractor's work product so close to a final agency product, as to effectively preempt the Federal officials' decision-making process, discretion or authority. Such circumstances may be avoided by:
>
> "(i) carefully delineating in the statement of work the contractor's responsibilities and types of decisions expected to be made in carrying out these responsibilities; and
>
> "(ii) having Federal employees oversee and, as necessary, give final approval of contractor conduct and decisions.
>
> "This requires that a sufficient number of in-house personnel with the appropriate training and expertise be available and remain available through the course of the contract to make independent and informed evaluations of the contractor's work, approve or disapprove that work, perform all inherently governmental functions, and preclude the transfer of inherently governmental responsibilities to the contractor. Agencies should consider whether time constraints, the operational environment, or other conditions may limit their ability to effectively manage the contractor's actions or inappropriately restrict their final approval authority. If this is the case, government performance may be the only way that Federal officials can retain control of their inherently governmental responsibilities. … Agencies should also consider if the level of management and oversight that would be needed to retain government control of the operation and preclude the transfer of inherently governmental responsibilities to the contractor would result in unauthorized personal services. In such cases, the function should not be contracted out.
>
> "If the agency determines that contractor performance of a function closely associated with an inherently governmental function is appropriate, the agency shall—
> (1) limit or guide a contractor's exercise of discretion and retain control of government operations by both—
>
> (i) establishing in the contract specified ranges of acceptable decisions and/or conduct; and

(ii) establishing in advance a process for subjecting the contractor's discretionary decisions and conduct to meaningful oversight and, whenever necessary, final approval by an agency official;

(2) assign a sufficient number of qualified government employees, with expertise to administer or perform the work, to give special management attention to the contractor's activities, in particular, to ensure that they do not expand to include inherently governmental functions, are not performed in ways not contemplated by the contract so as to become inherently governmental, do not undermine the integrity of the government's decision making process as provided by subsections 5–1(a)(1)(ii)(b) and (c), and do not interfere with Federal employees' performance of the closely associated inherently governmental functions....

(3) ensure that the level of oversight and management that would be needed to retain government control of contractor performance and preclude the transfer of inherently governmental responsibilities to the contractor would not result in unauthorized personal services as provided by FAR 37.104...."

The Blue Goose Alliance believes that the CSKT's involvement as proposed in the draft AFA is so extensive, as to effectively preempt Federal officials' decision-making processes. The number of federal employees available to oversee the project is insufficient to assure that CSKT work doesn't intrude on Inherently Federal functions and responsibilities. Steps need to be taken to increase the oversight capabilities in all areas of the NBRC operations and management. Further, the NEPA document to be prepared by the FWS must explicitly set forth the inherently federal positions and functions as well as the critical positions and functions. If critical positions or functions are to be performed by CSKT under the AFA, the NEPA document must analyze the effects of that delegation of duties and the costs to the NBRC and the public.

The Alliance appreciates the opportunity to provide scoping recommendations for the NEPA document to be prepared by FWS and to comment on the draft AFA. We intend to continue our long-standing involvement in this matter and will certainly be prepared to comment on any further NEPA compliance by FWS under the Judge's order of 2010 (a matter in which we participated as a major Plaintiff).

Sincerely,



Ronald Fowler, President
Blue Goose Alliance
6512 Williamsburg Blvd.
Arlington, VA 22213-1329

From:	"Brian Upton" <brianu@cskt.org>
To:	Dean_Rundle@fws.gov; Jeff_King@fws.gov
Cc:	"Rich Janssen"; tomm@cskt.org
Subject:	IDC
Date:	Wednesday, September 07, 2011 6:25:51 PM
Attachments:	IDC - statute and regulations.pdf

Jeff and Dean,

Per Jeff's request, attached are copies of: 1) 25 U.S.C. § 458cc(g)(3), which says the Secretary shall provide contract support costs; and 2) 25 C.F.R. §§ 1000.138-142, which address indirect cost rates. Jeff, 25 U.S.C. § 458cc(g)(3) is the statutory authority (directive) for the Secretary to pay contract support costs, which include indirect costs, in Self-Governance AFA's, and 25 C.F.R. § 1000.138 is the federal regulation addressing how indirect cost rates are determined (referencing the OIG rate). - IDC - statute and regulations.pdf

(g) **Payment**

(1) At the request of the governing body of the tribe and under the terms of an agreement entered into under this section, the Secretary shall provide funding to the tribe to carry out the agreement.

(2) The funding agreements authorized by this part and title III of this Act shall provide for advance payments to the tribes in the form of annual or semi-annual installments at the discretion of the tribes.

(3) Subject to paragraph (4) of this subsection and paragraphs (1) through (3) of subsection (b) of this section, the Secretary shall provide funds to the tribe under an agreement under this part for programs, services, functions, and activities, or portions thereof, in an amount equal to the amount that the tribe would have been eligible to receive under contracts and grants under this subchapter including amounts for direct program and contract support costs and, in addition, any funds that are specifically or functionally related to the provision by the Secretary of services and benefits to the tribe or its members, without regard to the organization level within the Department where such functions are carried out.

(4) Funds for trust services to individual Indians shall be available under an agreement entered into under this section only to the extent that the same services that would have been provided by the Secretary are provided to individual Indians by the tribe.

§ 1000.138 How are indirect cost rates determined?

The Department's Office of the Inspector General (OIG) or other cognizant Federal agency and the Tribe/Consortium negotiate indirect cost rates. These rates are based on the provisions of the Office of Management and Budget (OMB) Circular A–87 or other applicable OMB cost circular and the provisions of Title I of Pub. L. 93–638 (See § 1000.142). These rates are used generally by all Federal agencies for contracts and grants with the Tribe/Consortium, including self-governance agreements.

§ 1000.139 Will the established indirect cost rates always apply to new AFAs?

No, the established indirect cost rates will not always apply to new AFAs.

(a) A Tribe's/Consortium's existing indirect cost rate should be reviewed and renegotiated with the inspector general or other cognizant agency if:

(1) Using the previously negotiated rate would include the recovery of indirect costs that are not reasonable, allocable, or allowable to the relevant program; or

(2) The previously negotiated rate would result in an under-recovery by the Tribe/Consortium.

(b) If a Tribe/Consortium has a fixed amount indirect cost agreement under OMB Circular A–87, then:

(1) Renegotiation is not required and the duration of the fixed amount agreement will be that provided for in the fixed amount agreement; or

(2) The Tribe/Consortium and bureau may negotiate an indirect cost amount or rate for use only in that AFA without the involvement of the inspector general or other cognizant agency.

§ 1000.140 How does the Secretary determine the amount of indirect contract support costs?

The Secretary determines the amount of indirect contract support costs by:

(a) Applying the negotiated indirect cost rate to the appropriate direct cost base;

(b) Using the provisional rate; or

(c) Negotiating the amount of indirect contract support.

§ 1000.141 Is there a predetermined cap or limit on indirect cost rates or a fixed formula for calculating indirect cost rates?

No, indirect cost rates vary from Tribe to Tribe. The Secretary should refer to the appropriate negotiated indirect cost rates for individual Tribes, that apply government-wide. Although this cost rate is not capped, the amount of funds available for inclusion is capped at the level available under the relevant appropriation.

§ 1000.142 Instead of the negotiated indirect cost rate, is it possible to establish a fixed amount or another negotiated rate for indirect costs where funds are limited?

Yes, OMB Circular A–87 encourages agencies to test fee-for-service alternatives. If the parties agree to a fixed price, fee-for-service agreement, then they must use OMB Circular A–87 as a guide in determining the appropriate price (OMB circulars are available at *http://www.whitehouse.gov/omb/* or see 5 CFR 1310.3). Where limited appropriated funds are available, negotiating the fixed cost option or another rate may facilitate reaching an agreement with that Tribe/Consortium.

Other Terms and Conditions

§ 1000.143 May the bureaus negotiate terms to be included in an AFA for non-Indian programs?

Yes, as provided for by section 403(b)(2) and 403(c) and as necessary to meet program mandates.

Reallocation, Duration, and Amendments

§ 1000.144 Can a Tribe reallocate funds for a non-BIA non-Indian program?

Yes, section 403(b) permits such reallocation upon joint agreement of the Secretary and the Tribe/Consortium.

§ 1000.145 Do Tribes/Consortia need Secretarial approval to reallocate funds between Title-I eligible programs that the Tribe/Consortium administers under a non-BIA AFA?

No, unless otherwise required by law, the Secretary does not have to approve

From: "Brian Upton" <brianu@cskt.org>
To: Dean_Rundle@fws.gov; Jeff_King@fws.gov
Cc: tomm@cskt.org
Subject: letter to Director
Date: Tuesday, September 27, 2011 10:51:34 AM

Dean/Jeff,
As mentioned during our call, the attached letter went out to Mr. Ashe this morning by fax and will be mailed today to all parties on the cc list.[attachment "Ashe letter 9-19-11.pdf" deleted by Jeff King/R6/FWS/DOI]

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
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A People of Vision

A Confederation of the Salish,
Pend d' Oreilles
and Kootenai Tribes

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Jim Malatare – Treasurer
Michel Kenmille
Carole Lankford
Reuben A. Mathias
Charles L. Morigeau
Terry L. Pitts
James Steele Jr.

September 19, 2011

Mr. Dan Ashe, Director
U.S. Fish & Wildlife Service
U.S. Department of the Interior
1849 C St., NW
Washington, D.C. 20240

Via facsimile no.: (202) 208-6817 *original to follow via express delivery*

Re: National Bison Range Complex

Dear Director Ashe,

On behalf of the Confederated Salish and Kootenai Tribes (CSKT), I would like to congratulate you on your confirmation as Director of the U.S. Fish & Wildlife Service. We look forward to continuing to work with you in your new capacity.

Last year, Tribal Council Member James Steele, Jr. reported to our Tribal Council that you had attended meetings, in which he had participated, regarding the National Bison Range Complex (NBRC), including a "DOI Dialogue" on August 31, 2010 sponsored by the Office of Collaborative Action and Dispute Resolution. I understand that you have been supportive of the Tribal Self-Governance partnership we have had with the Service at the NBRC. We appreciate your support, and it is with respect to this partnership that I am writing you.

I have seen the July 25, 2011 letter sent to you by Blue Goose Alliance (BGA) President Ron Fowler. The letter discusses BGA's position with respect to our Annual Funding Agreements (AFA's) at the NBRC. I would like to respond for the record.

Two of the material misrepresentations in Mr. Fowler's letter can be quickly corrected. The first is his allegation that CSKT has stated an intent to have the lands of the National Bison Range "revert" to the Tribes. As I believe you know, this has never been CSKT's intent with respect to an NBRC AFA, nor would such an action be possible within the rubric of an AFA. The second misrepresentation involves his statement that "[a]ny entity, whether a Native Tribe, State Game Department, another Federal agency, or a private organization is not permitted by law to assume management responsibilities of a National Wildlife Refuge. . . ." This statement ignores the

plain language of the National Wildlife Refuge System Administration Act (NWRSAA), as amended, which authorizes the Secretary to "enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." 16 U.S.C. § 668dd(b)(4). It also ignores the authorization under the Tribal Self-Governance Act (TSGA) for similar Tribal cooperation. Under the NBRC agreements, the Service retains overall management and administration of the NBRC, with CSKT performing discrete program duties under the direction of the FWS Refuge Manager. This comports with both the NWRSAA and the TSGA.

Mr. Fowler's letter protests what he calls "outsourcing" of refuge management and asserts that the existence of an AFA "immediately changes the operational profile of the refuges involved placing them out of compliance with the NWRSAA [*sic*]." Federal partnerships with State or Tribal governments hardly amount to "outsourcing", which is typically equated with private-sector contracting in which profit motives are involved.

Taken as a whole, the letter makes apparent that BGA is not only philosophically opposed to any Tribal Self-Governance involvement at a National Wildlife Refuge, but it is apparently also opposed to any similar State partnerships authorized under the NWRSAA. This xenophobic approach to Refuge management runs counter to not only the NWRSAA, but also to former President Clinton's Executive Order No. 12996, which declares that "[c]onservation partnerships with other Federal agencies, state agencies, Tribes, organizations, industry, and the general public can make significant contributions to the growth and management of the Refuge System." (*emphasis added*). BGA's position is also at odds with FWS' Native American Policy, which states that the Service is committed to entering into contracts or agreements with Tribes for administration of fish and wildlife conservation programs under the terms of the Indian Self-Determination and Education Assistance Act.

The BGA letter asserts that an alleged lack of public involvement became the primary basis for last year's federal district court decision rescinding the FY 2009-11 NBRC AFA. As a preliminary matter, the court made clear that it was rescinding the agreement solely because it held that FWS had not adequately justified its invocation of a categorical exclusion for the AFA under the National Environmental Policy Act. The court made no finding regarding a lack of public involvement, nor did the court make any findings about the AFA itself. More to the point, I believe that you had been involved with some of the initial public meetings regarding an NBRC AFA back in the mid-1990's, and you are likely familiar with the extensive history of public involvement since then. Multiple public meetings were held in 2003 and 2004 prior to the first AFA being executed, and a voluntary public comment period for that first AFA (for which notice was printed in the Federal Register) was extended by agreement between FWS and CSKT. These were in addition to statutorily-mandated ninety-day congressional review periods for both of our AFA's, during which additional public comment opportunities were available.

In regards to Mr. Fowler's stated desire to return NBRC management to "reasonable normality, where wildlife and habitats again take precedence", we whole-heartedly agree. It is an unfortunate fact that the years of unfounded allegations and hostility towards Tribal participation at the NBRC are the reason such "normality" has been scarce in the past. Despite Mr. Fowler's efforts to characterize it differently, prior to the court's rescindment of our last AFA on procedural grounds, the Federal-Tribal partnership was performing very well. This is evidenced not only by the periodic status reports from the NBRC, but also by the report issued by the Interior Office of Inspector General in March of this year (Report No. NM-EV-FWS-0001-2010).

We look forward to returning to this productive partnership. In the meantime, we appreciate this opportunity to respond to the recent BGA letter and we appreciate your, and the Service's, ongoing support.

Sincerely,

E.T. "Bud" Moran, Chairman
Tribal Council

cc: Steve Doherty
Larry Echo-Hawk
Del Laverdure
Rachel Jacobson
Rowan Gould
Greg Siekaniec
Stephen Guertin
Rick Coleman
Dean Rundle
Jeff King
Patrick Durham
Sharee Freeman

From: Dean Rundle <Dean_Rundle@fws.gov>
To: tomm@cskt.org; richj@cskt.org; brianu@cskt.org
Cc: Jeff_King@fws.gov
Subject: Fw: table of penalties
Date: Wednesday, June 22, 2011 1:51:07 PM
Attachments: 370 DM 752.pdf

Tom/Rich/Brian: Attached below is the table of penalties for DOI, as promised when we met in Mission last week. This chapter from the Departmental Manual is actually the entire chapter on Discipline and Adverse Actions. The actual Table of Offenses and Penalties is at Appendix B, starting on page 19.

Dean----- Forwarded by Dean Rundle/R6/FWS/DOI on 06/22/2011 01:48 PM -----

Carla Goltz/R6/FWS/DOI06/22/2011 12:58 PM

To Dean Rundle/R6/FWS/DOI@FWS
cc
Subject table of penalties

Carla M. Goltz

Assistant Human Resources Officer

303-236-7912 (phone)

303-236-5775 (fax)

NOTE: This email, including all attachments, is intended for the use of the individual or entity to which it is addressed. It may contain information that is privileged, confidential, or otherwise protected by applicable law. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of this email or its contents is strictly prohibited. If you receive this email in error, please notify the sender immediately and destroy all copies.

Department of the Interior
Departmental Manual

Effective Date: 12/22/06
Series: Personnel Management
Part 370: Departmental Personnel Program
Chapter 752: Discipline and Adverse Actions

Originating Office: Office of Human Resources

370 DM 752

1.1 **Purpose.** This chapter establishes the policy, procedures and authority/responsibility for administering employee discipline within the Department of the Interior (Department), and for taking appropriate corrective action for disciplinary or certain non-disciplinary reasons, when it is determined that such actions will promote the efficiency of the service. Requirements stated in this chapter are consistent with law, regulations and other Department policy applicable at the time of its issuance. Actions taken through the application of this chapter must comply with the requirements of pertinent laws, rules and regulations, as well as the lawful provisions of applicable negotiated agreements for employees in exclusive bargaining units.

1.2 **Authority.** Chapter 75 of Title 5, United States Code and Part 752 of Title 5, Code of Federal Regulations.

1.3 **Coverage.**

A. This chapter applies to all bureaus and offices of the Department. Bureaus/offices will not issue supplemental disciplinary policy, except where otherwise prescribed in this chapter. Employees covered by a collective bargaining agreement may be subject to additional procedures which may supersede/supplement those described in this chapter. Bureaus/offices may issue supplemental implementing guidance as needed.

B. The disciplinary/adverse action procedures described in this chapter do not apply to an Administrative Law Judge (ALJ), whose discipline is governed by separate statutory requirements. Additionally, only the adverse action procedures described in 1.7C of this chapter are applicable to Department appointees in the Senior Executive Service (SES), although SES employees (and ALJs) may be counseled/reprimanded for engaging in misconduct. Management must consult with the servicing Human Resources Office for guidance regarding employee/action coverage.

C. Employees

(1) The following employees are covered by the provisions of this chapter:

(a) An employee in the competitive service who has completed a probationary or trial period, or who is serving in an appointment that requires no probationary or trial period and who has completed one year of current continuous employment in the same or similar positions under other than a temporary appointment limited to one year or less;

(b) A preference eligible employee in the excepted service who has completed one year of current continuous employment in the same or similar positions;

(c) A non-preference eligible employee in the excepted service who has completed two years of current continuous employment in the same or similar positions under other than a temporary appointment limited to two years or less;

(d) An employee with competitive status who occupies a Schedule B position; and

(e) An employee who was in the competitive service at the time his/her position was first listed as part of the excepted service and still occupies that position.

(2) The following employees are excluded from coverage:

(a) An individual appointed by the President;

(b) An employee whose position has been determined to be of a confidential, policy-determining, policy-making, or policy-advocating character by the President, the agency head, or the Office of Personnel Management (such that the position is excepted from the competitive service – "Schedule C");

(c) A reemployed annuitant;

(d) An employee whose appointment is made with the advice and consent of the Senate;

(e) A non-preference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service;

(f) Administrative Law Judges;

(g) An employee in the competitive service serving a probationary or trial period; and

(h) Individuals who are otherwise excluded by the statutory provisions of Title 5, United States Code.

D. Actions

(1) The following actions are covered by this chapter when taken with respect to a covered employee:

(a) Written Reprimands;

(b) Suspensions;

(c) Removals;

(d) Reductions in grade;

(e) Reductions in pay; and

(f) Furloughs without pay for 30 days or less.

(2) The following actions are not covered by this chapter:

(a) A reduction-in-force action;

(b) A suspension or removal in the interest of national security;

(c) An action taken against an Administrative Law Judge;

(d) The reduction in grade of a supervisor or manager who fails to successfully complete a new probationary period as a supervisor or manager, if such reduction is to the grade held immediately before becoming a supervisor or manager;

(e) An action which entitles an employee to grade retention, and an action to terminate this entitlement;

(f) A voluntary action initiated by the employee;

(g) Termination of appointment on the expiration date specified as a basic condition of employment at the time the appointment was made;

(h) An action which terminates a temporary or term promotion and returns the employee to the position from which temporarily promoted, or to a different position of equivalent grade and pay, if the Department informed the employee that it was to be of limited duration;

(i) Cancellation of a promotion to a position not classified prior to the promotion;

(j) Reduction of an employee's rate of pay from a rate which is contrary to a rate allowed or permitted by law or regulation;

(k) Placement of an employee serving on an intermittent or seasonal basis in a temporary non-duty, non-pay status in accordance with conditions established at the time of appointment;

(l) An action imposed by the Merit Systems Protection Board;

(m) A reduction in grade or removal based solely on unacceptable performance and taken under 5 U.S.C. 4303; and

(n) An action taken or directed by the Office of Personnel Management based on a suitability determination.

(o) An action otherwise not covered by the statutory provisions of Title 5, United States Code, and the regulatory provisions of Title 5, Code of Federal Regulations.

1.4 **Definitions.**

A. Administrative Leave. An excused absence from duty without charge to leave or loss of pay.

B. Adverse Action. For purposes of this chapter**,** a personnel action taken by management, appealable to the Merit Systems Protection Board (MSPB), to effect an employee's removal, suspension for more than 14 days, furlough without pay for 30 days or less, or reduction in grade or pay.

C. Day. A calendar day (except where otherwise specified).

D. Deciding Official. A Department supervisor or manager who makes a decision on a proposed adverse action or disciplinary action.

E. Disciplinary Action. For purposes of this chapter, an action taken by management, not appealable to the MSPB (i.e., written reprimand; suspension for 14 days or less) to address employee misconduct.

F. Furlough. The placement of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons.

G. Grade. A level of classification under a position classification system.

H. Indefinite Suspension. The placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action.

I. Pay. The rate of basic pay fixed by law or administrative action for the position held by an employee.

J. Preponderance of the Evidence. That degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as sufficient to find that a contested fact is more likely to be true than untrue.

K. Proposing Official. A Department supervisor or manager who proposes an adverse or disciplinary action.

L. Removal. The involuntary separation of an employee from employment with the Department and Federal service, except when effected due to a reduction-in-force or the expiration of an appointment.

M. Suspension. The involuntary placement of an employee in a temporary non-duty, non-pay status for disciplinary reasons.

1.5 **Responsibilities**.

A. Heads of Bureaus and Offices are Responsible for:

(1) Implementing, supporting and providing oversight for the effective management of employee conduct and discipline;

(2) Communicating information to the workforce regarding conduct requirements and disciplinary parameters;

(3) Delegating appropriate authority, establishing roles/responsibilities for policy implementation within the bureau/office, and ensuring that applicable training is provided for supervisors to properly exercise their disciplinary responsibilities;

(4) Ensuring adherence to the policy and procedural requirements of this chapter, as well as the applicable provisions of established collective bargaining agreements; and

(5) Providing and implementing bureau/office-wide guidance and instructions other than those outlined in this chapter, as appropriate.

B. Director, Office of Human Resources is Responsible for:

(1) Developing and issuing Departmental policy and guidance regarding employee conduct and discipline;

(2) Monitoring and evaluating the administration of discipline throughout the Department, and revising the disciplinary policy and procedures as appropriate;

(3) Providing advice and assistance to bureaus/offices on the provisions of this chapter (as well as related laws, rules and regulations) and on managing employee conduct and discipline;

(4) Establishing and implementing reporting requirements for actions taken under this chapter, as well as complying with reporting requirements established by OPM; and

(5) Establishing overall parameters for Department-wide conduct/discipline training and coordinating the availability of related training opportunities.

C. Servicing Human Resources Offices (HRO) are Responsible for:

(1) Advising supervisors on employee conduct issues and disciplinary options (including procedural/regulatory parameters);

(2) Drafting or reviewing all disciplinary notices prior to issuance and applicable case files, to ensure reasonableness of penalty and statutory/regulatory compliance;

(3) Advising employees and supervisors of their procedural rights and responsibilities relative to this chapter (and applicable laws, regulations and negotiated agreements);

(4) Consulting for legal sufficiency with the Office of the Solicitor on adverse action proposals and decisions, and providing technical assistance to the Office of the Solicitor on actions taken under this chapter;

(5) Maintaining disciplinary and adverse action files and an information system for tracking and periodically reporting the actions effected; and

(6) Providing operational training support to ensure the workforce is sufficiently aware of the provisions of this chapter.

D. Office of the Solicitor is Responsible for:

(1) Providing reviews for legal sufficiency and overall appropriateness of adverse actions being considered, proposed, or taken under this chapter;

(2) Representing the Department during settlement negotiations, MSPB appeals, arbitrations and other activities related to the administrative and federal personnel litigation process; in accordance with established Departmental policy, coordinating settlements of actions taken under this chapter which impose a financial obligation on the Department**;** and

(3) Reviewing and providing input on conduct/discipline training and related instructional guidance for Department supervisors and employees.

E. Supervisors are Responsible for:

(1) Establishing and maintaining a safe, productive, supportive and well-ordered work environment;

(2) Providing a work environment free of illegal discrimination;

(3) Advising employees regarding assigned duties and conduct expectations and observing employee performance and conduct to ensure compliance with the standards of ethical conduct and other established work requirements;

(4) Promptly investigating and documenting circumstances related to incidents of employee misconduct;

(5) Consulting with the servicing HRO regarding employee misconduct and initiating appropriate, timely and relatively consistent corrective action as warranted; and

(6) Recognizing and complying with the requirements of this chapter and the applicable provisions of established collective bargaining agreements.

F. Employees are Responsible for:

(1) Having a familiarity with Federal and Departmental standards of ethical conduct, complying with all established conduct and performance requirements, and requesting clarification if necessary;

(2) Reporting incidents of waste, fraud, abuse, corruption and other misconduct to appropriate authorities; and

(3) Cooperating in official investigations and furnishing testimony.

1.6 **Policy.**

A. General. Employees of the Department are expected to demonstrate high standards of integrity, both on and off the job, abiding by the Department's conduct regulations (43 CFR Part 20) and other Federal and Departmental laws, rules and regulations. When established standards of conduct are violated, or the rules of the workplace are disregarded, corrective action is warranted to motivate employees to conform to acceptable behavioral standards and prevent prohibited and/or unsafe activities. Such corrective actions, when taken under this chapter, should comport with applicable laws and regulations, should be administered with relative consistency and should be taken for such cause as will promote the efficiency of the service.

B. Standard for Taking Action. Management must be able to show that the actions taken under this chapter promote the efficiency of the service. To demonstrate this, the written notices of proposal and decision must clearly specify the charge(s) or reason(s) upon which the action is based, be able to prove the specific basis for its action by a preponderance of the evidence, be able to show the connection ("nexus") between the charge(s) and promotion of the efficiency of the service, and be able to establish the reasonableness of the action taken under the

circumstances. In taking a corrective action against an appointee in the SES, management's options are limited to a written reprimand or an adverse action covered by this chapter (i.e., suspension for more than 14 days; removal from the Federal service); management may take an adverse action against an SES employee only for misconduct, neglect of duty, malfeasance, or failure to accept a directed reassignment or to accompany a position in a transfer of function.

C. Use and Choice of Discipline. Discipline should be imposed to correct improper employee conduct and to maintain order, morale and workplace safety throughout the workforce. After determining that misconduct occurred and that corrective action is warranted, discipline should be initiated as soon as practicable after the misconduct which prompted it and effected on a progressive and equitable basis as much as possible. Progressive discipline provides that in dealing with an instance of employee misconduct, the responsible management official (often the first-level supervisor) should select the minimum disciplinary/adverse action most likely to correct the specific behavioral problem, with penalties selected at an escalating level for subsequent (but not necessarily identical) offenses, when appropriate. Management officials must exercise reasonable judgment and consider all relevant factors, both mitigating and aggravating (as reflected in the guidance found at Appendix A), in determining the most appropriate corrective action for each situation. As a guide for considering disciplinary options, the Department's *Table of Offenses and Penalties* is included as Appendix B to this chapter. This *Table* does not mandate the use of specific penalties in most disciplinary situations. Supervisors/managers retain full authority, except in limited circumstances (i.e., discipline prescribed by statute or the MSPB), to set penalties as they deem appropriate, based on the particular circumstances and specifications of the offense**.** Consultation and close coordination with the servicing HRO should ensure that a particular penalty is proportional to the offense and employees who commit similar offenses are treated with relative consistency.

D. Delegations of Authority. Each bureau will determine the level of supervisory authority required for taking actions covered by this chapter. For actions that require the issuance of a proposal and a decision (e.g., suspensions; removals; reductions in grade/pay), ordinarily the same supervisory/management official should not serve as both the proposing and deciding official on the action. Generally, the decision on a proposed action should be made by a management official at a higher organizational level than the proposing official; if there is no higher-level official within the Bureau/Office or if it is not feasible to use the higher-level official, another management official within the Department may be delegated the decision-making authority (in such exceptional situations, determinations regarding the delegation of decision-making authority must be approved by the Bureau/Office head, with the concurrence of the Director, OHR). Bureau officials, managers and supervisors who are delegated authority for implementing the provisions of this chapter and managing the workforce are accountable for complying with and properly administering all controlling laws, rules, policies, regulations and negotiated agreements pertaining to employee conduct and discipline.

1.7 **Procedures.**

A. General. Taking a corrective action against an employee is appropriate only when the employee has engaged in identifiable misconduct adversely affecting the efficiency of the service. Before initiating such action, management should conduct a thorough inquiry into any

apparent offense (collecting information to the greatest extent practicable directly from the subject employee) to ensure the objective consideration of all relevant facts and aspects of the situation. Ordinarily, this inquiry will be conducted by the appropriate line supervisor, with guidance from the servicing HRO. However**,** certain situations (particularly those involving possible criminal activity) warrant an investigation by the Office of Inspector General and/or internal Bureau law enforcement/criminal investigation offices. Once it is established that an employee engaged in misconduct necessitating corrective action, a supervisor or other management official (using the guidance at Appendices A and B, and in consultation with the servicing HRO) must determine the action/penalty required to deter the recurrence of the unacceptable behavior.

Minor misconduct may be corrected if the supervisor informally counsels the employee about the problem promptly after the first instance. The supervisor also may rely on notices of warning/admonishment to convince the employee to change the undesirable behavior. These actions are less severe than the disciplinary and adverse actions described below, are less subject to review by third parties, and do not become part of the employee's permanent official employment record. Notices of warning/admonishment document the employee's misconduct, place the employee on notice regarding the behavior expected by management, and advise the employee that more serious corrective action (e.g., reprimand; suspension; removal) will result if the unacceptable behavior is not corrected. The use of such corrective actions does not constitute a "prior penalty" for disciplinary purposes, as alluded to in Appendix B, to enhance the severity of penalty for a subsequent offense; however, such corrective actions may be viewed as "prior notice" (in consideration of factor 9, Appendix A).

B. Disciplinary Action.

(1) Written Reprimand

(a) This is a written notice issued to an employee by an authorized management official (usually the immediate or higher-level supervisor) when the employee's conduct warrants a corrective action more serious than a counseling or warning but without involving a loss of pay. Unlike a notice of counseling, warning or admonishment, a written reprimand is a formal penalty for disciplinary purposes (under Appendix B).

(b) The servicing HRO will assist management in the preparation and issuance of the reprimand, which should specify: the reason(s) prompting the action; the period of time a copy of the reprimand will be maintained in the employee's Official Personnel Folder (OPF); for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee's right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

(c) A copy of the reprimand will be filed on the temporary side of the employee's OPF for a period not-to-exceed two years or where applicable, the time specified by an established negotiated agreement; the time period will be appropriately recorded and tracked by the servicing HRO. The employee's supervisor may elect to withdraw the reprimand from the

OPF earlier than the period specified, in which case the supervisor will inform the employee, after consulting with the servicing HRO.

(2) Suspension (14 days or less)

(a) A disciplinary suspension is a management directed absence from work for an employee (excluding all SES appointees), with forfeiture of pay for the time specified. Since suspensions result in a loss of productivity and represent a financial loss to employees, they should be imposed only after lesser corrective actions have proven ineffective in improving employee behavior or when an employee has engaged in serious misconduct.

(b) An employee against whom a suspension of 14 days or less is initiated is entitled to receive a written proposal stating the specific reason(s) for the proposed action (including aggravating/mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed suspension (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO), shall state the proposed length of the suspension, as well as the employee's entitlement to: review the material relied upon by management in proposing the suspension (upon request); 7 days to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) before a decision is made; representation by an attorney or other representative; and a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed suspension, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(c) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e.g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally**,** Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release for representational duties.

(d) The employee's answer(s) to the proposed suspension should be provided to the deciding official (or designee) within 7 days following the date the employee receives the proposal notice. The employee is entitled to a reasonable amount of official time (normally a matter of hours, not days) to prepare and present an oral and/or written answer. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional

time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(e) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official disciplinary case file maintained by the servicing HRO.

(f) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents), before making a decision on the proposed suspension. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(g) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the disciplinary process, as well as the employee’s answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process; if considered, the deciding official should make such additional information available to the employee for comment prior to making a decision.

(h) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee’s right to file a grievance in accordance with the applicable administrative/negotiated grievance procedures.

C. Adverse Action.

(1) Most adverse actions taken under this chapter (i.e., removal for cause; suspension for indefinite period/more than 14 days; reduction in grade or pay) are based on instances of egregious and/or repeated employee misconduct (exceptions include furlough for 30 days or less and removal for medical inability to perform the duties of the position). Employees are entitled to receive advance written notice of at least 30 days before an action covered by this chapter may be effected, except for the following situations:

(a) *Emergency furlough.* The requirements for both an advance written notice and an employee opportunity to answer are waived for furloughs due to unforeseeable circumstances, such as sudden breakdowns in equipment, a lapse of appropriations, acts of God, or sudden emergencies requiring immediate curtailment of activities. Circumstances must be truly unforeseen, and of such a nature that they do not reasonably allow for time to prepare a proposal to take action or to receive an employee's answer.

(b) *Crime provision.* Management may shorten the advance notice period when there is reasonable cause to believe an employee has committed a crime (either on or off the job) for which a sentence of imprisonment may be imposed. The shortened notice period must still be at least 7 days. When circumstances require that the employee be kept away from the worksite during this shortened notice period, management may place the employee in an administrative leave status for such time as is necessary to decide and effect the adverse action. Generally, evidence that meets the requirements for a shortened notice period also will support an adverse action to *indefinitely* suspend an employee pending resolution of the criminal charges or completion of a subsequent administrative action. An employee who has been arrested with or without a warrant and held for further legal action by a magistrate court or indicted by a grand jury for a serious crime should be indefinitely suspended without pay pending the outcome of the judicial process. The consideration of any adverse action prompted by an employee's alleged criminal conduct must be closely coordinated with the Office of the Solicitor.

(2) An employee against whom an adverse action is initiated is entitled to receive a written proposal (normally with 30-days advance notice), stating the specific action proposed and the reason(s) for the proposed action (including any aggravating and/or mitigating factors referenced in Appendix A) in sufficient detail to enable the employee to answer the charge(s). The notice of proposed adverse action (issued by the immediate supervisor or other management official, with the advice and assistance of the servicing HRO, and after a legal sufficiency review by the Office of the Solicitor), additionally shall reference that the employee may: review the material relied upon by management in proposing the suspension; have 14 days (and a reasonable amount of official time) to answer orally and/or in writing the proposal (and furnish affidavits and other documentary evidence) for consideration before a decision is made; be represented by an attorney or other representative; and receive a written decision (explaining the specific reasons for that decision) at the earliest practicable date. The notice also shall identify the name of the deciding official (generally, a higher-level manager) and, if different, the name of the official designated to receive the oral and/or written answer (if such an official is designated, that individual may provide a recommendation to the deciding official regarding the disposition of the proposed action). After issuing the notice of proposed adverse action, management can amend the proposal notice (or cancel and reissue it at a later date) to allow for

the consideration of any additional misconduct which becomes known to management prior to the issuance of a decision.

(a) When some but not all employees in a given competitive level are being furloughed, the notice of proposal shall state the basis for selecting a particular employee for furlough, as well as the reasons for the furlough.

(b) Ordinarily, the employee shall remain in an active duty status during the advance notice period, and the proposal notice should so state. However, in rare instances, the proposing official may determine that the employee's presence at the workplace may be injurious to the employee or to others, may result in loss of or damage to Government property, or may otherwise jeopardize legitimate Government interests. In such cases, management (in consultation with the servicing HRO and the Office of the Solicitor) may assign the employee to other duties, allow the employee to take leave (or place the employee in an appropriate leave status if the employee is absent from the workplace), curtail the notice period (using the crime provision), or place the employee in an administrative leave status for such time as is necessary to make a decision and effect an action. The placement of an employee on administrative leave does not constitute an adverse action, but should only be done in the most exceptional situations (i.e., cases involving proposed removals or indefinite suspensions)**,** when all other options are considered imprudent. Only bureau/office heads, their deputies, or the Director, OHR, may authorize the placement of an employee on administrative leave for an extended period of time (i.e., beyond 45 days); this authority may not be re-delegated. Bureau/Office heads (or their deputies) must coordinate decisions regarding the placement/continuation of an employee in an administrative leave status for more than 45 days with the Director, OHR, who will review such decisions for the Department and may rescind them if considered inappropriate.

(c) Management must make a reasonable and diligent effort to ensure that the employee receives the notice of proposed adverse action in a timely basis. Personal delivery of the advance notice to the employee, allowing for the employee's signed acknowledgment of receipt, is the most desirable method of delivery. If the notice cannot be personally delivered to the employee, the servicing HRO will determine the appropriate alternative delivery method.

(3) The employee's representative must be designated, in writing, to the deciding official prior to any oral and/or written answer. Employees serving in a legal capacity within the Department (e**.**g., attorneys with the Office of the Solicitor and Office of Hearings and Appeals) may not represent another Department employee with regard to actions taken under this chapter. Additionally**,** Department management may disallow, as an employee's representative, an individual whose activities as a representative could cause a conflict of interest or of position, or an employee of the Department whose release from his/her official position would result in unreasonable costs or whose priority work assignments preclude his/her release.

(4) The employee's answer(s) to the proposed adverse action should be provided to the deciding official (or designee) within 14 days following the date the employee receives the proposal notice. An employee in an active duty status is entitled to a reasonable amount of official time (normally a matter of hours, not days) to review the material relied on to support the proposed action and to prepare and present an oral and/or written answer; the employee must

request and obtain supervisory approval for the use of official time, in advance. If the employee wishes additional time to answer, the employee (or designated representative) must submit an extension request, in writing, to the deciding official (or designee) before the expiration of the answer period, stating the reason for the request and the amount of additional time needed. The deciding official shall respond to the employee, in writing, either granting or denying (fully or partially) the time extension request.

(5) The right to answer orally does not include the right to a formal hearing and the appearance of witnesses will not be permitted. Although oral replies are generally conducted in a face-to-face meeting, when this is impractical, audio or video conferencing may be used. When practicable, a representative from the servicing HRO should be present during the presentation of the oral answer, to assist and provide procedural guidance to the deciding official (or designee) and employee (or representative). If the employee makes an oral answer, the deciding official (or designee), shall prepare a written summary for the record (no verbatim transcript of the oral answer meeting is required). A draft of the summary should be provided to the employee (or representative) for the opportunity to comment before it is made part of the record. The final summary of the oral answer and any comment made by the employee (or representative) regarding the summary shall become part of the official adverse action case file maintained by the servicing HRO.

(6) The deciding official will obtain (from the servicing HRO) and review a copy of the entire case file, which should contain all the evidence relied upon by the proposing official (including the proposal notice and all supporting documents) before making a decision on the proposed adverse action. Upon request, the employee also may review this file, which should contain only the material relied upon to support the action; information that cannot be disclosed to the employee shall not be used as a basis for taking any action.

(7) The deciding official shall issue a written decision at the earliest practicable date after receipt of the employee's answer(s), or following expiration of the 14-day answer period. The notice of decision must be delivered to the employee (or representative) at or before the time any action is to be effected (or in accordance with applicable provisions of any negotiated agreement). The servicing HRO will assist the deciding official in making the appropriate decision and preparing and issuing the decision notice. In arriving at a decision, the deciding official should consider only the information, evidence and communication available to the employee for comment or answer throughout the adverse action process, as well as the employee’s answer(s), and use only the reasons which were included in the proposal notice to support the decision. The deciding official may seek additional information to corroborate/refute any information previously obtained during the process.

(8) The notice of decision should indicate: the specific action decided upon (and applicable effective dates); the charge(s) and specification(s) in the proposal notice which were/were not sustained; the consideration given to the employee's answer(s), if any, and to any mitigating and aggravating factors; for progressive disciplinary purposes, the possibility of taking more serious action for any subsequent offenses(s); and, the employee’s right to either file an appeal to MSPB (include a copy of the Board’s appeal form/regulations and the address of the

appropriate Board office) or file a grievance in accordance with any applicable negotiated agreement.

1.8 **Records.** The servicing HRO shall maintain confidential disciplinary/adverse action case files; each file shall contain copies of the notice of proposed action, any written answer, a summary of any oral answer, the notice of decision (including the reasons for it), any order effecting the action, and any supporting material (e.g., witness statements; affidavits; documents; investigative reports). Disciplinary/adverse action files must be provided to various parties (e.g., the MSPB; the affected employee and/or designated representative; a grievance examiner), but need only be furnished in response to a specific request.

APPENDIX A

PENALTY DETERMINATION

After establishing a sufficient basis for taking action (i.e., a preponderance of the evidence to support the charge(s); a nexus between the offense(s) and the employee's job or the agency's mission), the supervisor/manager, in consultation with the servicing HRO, must determine the appropriate penalty for the employee's misconduct. At this point, whether proposing or deciding an action, it is prudent to consider all remedies (disciplinary or non-disciplinary; formal or informal) that may effectively resolve the identified problem.

In selecting an appropriate penalty for a specific offense, responsible judgment must be exercised so that an employee will not be penalized out of proportion to the offense. Management should take into account all of the specific circumstances of the case and should ensure, to the extent possible, that employees who commit similar offenses are treated consistently. However, while equitable and uniform treatment of employees who commit similar offenses (under "like" circumstances) is preferable when possible, mechanistic consistency is not recommended or required. In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (1981), the MSPB identified a number of factors -- generally referred to as the "*Douglas* Factors" -- which it specified were not exhaustive, but were generally recognized as relevant in determining the appropriateness of a penalty. A reasonable and conscientious application of these factors (listed below, with guidance based on MSPB case-law) could result in employees receiving different penalties, even though they may have committed similar offenses.

(1) *Nature and Seriousness of Offense* – the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.

- Mitigating factors and the employee's potential for rehabilitation must be balanced against the seriousness of the offense and its effect on the duties of the position and the mission of the organization.
- Serious misconduct can outweigh an employee's length of service and overall good work record.

- If the misconduct is serious enough, removal might be an appropriate penalty for a first offense, and on appeal, a third party might overlook a questionable application of other *Douglas* factors (e.g. failure to properly notify the employee of consideration of past record; disparate penalties).

(2) *Employee's Job* – the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position.

- Persons in positions of trust can be held to higher standards; positions of trust include jobs with fiduciary, law enforcement and public safety or health responsibilities.
- Loss of confidence in an employee's ability to function as a supervisor supports removal from a supervisory position.
- If an employee has performed well in non-supervisory jobs, but fails as a supervisor, demotion is often viewed as more appropriate than removal from federal service.

(3) *Disciplinary Record* – the employee's past disciplinary record.

- The MSPB may review independently prior disciplinary actions pending in grievance proceedings when reviewing termination and other serious disciplinary actions.
- An employee's record of past discipline is used to enhance the penalty; it may not be used as proof of the current misconduct.
- Any past offense may form the basis for proposing a penalty from the next higher range of penalties for a subsequent offense; the offenses need not be identical or similar.
- Prior disciplinary actions may be cited even if they involved offenses unrelated to the current charges, although past discipline that occurred years before the current action and that involved unrelated offenses likely will be discounted on appeal.
- Management may not cite disciplinary actions that have expired in accordance with agency regulations or a collective bargaining agreement.
- An employee may not challenge the merits of prior disciplinary actions if the employee was informed of the actions in writing, the actions are a matter of record, and the employee had an opportunity to dispute the actions before a higher authority (if such actions were reviewed by a higher authority, they must have been upheld).
- Management's intent to consider the past disciplinary record must be stated in the proposal notice.

(4) *Work Record* – the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability.

- When the offense involves supervisory misconduct, the length of service as a supervisor is more important than total service with the agency.
- When official records concerning an employee's performance (e.g. written performance appraisals) are contradicted by a manager's statements in the notice of decision or in testimony, the official records will be judged more reliable.
- Disciplinary actions or additional misconduct occurring after the issuance of the adverse action proposal may not be cited as a past disciplinary record, but may be used to show an overall poor work record.

- Positive actions by management after learning of an employee's misconduct (e.g. promoting the employee; allowing the employee to perform his/her duties for an extended period of time) may indicate that the employee's overall work record outweighs or diminishes the seriousness of the offense.

(5) *Effect on Future Performance* – the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties.

- Loss of trust in the employee's ability to perform assigned duties in the future may be used to enhance the penalty.
- Offenses directly related to an employee's duties (e.g., falsification of the same documents the employee has responsibility to review) raise legitimate concerns about his/her ability to continue to perform those duties.
- Offenses inconsistent with an employee's supervisory responsibilities call into question his ability to function as a supervisor in the future.

(6) *Consistency with Other Penalties* – consistency of the penalty with those imposed upon other employees for the same or similar offenses.

- Management may not knowingly treat similarly situated employees differently when setting disciplinary penalties; to be similarly situated, the comparison employees must work in the same unit for the same supervisor. When an employee identifies a difference in penalties for the same offense, management may need to present evidence supporting the difference.
- There is no requirement for management to be <u>absolutely</u> consistent in its penalty determinations. The prior disciplinary and work records of the comparison employees may justify a difference, and the underlying facts in each case might warrant different penalties.
- When management has an established policy or practice to impose a particular penalty for an offense, it cannot begin to use a harsher penalty without giving prior notice to employees.

(7) *Consistency with Table of Penalties* – consistency of the penalty with any applicable agency table of penalties.

- Management's departure from the agency table of penalties may be permissible; it should not apply the table of penalties so rigidly as to ignore other *Douglas* factors.
- Management may take a more severe action than suggested in the table of penalties for a first offense if the employee has a record of prior, unrelated offenses.

(8) *Notoriety and Impact* – the notoriety of the offense or its impact upon the reputation of the Agency.

- Publicity or even the possibility of publicity that could have a negative impact on the reputation of the agency is a factor that may be considered to enhance a penalty.

(9) *Clarity of Notice* – the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question.

- While lack of notice of the rules to be followed can be a mitigating factor, management is under no obligation to warn employees about behavior the employees should know is improper.
- Supervisors' ignoring or condoning certain behavior can indicate lack of notice.
- Training on agency policies constitutes notice of expected behavior.
- Prior misconduct for which the employee was counseled, even though the employee was not formally disciplined (or was formally reprimanded, but the reprimand is no longer in effect), can be cited to show an employee was on notice of the rules to be followed.

(10) *Potential for Rehabilitation* – potential for the employee's rehabilitation.

- An employee who admits misconduct and shows remorse displays potential for rehabilitation, while an employee who rationalizes his/her wrongdoing, fails to take responsibility or doesn't show an understanding of why his/her behavior was wrong is not a good candidate for rehabilitation.
- Lying during an investigation may be viewed as a lack of potential for rehabilitation.
- An employee who ceases misconduct after being warned may show potential for rehabilitation; however, an employee who shows improvement after receiving a notice of proposed adverse action is not particularly convincing.
- Attending meetings with an EAP counselor to discuss personal problems may indicate potential for rehabilitation.

(11) *Mitigating Circumstances* – mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter.

- Emotional problems and stress may be mitigating factors, but there must be some evidence showing the problems contributed to the misconduct.
- Stress generally should not be viewed as a mitigating factor when the misconduct involves illegal drug use.
- Job tension, although not a medical problem, can be a mitigating factor.
- Bad faith on the part of agency management (e.g., evidence that management set out to "get rid of" the employee) can be a factor used to reduce the penalty.
- Evidence that the deciding official was predisposed against the employee is viewed as a mitigating factor by a third party.

(12) *Availability of Alternative Sanctions* – the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

- Prior warnings and reprimands indicate that a penalty less than removal will not deter the employee from similar misconduct in the future.
- A penalty designed primarily for its value as an example or warning to other employees likely will not be upheld upon review, as third parties generally do not accept this as a

valid basis for penalty selection. A penalty can be used to deter future misconduct by other employees, but this objective does not warrant overlooking other relevant *Douglas* factors.

- Management does not have to prove that the penalty was the least sanction necessary to promote the efficiency of the service or that it considered alternative penalties. However, such a showing provides essential evidence that the deciding official considered the relevant *Douglas* factors and that the penalty is reasonable.

Not all of these factors will be pertinent in every case. Frequently, some of the pertinent factors will weigh in the employee's favor while others may not (or even constitute aggravating factors). Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the specific case, and in reviewing penalty selection, a third party will determine whether management considered all the relevant factors and exercised its discretion within tolerable limits of reasonableness.

Management need not demonstrate that it considered all potential mitigating or aggravating factors before selecting a penalty, nor is it required to specifically show how each *Douglas* factor applies to each case. Even though there is no absolute requirement to do so, it is advisable for management to specifically state in proposal/decision notices what factors it considered in setting the penalty, to avoid concerns that relevant issues were not addressed. Therefore, both proposing and deciding officials should address the *Douglas* factors, as well as any mitigating factors, in terms of their particular relevance to penalty selection.

As a general rule, aggravating factors used by management in its penalty determination (e.g., an employee's poor work record), should be included in the proposal notice so that the employee has a chance to respond to them in the oral and/or written replies. In the notice of decision, the deciding official should reference his/her consideration of the proposing official's *Douglas* factor analysis and the employee's related response(s), before explaining his/her judgment regarding how the relevant factors serve to support or mitigate the proposed penalty.

APPENDIX B

TABLE OF OFFENSES AND PENALTIES

This Table provides a list of common infractions, along with a suggested range of penalties for each; it does not presume to cover all possible offenses, nor does it mandate the use of specific penalties in most disciplinary situations. The range of penalties described in the Table is intended to serve as a guide to discipline, not a rigid standard, and deviations are allowable for a variety of reasons. Greater or lesser penalties than suggested may be imposed as circumstances warrant, and based on a consideration of mitigating and aggravating factors. Management officials must exercise reasonable judgment and consider all relevant factors (as reflected in the guidance found at Appendix A) in determining the most appropriate corrective action for each situation. Any penalty determination outside the suggested range should be based upon a

reasonable consideration of the factors described in Appendix A, and the rationale documented in the decision notice.

The use of this Table as a guide will help to ensure appropriateness of penalty in relation to the charge(s), as well as relative consistency in discipline throughout the Department. The fact that a particular offense is not listed in the Table does not mean that the employee cannot be charged with that offense. In such instances, a reasonable penalty can be determined (with the assistance of the servicing HRO) by a comparison to those offenses listed in the Table.

The Table lists only disciplinary and adverse actions which become a matter of record in the employee's Official Personnel Folder; it does not mention oral warnings, counseling notices, and other corrective actions which may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which a disciplinary/adverse action is taken, although it may not be the first time the employee engaged in misconduct.

Progressively stronger corrective actions should be taken if an employee repeatedly engages in misconduct. When an employee receives corrective action for an offense which falls under one range of penalties, and later commits a different offense under the same or another category of offense, the latter is considered a second offense for progressive disciplinary purposes. For example, if an employee is charged with absence without leave (AWOL) and is issued an official reprimand (first offense), then is later charged with insubordination for subsequent misconduct, the appropriate penalty range for the insubordination charge is a 30-day suspension to removal (as a second offense).

In addition to a management-initiated corrective action, a Department employee also may be subject to criminal prosecution when there is evidence of a possible statutory violation; such evidence should be provided to the Office of Inspector General, which then may refer the matter to the Department of Justice for further consideration and possible prosecution. If the Department of Justice declines to prosecute, the employee involved in the alleged wrongdoing will then be subject to an appropriate administrative action consistent with the penalties contained in this Table. An employee who has been arrested and held for further legal action by a magistrate court, or indicted by a grand jury for an imprisonable offense, should be indefinitely suspended without pay pending the outcome of the judicial process so as not to prejudice the employee's right to due process in the criminal case. If the employee pleads guilty or is convicted, the Department may then proceed with a removal or other appropriate action**;** in the absence of a conviction, the indefinite suspension should end, although other administrative action may be taken.

The servicing HRO must be consulted regarding the procedural requirements to follow when taking corrective action. This consultation requirement includes securing advice on the merits of the charge(s) and the appropriateness and Departmental-consistency of the penalty being proposed. In situations involving possible violations of the Department's Standards of Ethical Conduct, supervisors/managers should also consult with a bureau Ethics Counselor and/or an ethics official from the Office of the Solicitor, Office of Ethics.

Nature of Offense (General Misconduct)	**Penalty for First Offense**	**Penalty for Second Offense**	**Penalty for Third Offense**	**Remarks**
1. Attendance-related offenses. a. Absence without leave (AWOL). This includes tardiness and unauthorized delay in returning from lunch and break periods, or in returning after leaving work station on official business; unauthorized departure or absence from duty station.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	Refer to 370 DM 630 for leave requirements and guidance. Penalty depends primarily on length and frequency of unacceptable absences. Removal may be appropriate for a first or second offense if the absence is prolonged, the failure to adhere to leave procedures is flagrant, or the circumstances are otherwise particularly burdensome.
b. Failure to follow established leave procedures; failure to provide administratively acceptable documentation to support absence(s).	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
c. Excessive unauthorized absences (e.g., more than 5 consecutive workdays).	5-day suspension to removal	14-day suspension to removal	Removal	
2. Improper or unauthorized release of sensitive and administratively-controlled information or employee records; failure to safeguard classified material. a. Information is not compromised and release is unintentional.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	Refer to 5 USC 552a and 43 CFR 2.52 for Privacy Act provisions regarding the misuse of personal information; also refer to 18 USC 798 and 18 USC 1905. Deliberate disclosures of Privacy Act information must be referred to OIG.
b. Information is compromised and release is unintentional.	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	
c. Release of restricted information is deliberate.	30-day suspension to removal	Removal		
3. Offenses related to substance abuse. a. Alcohol-related (1) Reporting to or being on duty while “under the influence” of alcohol.	Written Reprimand to 5-day	5- to 30-day suspension	30-day suspension to removal	Refer to 43 CFR 20.505, 370 DM 792, Drug-Free Workplace (Zero Tolerance) Policy, DOI Handbook on the Department of Transportation

	suspension			Alcohol and Drug Testing Program, and DOI Federal Railroad Administration Supplement for specific guidance.
(2) Unauthorized use and/or possession of alcoholic beverages while on Government premises (or vehicle).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	
(3) Operating a Government vehicle/aircraft while "under the influence" of alcohol.	30-day suspension to removal	Removal		Actions involving these offenses must assure that counseling or rehabilitative assistance is offered; however, referral to an employee assistance program (EAP) does not preclude the initiation of corrective action.
b. Drug-related				
(1) Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program.	Written Reprimand to removal	Removal		
(2) Unlawful use, being under the influence or unauthorized possession of drugs, drug paraphernalia or controlled substance while on Government premises or in a duty status.	Written Reprimand to removal	30-day suspension to removal	Removal	The illegal drugs currently tested for (as defined in 370 DM 792, Subchapters 9 & 10) include: marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). However, the Department is authorized to test for any illegal drugs as deemed necessary. When there is possession of illegal drugs - call law enforcement and notify OIG. When the substance is prescribed by an appropriate medical authority and used accordingly, it would not be an offense. 370 DM 792, 10.12 requires mandatory initiation of removal from service for a second offense of failing to refrain from illegal drug use.
(3) Sale or transfer of an illegal drug or controlled substance while on Government premises (or vehicle**)**.	Removal			
(4) Refusal or failure to provide a required specimen for drug-testing; tampering with a drug-test specimen; refusal to obtain counseling or rehabilitation (after finding of illegal drug use).	14-day suspension to removal	30-day suspension to removal	Removal	
4. Discourteous conduct (e.g., rude, insolent, disgraceful acts or remarks)	Written Reprimand to	5- to 30-day suspension	30-day suspension	5 USC 7503(a) permits suspension of

toward supervisors, co-workers, or the public.	5-day suspension		to removal	14 days or less of any employee with four documented instances of discourteous conduct toward the public within a one-year period as confirmed by an immediate supervisor, or any other pattern of discourteous conduct.
5. Boisterous or disruptive/disorderly conduct; use of insulting, intimidating, abusive or offensive language to or about another employee or supervisor.	Written Reprimand to 5-day suspension	5- to 30-day suspension	30-day suspension to removal	
6. Deliberately making known false, malicious, or unfounded statements against co-workers, supervisors, subordinates, or Government officials which could undermine the authority or damage the reputation of those concerned.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 USC 2302(b)(8) and (9), prohibiting actions against employees for engaging in protected activities.
7. Threatening statements or behavior (of a physical nature).	14-day suspension to removal	Removal		Charge involving "threat" must consider the listener's reactions, the listener's apprehension of harm, the speaker's intent, any conditional nature of the statements, and the attendant circumstances – refer to Metz v. Dept. of Treasury, 780 F.2d 1001 (Fed. Cir. 1986).
8. Fighting and offenses related to fighting.				Penalty depends on such factors as provocation, extent of injuries, and whether actions were defensive or offensive in nature.
a. Engaging in potentially dangerous "horseplay."	Written Reprimand to 14-day suspension	14-day suspension to removal	30-day suspension to removal	
b. Hitting, pushing, or other acts against another without causing injury.	5- to 30-day suspension	30-day suspension to removal	Removal	
c. Hitting, pushing, or other acts against another causing injury.	30-day suspension to removal	Removal		

9. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	Written Reprimand to removal	14- day suspension to removal	Removal	Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.
10. Failure to provide equal opportunity regardless of race, color, religion, gender, national origin, age, marital status, political affiliation, sexual orientation or handicapping condition.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.101(13).
11. Unauthorized possession/sale (actual or attempted) of Government property or property of others; improper acceptance of Government funds/reimbursement.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Referral to OIG may be appropriate.
12. Loss, misuse of, damage to or failure to safeguard Government property, records, or information (e.g., willful or negligent damage to Government resources; carelessness in performance of duty resulting in waste of public funds).	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	Refer to 5 CFR 2635.101(9). For misuse of Government vehicles, see item 5 under Violations of Statute. Referral to OIG may be appropriate.
13. Failure to comply with safety regulations, instructions or prescribed safe practices; failure to use proper safety equipment; failure to report accident or injury.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	
14. Sleeping or loafing while on duty; inattention to duty; willful idleness while on duty.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Seriousness of offense is greater if persons/property endangered.
15. Failure or delay in carrying out instructions; failure or carelessness in performing assigned work; failure to take/complete officially-directed training.	Written Reprimand to 14-day suspension	14- to 30-day suspension	30-day suspension to removal	Refer to 370 DM 430 to deal with unacceptable performance and performance-based actions.
16. Insubordination; disregard of directive; refusal to comply with a proper order.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.502. An "insubordination" charge requires a showing that the

				employee deliberately disregarded supervisory directives. In some instances (e.g., refusal to report for an ordered reassignment) removal may be appropriate.
17. Falsification/misrepresentation of official Government records or documents including, but not limited to, time and attendance records, travel vouchers, job applications, performance appraisals, claims for benefits, and other employment-related documents.	Written Reprimand to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
18. Misrepresentation, falsification, exaggeration, concealment or withholding of material fact in connection with an official Government investigation, inquiry or other administrative proceeding.	14-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.510. Referral to OIG may be appropriate.
19. Refusal to testify or cooperate in connection with any administrative investigation, inquiry, or other proper proceeding (when criminal charges are not anticipated).	5-day suspension to removal	14-day suspension to removal	30-day suspension to removal	
20. Prohibited/improper use of Government property (e.g., office equipment; supplies; facilities; credentials; records; communication resources; cellular phones; official time); misuse of the Internet/electronic mail; using the Internet/electronic mail for unauthorized purposes.	Written Reprimand to 14-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including	14- to 30-day suspension More severe discipline (including removal) may be appropriate for first/second offense if misconduct involves using the Department's Internet/electronic mail system for prohibited reasons, including gambling, accessing/send	30-day suspension to removal	Refer to 5 CFR 2635.704 and 705(a); 410 DM 2 (Limited Personal Use of Government Personal Property). Consider issue of employee notice regarding agency policy.

	gambling, accessing/sending prohibited sexually-related material, or other egregious acts of misuse.	ing prohibited sexually-related material, or other egregious acts of misuse.		
21. Offenses related to gambling. a. Participating in a gambling activity while on Government premises or in a duty status (e.g., office pools). b. Operating, assisting, or promoting a gambling activity while on Government premises or in a duty status or while others involved are in a duty status.	Written Reprimand to 14-day suspension 5- to 30-day suspension	14- to 30-day suspension 30-day suspension to removal	30-day suspension to removal Removal	Refer to 5 CFR 735.201.
22. Indebtedness; failure to meet financial obligations in a proper and timely manner.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.809. Actionable if there is a nexus between the failure to pay and the efficiency of the service. Since a suspension may reduce an employee's ability to pay overdue financial obligations, a reprimand may be more appropriate for a first offense (more severe discipline may be appropriate for subsequent offenses). Special care is called for in dealing with this type of offense, as it may involve mitigating circumstances.
23. Offenses related to Government travel charge card and/or purchase card. a. Misuse of travel card (i.e., personal/unauthorized purchases) **or**	Written Reprimand to	5-day suspension to	30-day suspension	Refer to Financial Administration Memorandum (FAM) 2000-010 for further information and instructions on

delinquent in payment. b. Misuse of travel card (i.e., personal/unauthorized purchases) **and** delinquent in payment. c. Unauthorized use of or failure to appropriately monitor use of Government purchase card; "micro-purchasing" violations.	30-day suspension 5- to 30-day suspension Written Reprimand to 30-day suspension	removal 14-day suspension to removal 14-day suspension to removal	to removal Removal Removal	Resolving Delinquencies on Individually-billed Travel Card Accounts, and the Department's Integrated Charge Card Program Guide (revised 4/2004).
24. Carrying a firearm or other weapon on Government property (or in Government vehicle) unless specifically authorized/required in the performance of duties.	30-day suspension to removal	Removal		Refer to 43 CFR 20.511.
25. Using public office for private gain.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.702.
26. Engaging in unauthorized/prohibited selling, soliciting or fundraising activities.	Written Reprimand to 5-day suspension	5- to 14-day suspension	14-day suspension to removal	Refer to 5 CFR 2635.808.
27. Engaging in prohibited outside employment or private business activities.	Written Reprimand to removal	Removal		Refer to 5 CFR 3501.105.
28. Participating in particular matters while having a conflicting financial interest.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.401. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
29. Participating in matters affecting financial interests of an entity where employment is being sought.	5-day suspension to removal	Removal		Refer to 5 CFR 2635.601. Consult Ethics Office and may require referral to OIG. See 18 USC 208.
30. Violating the Department's Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership).	Written Reprimand to 30-day suspension	30-day suspension to removal	Removal	Refer to 305 DM 3.

31. Violating the Standards of Ethical Conduct not covered elsewhere in this Table.	Written Reprimand to removal	14-day suspension to removal	Removal	Refer to 5 CFR 2635.
32. Unauthorized use of nonpublic information.	Written Reprimand to removal	Removal		Refer to 5 CFR 2635.703.
33. Engaging (on-duty or off-duty) in criminal, infamous, dishonest, or notoriously disgraceful conduct prejudicial to the Government.	5-day suspension to removal	30-day suspension to removal	Removal	Refer to 43 CFR 20.501.
Nature of Offense (Supervisory Misconduct)	**Penalty for First Offense**	**Penalty for Second Offense**	**Penalty for Third Offense**	**Remarks**
1. Taking, directing others to take, recommending or approving any action which may be considered a "prohibited personnel practice" (e.g., reprisal against an employee for engaging in protected activities; discrimination based on race, color, gender, age, religion, national origin, marital status, political affiliation, sexual orientation or handicapping condition).	5-day suspension to removal	14-day suspension to removal	Removal	Refer to 5 USC 2302, 5 CFR 2635.101(13), and related Department policies. Action may be taken regardless of whether there was an official "finding" of discrimination (or other prohibited personnel practice).
2. Taking reprisal action against an employee for exercising rights provided by the Federal Service Labor-Management Relations Statute.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC, Chapter 71.
3. Neglecting to recommend/take corrective action upon receipt of information regarding the job-related misconduct of a subordinate employee.	Written Reprimand to 30-day suspension	14-day suspension to removal	Removal	
4. Failure to appropriately monitor employee use of Government purchase/travel charge card.	Written Reprimand to 14-day suspension	14-day suspension to removal	Removal	
5. Misconduct of a sexual nature that includes, but is not limited to, unwelcome sexual remarks, indecent comments/jokes, offensive sexual banter, unwanted sexual advances, or unwelcome physical touching.	5-day suspension to removal	14-day suspension to removal	Removal	Refer to the Department's Zero Tolerance Policy; penalty may include mandatory training. More severe discipline is appropriate for egregious misconduct.

6. Influencing or attempting to influence the DOI employment of a relative.	5- to 30-day suspension	14-day suspension to removal	Removal	Refer to 5 USC 3110.
7. Violating, or inducing a subordinate to violate, the Department's Code of Scientific Conduct (or other profession's Code of Ethical Conduct).	5-day suspension to removal	Removal	Removal	Refer to 305 DM 3.
8. Using Government employees in duty status for other than official purposes.	Written Reprimand to removal	14-day suspension to removal	30-day suspension to removal	Refer to 5 CFR 2635.705(b).
Nature of Offense (Violations of Statute)	**Penalty for First Offense**	**Penalty for Second Offense**	**Penalty for Third Offense**	**Remarks**
1. Engaging in prohibited partisan political activity (e.g., partisan campaigning; soliciting/receiving political contributions).	30-day suspension to removal	Removal		Refer to 5 USC, Sections 7321-7326.
2. Participating in a strike, work stoppage, work slowdown, sick-out, or other similar job action.	30-day suspension to removal	Removal		Refer to 5 USC 7311.
3. Misappropriating/misapplying Government funds; directing, expecting, or rendering services not covered by appropriations.	1- to 30-day suspension	30-day suspension to removal	Removal	Refer to 31 USC 1301, 1341 and 1349.
4. Willfully mutilating or destroying a public record.	Removal			Refer to 18 USC 2071.
5. Willfully using or authorizing the use of a Government vehicle/aircraft for other than official purposes.	30-day suspension to removal	Removal		Refer to 31 USC 1344 and 1349.
6. Engaging in actions against national security.	30-day suspension to removal	Removal		Refer to 5 USC 7532.

12/22/06 #3738
Replaces 3/29/06 #3705

Comprehensive conservation plan schedule

CCPs completed | CCPs in progress | CCPs scheduled to begin

Comprehensive conservation plans (CCPs) completed

CCPs completed since passage of the National Wildlife Refuge System Improvement Act of 1997: 107* plans (Federal fiscal year each plan was completed is in parentheses)

- (FY 12) Lee Metcalf National Wildlife Refuge, Montana
- (FY 12) Huron, Madison, and Sand Lake Wetland Management Districts, South Dakota
- (FY 12) Charles M. Russell and UL Bend National Wildlife Refuges, Montana
- (FY 11) Bowdoin National Wildlife Refuge Complex, Montana: Bowdoin, Black Coulee,

Creedman Coulee, Hewitt Lake, and Lake Thibadeau National Wildlife Refuges and Bowdoin Wetland Management District
- (FY 09) Red Rock Lakes National Wildlife Refuge, Montana
- (FY 08) North Dakota National Wildlife Refuges: Audubon, Chase Lake, Kellys Slough, Lake Alice, Lake Ilo, Lake Nettie, Lake Zahl, McLean, Shell Lake, Stewart Lake, Stump Lake, and White Lake
- (FY 08) North Dakota wetland management districts: Arrowwood, Audubon, Chase Lake, Crosby, Devils Lake, J. Clark Salyer, Kulm, Lostwood, and Valley City
- (FY 08) Pathfinder National Wildlife Refuge, Wyoming
- (FY 08) Sullys Hill National Game Preserve, North Dakota
- (FY 07) Arapaho National Wildlife Refuge Complex, Wyoming: Bamforth, Hutton Lake, and Mortenson Lake National Wildlife Refuges
- (FY 07) Arrowwood National Wildlife Refuge, North Dakota
- (FY 07) Bear Butte National Wildlife Refuge, South Dakota
- (FY 07) Des Lacs National Wildlife Refuge, North Dakota
- (FY 07) J. Clark Salyer National Wildlife Refuge, North Dakota
- (FY 07) Kirwin National Wildlife Refuge, Kansas
- (FY 06) North Dakota limited-interest national wildlife refuges: Appert Lake, Ardoch, Bone Hill, Brumba, Buffalo Lake, Camp Lake, Canfield Lake, Cottonwood Lake, Dakota Lake, Half-Way Lake, Hiddenwood, Hobart Lake, Hutchinson Lake, Johnson Lake, Lake George, Lake Otis, Lake Patricia, Lambs Lake, Little Goose, Lords Lake, Lost Lake, Maple River, Pleasant Lake, Pretty Rock, Rabb Lake, Rock Lake, Rose Lake, School Section Lake, Sheyenne Lake, Sibley Lake, Silver Lake, Snyder Lake, Springwater, Stoney Slough, Sunburst Lake, Tomahawk, Willow Lake, Wintering River, and Wood Lake
- (FY 05) Lost Trail National Wildlife Refuge, Montana
- (FY 05) Rocky Flats National Wildlife Refuge*, Colorado
- (FY 05) Sand Lake National Wildlife Refuge, South Dakota
- (FY 04) Arapaho National Wildlife Refuge, Colorado
- (FY 04) Fish Springs National Wildlife Refuge, Utah
- (FY 03) Alamosa and Monte Vista National Wildlife Refuges, Colorado
- (FY 02) Crescent Lake National Wildlife Refuge, Nebraska
- (FY 02) Seedskadee National Wildlife Refuge, Wyoming
- (FY 02) Waubay National Wildlife Refuge and Waubay Wetland Management District, South Dakota
- (FY 01) North Platte National Wildlife Refuge, Nebraska
- (FY 00) Flint Hills National Wildlife Refuge, Kansas
- (FY 00) Ouray National Wildlife Refuge, Utah
- (FY 00) Tewaukon National Wildlife Refuge Complex, North Dakota: Storm Lake, Tewaukon, and Wild Rice Lake National Wildlife Refuges, and Tewaukon Wetland Management District
- (FY 99) Browns Park National Wildlife Refuge, Colorado
- (FY 99) Fort Niobrara National Wildlife Refuge, Nebraska
- (FY 99) Lostwood National Wildlife Refuge, North Dakota
- (FY 99) Valentine National Wildlife Refuge, Nebraska
- (FY 98) Marais des Cygnes National Wildlife Refuge, Kansas
- (FY 97) Bear River Migratory Bird Refuge, Utah
- (FY 97) Two Ponds National Wildlife Refuge, Colorado
- (FY 96) Rocky Mountain Arsenal National Wildlife Refuge, Colorado

*The plan for Rocky Flats National Wildlife Refuge was completed but is not included in this total for 2012 completion.

- (FY 07) Medicine Lake National Wildlife Refuge Complex, Montana: Medicine Lake and Lamesteer National Wildlife Refuges, and Northeast Montana Wetland Management District
- (FY 07) Rainwater Basin Wetland Management District, Nebraska
- (FY 07) Upper Souris National Wildlife Refuge, North Dakota
- (FY 06) Lacreek National Wildlife Refuge and Lacreek Wetland Management District, South Dakota
- (FY 06) Long Lake National Wildlife Refuge Complex, North Dakota: Florence Lake, Long Lake, and Slade Lake National Wildlife Refuges, and Long Lake Wetland Management District

CCPs in progress

(Federal fiscal year each plan was started is in parentheses)

- (FY 12) Charles M. Russell Wetland Management District and Hailstone, Halfbreed Lake, Lake Mason, and War Horse National Wildlife Refuges, Montana
- (FY 11) San Luis Valley National Wildlife Refuge Complex, Colorado: Alamosa, Baca, and Monte Vista National Wildlife Refuges and Sangre de Cristo and San Luis Valley Conservation Areas
- (FY 10) National Elk Refuge, Wyoming
- (FY 10) Quivira National Wildlife Refuge, Kansas
- (FY 09) Cokeville Meadows National Wildlife Refuge, Wyoming
- (FY 08) Benton Lake National Wildlife Refuge Complex, Montana: Benton Lake and Swan River National Wildlife Refuges, Benton Lake Wetland Management District, and Blackfoot Valley and Rocky Mountain Front Conservation Areas
- (FY 07) Lake Andes National Wildlife Refuge Complex, South Dakota: Karl E. Mundt and Lake Andes National Wildlife Refuges

CCPs scheduled to begin

Fiscal Year 2013

- Bear River Migratory Bird Refuge, Utah (Revision)
- Fort Niobrara National Wildlife Refuge, Nebraska (Revision)
- John W. and Louise Seier National Wildlife Refuge, Nebraska
- National Bison Range Complex, Montana: National Bison Range, Nine Pipe and Pablo National Wildlife Refuges, and Northwest Montana Lake County Wetland Management District
- Rocky Mountain Arsenal and Two Ponds National Wildlife Refuges, Colorado (Revision)
- Valentine National Wildlife Refuge, Nebraska (Revision)

Fiscal Year 2014	Fiscal Year 2015	Fiscal Year 2016
• *(to be determined)*	• *(to be determined)*	• *(to be determined)*

CCPs completed | CCPs in progress | CCPs scheduled to begin

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Comprehensive conservation plans (CCPs) completed

CCPs completed since passage of the National Wildlife Refuge System Improvement Act of 1997 (Federal fiscal year each plan was completed is in parentheses)

- (FY 13) Benton Lake National Wildlilfe Refuge Complex, Montana: Benton Lake and Swan River National Wildlife Refuges; Benton Lake Wetland Management District; and Blackfoot Valley, Rocky Mountain Front, and Swan Valley Conservation Areas
- (FY 13) Lake Andes National Wildlilfe Refuge Complex, South Dakota: Karl E. Mundt and Lake Andes National Wildlife Refuges and Lake Andes Wetland Management

District
- (FY 12) Lee Metcalf National Wildlife Refuge, Montana
- (FY 12) Huron, Madison, and Sand Lake Wetland Management Districts, South Dakota
- (FY 12) Charles M. Russell and UL Bend National Wildlife Refuges, Montana
- (FY 11) Bowdoin National Wildlife Refuge Complex, Montana: Bowdoin, Black Coulee, Creedman Coulee, Hewitt Lake, and Lake Thibadeau National Wildlife Refuges and Bowdoin Wetland Management District
- (FY 09) Red Rock Lakes National Wildlife Refuge, Montana
- (FY 08) North Dakota National Wildlife Refuges: Audubon, Chase Lake, Kellys Slough, Lake Alice, Lake Ilo, Lake Nettie, Lake Zahl, McLean, Shell Lake, Stewart Lake, Stump Lake, and White Lake
- (FY 08) North Dakota wetland management districts: Arrowwood, Audubon, Chase Lake, Crosby, Devils Lake, J. Clark Salyer, Kulm, Lostwood, and Valley City
- (FY 08) Pathfinder National Wildlife Refuge, Wyoming
- (FY 08) Sullys Hill National Game Preserve, North Dakota
- (FY 07) Arapaho National Wildlife Refuge Complex, Wyoming: Bamforth, Hutton Lake, and Mortenson Lake National Wildlife Refuges
- (FY 07) Arrowwood National Wildlife Refuge, North Dakota
- (FY 07) Bear Butte National Wildlife Refuge, South Dakota
- (FY 06) Lacreek National Wildlife Refuge and Lacreek Wetland Management District, South Dakota
- (FY 06) Long Lake National Wildlife Refuge Complex, North Dakota: Florence Lake, Long Lake, and Slade Lake National Wildlife Refuges, and Long Lake Wetland Management District
- (FY 06) North Dakota limited-interest national wildlife refuges: Appert Lake, Ardoch, Bone Hill, Brumba, Buffalo Lake, Camp Lake, Canfield Lake, Cottonwood Lake, Dakota Lake, Half-Way Lake, Hiddenwood, Hobart Lake, Hutchinson Lake, Johnson Lake, Lake George, Lake Otis, Lake Patricia, Lambs Lake, Little Goose, Lords Lake, Lost Lake, Maple River, Pleasant Lake, Pretty Rock, Rabb Lake, Rock Lake, Rose Lake, School Section Lake, Sheyenne Lake, Sibley Lake, Silver Lake, Snyder Lake, Springwater, Stoney Slough, Sunburst Lake, Tomahawk, Willow Lake, Wintering River, and Wood Lake
- (FY 05) Lost Trail National Wildlife Refuge, Montana
- (FY 05) Rocky Flats National Wildlife Refuge, Colorado
- (FY 05) Sand Lake National Wildlife Refuge, South Dakota
- (FY 04) Arapaho National Wildlife Refuge, Colorado
- (FY 04) Fish Springs National Wildlife Refuge, Utah
- (FY 03) Alamosa and Monte Vista National Wildlife Refuges, Colorado
- (FY 02) Crescent Lake National Wildlife Refuge, Nebraska
- (FY 02) Seedskadee National Wildlife Refuge, Wyoming
- (FY 02) Waubay National Wildlife Refuge and Waubay Wetland Management District, South Dakota
- (FY 01) North Platte National Wildlife Refuge, Nebraska
- (FY 00) Flint Hills National Wildlife Refuge, Kansas
- (FY 00) Ouray National Wildlife Refuge, Utah
- (FY 00) Tewaukon National Wildlife Refuge Complex, North Dakota: Storm Lake, Tewaukon, and Wild Rice Lake National Wildlife Refuges, and Tewaukon Wetland Management District
- (FY 99) Browns Park National Wildlife Refuge, Colorado
- (FY 99) Fort Niobrara National Wildlife Refuge, Nebraska
- (FY 99) Lostwood National Wildlife Refuge, North Dakota
- (FY 99) Valentine National Wildlife Refuge, Nebraska
- (FY 98) Marais des Cygnes National Wildlife Refuge, Kansas
- (FY 97) Bear River Migratory Bird Refuge, Utah
- (FY 97) Two Ponds National Wildlife Refuge, Colorado
- (FY 96) Rocky Mountain Arsenal National Wildlife Refuge, Colorado

- (FY 07) Des Lacs National Wildlife Refuge, North Dakota
- (FY 07) J. Clark Salyer National Wildlife Refuge, North Dakota
- (FY 07) Kirwin National Wildlife Refuge, Kansas
- (FY 07) Medicine Lake National Wildlife Refuge Complex, Montana: Medicine Lake and Lamesteer National Wildlife Refuges, and Northeast Montana Wetland Management District
- (FY 07) Rainwater Basin Wetland Management District, Nebraska
- (FY 07) Upper Souris National Wildlife Refuge, North Dakota

CCPs in progress

(Federal fiscal year each plan was started is in parentheses)

- (FY13) Rocky Mountain Arsenal National Wildlife Refuge, Colorado
- (FY13) Two Ponds National Wildlife Refuge, Colorado
- (FY 11) San Luis Valley National Wildlife Refuge Complex, Colorado: Alamosa, Baca, and Monte Vista National Wildlife Refuges
- (FY 10) National Elk Refuge, Wyoming
- (FY 10) Quivira National Wildlife Refuge, Kansas
- (FY 09) Cokeville Meadows National Wildlife Refuge, Wyoming

CCPs scheduled to begin

Yet to be scheduled

- Bear River Migratory Bird Refuge, Utah
- Charles M. Russell Wetland Management District Complex, Montana: Charles M. Russell Wetland Management District; Hailstone, Halfbreed Lake, Lake Mason, and War Horse National Wildlife Refuges
- Fort Niobrara National Wildlife Refuge, Nebraska (revision)
- John W. and Louise Seier National Wildlife Refuge, Nebraska
- National Bison Range Complex, Montana: National Bison Range, Nine Pipe and Pablo National Wildlife Refuges, Northwest Montana Wetland Management District, and

Fiscal year 2014	Fiscal year 2015	Fiscal year 2016
(to be determined)	*(to be determined)*	*(to be determined)*

Lost Trail National Wildlife Refuge
- Valentine National Wildlife Refuge, Nebraska (revision)

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Comprehensive conservation plan schedule

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Comprehensive conservation plans (CCPs) completed

- (FY 05) Lost Trail National Wildlife Refuge, Montana
- (FY 05) Rocky Flats National Wildlife Refuge*, Colorado
- (FY 05) Sand Lake National Wildlife Refuge, South Dakota
- (FY 04) Arapaho National Wildlife Refuge, Colorado
- (FY 04) Fish Springs National Wildlife Refuge, Utah
- (FY 03) Alamosa and Monte Vista national wildlife refuges, Colorado
- (FY 02) Crescent Lake National Wildlife Refuge, Nebraska

CCPs completed since passage of the National Wildlife Refuge System Improvement Act of 1997: 107* plans (Federal fiscal year each plan was completed is in parentheses)

- (FY 09) Red Rock Lakes National Wildlife Refuge, Montana
- (FY 08) North Dakota national wildlife refuges: Audubon, Chase Lake, Kellys Slough, Lake Alice, Lake Ilo, Lake Nettie, Lake Zahl, McLean, Shell Lake, Stewart Lake, Stump Lake, and White Lake
- (FY 08) North Dakota wetland management districts: Arrowwood, Audubon, Chase Lake, Crosby, Devils Lake, J. Clark Salyer, Kulm, Lostwood, and Valley City
- (FY 08) Pathfinder National Wildlife Refuge, Wyoming
- (FY 08) Sullys Hill National Game Preserve, North Dakota
- (FY 07) Arapaho National Wildlife Refuge Complex, Wyoming: Bamforth, Hutton Lake, and Mortenson Lake national wildlife refuges
- (FY 07) Arrowwood National Wildlife Refuge, North Dakota
- (FY 07) Bear Butte National Wildlife Refuge, South Dakota
- (FY 07) Des Lacs National Wildlife Refuge, North Dakota
- (FY 07) J. Clark Salyer National Wildlife Refuge, North Dakota
- (FY 07) Kirwin National Wildlife Refuge, Kansas
- (FY 07) Medicine Lake National Wildlife Refuge Complex, Montana: Medicine Lake and Lamesteer national wildlife refuges, and Northeast Montana Wetland Management District
- (FY 07) Rainwater Basin Wetland Management District, Nebraska
- (FY 07) Upper Souris National Wildlife Refuge, North Dakota
- (FY 06) Lacreek National Wildlife Refuge and Lacreek Wetland Management District, South Dakota
- (FY 06) Long Lake National Wildlife Refuge Complex, North Dakota: Florence Lake, Long Lake, and Slade Lake national wildlife refuges, and Long Lake Wetland Management District
- (FY 06) North Dakota limited-interest national wildlife refuges: Appert Lake, Ardoch, Bone Hill, Brumba, Buffalo Lake, Camp Lake, Canfield Lake, Cottonwood Lake, Dakota Lake, Half-Way Lake, Hiddenwood, Hobart Lake, Hutchinson Lake, Johnson Lake, Lake George, Lake Otis, Lake Patricia, Lambs Lake, Little Goose, Lords Lake, Lost Lake, Maple River, Pleasant Lake, Pretty Rock, Rabb Lake, Rock Lake, Rose Lake, School Section Lake, Sheyenne Lake, Sibley Lake, Silver Lake, Snyder Lake, Springwater, Stoney Slough, Sunburst Lake, Tomahawk, Willow Lake, Wintering River, and Wood Lake
- (FY 02) Seedskadee National Wildlife Refuge, Wyoming
- (FY 02) Waubay National Wildlife Refuge and Waubay Wetland Management District, South Dakota
- (FY 01) North Platte National Wildlife Refuge, Nebraska
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- (FY 00) Ouray National Wildlife Refuge, Utah
- (FY 00) Tewaukon National Wildlife Refuge Complex, North Dakota: Storm Lake, Tewaukon, and Wild Rice Lake national wildlife refuges, and Tewaukon Wetland Management District
- (FY 99) Browns Park National Wildlife Refuge, Colorado
- (FY 99) Fort Niobrara National Wildlife Refuge, Nebraska
- (FY 99) Lostwood National Wildlife Refuge, North Dakota
- (FY 99) Valentine National Wildlife Refuge, Nebraska
- (FY 98) Marais des Cygnes National Wildlife Refuge, Kansas
- (FY 97) Bear River Migratory Bird Refuge, Utah
- (FY 97) Two Ponds National Wildlife Refuge, Colorado
- (FY 96) Rocky Mountain Arsenal National Wildlife Refuge, Colorado

*The plan for Rocky Flats National Wildlife Refuge was completed but is not included in this total for 2012 completion.

CCPs in progress

(Federal fiscal year each plan was started is in parentheses)

- (FY 10) Quivira National Wildlife Refuge, Kansas
- (FY 09) Cokeville Meadows National Wildlife Refuge, Wyoming
- (FY 09) Lee Metcalf National Wildlife Refuge, Montana
- (FY 08) Benton Lake National Wildlife Refuge Complex, Montana: Benton Lake and Swan River national wildlife refuges, Lost Trail National Wildlife Refuge (amendment), Benton Lake Wetland Management District, Blackfoot Valley Wildlife Management Area, and Rocky Mountain Front Conservation Area
- (FY 08) Huron, Madison, and Sand Lake wetland management districts, South Dakota
- (FY 07) Lake Andes National Wildlife Refuge Complex, South Dakota: Karl E. Mundt and Lake Andes national wildlife refuges
- (FY 07) Bowdoin National Wildlife Refuge Complex, Montana: Bowdoin, Black Coulee, Creedman Coulee, Hewitt Lake, and Lake Thibadeau national wildlife refuges, and Bowdoin and Northwest Montana Flathead County wetland management districts
- (FY 07) Charles M. Russell and UL Bend national wildlife refuges, Montana

CCPs scheduled to begin

Fiscal Year 2011

- Charles M. Russell Wetland Management District, and Hailstone, Halfbreed Lake, Lake Mason, and War Horse national wildlife refuges, Montana
- National Bison Range Complex, Montana: National Bison Range, Nine Pipe and Pablo national wildlife refuges, and Northwest Montana Lake County Wetland Management District

Fiscal Year 2012

- John W. and Louise Seier National Wildlife Refuge, Nebraska
- Rocky Mountain Arsenal National Wildlife Refuge, Colorado
- Two Ponds National Wildlife Refuge, Colorado
- Bear River Migratory Bird Refuge, Utah

Fiscal Year 2013

- *(to be determined)*

Fiscal Year 2014

- *(to be determined)*

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DEPARTMENT OF THE INTERIOR
TASKING PROFILE

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Document Date:	Received Date:	Due Date:	Action Office:	Signature Level:	Doc Source:
11/10/2010	11/16/2010		FWS	AA	ITL

To (Recipient): Gould, Rowan

From (Author): Moran, Bud

Chairman
Confederated Salish and Kootenai Tribes
P.O. Box 278
Pablo, MT 59855

Subject Text: Salazar CC"ed: Confederated Salish and Kootenai Tribes request negotiations for new Annual Funding Agreement for National Bison Range Complex activities

Req. Surnames:

Mail Carrier: **Mail Track #:**

Cross Ref:

Copies To: SIO-OES

Status Tracking:

Correspondence Specialist and Phone: SIO-OES

Closed Comments:

Signed:

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
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A People of Vision

A Confederation of the Salish,
Upper Pend d'Oreilles
and Kootenai Tribes

TRIBAL COUNCIL MEMBERS:
E.T. "Bud" Moran – Chairman
Joe Durglo – Vice Chair
Steve Lozar – Secretary
Jim Malatare – Treasurer
Michel Kenmille
Carole Lankford
Reuben A. Mathias
Charles L. Morigeau
Terry L. Pitts
James Steele Jr.

November 10, 2010

Mr. Rowan Gould, Director
U.S. Fish & Wildlife Service
U.S. Department of the Interior
1849 C St., NW
Washington, D.C. 20240

Dear Director Gould,

In light of recent events, and after considerable deliberation, the Confederated Salish & Kootenai Tribes (CSKT) would like to request negotiations for a new Annual Funding Agreement (AFA) for National Bison Range Complex (NBRC) activities.

Over the past two years, we have been gratified by the depth of support within the Interior Department for the FY 2009-2011 AFA and the partnership it established. We have been especially pleased with the extensive support within the U.S. Fish & Wildlife Service (FWS). I understand that you had indicated that you were very pleased with the partnership at the NBRC during an August meeting with two CSKT Tribal Council Members and other Interior officials in Washington, D.C. We too have been pleased with the working relationship we have developed with FWS at the Bison Range. We believe that the cooperative approaches of Regional Director Stephen Guertin, Refuge Supervisor Dean Rundle and Refuge Manager Jeff King have been key to our joint success.

We were very disappointed with the September 28, 2010 Federal court decision rescinding the AFA based upon a finding of a procedural deficiency. We were pleased to hear from Assistant Secretary Larry EchoHawk, during his visit to our Reservation several weeks ago, that the Interior Department was going to be "speaking with one voice" with respect to its response to the court's decision.

Yesterday, our Tribal Council met with Mr. Rundle and Mr. King to discuss next steps. We were pleased to hear from Mr. Rundle that FWS and the Interior Department were supportive of entering into another AFA and taking steps to continue our Tribal-Federal cooperation in the interim. While our Tribal attorneys are continuing their litigation discussions with Department of Justice attorneys, we believe that it also makes sense to discuss new AFA negotiations and address interim cooperative efforts in order to best maintain our partnership. I believe we share

an interest in protecting our mutual investments in CSKT's NBRC staff, and returning them to work for the benefit of the NBRC.

During our discussion, Mr. Rundle had raised the issue of FWS' development of a Tribal Self-Governance policy. While we have been aware that FWS has been working on such a policy over past years, we do not believe that such policy development should impede us from timely resuming our Self-Governance partnership at the NBRC. We are confident that both efforts can effectively move forward independently.

Due to our concern for, and connection with, the natural resources of the NBRC, CSKT has long invested in this partnership effort. We look forward to working with you and FWS in building upon our joint accomplishments of the past couple of years. We would be happy to meet with you to further discuss this.

Sincerely,

E.T. "Bud" Moran, Chairman
Tribal Council

cc: Steve Doherty
Thomas Strickland
Larry EchoHawk
Jane Lyder
Will Shafroth
Greg Siekaniec
Del Laverdure
Michael Black
Stephen Guertin
Rick Coleman
Dean Rundle
Jeff King
Patrick Durham
Sharee Freeman

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATHANIEL P. REED, *et al.*, Plaintiffs, v. KEN SALAZAR, Secretary of the Interior, *et al.*, Defendants.	Civil Action No. 08-2117 (CKK)

AMENDED MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES' MOTION FOR SUMMARY JUDGMENT

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25 C.F.R. § 1000.4(a)(5) 56

25 C.F.R. § 1000.4(b)(6) 57

25 C.F.R. § 1000.4(c)(5) 42

40 C.F.R. § 1508.4 47

43 C.F.R. § 46.205 47

OTHER AUTHORITY

Act of May 25, 1948 (62 Stat. 269) 2

Exec. Order No. 12996 45

October 7, 1994 Cong. Rec. at 28834 . . . . . 30, 31

OMB Circular A-76 . . . . . 32, 34

61 Fed. Reg. 25235 42

62 Fed. Reg. 54644, 54646 . . . . . 3, 42

69 Fed. Reg. 41838, 41840 48

73 Fed. Reg. 39713-14 21

H. Rep. No. 103-653 (1994), 1994 U.S.C.C.A.N. 3488 . . . . . 3, 31, 41

H.R. Rep. No. 105-106 (1997), 1997 U.S.C.C.A.N. 1798-5 . . . . . 39, 45

S. Rep. No. 94-593 (1976), 1976 U.S.C.C.A.N. 288 44

S. Rep. No. 100-274 (1988), 1988 U.S.C.C.A.N. 2620 . . . . . 33, 34

I. Introduction On June 19, 2008, under the authority of the Tribal Self-Governance Act TSGA), the U.S. Fish & Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes (CSKT) signed an Annual Funding Agreement (AFA) involving activities at the National Bison Range Complex (NBRC) for fiscal years 2009 through 2011. Plaintiffs challenge FWS' approval of the AFA, claiming it violates: the Indian Self-Determination and Education Assistance Act (ISDEAA); the National Wildlife Refuge System Administration Act (NWRSAA, or Refuge Act); the National Environmental Policy Act (NEPA); the Intergovernmental Personnel Act (IPA); the Freedom of Information Act (FOIA); and the Administrative Procedures Act (APA).

This Court granted CSKT intervention as a matter of right. For the reasons included in this memorandum, the Defendants are entitled to summary judgment as a matter of law.

II. Statement of Facts[1]

A. Factual Background

1. Background. CSKT has a long connection to the land and bison within the NBRC. Mem. of P. & A. in Supp. of CSKT's Mot. to Intervene at 3-4; *see also* AR at 001633, 02121. In 1909, the federal government appropriated the land for the National Bison Range from property reserved for CSKT under the Treaty of Hellgate, an action

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1 [Footnote text deleted per technical corrections amendment, as explained in Motion filed by CSKT on April 26, 2010.]

later held to be an unconstitutional taking. AR at 002113 (citing *Confederated Salish and Kootenai Tribes v. United States*, 437 F.2d 458 (Ct. Cl. 1971)).

The NBRC is located within the exterior boundaries of the Flathead Indian Reservation and includes two ancillary Refuges located on federally-held trust lands for which CSKT is the beneficial owner (Ninepipe and Pablo National Wildlife Refuges). AR at 002700 (AFA at §2.B). When Congress appropriated money to purchase Refuge easement rights in the Ninepipe and Pablo Refuge lands, it recognized CSKT's reserved rights in those lands.[2]

CSKT has a long history of natural resources management, including cooperative projects with FWS. AR at: 002119-21, 002123; 001018; and 000386. Its past record and current abilities as a natural resources manager have been widely recognized, from the FWS Regional Director to the New York Times. AR at: 000728SUPII ("I have worked directly with the CSKT's Wildlife Program and I rank them among the best in Tribal Programs and as good as many State Fish and Wildlife agencies."); 002121 ("Yet virtually no one disputes the excellent management and conservation record of the Salish and Kootenai."); and 001084. CSKT's reputation is also known by senior Department of Interior (DOI) officials. *E.g.*, 001633 ("The tribe has an extensive Natural Resources Department; it was one of the first tribes to designate a wilderness area on its reservation, and aid in the preservation of a number of species.").

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[2] In § 5(b) of the Act of May 25, 1948 (62 Stat. 269), in an authorization of funds to be paid to CSKT for a permanent easement for the Ninepipe and Pablo Refuges, Congress reiterated that CSKT "shall have the right to use such tribal lands, and to grant leases and concessions thereon, for any and all purposes not inconsistent with such permanent easement."

2. Origin of AFA Negotiations. After President Clinton signed the Tribal Self-Governance Act (TSGA) into law in 1994, CSKT repeatedly tried to negotiate an AFA with FWS for managing local programs at the NBRC. AR at: 000744-45SUPII; and 000377. The House Natural Resources Committee stated that it

> intends . . . to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in [a] Self-Governance funding agreement.
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> AR at 001016; H. Rep. No. 103-653 at 10 (1994)(*not reprinted in U.S.C.C.A.N., see* 1994 U.S.C.C.A.N. 3488).

Since the 1990's, the Interior Secretary has consistently identified activities at the National Bison Range and the Ninepipe and Pablo National Wildlife Refuges (collectively, the NBRC) as eligible for Tribal Self-Governance contracting. AR at 002504, 002508; 002107, 002110; 000689-90; *see also* 62 Fed. Reg. 54644, 54646 (programs identified as eligible in fiscal year 1999). Over the course of different presidential administrations, CSKT heard support from senior DOI policymakers for an AFA, but resistance from people within regional and local FWS offices who were opposed to tribal contracting of NBRC functions. AR at 00698SUPII; 001015; Mem. of P. & A. in Supp. of CSKT's Mot. to Intervene, Ex "A" at ¶ 7 (Decl. of James Steele. Jr.); 001958 ("In November 1996, discussions resumed at the encouragement of Secretary Babbitt."); 000380 ("[Senator Conrad Burns] alleged that Interior Secretary Bruce Babbitt arranged a secret deal with the Salish and Kootenai Tribal Government."); and 000966SUPII.

There was also opposition from what the Montana Human Rights Network (MHRN) has described as Montana's "anti-Indian movement". AR at 000357 ("Many of the local opponents to joint management [of the NBRC] are key players in Montana's anti-Indian

movement."). In 2000, an MHRN report titled "Drumming Up Resentment: The Anti-Indian Movement in Montana" included a section on opposition to CSKT efforts to contract activities at the NBRC. *Id.* at 000377-78. The report noted that "[t]empers flared over [CSKT's Bison Range] proposal and anti-Indian sentiment ran high." *Id.* at 000377. It documents Plaintiff Delbert "Skip" Palmer, an FWS Bison Range employee at the time, as a board member during this period for All Citizens Equal (ACE), which MHRN describes as an anti-Indian organization. *Id.* at 000377, 000379, 000381, 000370, 000373. MHRN reported:

> Although ACE leaders and supporters were organizing opposition to the transfer [of contracted NBRC duties to CSKT], most often they chose to do so individually or with less well-known and newly formed organizations. As the Bison Range controversy was brewing in 1994 and 1995, ACE was coming out of a time period where it was closely identified with active white supremacist groups in the community.
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> *Id.* at 000377.

MHRN also described a public meeting held on CSKT's efforts to secure a Tribal Self-Governance agreement at the NBRC:

> Organizing efforts [by opponents of tribal contracting] continued through the summer, culminating in a hearing August 28, 1995. The hearing, organized by U.S. Senator Conrad Burns and held in the Lake County Courthouse, was hosted by [Dan] Ashe of the U.S. Fish and Wildlife Service. Racist sentiment was clearly present during the hearing . . . . During the meeting, local resident, Angie Read, said that Indians are lazy and it would take "10 others" to see that the job was done if an Indian was hired at the range.
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> *Id.* at 000378.

Due to the combination of local opposition and local/regional FWS staff resistance, CSKT sought assistance from the leadership of FWS/DOI to continue efforts to negotiate a Tribal Self-Governance agreement with FWS. AR at 000745SUPII ("For the entire decade which PEER references, CSKT made 'serious efforts' to contract operations at the NBRC.").

3. AFA Negotiations in 2003-04 Result in the FY 2005-06 AFA. A new effort at AFA negotiations began in 2003. AR at 000942. Plaintiff Public Employees for Environmental Responsibility (PEER), a group primarily representing government employees, opposed negotiation of the AFA, characterizing it as privatization and poor policy. AR at 000744SUPII (PEER statements asking for "a full review of any actions ceding national assets to entities outside of public control", and describing proposed AFA as "a proposal that divests the federal government of its interest and oversight of federal lands."). CSKT first responded to PEER's letters and press releases in a letter dated July 9, 2003, which was copied to federal officials and which included a list correcting errors in various statements made by PEER. AR at 000741-46SUPII, 000739SUPII.

It was not until 2004 that the renewed negotiation efforts yielded a compromise agreement wherein FWS contracted to CSKT portions of NBRC biology, visitor services, maintenance, and fire control programs. AR at 002642 (FY 2005-06 AFA at § 6.A). Despite contracting to CSKT most of the NBRC field workers, FWS had refused to contract any supervisory positions and instead created a new "Coordinator" position which it contracted to CSKT. AR at: 001358SUPI; and 002649 (FY 2005-06 AFA at § 11.B).

Under the AFA, CSKT agreed to continue to employ any federal NBRC worker whose job it contracted, with CSKT and FWS offering a variety of employment options which those federal workers could unilaterally select. AR at 002650-51 (FY 2005-06 AFA at

§ 11.E.2-3).[3] Those options included assignment by FWS to work for CSKT under an Intergovernmental Personnel Act (IPA) agreement. *Id.* at 002650.

Although it was not required, FWS and CSKT both agreed to publish the draft AFA for a 90-day public comment period which began on July 14, 2004. AR at 000385. This comment period was later extended for an additional 15 days. *Id.* A joint FWS-CSKT website was created to inform the public about the AFA, and a summary of the various public outreach was printed in the Federal Register. *Id.* at 000386; *see also* AR at 000654.

During the comment period, almost all of the FWS staff at the NBRC, including Plaintiff Delbert "Skip" Palmer, signed an October 8, 2004 letter requesting that FWS not approve the AFA. AR at 000966SUPII. The staff opposed the AFA, saying that it provides "biased opportunity" to tribal members, which "is offensive to us as employees and Americans", *id.* at 000968SUPII, and that the "AFA would convert the special purpose of the NWRS from 'Wildlife First' to a social program for a select segment of society." *Id.* at 000968-69SUPII. The signatories further stated that they "are concerned for our safety under this AFA" and asked their Regional Director "[w]hy would you or the FWS institutionalize racial preference hiring on US federal National Wildlife Refuge [*sic*]?" *Id.* at 000967SUPII.

In September of 2004, FWS approved a Programmatic Categorical Exclusion (CE) decision document under NEPA. AR at 002099. This Programmatic CE explicitly

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[3] Employment options for federal workers at the NBRC under the FY 2005-06 AFA included: tribal employment with federal benefits; tribal employment with tribal benefits; maintaining federal employment and being assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) agreement; or reassignment to another FWS station. AR at 002650 (§ 11.E of FY 2005-06 AFA). These options remain in the FY 2009-2011 AFA. AR at 002715-16 (§ 12.E of FY 2009-11 AFA).

anticipates subsequent AFA's. *Id.* at 002105. The decision document package for the Programmatic CE certifies compliance with various executive orders and statutes, including Section 7 of the Endangered Species Act. *Id.* at 002100-01. Prior to approving the FY 2005-06 AFA, FWS provided notice of this Programmatic CE in its response to an inquiry from then-Senator Conrad Burns of Montana. AR at 001359SUPI.

In response to public comments, revisions were made to the draft FY 2005-06 AFA. AR at 000385. It was then signed December 15, 2004 and was sent to Congress for the statutorily-mandated 90 day review period. *Id.*, 25 U.S.C. § 458cc(f). FWS published in the Federal Register its responses to public comments on the AFA, including its determination that the AFA fell within a categorical exclusion under NEPA. AR at 000385, 000387. There were no legal challenges to either the AFA or FWS' invocation of the Programmatic CE.

4. Implementation of the FY 2005-06 AFA and Resistance From Federal Employees. The FY 2005-06 AFA went into effect on March 15, 2005. Most of the FWS staff at the NBRC whose jobs were contracted chose reassignment rather than work for CSKT, but two staffers chose to remain and be assigned to work for CSKT under an IPA agreement. AR at 001695 ("December 2004 . . . Two employees transferred to work for CSKT."); Pls.' Mem. of P. & A. in Supp. of Pls.' Mot. For Summ. J., Decl. of Delbert Dee "Skip" Palmer at ¶ 6. Despite § 11.E of the AFA requiring that all affected federal employees choose their employment option before the effective date of the AFA, not all FWS staffers made their final employment choice by that date and, consequently, CSKT had to hire some staff during the first few months after the AFA took effect. AR at 000586.

Throughout their tenure under the FY 2005-06 AFA, CSKT workers experienced great tension with, and a marked lack of communication and cooperation from, much of the FWS staff. AR at: 000047 at ¶ 22; 002465-66; 000760SUPII; 000588-89; 001832; 000693; 000695; 001634; and 000848. CSKT also experienced problems with the IPA arrangement wherein FWS workers were assigned to perform work for CSKT. AR at: 000848; 000692; 000685; 000750SUPII; 001836, 001886, 001887, 001890, 001898, and 001910.

5. FWS Allegations of Performance Deficiencies, and CSKT Responses. This tension and lack of cooperation manifested itself in a report which FWS drafted in early 2006, ostensibly as an evaluation of CSKT's performance under the AFA. AR at 001132. The report, which alleged performance deficiencies on the part of CSKT employees, was developed by some of the same FWS employees who had previously submitted the 10/8/04 letter opposing the AFA prior to its approval. AR at 000966-69SUPII. Prior to issuing this report, FWS had never notified CSKT of performance deficiencies using procedures under §10.A.3.b(2) of the AFA, which afforded due process by providing an opportunity to either disprove the allegations or correct any problem that truly existed. AR at 002648.

CSKT accepted many of the report's findings, but asserted that a number of the report's alleged deficiency findings were incorrect, incomplete (disregarding FWS' role in the alleged deficiency), and/or subjective. AR at 000583. CSKT vigorously disputed those allegations and repeatedly tried to address the issue with FWS in order to correct the report. *E.g.*: AR at: 000583 *et seq.*; 000770SUPII; 000769SUPII; and

000765SUPII. Despite numerous objections and corrections from CSKT, FWS finalized its report in a substantially uncorrected form, changing only some text in the report's executive summary but not altering any of the allegations of CSKT's performance. AR at: 000583 *et seq.* (CSKT's objections); and 001973 (FWS final report). CSKT submitted a rebuttal to FWS and requested that it be provided to anyone who received a copy of the FWS report. AR at 000583 *et seq.* CSKT was then left to respond to the report's allegations on a piecemeal basis with both the general public and parties who had all along opposed the AFA and now cited the FWS report as justification for their opposition. *E.g.,* AR at: 000739SUPII *et seq.*; and 002115-17, 002122.

Against this backdrop, in reference to the FWS report FWS Regional Director Mitch King stated that "we are showing exceptional results and continual improvement. [The FWS] report displays both the good and the bad of the first year and to even a biased reader it is obvious that the good far outweighs the bad." AR at 000770SUPII.

6. Negotiations for Successor AFA Followed By New Allegations From FWS Staff. In spring of 2006, while CSKT was trying to correct and address the FWS report on CSKT performance in 2005, the parties began negotiations for a successor AFA. AR at 001132. Negotiations with Regional FWS staff came to a standstill in June. AR at 001695. CSKT then met with FWS/DOI officials in Washington, D.C. and, by summer's end, CSKT and FWS/DOI had verbally agreed to phase in an increase in CSKT's contracting of local NBRC operations. AR at: 002035; 002512; 001695 ("September 2006 . . . CSKT meets with FWS and Interior officials in Washington, D.C. to discuss proposal for phasing in a full local [*sic*] tribal contracting of National Bison Range

activities over a three year period."). CSKT put this in writing in a draft AFA which the FWS Director instructed CSKT to transmit to FWS' Denver regional office. AR at 002154.

The proposal for phasing in additional CSKT responsibilities under a successor AFA, and a subsequent extension of the FY 2005-06 AFA pending negotiations for a successor AFA, were quickly followed by new allegations from FWS staff in an informal grievance about CSKT employees, this time alleging a hostile work environment. AR at 000738SUPII (extension of AFA); 001695 (grievance filed); *see also* 002512; 000720-21SUPII. While the allegations involved CSKT staff, the informal grievance specifically charged FWS with creating an alleged hostile work environment "through implementation of the Annual Funding Agreement." AR at 000127. The grievants "specifically refute[d] the notion [that their] grievance is against the Confederated Salish and Kootenai Tribe or their members." *Id.*

Aside from a broad notice that some FWS staff had made allegations against CSKT employees regarding "safety and ethical violations, harassment, intimidation and personal slander", no specifics were conveyed to CSKT, despite FOIA requests which CSKT pursued through the administrative appeal stage. AR at: 000045 at ¶¶ 11-12, 000117; 000720SUPII. The administrative appeal of the FOIA denial was effectively denied. AR at 000129. In the absence of any specific details about the broad allegations, CSKT conducted its own investigation to the best of its ability and reported its findings to the FWS Director. AR at: 000045-46 at ¶¶ 11-15, 20; and 000722SUPII. CSKT repeatedly reminded FWS that the AFA had a notification process in place to address alleged performance deficiencies and that FWS was not complying with that requirement, making it

difficult or impossible for CSKT to look into the allegations and either disprove the allegations or address any problems that may have truly existed. AR at: 000722SUPII; 000726-27SUPII; 000721SUPII; 000697SUPII; and 000119, 000128. In a letter to FWS Director Dale Hall, CSKT Tribal Council Chairman James Steele, Jr. said

> [a]s you know, there are some individuals within the Service who have historically opposed the AFA and CSKT's contracting at the Bison Range. I want to ensure that you receive balanced information on this issue, and that would be best accomplished by hearing directly from us.
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> AR at 000721SUPII.

FWS brought in someone to investigate the allegations. AR at 002512. The investigation report largely consisted of summaries of the investigator's interviews with FWS staff. AR at 002356. In one of the few cases where the FWS investigator attempted to ascertain the veracity of an allegation, he found that the allegation made by the FWS staffer in question was not true.[4] CSKT did not make its staff available to the investigator because FWS had never provided information to CSKT about what the allegations were or who they involved. AR at 002381. Noting this, the investigator's report said that "the CSKT side of the story is still unknown." *Id.* at 002356. The investigator found that FWS staff "are threatened by the fact that they may lose their jobs" and that "some felt that practice [of tribal preference hiring] was discriminatory when applied to federal jobs and possibly their job." *Id.* at 002357.

FWS did not provide CSKT with either the grievance or the report, nor did FWS solicit from CSKT any response to either of them. FWS did not provide CSKT with any notice of

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[4] The FWS investigator's report states that: "Skip Palmer had told me that his son-in-law, Jereme Nicholoson [*sic*], had found tribal member and NBR maintenance worker TJ Hanes [*sic*] on his property in the distant past hunting elk illegally. I asked Nicholson [*sic*] about this and he said that wasn't true." AR at 002382.

performance deficiency as a result of the grievance, per § 10.A.3.b(2) of the AFA. AR at 000722SUPII, 000726-27SUPII.

Even after the FWS had received the above-mentioned investigation report, DOI referred the matter to its Equal Employment Opportunity (EEO) office. AR at: 002512; and 000349. CSKT supported this referral to an independent EEO investigator, and requested that the investigator interview the Tribal staff at the NBRC. AR at 000696-97SUPII.

7. Bison Feeding Allegations and CSKT Responses. On December 7, 2006, the FWS Deputy Regional Director, through a phone call, informed CSKT about FWS staff alleging that CSKT staff were not properly feeding bison that had been penned awaiting transport to other areas. AR at 002441-42. CSKT responded by suggesting that all persons involved talk with each other to clarify the issue before FWS took any action. *Id.* at 002441-42. The Deputy Regional Director told CSKT he would procure daily reports from the NBRC Refuge Manager to monitor the issue, but he instead sent a letter to CSKT that same afternoon stating that FWS was immediately "withdrawing authorization" for CSKT to feed bison. AR at: 002441 (Deputy Regional Director's stated intent to procure daily reports); and 002393 (FWS letter). The FWS Deputy Regional Director made his phone call and sent his letter while all CSKT NBRC staff, and most FWS staff, were away from the NBRC at an off-site training on workplace communication that had been ordered by DOI. AR at 000547.

Prior to December 7th, CSKT was unaware that FWS was concerned about an alleged feeding deficiency. AR at: 002441; 000537; and 000045 at ¶¶ 8-9. While the Refuge Manager stated that he considered the matter an "emergency" and recommended that FWS "reassume" the feeding duties, he did not utilize either the emergency or

reassumption provisions of the FY 2005-06 AFA, nor did he otherwise notify CSKT of the alleged emergency. AR at: 002341 ("I consider this an emergency and strongly recommend that the FWS immediately reassume the responsibility of feeding these bison."); 002393; 002442; and 002657, 002659 (AFA at §§ 15, 16.C).

On December 11, 2006, CSKT sent a response to FWS disputing the allegations and requesting more information. AR at 002440, 002443. The response included a letter from an independent veterinarian whom CSKT had brought to the NBRC to assess the bison. *Id.* at 002445. The veterinarian's letter stated that the bison "appeared to be in good condition", that their "rib cover and tail head fat appeared good", and that the bison "had good fill and were 'frisky' when moved." *Id.* His letter gave his general impression that "the animals are in good condition". *Id.* He suggested weighing the bison if there was any question as to their condition, but FWS rejected CSKT's request to do this. *Id.*; AR at 000715SUPII; *see also* 000718SUPII . CSKT's response also reminded FWS of the contractual requirement in § 10 of the AFA to provide written notice of performance deficiencies and an opportunity for CSKT to either disprove them or correct any problems. AR at 002442.

For at least ten days before December 7th, FWS created an internal record purporting to show bison feeding deficiencies, summarized in an internal report dated December 10, 2006 and revised on January 4, 2007. AR at 002400 (12/10/06 version); 000006 (1/4/07 version); *see also* AR at 002340. During that time, FWS did not issue any notice of performance deficiency as required under §10.A.3.b(2) of the FY 2005-06 AFA. AR at 002442. CSKT did not see either of the internal FWS reports (both of which were

dated after December 7th), and had no ability to respond to them, until well after FWS terminated the AFA on December 11, 2006. AR at 000005.

After CSKT finally received the FWS report on January 9, 2007, it issued a response report of its own to both demonstrate that the bison had been fed properly and correct the record that had been created by FWS. AR at: 000005 (FWS report conveyed to CSKT); 000536 (CSKT response to allegations in report). CSKT also filed an administrative appeal of FWS' action to withdraw bison feeding responsibilities from the AFA and requested accelerated consideration. *See* Section II.B.1 of this Memorandum, *infra*.

8. FWS Termination of AFA With No Prior Notice. On December 11, 2006, four days after it had "withdrawn authority" for feeding bison, FWS Regional Director Mitch King abruptly terminated the existing AFA, and negotiations for a successor AFA, on the basis of various allegations of performance deficiencies, including the alleged bison feeding issue. AR at 002429. Prior to issuing the termination letter, FWS had issued no written notices of any performance deficiency, as required under §10.A.3.b(2) of the FY 2005-06 AFA, and otherwise failed to provide CSKT with any notice of the allegations and an opportunity to either disprove the allegations or correct any actual deficiency. AR at: 000029-30; 000044 at ¶¶ 5-21, 000132 at ¶¶ 3-4; and 001696.

In terminating the AFA, FWS did not utilize procedures contained in federal regulations and the AFA governing federal reassumption of contracted activities. AR at: 002659-60 (§ 16.C of FY 2005-06 AFA); 000030; and 25 C.F.R. §§ 1000.300-318. CSKT did not have notice of performance deficiency allegations, and had no opportunity to address or disprove them prior to termination of the AFA. AR at 000026-27, 000029-30. FWS'

termination of the AFA appeared to have been partially based upon performance allegations which were contained in a report purporting to evaluate CSKT performance over calendar year 2006. AR at 002517. This report was not finalized until over a month after FWS had terminated the AFA, and it was not provided to CSKT until over two months after termination. AR at 000700SUPII. FWS created a record appearing to show serious substandard performance on the part of CSKT and terminated the AFA before CSKT had either notice of the allegations or opportunity to disprove, or otherwise respond to, them. *Id.; see also* AR at 002400 (FWS report on bison feeding which was not provided to CSKT until it was revised a month later [see AR at 000005]).

Once CSKT obtained a copy of the FWS report purporting to evaluate CSKT's calendar year 2006 performance, CSKT issued a detailed response document refuting and otherwise responding to the report's allegations. AR at 001826 *et seq.* CSKT also prepared a separate final report of its AFA accomplishments. AR at 001070 *et seq.*

9. Responses to AFA Termination and CSKT Appeal to IBIA. Termination of the AFA resulted in local, regional and national media coverage of the issue. AR at 000034, 000140, 000144, 000146. After FWS terminated the AFA, a number of third parties questioned FWS', or individual FWS staffers', motives and the record they created to allege poor CSKT performance. AR at: 002463, 002466 (statement of longtime FWS volunteer Paul Bishop); 000358 (Montana Human Rights Network letter to PEER); 000251 (letter from Congressman Don Young to Secretary of Interior Dirk Kempthorne); and 001346 (letter from Chickaloon Village Chairman Doug Wade). The National Congress of American Indians passed a resolution stating that the negotiations for a successor

AFA were "arbitrarily terminated"and calling on the Secretary to enter into a new AFA. AR at 001964-65. In a bipartisan letter to the Interior Secretary, House Natural Resources Committee Chairman Nick Rahall and Ranking Member Don Young said they were "concerned that the lack of support of this agreement by some individuals within the FWS may have resulted in a distorted record concerning NBR activities under the AFA." AR at 001016.

In her internal memo dated December 29, 2006, Deputy Secretary Lynn Scarlett stated that "[i]t appears that our team did not take all of the steps necessary to manage this situation properly." AR at 002513. She also noted that "the authorization to terminate the AFA (or portions thereof) did not follow expected procedures - those that require the identification of problems and afford a reasonable opportunity to correct them." *Id.* at 002513. Deputy Secretary Scarlett, FWS Director Dale Hall, and Acting Assistant Secretary for Indian Affairs James Cason agreed to "retain an ombudsman/facilitator/mediator to work at the NBR . . . to assist the team to identify and resolve problems and conflicts effectively." *Id.* at 002514. The officials, including the FWS Director, agreed to enter into a new AFA, which was announced by press release. AR at 002516. They also agreed to write a draft decision paper for the Secretary's office that would examine different options for future management of the NBRC. AR at: 002514-15; and 001632 *et seq.*

Despite this commitment for renewed AFA negotiations, CSKT appealed the FWS termination of the AFA to the Interior Board of Indian Appeals (IBIA) in order to both preserve its rights and correct the record generated by FWS with respect to CSKT's performance and the termination of the AFA. See Section II.B.2 of this Memorandum, *infra*. CSKT agreed to stay the IBIA proceedings due to the federal commitment to negotiate a new AFA, which was reiterated

by Interior and FWS officials who visited the Flathead Indian Reservation in January 2007 to initiate negotiations for a new AFA. AR at: 001696; and 000695-96SUPII.

10. FWS Resists New AFA Negotiations. In March 2007, Deputy Secretary Lynn Scarlett and DOI's Office of Collaborative Action and Dispute Resolution engaged a team of third party neutrals to work with FWS/DOI and CSKT. AR at 000660. In her memo to federal officials, Deputy Secretary Scarlett requested that they "advise the National Bison Range Team that their good faith participation in this process is crucial to carrying out our agreed upon commitments." *Id.* at 000661.

Rather than engaging in negotiations for a new AFA, in April of 2007 FWS instead proposed a cooperative agreement which would not have been within a Tribal Self-Governance Act framework. AR at 000944. FWS officials proposed this at the same time as Interior officials were reiterating the Department's commitment to a new Tribal Self-Governance AFA. AR at 001015. As a result of the conflicting messages, CSKT sought to clarify why FWS was proposing a cooperative agreement rather than an AFA. AR at: 000971-72; and 000985-86. NBRC Refuge Manager Bill West[5] eventually responded months later in an August 17, 2007 letter by stating that

> we believe that an AFA is the antithesis of partnership. The reason we will not consider a Tribal Self-Governance agreement is that we are absolutely convinced such an agreement is unworkable. The poorly written [federal] regulations for implementing an AFA, in themselves, create an adversarial condition that prevents partnership from occurring. The regulations do not provide an intelligent method to achieve land management objectives.
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> AR at 002042.

[5] Mr. West was a signatory to the October 8, 2004 letter opposing the original AFA and requesting that FWS not approve it. AR at 000969SUPII. At that time, he had been the Deputy Refuge Manager.

This FWS push for a cooperative agreement was later the subject of congressional inquiries, as well as statements by several congressmen that an AFA was the appropriate type of agreement to pursue. AR at: 002202-03; 002212-13; and 002261.

In light of FWS refusing to negotiate for a new AFA, CSKT petitioned in May 2007 to lift the stay of IBIA proceedings and continued with the administrative litigation while simultaneously working, with federal officials and the third-party neutrals hired, to resume AFA negotiations. AR at: 000695SUPII; 001696; and 000660. During this time, the third party neutrals conducted interviews of federal and tribal parties as part of the assessment report they were charged with drafting. AR at 002129, 002130-32.

As more time went by without a new agreement, others who supported a new AFA for CSKT began to speak up, including parties ranging from the local Sierra Club and other conservation groups to congressional officials. *E.g.*, AR at: 002222 (local Sierra Club Group); 002125 (Friends of the National Bison Range); 002126 (Hellgate Hunters & Anglers); 001016 (joint letter from Congressmen Nick Rahall and Don Young); 001146SUPI (Senator Jon Tester); 001956-57 (Senator Tester); 002203 (Congressmen Nick Rahall, Don Young, Dale Kildee and Eni Faleomavaega joint letter); 002212 (Congressmen Nick Rahall and Don Young joint letter); and 002261 (Senators Max Baucus and Jon Tester joint letter).

Several of these parties asserted that FWS had not provided CSKT with a fair opportunity under the first AFA and/or that FWS continued to resist a second AFA. *E.g.*, AR at: 002124 ("Unfortunately, people within the U.S. Fish and Wildlife Service have worked against both of these very reasonable goals [of keeping NBR intact and allowing a meaningful

management role for CSKT]"); and 001018 (FWS proposals to radically downsize NBRC staff and bison herd numbers "have every appearance of being proposals intended to make the CSKT disinterested in future management of the NBRC.").

11. Third Party Neutrals Issue Assessment Report and Assistant Secretary for Fish, Wildlife and Parks Orders Facilitated Negotiations. On October 2, 2007, the third-party neutrals procured by DOI issued their final assessment report, which recommended facilitated negotiations for a new agreement between FWS and CSKT. A copy of the final report is attached as Exhibit "A" to this Memorandum. *See also* AR at 002130, 002134 (draft of report). The Assistant Secretary for Fish, Wildlife and Parks, together with the FWS Director, followed by issuing a November 26, 2007 memo directing the FWS Regional Director to begin such negotiations for a new Self-Governance AFA. AR at 002224, 002227. At this point, FWS had a new Regional Director in Denver, who designated the new FWS Refuge Supervisor for the NBRC to be the lead negotiator for FWS. AR at 002276.

12. Negotiations, NEPA Reconsideration and Signing of FY 2009-11 AFA. The third party neutrals facilitated the AFA negotiations, which began in January 2008. AR at 000172. Prior to, and during, the negotiations for a new AFA, federal officials again discussed NEPA compliance, with solicitors and officials reviewing the issue and determining that a new AFA fell under the same Programmatic CE as the prior FY 2005-06 AFA. An April 20, 2007 memo from two Associate Solicitors, representing both the General Law and Indian Law divisions, replied to the Associate Deputy Secretary's question on NEPA applicability with the following response: "When the 2005-2006 AFA became effective, the FWS determined that NEPA did not apply because the AFA was within the terms of a categorical exclusion. The

result holds for the current AFA as well." AR at 000962SUPII. A year later, a February 28, 2008 email from Janet Naughton, Chief of Staff for the Assistant Secretary for Fish, Wildlife and Parks, to Jean Clemens of FWS' Denver External Affairs Office, stated that "NEPA does not apply to the AFA process. FWS responded to this with great specificity in the final AFA notice in the Fed Reg in 2005."[6] AR 000867SUPI.

In an April 11, 2008 letter to Congressman John Dingell, Assistant Secretary for Fish, Wildlife and Parks Lyle Laverty reiterated that "[a]s to the activities to be conducted under the AFA, ... the Service has found that routine operation, maintenance, and management activities do not (individually or cumulatively) have a significant effect on the human environment and are, therefore, categorically excluded from NEPA compliance." AR at 000907. Notice of the CE was also included in FWS' public outreach plan. AR at 001625.

The negotiations resulted in the parties signing the FY 2009-2011 AFA on June 19, 2008. AR at 002699.[7] Due to the experience under the prior FY 2005-06 AFA, the new FY 2009-2011 AFA includes: a requirement for monthly status reports to be provided to CSKT and senior FWS/DOI officials, including notice of any performance concerns by either party; a team structure for AFA implementation; and detailed dispute resolution procedures. AR at 002714, 002706, 002729. The new AFA retains the provision

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[6] Although unclear, the text of Ms. Naughton's email appears to consist of an email from Art Gary, Associate Solicitor for the General Law Division, who had co-authored, along with Edith Blackwell, Acting Associate Solicitor for the Indian Affairs Division, the April 20, 2007 memo on AFA issues (including NEPA). *See* AR at 000960-62SUPII.

[7] George Skibine, the Acting Assistant Secretary for the Bureau of Indian Affairs, also signed the AFA due to the BIA's agreement to purchase liability insurance for volunteers in accordance with 25 U.S.C. § 450f(c). AR at 002725 (AFA at § 15.D).

stating that CSKT will manage activities under the AFA "[s]ubject to the final authority of the Refuge Manager". AR at 002704 (AFA at § 7.A).

The AFA was sent to the relevant Congressional committees for the statutorily-required 90-day review period before becoming fully effective on January 1, 2009. AR at 001946; 25 U.S.C. § 458cc(f). Notice of the AFA signing was published in the Federal Register, along with express notice that the "National Bison Range and other units of the NBR complex will remain units of the NWRS and will continue to be administered and managed by the Service in accordance with the NWRS Administration Act, and all other applicable laws, regulations and policies." AR at 001948; 73 Fed. Reg. 39713-14 (July 10, 2008).

Approval of the new AFA was the basis for the parties' August 14, 2008 settlement of CSKT's pending IBIA claim challenging FWS' termination of the FY 2005-06 AFA. AR at 002012. Before the FY 2009-2011 AFA became fully effective, a new FWS Refuge Manager was in place at the NBRC. AR at 002146 (IPA agreement at Part IV, § 12 listing Jeff King as Refuge Manager).

13. Plaintiffs File Lawsuit. Plaintiffs filed their action challenging the AFA on December 8, 2008. Plaintiff PEER had previously expressed its opposition to Tribal Self-Governance agreements involving Refuges. AR at: 000744-46SUPII (citing PEER statements that "[o]ur concern is not with tribal governments but with a proposal that divests the federal government of its interest and oversight of federal lands", and "[t]he issue is one of] eventual dissolution of the rich history and legacy of the [National Wildlife Refuge System.]").

B. Procedural Background - CSKT's Administrative Appeals of FWS Actions.

1. CSKT Appeal of FWS Action Regarding Bison Feeding. On January 10, 2007, CSKT appealed the December 7th FWS decision "withdrawing authorization" for feeding bison. AR at 000152 [*erroneously dated "January 10, 2006"*]. FWS did not respond, so CSKT appealed to the Civilian Board of Contract Appeals (CBCA) requesting accelerated consideration under the Board's regulations. AR at 002332 (*Confederated Salish and Kootenai Tribes of the Flathead Nation v. Dept. of the Interior*, Docket No. CBCA 692-ISDA).

After rejecting FWS' motion to dismiss, the CBCA issued a ruling on December 4, 2007 which expressly declined to rule on whether FWS had breached its contract by "withdrawing authority" for bison feeding under the AFA. AR at: 002135; and 002331-32, 002338. Instead, the CBCA determined that, even if FWS had breached its contract, it was not a material breach since FWS terminated the AFA just four days later. *Id.* at 002338 ("Even if deemed to be a breach, the Government's taking over the bison activities on December 7 was not a material breach to the contract.") and 002332 ("Therefore, because the contract properly expired on December 11, the determination of December 7 did not constitute a material breach.").[8] This decision was released soon after the Assistant Secretary for Fish, Wildlife and

[8] While the CBCA board's dicta characterized the AFA as having "properly expired on December 11", the legality/propriety of FWS' December 11th termination of the FY 2005-06 AFA was not before the CBCA. As the CBCA acknowledged, CSKT had challenged the legality of FWS' termination of the AFA (and AFA negotiations) in a separate claim to the Interior Board of Indian Appeals. AR at: 002337, n.1 ("Although the contractor is pursuing relief elsewhere, alleging that the Government improperly ceased negotiations. . . ."); 002140, n.3 ("CSKT pursues relief elsewhere regarding the Government's failure to enter into another AFA . . . ."); and 000024 (CSKT Notice of Appeal to IBIA).

Parks ordered that new AFA negotiations be finished by March 28, 2008. AR at 002230. CSKT chose to focus on the new negotiations rather than appeal the CBCA decision.

2. CSKT Appeal of AFA Termination. Although FWS and Interior had, in December 2006, committed to enter into a new AFA, on January 9, 2007 CSKT appealed the AFA termination to the IBIA in order to both preserve its rights and correct the record generated by FWS with respect to the AFA termination and CSKT performance. AR at: 000024; and 000032 (*Confederated Salish and Kootenai Tribes of the Flathead Nation v. Mountain-Prairie Regional Director*, Interior Board of Indian Appeals Docket # IBIA 07-60-A). The same month, CSKT agreed to stay the IBIA proceedings as a result of the federal commitment to negotiate a new AFA. AR at: 001696; and 000695-96SUPII. CSKT petitioned in May 2007 to lift the stay of IBIA proceedings. AR at 001696. Later, CSKT and FWS agreed that the signing of the new FY 2009-11 AFA settled the case and agreed to its dismissal, which the IBIA ordered on August 14, 2008. AR at 002012.

III. Standard of Review

The Court should grant a motion for summary judgment if no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *City of Williams v. Dombeck*, 151 F.Supp.2d 9, 12 (D.D.C. 2001). The court will not accept legal conclusions cast in the form of factual allegations. *Islamic American Relief Agency (IARA-USA) v. Gonzales*, 477 F.3d 728, 732 (D.C.Cir. 2007). In an APA case, summary judgment is appropriate where review is on the administrative record. *GCI Health Care Centers, Inc. v. Thompson*, 209 F.Supp.2d 63, 67-8 (D.D.C. 2002). Under the APA, the Court must set aside an agency action that is "arbitrary and capricious, an abuse of discretion, or otherwise not in

accordance with the law." 5 U.S.C. § 706(2). The scope of review under the "arbitrary and capricious" standard is narrow and the reviewing court may not substitute its judgment for that of the agency. *GCI Health Care Centers, Inc. v. Thompson*, *supra*, at 74. To survive the "arbitrary and capricious" standard, an agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made." *Poett v. United States*, — F.Supp.2d —, 2009 WL 3088828 at 9 (D.D.C. 2009).

This standard of review is highly deferential to the agency and the Court is not entitled to substitute its judgment for that of the agency. *Poett* at 9. A court must uphold an agency decision if the agency shows that it has examined relevant data and articulated a satisfactory explanation for its action. *GCI Health Care Centers, Inc.* at 74. A court need not find that the agency decision "is the only reasonable one, or even that it is the result [the Court] would have reached". *Poett*, *supra*, at 9 (quoting *Am. Paper Inst., Inc. v. Am. Elec. Paper Serv. Corp.*, 461 U.S. 402, 422 (1971)). The party challenging agency action has the burden of proof. *Poett* at 9.

A reviewing court shall set aside agency action that is an abuse of discretion or is otherwise not in accordance with the law. 5 U.S.C. § 706(2)(A). Judicial review is confined to the full administrative record before the agency at the time the decision was made. *Poett* at 9.

IV. Plaintiffs Have Not Demonstrated Sufficient Standing.

To pursue injunctive relief in federal court, a plaintiff must demonstrate standing under Article III of the Constitution by showing: 1) "injury in fact" that is concrete and particularized, and is "actual or imminent" rather than "conjectural or hypothetical"; 2) causation traceable to the challenged action of the defendants; and 3) a likelihood, as opposed to speculation, that the

injury will be redressable by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Summers v. Earth Island Institute*, 129 S.Ct. 1142, 1149 (2009).

When the plaintiff is not herself the object of the government action she challenges, standing is not precluded, but it is ordinarily "substantially more difficult" to establish. *Summers v. Earth Island Institute*, *supra*, at 1149 (citing *Lujan v. Defenders of Wildlife*, *supra*, at 562).

A. Plaintiffs' Claimed Injury is Neither Concrete Nor Particularized.

Plaintiffs allege no concrete injuries they have suffered, or will suffer, as a result of the AFA. Most of the Plaintiffs claim no injuries whatsoever. *E.g.*, Pls.' Compl. at: ¶ 8, ¶ 14, ¶ 15. Rather, they assert general and conclusory "concerns" as their apparent injuries. *E.g.*, Pls.' Compl. at: ¶ 8 ("Mr. Reed has concluded that management of the NBRC must be the sole responsibility of the United States Fish and Wildlife Service."); ¶ 11 ("Mr. Kaschke is concerned that the AFA with the CSKT . . . damages the career opportunities of current FWS personnel at the NBRC."); and ¶ 12 ("[Mr. Mazzoni] is concerned that the AFA's dispute resolution process . . . leaves the Refuge Manager with no ultimate authority for refuge management.").

Plaintiffs' generalized concerns and conclusory opinions about administration of the Refuge System do not equate to the concrete and particularized injuries required for standing. *Cf.*, *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 182 (2000)(where the Court found standing on the part of plaintiffs who would not fish, swim, or recreate in a river for fear of pollution discharged by defendant, which the Court held to present "more than the mere 'general averments' and 'conclusory allegations'). In contrast, the Plaintiffs here assert standing on general averments of dissatisfaction with the AFA, as well as conclusory allegations about CSKT's performance and speculation of future poor performance.

Plaintiffs point to no "concrete and particularized" injuries they suffer as a result of CSKT's alleged performance. "It would exceed [Article III's] limitations if . . . in the absence of any showing of concrete injury, we were to entertain citizen suits to vindicate the public's nonconcrete interest in the proper administration of the laws." *Summers* at 1151.

B. Plaintiffs' Claimed Injuries Are Conjectural and Hypothetical.

Plaintiffs' claimed injuries are not "actual or imminent" but are "conjectural" and "hypothetical" within the meaning of *Lujan*. Plaintiffs make the conclusory, and presumptive, statement that "FWS is well aware that another AFA with the CSKT is likely to have significant impacts on the environment." Pls.' Compl. at ¶ 90. Plaintiffs declined, however, to further speculate as to what those significant impacts may be. To the extent Plaintiffs predict future poor performance by CSKT under the current AFA, such claims are conjectural and hypothetical and do not meet Article III standing requirements. *Summers* at 1142. In *Summers*, the Court declined to find concrete injury where it was being "asked to assume. . . that [a U.S. Forest Service] tract is about to be developed by the Forest Service in a way that harms [plaintiff's] recreational interests". *Summers* at 1150. The D.C. Circuit has stated that "[s]peculative and unsupported assumptions regarding the future actions of [third parties] are insufficient to establish Article III standing." *Nat'l Wrestling Coaches Ass'n. v. Dept. of Educ.*, 366 F.3d 930, 943 (D.C.Cir. 2004).

The Plaintiffs in the case at bar ask this Court to assume that CSKT will perform poorly under the current AFA. Aside from its conjectural and hypothetical nature, Plaintiffs' claim is also belied by CSKT's documented performance thus far under the current AFA. *E.g.*, Mem. of P. & A. in Supp. of CSKT's Mot. to Intervene, Ex. "A" at ¶ 20.

C. Plaintiffs Assert No Imminent or Concrete Plans to Return to the NBRC.

Imminent plans to visit or use a site may be sufficient for purposes of establishing Article III standing. *Summers* at 1149. Plaintiffs assert no such imminent plans. None of the Plaintiffs assert any imminent plans to return to the NBRC. Only two plaintiffs have asserted any plans to return at all. Plaintiff Marvin Plenert stated that he "plan[s] to return to visit in the future." Pls.' Mot. For Summ. J., Decl. of Marvin Plenert at ¶ 15. Plaintiff David Wiseman referenced "periodic visits to the NBRC, which I intend to continue." *Id.* at Decl. of David Wiseman at ¶ 8. Plaintiff Palmer asserts only that he "would return [to the NBRC] if the AFA were cancelled." *Id.* at Decl. of Delbert Dee "Skip" Palmer at ¶ 11. These kinds of "some-day" intentions to return, without any description of concrete plans, or indeed any specification of when the "some-day" will be, do not support a finding of the "actual or imminent" injury required under Supreme Court caselaw. *Summers* at 1151 (quoting *Lujan* at 564).

D. Plaintiffs Have Not Met Their Burden to Demonstrate Standing.

Plaintiffs have not satisfied the required elements for Article III standing with respect to any of their claims, and this Court should accordingly grant Intervenor-Defendant CSKT's Motion for Summary Judgment. Alternatively, the remainder of this memorandum explains why Defendants are entitled to summary judgment on the merits for each of the claims.

V. The AFA Complies with Both the Tribal Self-Governance Act and the Refuge Act.

Plaintiffs claim that the FY 2009-11 AFA violates the TSGA proscriptions against contracting: 1) inherently federal functions; and/or 2) functions where the statute establishing the program does not authorize the type of participation sought by the contracting tribe. Pls.' Compl.

at ¶¶ 82-84. Plaintiffs assert related claims that the AFA violates the Refuge Act requirement that the Refuge System be administered by the Secretary through the FWS. *Id.* at ¶¶ 74-79.

A. The AFA Does Not Contract Inherently Federal Functions to CSKT.

1. The Plain Meaning of "Inherently", and Legal Guidance as to What May Be Deemed "Inherently Federal", Contradict Plaintiffs' Claims.

The TSGA may not "expand or alter existing statutory authorities . . . so as to authorize the Secretary to enter into any agreement [contracting] functions that are inherently Federal . . . ." 25 U.S.C. § 458cc(k). Webster's defines "inherent" as "existing as an essential constituent or characteristic." http://www.websters-online-dictionary.org/definition/inherent. Given the plain meaning of "inherent", deeming a function "inherently federal" under the TSGA is held to a high standard. AR at 002229 ("It is my understanding that there is no clear, unambiguous definition of the term 'inherently federal function', but it is a very high bar to overcome.").

Congress intended this higher standard in the TSGA by proscribing only functions that are "inherently federal", rather than prohibiting the contracting of "statutorily federal functions", or "inherently governmental" functions, consistent with existing Office of Management and Budget (OMB) guidance intended to differentiate between governmental and private activities.

In determining which activities may be "inherently federal", then-Assistant Secretary for Fish, Wildlife and Parks Lyle Laverty described the Department's conservative approach:

> [I]t is also clear that the Secretary of the Interior is authorized [by the Refuge Act] to enter into cooperative agreements with State fish and wildlife agencies to manage programs on a refuge, "subject to standards established by, and the overall management oversight" of the Service. . . .We find the discussions of State involvement in refuge management to be instructive, and believe that it is appropriate to follow the guidance provided by Congress for involving States in refuge management when applying the mandates of Indian tribal self-governance to the NWRS to allow Tribes to manage programs on refuges, subject to Service standards, and with final decision authority retained by the Service. In doing so, we have not exceeded our authority to define

> "inherently federal functions", since no inherently federal functions will be included in any AFA with any Tribe.
>
> AR at 001951-52.

Neither the TSGA's Interior provisions nor their accompanying federal regulations defines what may be considered an "inherently federal function", nor are there any reported federal court decisions providing a definition within the context of the TSGA. However, there is guidance as to what may be an "inherently federal" function, including: Title V of the Indian Self-Determination and Education Assistance Act (ISDEAA); legislative history of the TSGA; federal case law; Interior Solicitor Guidance; and OMB guidance. All of these authorities were reviewed by DOI solicitors and/or officials prior to approval of the FY 2009-11 AFA. AR at: 001704; 000910; 000931; and 000184.

2. Title V of the Indian Self-Determination & Education Assistance Act

In looking for guidance as to what Congress intended as the definition of an "inherently federal" function, the most logical place to start is in other statutory provisions within ISDEAA. The TSGA, which dealt with Interior programs, was incorporated as Title IV of ISDEAA. Sister Self-Governance provisions involving the Indian Health Service were later enacted as Title V of ISDEAA. Title V contains the following definition of inherent federal functions:

> The term "inherent Federal functions" means those Federal functions which cannot legally be delegated to Indian tribes.
>
> 25 U.S.C. § 458aaa(a)(4).

In defining inherently federal functions as those that would be illegal to delegate, Congress established a high standard for making such a determination.

Given the Refuge Act's authorization for state agencies to manage programs on Refuges, such functions are not "inherently federal", and given TSGA's authorization for tribal

contracting, local Refuge duties contracted under the AFA are not the sort that "cannot legally be delegated to Indian tribes" within the meaning of the Title V definition. 16 U.S.C. § 668dd(b)(4), 25 U.S.C. § 458cc(c). Under the AFA, FWS and DOI retain: all policy-making and oversight functions; the Refuge Manager and the Deputy Refuge Manager at the NBRC; and the complete FWS/Interior chain of command for the NBRC. AR at 002704; *infra* at n.9. The Department has even recognized the possibility that, if CSKT were to contract all local Refuge activities, FWS could exercise supervisory authority through the regional office and retain other inherently federal functions, if any, through restructuring. AR at 001706.

Section V.B of this Memorandum addresses Plaintiffs' assertion that the Refuge Act's mandate for the Secretary to administer the Refuge System through FWS means that Refuge activities cannot legally be delegated by FWS to a tribe. *Infra* at 41. That argument fails, as explained later in this Memorandum.

3. Legislative History

a. Tribal Self-Governance Act

There is limited legislative history with respect to the inherently federal function portion of the TSGA since Congress added the provision immediately prior to the bill's passage. Senator John McCain noted in floor comments that the provision responded to a concern raised by the International Association of Fish and Wildlife Agencies about the Act potentially impacting the jurisdictional authority of tribal, state and federal governments over fish and wildlife resources. See October 7, 1994 Cong. Rec. at 28834. As for the Act's reference to "inherently federal" responsibilities, McCain described them as functions "which are determined by the Federal courts not to be delegable under the constitution" - again, a very high bar. *Id.* at p. 28835.

As a 1996 Solicitor's memo generally recognized, most of the duties exercised at the local Refuge level are not the sort that courts have determined not to be delegable under the Constitution, as described by Senator McCain. AR at 001035. With respect to local activities, the House Committee on Natural Resources, in reporting on the TSGA, stated its intent "to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement." H. Rep. No. 103-653 at 10 (1994)(*not reprinted in U.S.C.C.A.N., see* 1994 U.S.C.C.A.N. 3488). This was reaffirmed by bipartisan Committee leadership. AR 001016. The AFA fulfills this intent, while ensuring that oversight and discretionary administrative decisions regarding the NBRC are retained by FWS and DOI officials.

In trying to provide examples of functions that could be deemed "inherently federal", Senator McCain gave the following examples:

> [S]uch a list certainly could include discretionary administration of Federal fish and wildlife protection laws, promulgation of regulations, obligation and allocation of Federal funds, the exercise of certain prosecutorial powers, and other discretionary functions vested in Federal officials.
>
> October 7, 1994 Cong. Rec. at 28834.

None of these examples describe the local activities contracted under the AFA. The inapplicability of the middle three examples ("promulgation of regulations", "obligation and allocation of Federal funds", and "exercise of certain prosecutorial powers") is self-explanatory. The first example ("discretionary administration of Federal fish and wildlife protection laws") is also inapplicable. When McCain referred to this, the context of his overall remarks make it clear he meant general administration at a higher level than that of local wildlife Refuge programs. That is why he made the comment that inherently federal functions are those that could not "be

delegable under the Constitution". Nothing in the AFA disturbs federal administration of fish and wildlife protection laws. Interpreting McCain's remarks to include local Refuge activities would prohibit State-managed Refuge programs authorized under 16 U.S.C. § 668dd(b)(4).

Neither does McCain's last example ("discretionary functions vested in Federal officials") describe duties contracted by CSKT. The AFA does not disturb the administrative discretion held by the Refuge Manager, Refuge Supervisor, Regional National Wildlife Refuge System Chief, FWS Regional Director, FWS Director, Assistant Secretary for Fish, Wildlife and Parks, or Interior Secretary. Minor acts of discretion, such as may be involved in CSKT's operation of local refuge activities under the AFA, can not be deemed inherently federal. OMB Circular A-76 specifically states that "not every exercise of discretion is evidence that an activity is inherently governmental." See OMB Circular A-76 (May 29, 2003), Attachment A, at A-2.

The AFA specifically states that, at the local level, the FWS Refuge Manager retains ultimate control over the NBRC. AR at 002704 (AFA at § 7.A). The TSGA and its implementing regulations preserve the policy-making and other administrative responsibilities of the federal agencies. 25 U.S.C. § 458cc(d); 25 C.F.R. §§ 1000.221, 1000.300 *et seq.* Under the TSGA, tribal government contractors are required to follow federal laws and regulations governing a contracted program. 25 C.F.R. § 1000.220. The AFA has even stricter conditions, requiring CSKT to comply with all "Operational Standards" used by FWS, which the AFA defines as "a requirement of a law, regulation, written policy, approved written plan, or published Service standard, whether or not existing on the date of execution of this AFA, that governs the performance of an Activity, and which the Service would have to meet if the Service itself performed the Activity." AR at 002710, 002702 (AFA at §§ 9.A and 4).

The local operations of the Refuge are similar in scope to the local operations of other federal programs which CSKT contracts through Self-Governance AFA's, where much of the federal oversight, and exercise, of inherently federal functions occurs through the agency's regional or central offices. The Solicitors apparently recognized this when they stated that

> [i]t is our opinion that it may be possible to restructure some of these positions to remove some of the functions that appear to be inherently Federal or to put additional supervision in place to remove the discretionary component of the function.
>
> AR at 001706.

FWS' policy manual shows many layers of oversight above the level of Refuge Manager that retain federal oversight of, and policy-making responsibility for, the NBRC.[9] This federal chain of command continues under the AFA, and is incorporated into the AFA's dispute resolution procedures. AR at 002729-30. CSKT is not contracting any "discretionary functions vested in federal officials" within the meaning of McCain's remarks.

b. Indian Self-Determination Act and Education Assistance Act

In trying to define what may be "inherently federal", other legislative history is instructive as well. Prior to enacting the TSGA, Congress gave examples of contractible federal activities, many of which are comparable to local Refuge-level functions. A Senate Report, accompanying a bill to amend the ISDEAA, listed numerous activities - including federal trust functions - as being contractible by tribes. S. Rep. No. 100-274 at 25 (1988), *reprinted at* 1988 U.S.C.C.A.N.

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[9] FWS' policy manual identifies many federal officials having oversight responsibility for, and ultimate approval of, decisions which may be made at the Refuge level. *E.g.*, 602 FW § 1.8; 603 FW § 2.7. This chain of command and oversight continues under the AFA. Depending on the activity, review or approval may be required by the Refuge Supervisor, Regional Chief of Wildlife Refuges, the FWS Regional Director, or the FWS Director. The Assistant Secretary of Fish, Wildlife & Parks, Deputy Secretary, and Interior Secretary also oversee FWS officials.

2620, 2644. These include: real estate appraisals; soils inventories; water resources studies; lease permits; land use zoning studies; forestry management and fire suppression; minerals inventories; environmental quality assessments; archeological resources studies; fish and game studies; cadastral surveys; land title and records management; lease compliance; trust fund investment and accounting services; and facilities maintenance and repair. *Id.* at 25, 1988 U.S.C.C.A.N. 2644. Many of these functions are similar in nature to the kinds of activities CSKT contracts under the NBRC AFA. Some of the functions identified by the Committee involve federal trust resources, yet Congress still deemed them contractible, making it hard for Plaintiffs to claim that local Refuge activities are inherently federal and unable to be contracted under the TSGA.

Nothing in the above legislative history supports the contention that Congress believes local Refuge activities are inherently federal and not eligible for contracting under the TSGA.

4. Federal Case Law

Even in the absence of courts specifically defining what functions are "inherently federal" within the context of the TSGA, guidance exists in consistent themes found in federal case law. Courts have found that activities which may be deemed "inherently governmental" include such things as: criminal investigations; management of government programs; activities related to combat; conduct of foreign relations; regulation of natural resources; direction of intelligence operations; regulation of industry/commerce (*Nat'l Federation of Federal Employees v. Cheney*, 883 F.2d 1038, 1049 n.25 (D.C. Cir. 1989)(citing OMB Circular A-76); border protection (*Caban v. U.S.*, 728 F.2d 68, 77 (2nd Cir. 1984)(dissenting opinion)); immigration regulation (*Fiallo v. Bell*, 430 U.S. 787, 792 (1977)[citing *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953)]); use of peremptory challenges in jury selections (*Edmonson v. Leesville Concrete Co.*,

500 U.S. 614, 620-22 (1991)); and raising revenue (*Indian Country, U.S.A., Inc. v. State of Oklahoma*, 829 F.2d 967, 982 (10th Cir. 1987)). Recognizing that activity found to be "inherently governmental" is not necessarily "inherently federal", this case law is still instructive.[10]

None of the above activities are implicated by functions contracted under the AFA. While the inapplicability of most of them is obvious (*e.g.*, "activities related to combat"), two cited by *Nat'l Federation of Federal Employees v. Cheney*, *supra*, that have superficial relevance include "management of government programs" and "regulation of natural resources". However, cursory scrutiny of these two categories shows that neither describe what is contracted under the AFA. The D.C. Circuit's reference to "management of government programs" refers to ultimate management of government programs - the type of oversight that remains with FWS under § 7.A of the AFA, the TSGA, and its implementing regulations. 25 U.S.C. § 458cc(d); 25 C.F.R. §§ 1000.221, 1000.300 *et seq.* If this reference to management implicated any sort of low-level management activity, then it would also prohibit: hundreds of existing DOI AFA's with tribes; agreements under the Refuge Act provision allowing management of programs by State agencies; and myriad other agreements for operations contracted out by other federal agencies.

The citation in *Nat'l Federation of Federal Employees v. Cheney* of "regulation of natural resources" as being inherently governmental also does not implicate activities contracted under the AFA. The NBRC AFA does not provide CSKT with authority to either regulate or issue regulations. Under the AFA, CSKT just implements, and complies with, federal natural resource

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[10] See discussion in Solicitor John Leshy's memo qualifying use of OMB guidance in determining what functions may be inherently federal under the TSGA. AR at 001027-28 (*E.g.*: "tribes are not analogous to private contractors because they possess a substantial measure of independent sovereign authority"; and the statutory requirement for agencies to interpret federal law "in a manner that will facilitate . . . the inclusion of" functions in an AFA).

regulations. The TSGA requires that contracting tribes adhere to federal regulations, preserving FWS' role as regulator of natural resources. 25 C.F.R. § 1000.220. As mentioned previously, CSKT has gone further, agreeing to comply with all "Operational Standards" pertaining to FWS. AR at 002710, 002702 (AFA at §§ 9.A and 4). As a general matter, CSKT and other tribes have long contracted natural resources programs from the Bureau of Indian Affairs, demonstrating that such activity is not "inherently" federal. AR at 001018.

In addition to courts identifying functions that are "inherently governmental", they have also identified functions that are not inherently governmental. Examples of such functions include: logistical support (including transportation, maintenance and supply)(*Nat'l Federation of Federal Employees, supra*, at 1049); repair and maintenance of military aircraft or facilities (*Vincent v. Trend Western Technical Corporation*, 828 F.2d 563, 569 (9th Cir. 1987)); conducting business relationships with contractors and subcontractors (*City of Gastonia v. Balfour Beatty Construction Corp., Inc.*, 222 F.Supp.2d 771, 774 (W.D.N.C. 2002)); "lending, ministerial and corporate functions" including special credit advances (*Fidelity Financial Corporation v. Federal Home Loan Bank of San Francisco*, 589 F.Supp. 885, 897 (N.D.Cal. 1983)); and special education (*Rendell-Baker v. Kohn*, 457 U.S. 830, 842 (1982)). Since some of these categories, which involve issues entailing discretionary decision-making (as well as national security), have been found by courts to not even be "inherently governmental", they contradict Plaintiffs' claims that discretionary decision-making at the local Refuge level is somehow inherently federal.

Taken as a whole, a survey of federal case law demonstrates that the AFA does not contract to CSKT any activities that are "inherently federal" within the meaning of the TSGA.

5. Solicitor's Guidance and OMB Guidance

Since President Clinton signed the TSGA into law, DOI's Office of the Solicitor has repeatedly reviewed and analyzed what may constitute an inherently federal function within the meaning of the Act. AR at: 002467; 000987; and 001026. Analysis and input from Solicitors continued prior to, and during, negotiations for the new FY 2009-11 AFA. AR at: 001704-06; 000962SUPII; and 000184.

In his May 17, 1996 memo, Solicitor John Leshy found that, with respect to the non-delegation doctrine, there was no constitutional restriction on contracting programs to tribes under the TSGA. AR at 001032-35. In reaching his conclusion, he addressed Senator McCain's definition of an "inherently federal" function as being a function that is not delegable under the Constitution. *Supra* at 30. Leshy relied in part on the Supreme Court decision in *U.S. v. Mazurie*, 419 U.S. 544 (1975), saying that, to the extent the delegation doctrine contains limits, courts "have determined that those limits are relaxed where the delegation is to a tribe in an area where the tribe exercises sovereign authority." AR at 001033.

In considering what may constitute an inherently federal function for purposes of the TSGA, Leshy and other Solicitors reviewed guidance from the OMB. AR at: 001036; and 001704. In recommending this guidance, Leshy had several caveats, saying that

> we must keep in mind the idea that [the OMB guidance] was prepared in the context of government contracting with private entities . . . . Under the Tribal Self-Governance Act, by contrast, we are dealing with agreements with Indian tribes that generally possess sovereign authority. This creates an important limitation on how the OMB guidance ought to be applied here.
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> AR at 001037.

He cautioned that, in light of the U.S. Supreme Court's decision in *U.S. v. Mazurie*, *supra*, "the OMB guidance should not be applied as strictly in the tribal context." AR at 001037.

Leshy reiterated that, in determining what functions may be deemed inherently federal, "close calls should go in favor of inclusion rather than exclusion, because section 403(i) of the TSGA directs the Secretary to 'interpret each Federal law and regulation in a manner that will facilitate . . . the inclusion of programs, services, functions and activities in the agreements." AR at 001038. He concluded by saying that the inherently federal function restriction "can only be applied on a case-by-case basis" and that agencies "should closely consult with the Solicitor's Office, including Regional and Field offices" when considering TSGA contracting of functions that some could consider inherently federal. AR at 001039. FWS and DOI did this. *E.g.*, AR at: 001704; and 000960SUPII. CSKT also provided Solicitors with its analysis of OMB guidance. AR at: 000916-23; and 000184.

Using Leshy's memo and OMB guidance, as well as input from CSKT, the Solicitors analyzed a draft AFA in 2007 to determine whether any inherently federal functions are involved at the NBRC Refuge level. AR at 001704-06. The conclusion of their memo was that "several of the positions at the range clearly do not involve inherently Federal functions . . . . All of these may be contracted under an AFA." *Id.* at 001705. They identified only three NBRC positions which "implicate" what "appear to be" inherently federal functions: the Refuge Manager; Deputy Refuge Manager; and Outdoor Recreation Planner. *Id.* The Solicitors drew no final conclusions, and were careful to repeatedly state that the positions only "appear" to involve inherently federal functions. AR at 001705-06. They concluded the memo by saying

> it may be possible to restructure some of these positions to remove some of the functions that appear to be inherently Federal or to put additional supervision in place to remove the discretionary component of the function. Alternatively, changing the status of personnel from Federal to Tribal would remove the concern about supervision of Federal employees."
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> AR at 001706.

Under the AFA, the Refuge Manager and Deputy Refuge Manager remain FWS staff. CSKT may contract the Outdoor Recreation Planner position in FY 2011, but the staff the Planner had previously supervised are now tribal employees. AR at 002703 (AFA at § 6.A.5).

The above-referenced guidance and analysis from various Interior Solicitors demonstrates extensive consideration to the issue of what may be deemed an inherently federal function under the TSGA. It also demonstrates that the NBRC does not implicate any such functions.

6. History, Past Practice, and Current Practice

Plaintiffs claim that a broad spectrum of activities at a local Refuge are inherently federal, including management of "most of the major NBRC programs". Pls.' Compl. at ¶¶ 84, 84(A). Plaintiffs' claim meets its first hurdle in the text of the Refuge Act itself, which authorizes State agencies to manage Refuge programs. 16 U.S.C. § 668dd(b)(4). History further contradicts Plaintiffs' position where non-federal entities (primarily State agencies) have performed the same or similar activities as contained in the FY 2009-11 AFA. For example, "Coordination Areas" administered by States contradict Plaintiffs' claims that Refuge management activities are somehow inherently federal. Legislative history for the National Wildlife Refuge System Improvement Act (NWRSIA) observed that "Coordination Areas have been well managed by the States under State laws and regulations, in many cases for decades. However, they are part of the Refuge System." H. Rept. 105-106, at 7 (1997), 1997 U.S.C.C.A.N. 1798-5, 1798-11.

In discussing the NWRSIA's provision authorizing FWS to enter into agreements with States to manage Refuge programs, the House Resources Committee stated as follows:

> On some existing refuges, State agencies cooperate with the USFWS by participating in the management of specific programs, such as hunting law enforcement or other public use-related activities. States also manage habitat on parts of individual refuges, particularly in cases where refuge lands are adjacent to or surrounded by State lands. In

> all these situations, the USFWS retains management oversight and is ultimately responsible to ensure that allowed uses remain compatible and that habitat is managed consistently with the purposes for which the refuges were established.
>
> *Id.* at 10-11.

This history of State involvement on federal Refuges refutes Plaintiffs' claims that such Refuge activities are "inherently" federal.

7. The AFA Does Not Delegate Any Inherently Federal Functions.

This Court need not define what is or is not an inherently federal function within the meaning of the TSGA. The above guidance shows that the activities contracted under the NBRC AFA do not include "inherently federal" functions, and this general issue has been extensively analyzed by the Interior Department. *E.g.*, AR at: 001632, 001704; 000962SUPII; 000184; and 000937SUPI. The Department's interpretation is entitled to considerable deference. *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). Its interpretation of "inherently federal" is rational and has a reasoned basis. *Poett* at 9.

To the extent there is any ambiguity in the TSGA's proscription of contracting inherently federal functions, statutes are to be construed liberally in favor of Indians, with ambiguous provisions interpreted to their benefit. *Red Lake Band of Chippewa Indians v. U.S. Department of Interior*, 624 F.Supp.2d 1, 25 (D.D.C. 2009); *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985). The D.C. Circuit views this canon of construction as having "special strength." *Indian Educators Federation v. Kempthorne*, 541 F.Supp.2d 257, 262 (D.D.C. 2008)(citing *Albuquerque Indian Rights v. Lujan*, 930 F.2d 49, 59 (D.C. Cir. 1991).

Relevant to DOI's duty to implement both the Refuge Act and the TSGA, this Circuit has recognized that a court must defer to agency interpretation of an ambiguous statutory term if it "represents a reasonable accommodation of conflicting policies that were committed to the

agency's care by the statute." *New York v. U.S. Environmental Protection Agency*, 413 F.3d 3, 23 (D.C.Cir. 2005); *Back Country Horsemen of America v. Johanns*, 424 F.Supp.2d 89, 95 (D.D.C. 2006). DOI's interpretation of "inherently federal" for this AFA should be upheld.

B. The AFA Includes No Functions For Which the Refuge Act Does Not Authorize the Type of Participation Contracted by CSKT.

Plaintiffs claim that, since the Refuge Act does not mention tribes, it does not authorize the contracting provided in the AFA and the AFA therefore violates the TSGA's disclaimer section in 25 U.S.C. § 458cc(k). Pls.' Compl. at ¶¶ 82-83. The disclaimer reads as follows:

> Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under [this Act] with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided*, however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under [this Act]. [*underlining added*]

Plaintiffs do not address the section's last proviso, which clarifies that an authorizing statute need not specifically mention tribes. This proviso is reiterated in the TSGA's regulations. 25 C.F.R. § 1000.130.[11] Congress' intent is further reflected in: 1) the TSGA's legislative history discussing tribal contracting of FWS or NPS functions, and the Committee's intent "to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement"; and 2) the Act's requirement that the Secretary interpret federal laws in a manner that facilitates inclusion of programs into TSGA agreements. *See*: H. Rep. No. 103-653 at 10 (1994)(*not reprinted in*

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[11] 25 C.F.R. § 1000.130 reads as follows:

> Does a Tribe/Consortium need to be identified in an authorizing statute in order for a program or element of a program to be included in a non-BIA AFA?
>
> No, the Act favors the inclusion of a wide range of programs.

U.S.C.C.A.N., see 1994 U.S.C.C.A.N. 3488); 25 U.S.C. § 458cc(i)(1); and 25 C.F.R. § 1000.4(c)(5). Given these directives, the Refuge Act can not be read to bar the AFA.

1. The TSGA and Refuge Acts Must Be Construed *In Pari Materia* and in a Manner Facilitating Inclusion of Programs In Agreements.

Under rules of statutory construction, statutes *in pari materia* are normally construed together to discern their meaning. *Motion Picture Association of America, Inc. v. Federal Communications Commission*, 309 F.3d 796, 801-02 (D.C. Cir. 2002); *Hornbeck Offshore Transportation, LLC v. U.S. Coast Guard*, 424 F.Supp.2d 37, 52 (D.D.C. 2006).

The Refuge Act and the TSGA are easily read together to authorize tribal contracting of Refuge programs. The Refuge Act requires the Interior Secretary to administer the Refuge System through FWS. 16 U.S.C. § 668dd(a)(1). However, the Refuge Act also authorizes the Secretary to enter into agreements with State agencies for the management of Refuge programs - subject to standards established by, and the overall management oversight of, the FWS Director. 16 U.S.C. § 668dd(b)(4). The TSGA authorizes the Secretary and FWS to contract Interior activities to qualifying tribes, including Refuge programs. 25 U.S.C. § 458cc(c).

The Interior Secretary has long read the Acts in this manner, interpreting Refuge activities as being eligible for Self-Governance contracting. AR at: 002504, 002508; 002107, 002110; 000689-90; *see also* 61 Fed. Reg. 25235 (FY 1997), 62 Fed. Reg. 54644, 54646 (FY 1999). Congress required this statutory construction by directing that the Secretary interpret federal laws to facilitate inclusion of federal programs into TSGA agreements. 25 U.S.C. § 458cc(i)(1). As Interior Solicitor John Leshy stated in a May 8, 1995 memo:

> If we were to interpret the Refuge Act to forbid compacting of any functions, it would essentially remove National Wildlife Refuges entirely from the Self-Governance program. There is no evidence Congress intended such a sweeping result.

AR at 000989.

The Secretary's interpretation of the two Acts has been shared by the House Natural Resources Committee leadership, who stated in a bipartisan letter to the Interior Secretary that they see CSKT helping to manage the NBRC "as a logical partnership under both the [Refuge Act] and the Tribal Self-Governance Act." AR at 001017. The Supreme Court has held that, "when two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551 (1974); *Demby v. Schweiker*, 671 F.2d 507, 510 (D.C. Cir. 1981).

2. The AFA Comports with the Refuge Act.

As required by the Refuge Act, the Secretary, through FWS, continues to administer the NBRC under the AFA. AR at 002704, 002699-700 (AFA at §§ 7.A-B, 1, and 3.C). FWS remains the sole federal agency in charge of administering the NBRC. Under the AFA, FWS retains full management authority for administering the NBRC but simply contracts work to CSKT under the TSGA just as Plaintiffs concede FWS may delegate work to State agencies under the Refuge Act. Pls.' Compl. at ¶ 60. The AFA provides no independent or 'lead' authority to CSKT for any policy matters. FWS is the sole agency establishing the natural resource management regime under which CSKT must perform work. FWS regulations and Operational Standards govern CSKT's performance of Refuge activities. AR at 002699, 002710, 002704 (AFA at §§ 1, 9.A, 7.A). There is no more opportunity for conflicts with tribes under an AFA than there is with States managing Refuge programs under the authority of 16 U.S.C. § 668dd(b)(4). Both tribes and States operate under FWS oversight and control.

The AFA simply allows CSKT to conduct work under FWS supervision and under the same regulatory framework as FWS manages all other Refuges. AR at 002699, 002710, 002704 (AFA at §§ 1, 9.A, 7.A). This is underscored by CSKT's agreement to follow not only federal laws and regulations regarding Refuge management, but also all FWS "Operational Standards". AR at 002710, 002702, 002700 (AFA at §§ 9.A, 4, 3.C). As the Deputy Secretary stated with respect to the FY 2005-06 AFA, "Tribal employees, as contractors, did not exercise management controls or oversight. Those responsibilities remained with the Fish and Wildlife Service." AR at 002512. This remains the case with the current AFA.

3. The AFA Realizes Federal Objectives for Partnerships on Refuges.

A February 1976 Senate Report on Refuge Act amendments concluded by noting that:

> FWS' own "recent record with respect to the administration of the [Refuge] system has not been outstanding. The condition of many refuges is one of general deterioration. Employee morale is at an all-time low. . . . On those refuges still open to the public, facilities are often inadequate and unclean. . . . Until [FWS] receives resources sufficient for the operation of the system, it is doubtful that conditions will improve."
>
> S. Rep. No. 94-593, at 5 (1976), *reprinted in* 1976 U.S.C.C.A.N. 288, 292.

Recognizing similar budget realities, House Committee leaders recently stated that adding resources to the NBRC through a Self-Governance AFA presents an opportunity for FWS:

> At a time when the overall National Wildlife Refuge System budget has suffered, CSKT employees and volunteers literally worked thousands of hours at the NBRC. If a new AFA, with broader tribal management, might result in a continuation of that degree of tribal supplementation at a federal refuge, we would think the Department would do everything in its power to make it happen.
>
> AR at 001018.

The legislative history for the NWRSIA includes the same encouragement, such as when the House Resources Committee said that it

> expects the USFWS to be energetic and creative in seeking [financial, personnel and infrastructure resources], including partnerships with the States, local communities and private and nonprofit groups.
>
> H.R. Rep. No. 105-106, at 6 (1997), 1997 U.S.C.C.A.N. 1798-5, 1798-10.

This principle was also recognized by President Clinton in an executive order stating that "[c]onservation partnerships with. . . Tribes . . .can make significant contributions to the growth and management of the Refuge System." Exec. Order No. 12996. Self-Governance agreements with tribes further both congressional expectations and President Clinton's executive order.

C. Neither the TSGA nor the Refuge Act Prohibits Contracting of Refuge Functions Under a Self-Governance AFA.

The AFA contracts no "inherently federal" functions within the meaning of the TSGA. A review of legal authorities, as well as the plain meaning of "inherently", shows that local routine Refuge operations such as those included in the AFA can not be considered "inherently" federal.

Nor does the AFA contract functions for which the Refuge Act "does not authorize the type of participation sought by the tribe". The Refuge Act expressly authorizes the "type" of participation sought by the tribe through the TSGA. The fact that the Refuge Act does not mention tribes is immaterial given the TSGA proviso stating that "tribes need not be identified in the authorizing statute" in order for a program to be included in an AFA.

The AFA does not run counter to the Refuge Act since FWS retains full ultimate control over the NBRC, including regulatory control and control of human access. When read *in pari materia* with the TSGA, the Refuge Act, as amended, authorizes the type of participation contained in the AFA. Congress requires the Secretary to interpret federal statutes in a manner that facilitates inclusion of programs in TSGA agreements. 25 U.S.C. § 458cc(i). The Secretary,

through FWS, did just that with the FY 2009-11 AFA, drafting it to ensure compliance with both the TSGA and the Refuge Act. AR at 001951-52; *see also* 001016-18.

VI. FWS Fulfilled Its Responsibilities Under NEPA.

Plaintiffs claim that the federal Defendants violated NEPA by: 1) not preparing an environmental assessment (EA) or an environmental impact statement (EIS) for the FY 2009-11 AFA; and 2) not claiming a categorical exclusion (CE) under NEPA. Pls.' Compl. at ¶¶ 87-8, 91. Plaintiffs' NEPA claims are based upon the assertion that, because of the discredited allegations regarding CSKT's performance under the prior FY 2005-06 AFA, the federal defendants were required to prepare either an EA or EIS to satisfy NEPA. Pls.' Compl. at ¶ 90. In so doing, Plaintiffs improperly treat the allegations regarding CSKT performance under the FY 2005-06 AFA as facts, even though CSKT consistently denied and refuted the allegations. AR at: 000583; 002440; 000536; and 001826.

A. Purpose of, and Requirements Under, NEPA; Judicial Review.

NEPA was enacted "to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." *City of Williams v. Dombeck*, 151 F.Supp.2d 9, 17 (D.D.C. 2001). NEPA is the "basic national charter for protection of the environment." *Humane Society of the United States v. Johanns*, 520 F.Supp.2d 8, 16 (D.D.C. 2007). The Act has "twin aims": 1) to require a federal agency to consider every significant aspect of the environmental impact of a proposed action; and 2) to ensure that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process. *Humane Society of the United States v. Johanns*, *supra*, at 17. It prohibits uninformed, rather than unwise, agency action. *Id.* at 17.

NEPA generally requires that an EIS be prepared for "major Federal actions significantly affecting the quality of the human environment. . . ." *Id.* at 16. However, some actions are categorically excluded from such a requirement. *Id.* at 17; 40 C.F.R. 1508.4; 43 C.F.R. 46.205.

The Court's role in reviewing challenges to an agency's NEPA compliance is limited to ensuring that the agency has adequately considered and disclosed the environmental impact of its actions and that its decision is not arbitrary and capricious. *Johanns* at 18. Agency interpretation of the scope of one of its own CE's is given controlling weight unless plainly erroneous or inconsistent with the terms used in the regulation. *Id.* at 32. Once an agency makes a decision in accordance with NEPA's procedural requirements, the only role for a court is to ensure that the agency has considered the environmental consequences; the court cannot interject itself into the agency's discretionary decision-making as to the choice of action taken. *City of Williams v. Dombeck*, *supra*, at 18.

B. FWS Complied With NEPA Through Its Programmatic CE.

Prior to approval of the original FY 2005-06 AFA, FWS officials signed a Programmatic CE as part of a decision document package that includes an Environmental Action Memorandum and a Statement of Compliance. AR at 002099 *et seq*. The Programmatic CE contains sections on objective, background, project scope, and alternatives considered. AR at 002103-06. The Statement of Compliance certified compliance with executive orders and statutes. AR at 002100-01. The Programmatic CE expressly includes subsequent AFA's within its "Scope of Project" section. AR at 002105 ("Subsequent AFA's may include some of those retained programs . . . . The FWS will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.").

The Programmatic CE states that the "Programmatic" agreement (AFA) falls under three categorical exclusion categories from 516 DM 6:

> The Programmatic agreement between the Service and the Tribe qualifies as a Categorical Exclusion under 516 DM 6 Appendix 1.4, (B1) research, inventory and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem; and (B2) the operation, maintenance, and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in only minor changes in the use, and have negligible environmental effects on-site or in the vicinity of the site; and (B4) the use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinance and laws.
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> AR at 002106.

Going beyond the "short statement" required for CE's, the Programmatic CE decision documents set forth FWS' considerations supporting invocation of the CE's. *Cf.*, *California v. Norton*, 311 F.3d 1162, 1176 (9th Cir. 2002); *Edmonds Institute v. Babbitt*, 42 F.Supp.2d 1, 18 at n.11 (D.D.C. 1999)("The Court does not intend to establish a requirement that an agency prepare a full-blown statement of reasons for invoking a categorical exclusion. Such a requirement would detract from the legitimate governmental interest in avoiding unnecessary paperwork for actions that legitimately fall under a categorical exclusion and do not require an EA or EIS.").

Notice of this CE was provided before and after signing of the FY 2005-06 AFA, including publication in the Federal Register. AR at: 001359SUPI (letter to Senator Conrad Burns stating that FWS "has addressed the implementation of this AFA through a Programmatic Categorical Exclusion."); 000387. This followed FWS' publication of a similar notice in the July 12, 2004 Federal Register for its invocation of a CE for an AFA with the Council of Athabascan Tribal Governments involving the Yukon Flats National Wildlife Refuge. 69 Fed. Reg. 41838, 41840. Neither Plaintiffs nor any other party challenged the FWS'

invocation of the CE for either of these AFA's. While Plaintiffs essentially assert that the scope of the AFA precludes invocation of a CE, *see* Pls.' Compl. at ¶ 89, it is not the scope of agency action that determines NEPA action, but rather whether it significantly affects the quality of the human environment. *Back Country Horsemen of America v. Johanns*, *supra*, at 99.

The Programmatic CE decision documents informed FWS' approval of the FY 2005-06 and FY 2009-11 AFA's, fulfilling the agency's duties under NEPA. AR at 000386.

C. Federal Officials Reconsidered Applicability of the Programmatic CE and Determined It Remained Applicable to the FY 2009-11 AFA.

Prior to, and during, the negotiations for the FY 2009-11 AFA, federal officials reconsidered NEPA and applicability of the Programmatic CE, with solicitors and officials determining that the new AFA falls under the Programmatic CE. AR at: 000962SUPII; 000867SUPI; and 000907. The officials had actively considered their NEPA responsibilities, and had inquired with solicitors for advice as to how to proceed. AR at 000962SUPII. The Department had also notified a Congressman about the invocation of a CE for the new AFA. AR at 000907. This was via a letter sent two months before the AFA was signed and sent to Congress. As the Eleventh Circuit said:

> [d]ocumentation of reliance on a categorical exclusion need not be detailed or lengthy. It need only be long enough to indicate to a reviewing court that the agency indeed considered whether or not a categorical exclusion applied and concluded that it did. . . . In most instances, a short statement that a categorical exclusion has been invoked will suffice to assure a reviewing court that environmental effects have been considered.
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> *Wilderness Watch v. Mainella*, 375 F.3d 1085, 1095 (11th Cir. 2004).

The Record shows such documentation of reliance on a CE for the FY 2009-11 AFA.

D. Plaintiffs Rely on Refuted Allegations, Rather Than Facts, To Support Claims That Invocation of the Programmatic CE Was Not Proper.

1. CSKT Disproved and Refuted Allegations of Performance Deficiencies.

Plaintiffs assert that allegations of CSKT performance deficiencies under the FY 2005-06 AFA should have triggered an EIS prior to approval of the new AFA. Pls.' Compl. at ¶¶ 88, 90, 91. Plaintiffs ignore the fact that CSKT was repeatedly, and by design, forced to defend against allegations that FWS acted upon, or otherwise assumed was final, even though FWS had not provided CSKT with the required notice and opportunity to respond. FWS did not provide CSKT with the specific allegations upon which FWS based its decision to terminate the FY 2005-06 AFA until long after FWS took the action, and then only because CSKT requested the information. AR at: 000700SUPII; and 000005.

The Record shows the pattern of FWS acting upon allegations of performance deficiencies in disregard of procedures required by § 10.A.3.b(2) of the FY 2005-06 AFA. AR at: 002429 (12/11/06 FWS letter terminating AFA); 002393 (12/7/06 FWS letter withdrawing bison feeding responsibilities); 000005 (FWS' 1/9/07 transmittal to CSKT of report with bison feeding allegations); and 000700SUPII (FWS' 2/17/07 transmittal to CSKT of report evaluating CSKT performance in 2006). Once CSKT was put on notice of an alleged deficiency, it consistently responded by disproving or otherwise rebutting the allegation. *E.g.*, AR at: 000583; 002440; 000536; and 001826.

CSKT did not dispute valid criticisms, which involved relatively minor issues that would not jeopardize either resources or the continuance of the AFA.[12]

Along with its denials and refutations of performance deficiency allegations, CSKT challenged FWS' termination of the FY 2005-06 AFA by filing a claim with the Interior Board of Indian Appeals. AR at 000024. This appeal was based in part on due process grounds and the fact that FWS had never provided the required notice to CSKT of any alleged performance deficiency and opportunity to respond, disprove the allegation, or correct any true deficiency. AR at: 000026-30; and 000044-45 at ¶¶ 4-10. The appeal said that FWS had provided neither information nor notice regarding the allegations in its termination letter, and that the allegations all appear to be false or concerning issues that CSKT had already addressed. AR at 000044-45 (Affidavit of Sheila L. Matt at ¶¶ 7-11). The appeal was ultimately dismissed in 2008 when FWS and CSKT settled the dispute by executing the new AFA. AR at 002012. However, during the process of renewing AFA negotiations in 2007, FWS/DOI officials raised this appeal, as well as the fact that FWS' allegations had been denied and otherwise disputed by CSKT. AR at: 002163; and 001633.

After release of the first FWS report alleging performance deficiencies, CSKT raised its concern about a conflict of interest on the part of the FWS employees who were 'evaluating'

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[12] For example, CSKT acknowledged that some of the invasive plant (weed infestation) survey work was not completed during the transition in 2005. AR at 000616. While it was partly due to communications issues with FWS, CSKT took responsibility for the criticism and took steps to correct the problem. In 2006, CSKT completed the invasive plant work contained in the 2006 Work Plan, and offered suggestions as to how to improve this activity. AR at: 001857-58; and 001075. During 2005-2006, FWS provided no notice to CSKT, per § 10.A.3.b(2) of the AFA, of performance deficiencies involving these issues. See also AR at 002122 for CSKT acknowledgment of minor improvements needed.

CSKT performance under the AFA since most of those same FWS employees had opposed the AFA even before it was signed. AR at 002122. As the Tribal Chairman observed:

> Tribes often deal with resistance from federal staff when we first contract federal programs. When CSKT first began contracting Bureau of Indian Affairs programs decades ago, there was fierce resistance from BIA employees. If those BIA employees had "evaluated" our performance during the first transition year, we probably could have expected a similar negative assessment. There is inherent conflict when the parties evaluating your work were not supportive of your participation in the first place.
>
> AR at 002122.

Many of the FWS NBRC staff had expressed their views towards the AFA in an October 8, 2004 letter. AR at 000966-69SUPII. Far from criticizing a few parts of the AFA, their letter implicitly opposed the entire concept of a Self-Governance AFA. Their opposition was based upon policy rather than upon environmental impacts. They deemed the AFA to be "offensive to us as employees and Americans", and characterized it as "a social program for a select segment of society." AR at 000968-69SUPII. Their hostility towards the concepts of Self-Governance may explain much of the tension and lack of cooperation CSKT staff experienced from FWS under the FY 2005-06 AFA. AR at: 000047 at ¶ 22; 002465-66; 000760SUPII; 000588; 001832; 000695; 001634; and 000848. One of the signatories to the October 8th FWS staff letter was assigned to CSKT under the IPA, which CSKT found problematic. AR at 000685. When some of these same individuals later 'evaluated' CSKT and alleged subpar performance, there was every reason to question the veracity and objectivity of the allegations.

2. Interior Never Accepted Performance Deficiency Allegations As Facts.

For notice of performance deficiencies, FWS and CSKT included specific procedures in the FY 2005-06 AFA to ensure CSKT would have a chance to either disprove or otherwise refute

all or part of an allegation, or correct any true problem. AR at 002648 (FY 2005-06 AFA at § 10.A.3.b(2)). Given FWS' extensive 'evaluation reports' on CSKT performance during the first AFA, *e.g.*, AR at 001132 and 002517, there was ample reason to question why, if CSKT performance had truly been so poor, FWS did not once provide CSKT with the required written notice and opportunity to respond prior to drafting its 'reports'. The apparent answer is that some within FWS were not interested in CSKT correcting the record or disproving allegations prior to FWS disseminating, and acting upon, the allegations.

The hostility towards the AFA by some within the FWS was known by parties inside and outside of DOI, providing further reason for DOI officials and others to not accept as fact the various performance deficiency allegations. *E.g.*, AR at: 000358 ("Many of the accusations appear to come from grievances filed by federal workers at the Bison Range. We question the merit of some of these reports, since Skip Palmer is among the employees."); and 001638. After reviewing an investigation report procured by FWS, the Director of DOI's Office of Civil Rights, Sharon Eller, still referred the FWS staff grievance (claiming FWS had created a hostile work environment) to independent EEO investigators. AR at 002512. She stated that termination of an AFA (as requested in the staff grievance) was not proper relief to request in an EEO-type complaint. AR at: 000251; and 000720SUPII.

After FWS' termination of the FY 2005-06 AFA, the Deputy Secretary's 12/29/06 memo recited the agreement amongst FWS and DOI officials to immediately enter into a new AFA. AR at 002513. It also expressed her "grave disappointment with the situation", noting that "our team did not take all of the steps necessary to manage this situation properly." *Id.* She said that "the authorization to terminate the AFA . . . did not follow expected procedures - those

that require the identification of problems and afford a reasonable opportunity to correct them." *Id.* She reiterated the need for "Interior agencies to work together and to follow the law and regulatory requirements when meeting our commitments." *Id.* With respect to staff allegations regarding a hostile work environment, she said that she will "await the outcome of the EEO investigation and offered no opinion on the complaints expressed both by FWS employees and the Tribe regarding the work environment, while the investigation is underway." *Id.*

In a Spring 2007 draft memorandum for the Secretary, the Solicitor's Office noted FWS allegations of performance deficiencies, but also noted CSKT's denial of those allegations and the CSKT report refuting them in detail. AR at 001634. The lengthy memorandum made no findings validating the allegations; instead, it provided reason to question their veracity. The Solicitors noted that "tribal employees repeatedly raised issues about what they felt was a hostile workplace created by FWS, and that communications and cooperation were lacking." *Id.* In making a recommendation for the Secretary, the memorandum bluntly stated that "it is difficult to imagine a successful implementation [of an AFA similar to the FY 2005-06 AFA] without a significant change in the FWS leadership that is opposed to tribal involvement through an AFA at the Bison Range." AR at 001638.

In addition to these DOI reactions, numerous third parties, ranging from congressmen to local conservation groups, also questioned both the manner in which allegations were made by, and the motives of, individuals within FWS who generated a record alleging poor performance by CSKT. *Supra* at Sec. II.A.9 and II.A.10, pp.15-19. The House Natural Resources Committee leadership expressed concern that "the lack of support of [the AFA] by some individuals within

the FWS may have resulted in a distorted record concerning NBR activities under the AFA." AR at 001016. A long-time volunteer put it more bluntly when he said that

> misinformation and outright fabrications being put forth by the FWS only serve to cloud the very real issue of whether the Tribes are qualified to manage any or all of the NBR. If the Tribes are not allowed to continue it needs to be because of actual performance issues, which are evaluated on a level playing field. That is not happening now.
>
> AR at 002466.

Widespread rejection of the FWS reports on CSKT performance explained why Montana Senators Jon Tester and Max Baucus wrote to the Secretary advising that "evaluation of the Tribes' performance should include some neutral third parties." AR at 002261.

In sum, Plaintiffs base their NEPA arguments on allegations that had been made by FWS before CSKT had any ability to respond. In so doing, Plaintiffs disregard CSKT's responses to the allegations, and the fact that the allegations were neither accurate nor made in good faith.

E. FWS Approved the FY 2009-11 AFA in Compliance with NEPA.

As the Record shows, FWS complied with its NEPA obligations when it approved the FY 2009-11 AFA in accordance with its Programmatic CE for Bison Range AFA's. Plaintiffs' efforts to impeach FWS' compliance are based upon performance deficiency allegations that had been disproved or discredited by CSKT and otherwise not accepted as true by a broad spectrum of parties inside and outside of the Interior Department. FWS/DOI did not act arbitrarily or capriciously by not accepting the allegations as fact after CSKT had refuted them. Nor did FWS act arbitrarily and capriciously by continuing its practice of invoking CE's for AFA's, as it had for both the first NBRC AFA and the Yukon Flats National Wildlife Refuge AFA.

VII. The AFA and IPA Agreements Comply with the Intergovernmental Personnel Act.

Plaintiffs claim that the AFA violates the IPA since "there is no possibility for the [assigned] employee to resume the duties of his/her position at the conclusion of the IPA, and no provision for an alternate assignment to another position at the same pay and grade." Pls.' Compl. at ¶ 102. Plaintiffs also claim that, under the AFA, "federal employees assigned to the CSKT . . . can be terminated by the CSKT". *Id.* at ¶ 100. The claims do not withstand scrutiny.

A. Assigned Employees May Resume Positions of Like Pay and Grade.

History contradicts Plaintiffs' claim that "there is no possibility for the assigned employee to resume the duties of his/her position at the conclusion of the IPA". Under the FY 2005-06 and FY 2009-11 AFA's, the parties used the same federal IPA agreement form (OF 69 # (Rev. 2-89)). AR at 002146. When the IPA agreements ceased as a result of FWS terminating the FY 2005-06 AFA, the two FWS staff members who had been assigned to work for CSKT, including Plaintiff Palmer, resumed the duties of their FWS positions. Pls.' Compl. at ¶ 16.

Tribes are generally neither required nor expected to hire the incumbents of a federal position being contracted under the TSGA. 25 C.F.R. § 1000.390(a)-(b). One purpose of the TSGA is to allow Tribes flexibility to operate programs as they see fit, which includes hiring. 25 C.F.R. § 1000.4(a)(5). Federal regulations reflect the choice of offering IPA assignments as an option, as CSKT and FWS did under § 12.E.3.a of the AFA. 25 C.F.R. § 1000.390(c).

The IPA statute does not guarantee that an employee may return to the same federal position at the end of an IPA assignment. The Act's regulations require only that, at the end of an assignment, the employee must be allowed to resume the duties of his position "or must be reassigned to another position of like pay and grade." 5 C.F.R. § 334.107(b). The parties' IPA

agreements state that "at the completion of the assignment, the participating employee will be returned to the position he or she occupied at the time this agreement was entered into or a position of like seniority, status and pay." AR at 002149 [*emphasis added*].

The IPA regulations expressly state that an assigned employee's "position is subject to any personnel actions that might normally occur." 5 C.F.R. § 334.107(b). Once a tribe contracts a federal position under a Self-Governance agreement, it may generally hire a new individual to fill the position.[13] 25 C.F.R. §§ 1000.390(a)-(b). A tribe may also employ a federal employee under an IPA agreement. 25 C.F.R. §§ 1000.390(c). But hiring a new employee (or employing a different federal employee under an IPA agreement) under an AFA constitutes a "personnel action that might normally occur" within the meaning of 5 C.F.R. § 334.107(b) and could affect a federal employee's position. 25 U.S.C. §§ 458cc(b)-(c). This is reflected in the regulation stating that it is the policy of the TSGA "[t]o provide for an orderly transition through a planned and measurable parallel reduction in the Federal bureaucracy." 25 C.F.R. § 1000.4(b)(6).

In light of such "personnel actions", IPA regulations state that if a federal employee can not resume his or her original position, she or he must at least be "reassigned to another position of like pay and grade." 5 C.F.R. § 334.107(b). Nothing in the AFA or the IPA agreements stops FWS from effecting such a reassignment, and the IPA agreements expressly cite the requirement.

---

[13] In the FY 2009-11 AFA, FWS and CSKT agreed to provide a variety of employment options to FWS employees whose positions were being contracted by CSKT. *See* this Memorandum at n.3, *supra*.

B. CSKT Can Terminate an IPA Agreement but Not an Assigned Employee's Federal Employment Status.

Plaintiffs claim that, under the AFA, "federal employees assigned to the CSKT . . . can be terminated by the CSKT". Pls.' Compl. at ¶ 100. This is incorrect. Neither the AFA nor the IPA agreements purports to allow CSKT to terminate an IPA employee's federal employment status.

Consistent with federal law, § 12.E.5.c of the AFA recognizes that CSKT may terminate an IPA agreement. AR at 002716-7; 5 C.F.R. § 334.107(a); *see also* AR at 002082, 002087. In the FY 2009-11 AFA, CSKT agreed to only terminate an IPA agreement for cause and only after engaging in the AFA's dispute resolution process. AR at 002717 (AFA at § 12.E.5.c.ii). Upon termination of an IPA agreement, and consistent with a tribe's ability to hire its own employee for a position, the AFA requires FWS to transfer the funding which it would have used to pay the IPA employee to CSKT so CSKT can hire a new employee to perform the contracted activities. AR at 002717 (AFA at § 12.E.5.c.iii).

In light of the NBRC's small staff, the AFA states that FWS will not reassign an employee, with whom CSKT had experienced performance problems requiring termination of an IPA agreement, to another NBRC position. *Id.* This does not restrict FWS from reassigning such employee to "another position of like pay and grade" elsewhere in compliance with 5 C.F.R. § 334.107(b). Given that FWS has retained only the Refuge Manager, Deputy Refuge Manager, and law enforcement duties at the NBRC, an available position at the NBRC is unlikely anyway.

C. Plaintiffs Cite No Situation Where an IPA Employee Refuses to Comply with the Statutory Requirement for Civil Service.

Plaintiffs claim that the IPA agreements violate the IPA statute because they contain no requirement that the federal employee agrees to serve in the civil service after the IPA

assignment for a period equal to that of the assignment. Pls.' Compl. at ¶ 101. The federal IPA form used by the parties addresses this in Part 13, Section 34.E of the form. [14] AR at 002149. Plaintiffs do not dispute that the statute binds the assigned employee regardless of whether or not the IPA agreement reflects the requirement. Nor do they assert that there has been, or will be, a case where FWS staff refuse to serve for a period equal to the length of the IPA assignment. Plaintiffs assert no injury under this claim and have no standing to bring it.

D. Any Deficiencies in IPA Agreements Would Not Be Fatal to the AFA.

Plaintiffs' IPA claims largely revolve around the IPA agreements themselves rather than the AFA so, even if the claims had any validity, Plaintiffs' relief would need to be directed towards reformation of the IPA agreements rather than the AFA. The AFA, in § 22.B, includes a severability clause. AR at 002731.

VIII. The AFA's Freedom of Information Act Provision is Authorized by Federal Statute.

Plaintiffs claim that § 10.D of the AFA violates FOIA, despite the AFA citing to the federal regulation from which the text of the provision was taken. Pls.' Compl. at § 94.

A. The FOIA Provision is Required by Federal Statute For ISDEAA Contracts and is Authorized for Self-Governance AFA's.

Reciting the federal regulation upon which it is based, the AFA provides as follows:

> As authorized by 25 C.F.R. § 1000.392, except for previously provided copies of Tribal records that the Secretary demonstrates are clearly required to be maintained as part of the record keeping system of the Department of the Interior, records of the CSKT shall not be considered Federal records for the purpose of FOIA.
>
> AR at 002712 (AFA at § 10.D).

---

[14] This same language was contained, although not specifically checked, in Part 13, Section 34.E, of the IPA agreement that Plaintiff Palmer had executed under the FY 2005-06 AFA. Copy attached to this Memorandum as Exhibit "B".

This text is required in ISDEAA Title I contracts. 25 U.S.C. §§ 450*l*(a) and 450*l*(c)(1)(b)(7). At a tribe's option, the statutory provision is transferable to Self-Governance AFA's (Title IV of ISDEAA). 25 U.S.C. § 458cc(*l*). Under Self-Governance regulations, the provision applies if a tribe opts, as CSKT did, to include it in an AFA. 25 C.F.R. § 1000.392(b).

B. Federal Law Expressly States that FOIA Does Not Apply to Records Maintained Solely by a Tribe.

The second sentence in § 10.D of the AFA states that "[t]he FOIA does not apply to records maintained solely by CSKT." AR at 002712. Federal statute and regulation make clear that the "Freedom of Information Act does not apply to records maintained solely by Tribes/Consortia" - regardless of whether a Tribe opts to include the text of 25 C.F.R. § 1000.392(b) in the AFA . 25 C.F.R. § 1000.392(c); *see also* 25 U.S.C. §§ 450*l*(b), 458cc(*l*).

C. The FOIA Provisions in the AFA Comply With Federal Law.

Given the absence of arguments challenging, or referencing, the statutes and regulations authorizing the AFA's FOIA provisions, Plaintiffs have neither sufficiently pled their claim nor provided this Court with reason to find that the text in the AFA is not in accordance with the law.

IX. Conclusion

Due to the above, and the defenses in CSKT's Answer, Defendants are entitled to summary judgment. CSKT requests this Court to grant its Motion for each of Plaintiffs' claims.

/s/ Brian D. Upton Date: December 22, 2009

Brian D. Upton
John T. Harrison
Counsel for the Confederated Salish and Kootenai Tribes
CSKT Legal Department
51383 Highway 93 North
P.O. Box 278
Pablo, MT 59855

Brian Upton

From: Suzanne Ghais [sghais13@yahoo.com]

Sent: Tuesday, October 02, 2007 10:19 AM

To: carl_artman@ios.doi.gov; james_cason@ios.doi.gov; arthur_gary@ios.doi.gov; dale_hall@fws.gov; mitch_king@fws.gov; lynn_scarlett@ios.doi.gov; jay_slack@fws.gov; kenneth_stansell@fws.gov; david_verhey@ios.doi.gov; todd_willens@ios.doi.gov; pat_ragsdale@ios.doi.gov; patrick_ragsdale@ios.doi.gov; barry_roth@ios.doi.gov; paul_hoffman@ios.doi.gov; sharee.freeman@gmail.com; arch_well@ios.doi.gov; archibald_well@ios.doi.gov; edith_blackwell@ios.doi.gov; kaush_arha@ios.doi.gov; sharon_eller@ios.doi.gov; alvin_dillings@ios.doi.gov; rick_coleman@fws.gov; dean_rundle@fws.gov; tomm@cskt.org; sherryc@cskt.org; tonyi@cskt.org; shannonc@cskt.org; mirandad@cskt.org; nancys@cskt.org; rhondas@cskt.org; carolel@cskt.org; mikek@cskt.org; jimm@cskt.org; sheilam@cskt.org; brianu@cskt.org; claytonm@cskt.org; daleb@cskt.org; joed@cskt.org; pat_jamieson@fws.gov; patricia_jamieson@fws.gov; darren_thomas@fws.gov; skip_palmer@fws.gov; dean_vaughan@fws.gov; bill_west@fws.gov

Cc: Sarah Palmer; Elena Gonzalez; Shayla Simmons; Gail Brooks

Subject: NBR assessment report

Attachments: Assessment presentation 10-2-07.doc

Dear colleagues at DOI/FWS and CSKT:

Attached is our assessment report, revised after obtaining and reflecting on feedback from the FWS and the CSKT.

We are conducting three briefings:
- One this afternoon in Washington
- Two on October 15 -- one for the CSKT and one for field and regional FWS staff.

Again, please help us with any incorrect any e-mail addresses by forwarding this to the intented recipients in your organization and copying us so we get the right address for future use.

Jon Townsend and Suzanne Ghais

Suzanne Ghais
Home office: 303-431-0767
Mobile: 303-913-5030
sghais13@yahoo.com

1:08-cv-02117(CKK)
Exhibit A

This document is a confidential dispute resolution communication as covered in the Alternative Dispute Resolution Act of 1998, Section 651, Title 28.

NATIONAL BISON RANGE
SITUATION ASSESSMENT

By Jon Townsend and Suzanne Ghais, Mediators/Facilitators

October 2, 2007

General Background

Case Assessment Objectives

- Assess the dynamics, nature and dimensions of the conflict surrounding the National Bison Range
- Assess prospects for a successful collaborative process and conditions for success
- Recommend a process to obtain resolution

Team

- Consultants: Jon Townsend & Suzanne Ghais
- Assisted by: DOI Office of Collaborative Action & Dispute Resolution (contacts Elena Gonzalez, Kathy Lynn)
- Contracting through: US Inst. for Environmental Conflict Resolution (contact Sarah Palmer)

Clients

U.S. Department of the Interior/U.S. Fish and Wildlife Service, Confederated Salish and Kootenai Tribes of the Flathead Nation. Consultants' fees were split between FWS and Bureau of Indian Affairs.

Washington, DC Interviews

- Jim Cason, Assoc. Deputy Secretary
- Lynn Scarlett, Deputy Secretary
- David Verhey, Acting Assistant Secretary for Fish, Wildlife and Parks
- Carl Artman, Assistant Secretary for Indian Affairs (telephone interview)

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- Dale Hall, Director, FWS, and Ken Stansell, Deputy Director, FWS
- Pat Ragsdale, Director, BIA (telephone interview)
- Art Gary, Associate Solicitor for General Law, and Barry Roth, Deputy Associate Solicitor for Fish and Parks
- Paul Hoffman, Deputy Assistant Secretary for Performance, Accountability and Human Resources (negotiator for original AFA)
- Sharee Freeman, Director, Office of Self-Governance
- Arch Wells, Director, Office of Trust Services, BIA
- Edith Blackwell, Deputy Associate Solicitor, Division of Indian Affairs and Kaush Arha, Associate Solicitor, Division of Indian Affairs
- Sharon Eller, Director, Office of Civil Rights, and Alvin Dillings, Deputy Director, Office of Civil Rights

Denver FWS Interviews

- Mitch King, Regional Director
- Jay Slack, Deputy Regional Director
- Rick Coleman, Assistant Regional Director, and Dean Rundle, Refuge Supervisor for CO, MT, UT, WY
- Al Kashinski, Senior Attorney, Office of the Solicitor (brief telephone interview)

FWS Interviews at National Bison Range

- Pat Jamieson, Visitor's Center
- Darren Thomas, Maintenance
- Skip Palmer, Maintenance
- Dean Vaughan, Private Lands Biologist, Partners for Fish and Wildlife Program
- Bill West, Refuge Manager, and Tim Miller

Offered an interview to former Range Manager Steve Kallin and requested his help in reaching other former NBR employees. Neither occurred.

Interviews at CSKT

- Tom McClure, former NBR maintenance

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- Sherry Clairmont, former NBR maintenance
- Tony Incashola, Director of Salish-Pend Oreille Culture Committee
- Shannon Clairmont, Wildlife Biologist, former Biologist at NBR
- Miranda DePoe, former NBR Visitors' Center staff, and Nancy Schall, former NBR Visitors' Center staff
- Group interview: Rhonda Swaney, Tribal Attorney; Carole Lankford, Tribal Council Vice Chair; Mike Kenmille, Tribal Council member; Jim Malatare, Tribal Council member; Sheila Matt, former NBR Coordinator for CSKT; Brian Upton, Tribal Attorney; Clayton Matt, Natural Resources Department Head; Dale M. Becker, Wildlife Program Manager; and (briefly, by telephone) Joe Dupuis, Tribal Council Executive Secretary
- Paul Bishop, volunteer

Themes and Observations

Our Interview Experience

1. Generally, interviewees seemed open and forthcoming about the situation and their views.
2. Except in Washington, there was some confusion about our role, and some distrust towards us, perhaps more so from the NBR personnel.

Conflict Dynamics

3. Trust between CSKT and FWS is low and was eroded by the difficult AFA experience. CSKT and USFWS have worked well together on non-NBR issues.
4. Recent communication attempts between the two entities, though well intended, have generally been awkward, strained, and replete with misunderstandings, with some notable exceptions. CSKT believes they have tried harder than FWS to bridge the communication issues; FWS employees are frustrated by the lack of CSKT response to the proposed CA.
5. Structure of the AFA (incl. reporting lines) was difficult at the range—though many on both sides feel it might have worked with the "right people" or better attitudes.
6. A few of the issues left unresolved prior to signing the last AFA have caused some of the current problems (e.g., handling of IPA personnel issues; tort claims

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and liability; background checks).

7. FWS (at least at regional & local level) and CSKT each view themselves as less powerful than the other.
8. Some FWS employees are apprehensive about possible employment by the tribe, even as federal employees, because of perception of possible discrimination by the tribe and the perceived lack of protection by US civil rights law.
9. Are two laws in conflict?
    a. (DOI-Washington and CSKT view) No. FWS must administer (oversee) the refuge, but legally the tribe could perform all other duties.
    b. (View of some in FWS) Yes. If the Self-Governance Act allows tribes to *manage* a refuge (e.g., setting work priorities, handling budget, making compatibility determinations, directing what work is done and when), that is in conflict with the legal mandate of FWS.

Parties' Willingness to Engage

10. FWS and CSKT are willing to re-engage productively (albeit cautiously) with each other despite difficult history.
    a. People want past and current efforts to result in something positive and to gain closure.
    b. There is no desirable alternative to engaging with each other – high interdependence.
    c. Some FWS personnel favor the idea of an exchange of land but this apparently does not resonate well with leadership of either DOI or CSKT.
11. Both parties want an agreement and want genuine partnership. However, there are competing visions of what a successful partnership would look like (Cooperative Agreement versus AFA). CSKT feels CA offers less responsibility and protection to the tribe. FWS feels AFA is antithetical to partnership.
12. FWS is willing to negotiate within some parameters – mainly, that there is one team with all reporting lines leading to an on-site Refuge Manager employed by FWS.
13. CSKT is willing to negotiate – they submitted a draft AFA in February at DOI request, and have not yet (to our knowledge) responded formally to the Proposed Cooperative Agreement.
14. CSKT has confidence in their ability to manage the range successfully according

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to FWS specifications and points to many other successful programs and enterprises.

Parties' Interests (as we understand them from interviews)

15. FWS:
    a. True partnership
    b. Authority to match responsibility to administer Refuges
    c. Flexibility to direct staff resources where work is needed
    d. Assurance of task-specific competence with all employees (tribal or federal) subject to similar training, background checks, etc. for similar jobs
    e. Reduction in administrative burdens
    f. To work as one team at NBR
16. CSKT:
    a. True partnership
    b. Accountability and recourse (e.g., opportunity to respond to unfavorable decisions or evaluations)
    c. Open communication and cooperation
    d. Prompt notice of any performance deficiencies
    e. Receptiveness to their ideas for improvement
    f. Fair implementation of the agreement, incl. to be allowed access to equipment, facilities, and guidance; and evaluated fairly and accurately based on agreed-upon standards
17. Site-level people feel focusing on the well-being of the resource would improve relations. Both CSKT and FWS acknowledge there is tremendous expertise and competence in each other's organizations, though each points to shortcomings in other's performance on NBR.
18. Jobs on the Range are highly coveted by both CSKT and FWS employees.
    a. FWS employees feel very insecure about their futures.
    b. Several tribal employees would love to return to work at NBR, despite limited potential career growth.

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Recommendations

Phase 1

Consultant team works internally within DOI.

Phase 2

Consultant team facilitates discussions and negotiations between representatives of FWS and CSKT with end goal of finalizing and implementing an agreement on how to work together in partnership on the NBR. The facilitation would incorporate brief elements of training on interest-based negotiation.

We recommend the following regarding the negotiation process:

- Each side's negotiating team should include someone with on-the-ground NBR experience.
- At the beginning, various assumptions and misunderstandings need to be discussed and cleared up.
- Dueling drafts must be avoided; principles or broad agreements should be negotiated first and captured in a single draft that can be revised as finer points are negotiated.
- People with on-the-ground NBR experience (from both FWS and CSKT) should have an opportunity to provide input on the practicality of any arrangements discussed and the opportunity to comment on draft prior to signing.
- There should be a transparent, orderly process for handling impasse.
- Leadership on both sides must work to ensure continuing momentum toward positive, long-term, durable resolution.
- Upon completion of an agreement, there should be a joint presentation and discussion with people who will be working at the NBR of what the agreement means and how it will work.

We recommend the following regarding the agreement content:

- All major issues should be resolved prior to signing.
- The agreement should include provisions for future informal and formal dispute resolution.

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Regardless of whatever agreement the parties end up signing they will need a team building session that covers such topics as the following:

- Building effective working relationships
- Working effectively as a team across differences
- Building "win-win" agreements with reluctant individuals and within work teams
- Integrating peoples' ideas with yours and those of other group members
- Communication skills to handle strong negative emotions and behaviors

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

IN REPLY REFER TO:

MAILING ADDRESS:
Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228-1807

September 3, 2010

Mr. E. T. "Bud" Moran, Chairman
Tribal Council
Confederated Salish and Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Chairman Moran:

This is in response to your letter of August 30, 2010, subj. "RE: NO COST EXTENSION REQUEST".

We have a September 30, 2010 deadline for obligating ARRA funds for the Mission Creek Bridge Replacement project at the National Bison Range (NBR). That deadline was met when funds for the project were transferred to the Confederated Salish and Kootenai Tribes (CSKT) under provisions of the Annual Funding Agreement for the NBR Complex, in June, 2009. Actual construction of the bridge does not need to be completed by September 30, 2010, and the Service has no problem with your proposal to complete the project in November, 2010.

We appreciate very much the excellent work and progress that the CSKT has made on this project and look forward to completion of the project on the schedule proposed in your letter.

Sincerely,

W. Dean Rundle
Refuge Program Supervisor

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Mountain-Prairie Region

IN REPLY REFER TO:

MAILING ADDRESS:
Post Office Box 25486
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Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Blvd.
Lakewood, Colorado 80228-1807

May 16, 2011

Mr. Bud Moran
Tribal Council Chairman
Confederated Salish and Kootenai Tribes
P. O. Box 278
Pablo, MT 59855

Dear Chairman Moran:

This is in reference to funds previously transferred from the U. S. Fish and Wildlife Service (Service) to the Confederated Salish and Kootenai Tribes (CSKT) under provisions of the Fiscal Years 2009 -2011 Funding Agreement between the United States Department of the Interior, Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes of the Flathead Reservation (AFA). The AFA prescribed timelines for the return of unexpended funds in the event of retrocession of activities by the CSKT or reassumption of activities by the Service, but did not anticipate rescission of the AFA by a U. S. District Court, as occurred on September 28, 2010.

At the time of the court decision, CSKT still had outstanding bills to be paid to vendors, resulting from valid obligations made pursuant to the AFA. Without the advanced written notices, required by the AFA for retrocession or reassumption, the "orderly transition" we had sought in our agreement was not possible, and it was necessary for the CSKT to retain some funds to deal with those legitimate obligations.

Following payment of all legitimate obligations incurred during the AFA, the CSKT retains $150,197.48, transferred from the Service during the AFA, that remains unexpended. The Service requests that those funds be returned to the Service as soon as possible.

Please return these funds by sending a check, in the amount of $150,197.48, made payable to: United States Fish and Wildlife Service, via overnight mail to:

U. S. Fish and Wildlife Service
Attn: Dean Rundle
134 Union Blvd., Suite 300
Lakewood, CO 80228

Thank you for the fine work the CSKT performed under the Annual Funding Agreement at the National Bison Range, the assistance provided by the staff of the CSKT Natural Resources Department, and for your prompt attention to the return of the unexpended funds. We look forward to renewing our partnership in the near future.

Sincerely,

W. Dean Rundle
Refuge Supervisor

Cc: Ruth Swaney, Budget Director, Confederated Salish and Kootenai Tribes
Brian Upton, Attorney, Confederated Salish and Kootenai Tribes
Gina Martinez, Chief, Budget and Program Development, NWRS, R6, FWS

King, Jeff <jeff_king@fws.gov>

5/15 agenda

5 messages

Brian Upton <brianu@cskt.org> Thu, May 9, 2013 at 1:50 PM
To: Debbie Schreiner <Debbie_Schreiner@fws.gov>, Dean_Rundle@fws.gov, Jeff_King@fws.gov

Debbie, Dean and Jeff,

After speaking with staff here, we're anticipating meeting with Noreen, Dean and Jeff for an hour or so next Wednesday at 1:00pm, with the focus of the discussion being the NBRC AFA and the environmental assessment. After the meeting, our Natural Resources Department would like to take Noreen, Dean and Jeff on a brief tour of some of the FWS-supported projects on the Flathead Indian Reservation. Dale Becker, our Tribal Wildlife Program Manager, indicated that he'd like to discuss some of those projects, as well as some issues concerning grizzly bear recovery funding. It's our understanding that Noreen would have until 5:00pm for that tour/discussion.

Please let us know if this rough agenda sounds good to Ms. Walsh and the federal team, or whether there are other issues that you would like to discuss or address. If the agenda as outlined above is acceptable, I'll circulate that information to tribal officials and staff next Monday.

I am trying to ascertain who from the Tribal Council may be attending the meeting. Staff attendees for CSKT will likely include: Clayton Matt, Tribal Services Manager; Rich Janssen, NRD Department Head; Tom McDonald, Fish, Wildlife, Recreation & Conservation Division Manager; Dale Becker, Tribal Wildlife Program Manager; John Harrison, Tribal Attorney, and myself.

Thanks,
Brian Upton

King, Jeff <jeff_king@fws.gov> Thu, May 9, 2013 at 2:01 PM
To: Laura King <Laura_King@fws.gov>

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex

58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

[Quoted text hidden]

Debbie Schreiner <Debbie_Schreiner@fws.gov> Thu, May 9, 2013 at 2:27 PM
To: Brian Upton <brianu@cskt.org>, Dean Rundle <dean_rundle@fws.gov>, Jeff King <jeff_king@fws.gov>

Noreen is fine with the agenda. Thanks.

From: Brian Upton [mailto:brianu@cskt.org]
Sent: Thursday, May 09, 2013 1:50 PM
To: 'Debbie Schreiner'; Dean_Rundle@fws.gov; Jeff_King@fws.gov
Subject: 5/15 agenda

[Quoted text hidden]

King, Jeff <jeff_king@fws.gov> Thu, May 9, 2013 at 2:30 PM
To: Dean Rundle <Dean_Rundle@fws.gov>

Dean,

I'm concerned about the 1-hour time to discuss the NBRC AFA and the environmental assessment. This could lead to discussions that I'm sure Noreen is not prepared to engage in at this time and I want to make sure she is not blindsided. A discussion about the content of our current draft EA is inappropriate at this time. As you know the SOL has advised us not to discuss the specifics of the EA with CSKT outside needed clarification of their history and culture until internal review.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

[Quoted text hidden]

Rundle, Dean <dean_rundle@fws.gov> Thu, May 9, 2013 at 2:37 PM
To: "King, Jeff" <jeff_king@fws.gov>

We should discuss this issue of SOL advice w/Noreen on the briefing Tuesday. I agree that we do not discuss

content of EA, but I do think we can talk about schedule, progress, status etc. Whether that takes an hour or not is up to what the tribe asks.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306
[Quoted text hidden]

Moynahan, Brendan <brendan_moynahan@fws.gov>

(no subject)

5 messages

Moynahan, Brendan <brendan_moynahan@fws.gov> Mon, Mar 4, 2013 at 4:06 PM
To: Wayne King <wayne_j_king@fws.gov>
Cc: Jeff King <Jeff_King@fws.gov>, Laura King <laura_king@fws.gov>

Hi Wayne,

Following up on the decision to pull funding for the NBR Science Symposium project, I'd like to make one last (if not futile!) plug for the project. There are several reasons why we think this is a particularly worthwhile project, especially at this moment.

First, we're expecting to start the CCP process this fall. As you know, capturing and organizing pertinent data and analyses is a critical part of that process. That is, the project results will be put to real, immediate use and will be instantly valuable to a long-term planning process. I don't want to take away from projects that others have proposed, but it could be argued that this project will pay greater dividends than other projects which may just be starting up this year.

Second, with the cost-sharing offered by the planning shop at the Regional Office, there's a real window for substantial value-added. In addition, they had committed to covering publication costs for the proceedings product.

Third, this project would be an exceptionally valuable opportunity for us to have a focused, positive, results-oriented, and very public partnership with the Confederated Salish and Kootenai tribes at a very sensitive point – and one that is ripe for a joint success.

Finally… though less directly relevant to the merit of the symposium, NBR last year funded the HGM project to the amount of about $50,000, I believe. While I don't mean to imply that there was an expectation of return on that amount, that cost and the current sequester situation simply means that the symposium project will not otherwise happen – there's no station-level slack to pick up the cost.

I suspect there's not much opportunity to save the symposium project at this point – and I can certainly appreciate the tough choices that we're all making at the moment. Still, I wanted to give one last plug. The symposium is timely and important; has a clear end-point and defined products; and would yield a big payoff relative to our CCP efforts and our collaboration with exceptionally important partners.

Thanks for the consideration,

Brendan

==========

Brendan J. Moynahan, Ph.D.

Lead Wildlife Biologist
National Bison Range Complex
National Wildlife Refuge System
U.S. Fish and Wildlife Service

58355 Bison Range Road

Moiese, MT 59824
406.644.2211 ext. 212
406.214.6361 (cell)
brendan_moynahan@fws.gov
==========

Moynahan, Brendan <brendan_moynahan@fws.gov> Wed, Mar 6, 2013 at 11:07 AM
To: Amy Lisk <amy_lisk@fws.gov>, Daniel Sharps <daniel_sharps@fws.gov>

Here's the email I sent to Wayne after the call on Monday....

==========
Brendan J. Moynahan, Ph.D.

Lead Wildlife Biologist
National Bison Range Complex
National Wildlife Refuge System
U.S. Fish and Wildlife Service

58355 Bison Range Road
Moiese, MT 59824
406.644.2211 ext. 212
406.214.6361 (cell)
brendan_moynahan@fws.gov
==========

[Quoted text hidden]

Lisk, Amy <amy_lisk@fws.gov> Thu, Mar 7, 2013 at 8:36 AM
To: "Moynahan, Brendan" <brendan_moynahan@fws.gov>

As always, I'm impressed. I would've bought the farm for sure!
So so so so happy about this.
A
[Quoted text hidden]

Moynahan, Brendan <brendan_moynahan@fws.gov> Thu, Mar 7, 2013 at 9:32 AM
To: "Lisk, Amy" <amy_lisk@fws.gov>

Me too- really looking forward to it. You deserve a lot of credit for the initial idea... this will be good.

Hey, I think Bob's going to try you on your cell... he just came by and said he hadn't seen time entered for you or Darren yet....

==========
Brendan J. Moynahan, Ph.D.

Lead Wildlife Biologist
National Bison Range Complex
National Wildlife Refuge System

U.S. Fish and Wildlife Service

58355 Bison Range Road
Moiese, MT 59824
406.644.2211 ext. 212
406.214.6361 (cell)
brendan_moynahan@fws.gov
==========

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Lisk, Amy <amy_lisk@fws.gov> Thu, Mar 7, 2013 at 10:10 AM
To: "Moynahan, Brendan" <brendan_moynahan@fws.gov>

eeks i forgot. i will give a shout thanks for heads up
[Quoted text hidden]



Moynahan, Brendan <brendan_moynahan@fws.gov>

Availability for NBR meeting in April?

9 messages

Moynahan, Brendan <brendan_moynahan@fws.gov> Fri, Jan 10, 2014 at 12:09 PM
To: Lindy Garner <lindy_garner@fws.gov>, Mike Artmann <mike_artmann@fws.gov>, Jeffrey Warren <jeffrey_warren@fws.gov>, Jo Ann Dullum <joann_dullum@fws.gov>, Randy Matchett <randy_matchett@fws.gov>

All,

We're hatching plans for a pre-CCP focus group meeting at the NBR in April. We'd love have you there to tap into your expertise, perspectives and experience. Could you let me know generally of your availability in April (second half) and whether your home station can cover travel ceiling? As part of the funding support, we expect to be able to pay for travel, but need ceiling to come from the traveler's home post.

Thanks -

Brendan

==========
Brendan J. Moynahan, Ph.D.

Supervisory Wildlife Biologist
National Bison Range Complex
National Wildlife Refuge System
U.S. Fish and Wildlife Service

58355 Bison Range Road
Moiese, MT 59824
406.644.2211 ext. 212
406.214.6361 (cell)
brendan_moynahan@fws.gov

Visit the National Bison Range on Facebook
==========

Randy Matchett <randy_matchett@fws.gov> Fri, Jan 10, 2014 at 12:17 PM
To: Brendan Moynahan <brendan_moynahan@fws.gov>
Cc: Richard Potts <richard_potts@fws.gov>, Matt Derosier <matt_derosier@fws.gov>

Brendan,

I should be available and it is the least we can do to return the favor of you coming to help us with our HMPs. Later in the month would be better to leave more mornings for prairie grouse surveys.

Randy

From: Moynahan, Brendan [mailto:brendan_moynahan@fws.gov]
Sent: Friday, January 10, 2014 12:09 PM
To: Lindy Garner; Mike Artmann; Jeffrey Warren; Jo Ann Dullum; Randy Matchett
Subject: Availability for NBR meeting in April?

[Quoted text hidden]

Garner, Lindy <lindy_garner@fws.gov> Fri, Jan 10, 2014 at 1:09 PM
To: "Moynahan, Brendan" <brendan_moynahan@fws.gov>

As of this moment best dates for me would be within April 16-22. I am not available the week of April 7.

Lindy Garner
U.S. Fish & Wildlife Service
Mountain-Prairie Region Invasive Species Coordinator
922 Bootlegger Trail
Great Falls, MT 59404
phone: 406/727-7400 x213
mobile: 406/899-5666
fax: 406/727-7432
Lindy_Garner@fws.gov
[Quoted text hidden]

Jeffrey Warren <jeffrey_warren@fws.gov> Mon, Jan 13, 2014 at 8:48 AM
To: Brendan Moynahan <brendan_moynahan@fws.gov>

I'm open the latter half of April right now.

Is there an un-focused group I could participate in? That suits my skill set better…

From: Moynahan, Brendan [mailto:brendan_moynahan@fws.gov]
Sent: Friday, January 10, 2014 12:09 PM
To: Lindy Garner; Mike Artmann; Jeffrey Warren; Jo Ann Dullum; Randy Matchett
Subject: Availability for NBR meeting in April?

All,

[Quoted text hidden]

Moynahan, Brendan <brendan_moynahan@fws.gov> Thu, Jan 16, 2014 at 8:44 AM
To: Jeffrey Warren <jeffrey_warren@fws.gov>

I suspect you'll fit right in! Glad you'll be around --- I'll firm up some date options and put a doodle poll out there for key participants…

Thanks!

==========
Brendan J. Moynahan, Ph.D.

Supervisory Wildlife Biologist
National Bison Range Complex
National Wildlife Refuge System
U.S. Fish and Wildlife Service

58355 Bison Range Road
Moiese, MT 59824
406.644.2211 ext. 212
406.214.6361 (cell)
brendan_moynahan@fws.gov

Visit the National Bison Range on Facebook
==========

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Jeffrey Warren <jeffrey_warren@fws.gov> Thu, Jan 16, 2014 at 8:57 AM
To: Brendan Moynahan <brendan_moynahan@fws.gov>

Sounds great, thanks.

From: Moynahan, Brendan [mailto:brendan_moynahan@fws.gov]
Sent: Thursday, January 16, 2014 8:45 AM
To: Jeffrey Warren
Subject: Re: Availability for NBR meeting in April?

[Quoted text hidden]

Artmann, Mike <mike_artmann@fws.gov> Tue, Jan 21, 2014 at 7:48 AM
To: "Moynahan, Brendan" <brendan_moynahan@fws.gov>

Sorry Brendan -- this one slipped off my radar. I should be available the second half of April.

How are the comments coming on the HGM? If possible, we should shoot for getting our responses back to Mickey by the end of the week. Hope the training is going well.

Mike

On Fri, Jan 10, 2014 at 12:09 PM, Moynahan, Brendan <brendan_moynahan@fws.gov> wrote:
[Quoted text hidden]

--
Mike Artmann
Wildlife Biologist
U.S. Fish & Wildlife Service

National Wildlife Refuge System
Inventory and Monitoring Initiative
134 Union Blvd.
Lakewood, CO 80228
w:(303) 236-4381
c:(720)-273-9864
mike_artmann@fws.gov

Moynahan, Brendan <brendan_moynahan@fws.gov> Tue, Jan 21, 2014 at 9:04 AM
To: "Artmann, Mike" <mike_artmann@fws.gov>

Nearly there - I'll have our comments to you by tomorrow morning.

The class is really good - super condensed, but very good with lots of emphasis on application...

==========
Brendan J. Moynahan, Ph.D.

Supervisory Wildlife Biologist
National Bison Range Complex
National Wildlife Refuge System
U.S. Fish and Wildlife Service

58355 Bison Range Road
Moiese, MT 59824
406.644.2211 ext. 212
406.214.6361 (cell)
brendan_moynahan@fws.gov

Visit the National Bison Range on Facebook
==========

[Quoted text hidden]

Dullum, Jo Ann <joann_dullum@fws.gov> Tue, Jan 21, 2014 at 3:32 PM
To: "Moynahan, Brendan" <brendan_moynahan@fws.gov>

Brendan,

I not available the week of April 7th (training in Denver) but other than that I can make most any date work.

As far as our travel costs, I&M will cover the I&M staff travel.

_____
Jo Ann L. D. Dullum
GIS/Data Manager R6 Inventory & Monitoring Initiative
922 Bootlegger Trail
Great Falls, MT 59404
(406) 727-7400 x227 W

(406) 788-7006 C

On Fri, Jan 10, 2014 at 12:09 PM, Moynahan, Brendan <brendan_moynahan@fws.gov> wrote:

[Quoted text hidden]

Moynahan, Brendan <brendan_moynahan@fws.gov>

CCP focus group at NBR- presentation topics and guidance

Lisk, Amy <amy_lisk@fws.gov> Tue, Mar 25, 2014 at 1:37 PM
To: Lindy Garner <lindy_garner@fws.gov>, Jeffrey Warren <Jeffrey_Warren@fws.gov>, Lee Jones <lee_c_jones@fws.gov>, Jeff King <Jeff_King@fws.gov>, Bob Rebarchik <bob_rebarchik@fws.gov>, Laura King <laura_king@fws.gov>, Pat Jamieson <pat_jamieson@fws.gov>, Amy Lisk <amy_lisk@fws.gov>, Jack Hogg <jthogg@montana.com>, John Byers <jbyers@uidaho.edu>, Dean Vaughan <dean_vaughan@fws.gov>, Vicky Dreitz <victoria.dreitz@umontana.edu>, Dale Becker <daleb@cskt.org>, Doug Dupuis <dougd@cskt.org>, Jane Mangold <jane.mangold@montana.edu>, Brady Allred <brady.allred@umontana.edu>, Gary Belovsky <belovsky.1@nd.edu>, Brendan Moynahan <brendan_moynahan@fws.gov>, Bill West <bill_west@fws.gov>, Jo Ann Dullum <joann_dullum@fws.gov>, Randy Matchett <randy_matchett@fws.gov>, "Luikart, Gordon" <gordon.luikart@mso.umt.edu>, "Schwartz, Michael K -FS" <mkschwartz@fs.fed.us>, tomm@cskt.org, walter.lujan@mt.usda.gov, Sean Fields <sean_fields@fws.gov>, janene_lichtenberg@skc.edu, Amy Cilimburg <amy@mtaudubon.org>, Karen Shoemaker <karen_shoemaker@fws.gov>, owlmontana@blackfoot.net

Hello Again,

We are expecting participation from most for the entire 3-day workshop. If you cannot attend the workshop in its entirety, please contact me directly by COB on Friday 3/28. Pinning down the daily attendee list will allow us to fine-tune the agenda so we're able to make best use of your time. When we have detailed attendance information, we'll finalize and distribute the agenda.

The first attachment is a PDF that lists presenters and topics. As you develop your presentation, please keep in mind the guidance that we want to hear your big-picture perspectives and overviews of your long-term experiences in your field, and have them related directly to coming planning processes (the Comprehensive Conservation Plan) and on-going management activities at the NBR.

The second attachment is a required PowerPoint template with detailed direction, suggestions and examples. Having all presenters use this common template will help a great deal with facilitating similar messaging and productive discussions during break-out groups.

Again, please also keep in mind that we will publish the proceedings from this meeting and ask that you submit a 3-5 page narrative of your presentation.

Thanks,

Amy

On Fri, Mar 14, 2014 at 1:13 PM, Lisk, Amy <amy_lisk@fws.gov> wrote:

Hello All,

The National Bison Range CCP focus group meeting will be held April 29 - May 1 at the Ninepipes Lodge in Charlo, MT. This facility is just adjacent to our Ninepipes National Wildlife Refuge, on Highway 93, 50 miles north of Missoula.

For those of you who will be travelling, I have prepared the following guidance. Please contact me with any questions.

Federal Employees –

Arrange travel with your designated travel specialist using account structure: [redacted]

Please email a copy of all authorizations and subsequent vouchers to Karen Shoemaker (karen_shoemaker@fws.gov), budget analyst for the NBR.

REMINDER: Federal employees will need to have available travel ceiling from their home unit. The travel expenses will be deducted from your station and transferred to the NBR. Please discuss the transfer process with your Budget Analyst and/or Project Leader.

Non-federal Invitational Presenters Seeking Reimbursement –

There are a few steps that we need to take in order for your travel arrangements to be made and paid for.

First, please contact Karen Shoemaker, Budget Analyst, at the National Bison Range at (406) 644-2211 ext. 206, on or before the close of business, March 20th, with the following information.

Last Name
First Name
Middle Initial
Address, City, State, and Zip code
Phone number
Email address
Social security number
Bank Name
Bank Routing Number (9 digit)
Bank Account Number
Account Type (checking or savings)
Date of Birth
Your Name as appears (exactly) on your drivers license

You will be set up as a vendor and connected with a travel specialist who will assist you in making arrangements in our system.

Airline expenses will be paid for directly by the travel specialist, but all other expenses (hotel and rental car) will be reimbursed through direct transfer via EFT to your bank account. It is necessary to obtain a copy of your receipts for our records. Please let us know your specific plans as certain forms will be necessary to process your reimbursement.

General Info –

I will be contacting you all again early next week to discuss presentation topics and following up with an email containing clear presentation guidance and a standardized PowerPoint template for you to use - doing so will

facilitate post-meeting roll-up and archiving of the meeting. We plan to publish the proceedings and are also requesting a 3-5 page narrative of your presentation.

Thanks so much - we're excited about this gathering and looking forward to your participation.

Amy

ORIGINAL MESSAGE

All,

I'm writing to invite you to a scoping workshop for the upcoming Comprehensive Conservation Plan for the National Bison Range Complex. The final CCP will provide overall guidance and specific priorities for management, operation, maintenance, monitoring, and research. This process may take 3-4 years to complete.

A critical part of building a meaningful and useful CCP is to gather, assemble, and understand the best available information on the resources of the NBRC. Because of your experience working for, with, or on the Complex, we hope that each of you can participate in the 3-day workshop this April. The workshop will include an overview of the goals and milestones of our CCP, but the primary objective is to capture and assemble biological information, with presentations by most participants, and break-out groups to focus biological issues.

Brendan Moynahan and I will draft the agenda, arrange meeting logistics, and will contact you directly to request presentations at the meeting, along with existing data sets, analyses, reports, etc. We expect to have funding available to cover travel costs for invited out-of-area presenters. Federal employees will need to have available travel ceiling from their home unit.

Please respond to the Doodle poll below to indicate your availability. We'll be back in touch shortly with more details and the 'save the date' notice. We hope you can make it, and look forward to working with you in April.

Regards,

Amy Lisk and

Brendan Moynahan

--
Amy Lisk

Wildlife Biologist
National Bison Range Complex

US Fish and Wildlife Service

58355 Bison Range Road
Moiese, MT 59824
406-644-2211 x 217
Fax: 406-644-2661
amy_lisk@fws.gov

Visit our new website at http://www.fws.gov/refuge/national_bison_range/
AND check out the National Bison Range on Facebook!!

---

2 attachments

presentation topics.pdf
68K

NBR Symposium PPT Template v3 bjm 2014 03 25.pptx
1733K

King, Jeff <jeff_king@fws.gov>

Draft EA

2 messages

Brian Upton <brianu@cskt.org> Thu, May 22, 2014 at 11:36 AM
To: will_meeks@fws.gov
Cc: Jeff_King@fws.gov, Rich Janssen <richjcskt@gmail.com>, Tomm@cskt.org, dale@cskt.org

Will,

The Tribal Council would like some additional time in which to consider the draft EA prior to providing comment to FWS. I expect that CSKT should be able to submit comment sometime in the June 10-13 window at the latest. Let me know if that presents any problems, and feel free to call me if you have any questions. If there are no issues, please just drop me a line to confirm.

Thanks,

BU

Will Meeks <will_meeks@fws.gov> Thu, May 22, 2014 at 11:44 AM
To: Brian Upton <brianu@cskt.org>
Cc: "Jeff_King@fws.gov" <Jeff_King@fws.gov>, Rich Janssen <richjcskt@gmail.com>, "Tomm@cskt.org" <Tomm@cskt.org>, "dale@cskt.org" <dale@cskt.org>, Toni Griffin <toni_griffin@fws.gov>

No worries Brian. That timeframe works for me.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

King, Jeff <jeff_king@fws.gov>

EA Status

Rundle, Dean <dean_rundle@fws.gov> Wed, Mar 13, 2013 at 7:36 AM
To: Brian Upton <brianu@cskt.org>
Bcc: Jeff_King@fws.gov

Brian: We should be ready to turn over the first 4 chapters for SOL review on Friday this week. Jeff and I had a talk with Dana and Sharon yesterday and Dana's advice on the question of CSKT review was to provide you with a final draft for comment, after completion of the analysis of environmental affects by our contractor and before a draft is released for public review and comment.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

King, Jeff <jeff_king@fws.gov>

FW: EA

4 messages

Will Meeks <Will_Meeks@fws.gov> Tue, Apr 29, 2014 at 4:00 PM
To: Jeff King <jeff_king@fws.gov>

Jeff,

See the thread below. I also left a message as such on your mobile.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

-----Original Message-----
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Tuesday, April 29, 2014 2:48 PM
To: 'Will Meeks'
Cc: ssilberman@cskt.org
Subject: RE: EA

Will,
That's fine with me if it works for Council. I know that the Council is not able to meet next week, so I'm not sure whether or not they will be backed up this Thursday. I'm copying Sharon Silberman on this email since she may be able to advise regarding the Council agenda.

Sharon, could you check with the Chairman and let Will and I know whether there's room to schedule Jeff King for a delivery of the draft NBRC EA this Thursday (5/1)?

Thanks,
BU

-----Original Message-----
From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, April 29, 2014 2:39 PM
To: Brian Upton
Subject: Re: EA

I think it would be nice to have Jeff deliver them to Council on Thursday if that works.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director

NWRS and PFW
303-236-4303

> On Apr 29, 2014, at 2:14 PM, Brian Upton <brianu@cskt.org> wrote:
>
> I'll be traveling on Friday, so it'd be good to make sure we get the draft
> no later than Thursday. If Jeff can drop it off, that'd be great - or I
> can pick it up from him if it's easier. Will it be possible to pick it
> up from Jeff (or someone else at NBRC) tomorrow? I know there are CCP
> meetings in progress, so just let me know. I just had a Council Member
> ask me this morning if we had received the draft EA yet.
>
>
> -----Original Message-----
> From: Will Meeks [mailto:will_meeks@fws.gov]
> Sent: Tuesday, April 29, 2014 9:57 AM
> To: Brian Upton
> Subject: EA
>
> Brian,
>
> We have the EA for internal review. Would you prefer these FedEx'd to you
> or hand delivered by Jeff King on Thursday?
>
> Thanks.
>
> Will Meeks
> U.S. Fish and Wildlife Service
> R6 - Assistant Regional Director
> NWRS and PFW
> 303-236-4303 (w)
> 720-541-0310 (c)
>

Will Meeks <Will_Meeks@fws.gov> Wed, Apr 30, 2014 at 10:16 AM
To: Jeff King <jeff_king@fws.gov>

Conducting interviews. Let's plan on catching one another first thing tomorrow morning before you head that direction. Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

-----Original Message-----
From: Sharon Silberman [mailto:ssilberman@cskt.org]
Sent: Wednesday, April 30, 2014 10:09 AM
To: 'Brian Upton'; 'Will Meeks'
Subject: RE: EA

I have Will scheduled at 10:00 tomorrow. Please come around 9:45 just in

case we are running early. Thank you, sharon
[Quoted text hidden]

Jeff King <jeff_king@fws.gov> Wed, Apr 30, 2014 at 10:23 AM
To: Will Meeks <Will_Meeks@fws.gov>

Ok. I'll give you a call before I head to Pablo.
jk

Sent from Jeff's iPhone
[Quoted text hidden]

Jeff King <jeff_king@fws.gov> Wed, Apr 30, 2014 at 10:25 AM
To: Will Meeks <Will_Meeks@fws.gov>

Will. One more thing. Tom McDonald and dale Becker are here today and they will be with me tomorrow at council.
jk

Sent from Jeff's iPhone

> On Apr 30, 2014, at 10:16 AM, Will Meeks <Will_Meeks@fws.gov> wrote:
>
[Quoted text hidden]

Fwd: 5/15 agenda

1 message

King, Jeff <jeff_king@fws.gov> Thu, May 9, 2013 at 2:01 PM
To: Laura King <Laura_King@fws.gov>

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

---------- Forwarded message ----------
From: **Brian Upton** <brianu@cskt.org>
Date: Thu, May 9, 2013 at 1:50 PM
Subject: 5/15 agenda
To: Debbie Schreiner <Debbie_Schreiner@fws.gov>, Dean_Rundle@fws.gov, Jeff_King@fws.gov

Debbie, Dean and Jeff,

After speaking with staff here, we're anticipating meeting with Noreen, Dean and Jeff for an hour or so next Wednesday at 1:00pm, with the focus of the discussion being the NBRC AFA and the environmental assessment. After the meeting, our Natural Resources Department would like to take Noreen, Dean and Jeff on a brief tour of some of the FWS-supported projects on the Flathead Indian Reservation. Dale Becker, our Tribal Wildlife Program Manager, indicated that he'd like to discuss some of those projects, as well as some issues concerning grizzly bear recovery funding. It's our understanding that Noreen would have until 5:00pm for that tour/discussion.

Please let us know if this rough agenda sounds good to Ms. Walsh and the federal team, or whether there are other issues that you would like to discuss or address. If the agenda as outlined above is acceptable, I'll circulate that information to tribal officials and staff next Monday.

I am trying to ascertain who from the Tribal Council may be attending the meeting. Staff attendees for CSKT will likely include: Clayton Matt, Tribal Services Manager; Rich Janssen, NRD Department Head; Tom McDonald, Fish, Wildlife, Recreation & Conservation Division Manager; Dale Becker, Tribal Wildlife Program Manager; John Harrison, Tribal Attorney, and myself.

Thanks,
Brian Upton



King, Jeff <jeff_king@fws.gov>

Fwd: 10/1 meeting

7 messages

Rundle, Dean <dean_rundle@fws.gov> Tue, Sep 17, 2013 at 7:29 AM
To: Debbie Schreiner <debbie_schreiner@fws.gov>
Cc: Will Meeks <will_meeks@fws.gov>, Noreen Walsh <noreen_walsh@fws.gov>, Jeff King <Jeff_King@fws.gov>

Debbie: Please schedule the meeting with CSKT for Tuesday, 10/1 from 0900 - 1200. Assume that will be in RD's conf. room.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

---------- Forwarded message ----------
From: **Brian Upton** <brianu@cskt.org>
Date: Tue, Sep 17, 2013 at 12:18 AM
Subject: 10/1 meeting
To: "Rundle, Dean" <dean_rundle@fws.gov>

Dean,
Got your voicemail today in between flights. Just got home and have email access before leaving for Helena first thing tomorrow morning. If I understood your message correctly, you were asking how long to schedule the 10/1 meeting. Let's plan on 9:00-noon. I'd rather overestimate the time than underestimate it. If I misunderstood your message or the options you had described, let me know.

Feel free to call - I'll be in a legal seminar the next couple of days, but it should be easy for me to step out.

BU

Debbie Schreiner <Debbie_Schreiner@fws.gov> Tue, Sep 17, 2013 at 8:44 AM
To: Dean Rundle <dean_rundle@fws.gov>
Cc: Will Meeks <will_meeks@fws.gov>, Noreen Walsh <noreen_walsh@fws.gov>, Jeff King <jeff_king@fws.gov>

Confirmed. Will be in RD's conference room.

From: Rundle, Dean [mailto:dean_rundle@fws.gov]
Sent: Tuesday, September 17, 2013 7:30 AM
To: Debbie Schreiner
Cc: Will Meeks; Noreen Walsh; Jeff King
Subject: Fwd: 10/1 meeting

[Quoted text hidden]

Jeff King <jeff_king@fws.gov> Tue, Sep 17, 2013 at 5:35 PM
To: Kim Pennington <Kim_Pennington@fws.gov>

Kim. I need to be in Denver on October 1. Can you check flights on September 30 and returning on October 2. Let me know my options. I'm on annual leave this week but checking email. I'll also need a full size car. Enterprise is my preference.
Thanks.
jk

Sent from Jeff's iPhone

Begin forwarded message:

> **From:** Debbie Schreiner <Debbie_Schreiner@fws.gov>
> **Date:** September 17, 2013, 7:44:42 AM PDT
> **To:** Dean Rundle <dean_rundle@fws.gov>
> **Cc:** Will Meeks <will_meeks@fws.gov>, Noreen Walsh <noreen_walsh@fws.gov>, Jeff King <jeff_king@fws.gov>
> **Subject: RE: 10/1 meeting**

[Quoted text hidden]

Pennington, Kim <kim_pennington@fws.gov> Fri, Sep 20, 2013 at 9:27 AM
To: Jeff King <jeff_king@fws.gov>

Jeff,

Do you already have motel reserved??? If not I can do that. What motel do you usually use - Hampton or Homewood?
[Quoted text hidden]
--
Kim Pennington
Administrative Assistant
Lee Metcalf NWR
4567 Wildfowl Lane
Stevensville, MT 59870
406-777-5552 x204



Jeff King <jeff_king@fws.gov> Fri, Sep 20, 2013 at 12:38 PM
To: "Pennington, Kim" <kim_pennington@fws.gov>

Home wood suites. Thanks for doing this for me. I'm back in office on Monday.
jk

Sent from Jeff's iPhone
[Quoted text hidden]

Pennington, Kim <kim_pennington@fws.gov> Fri, Sep 20, 2013 at 1:12 PM
To: Jeff King <jeff_king@fws.gov>

Jeff, I will work on this on Monday. Now that GovTrip is closed down, I will need to put it into Concur. On Monday, I will get you a paper copy of an authorization that will need to be signed by you and by Dean. Then I will contact the new travel agency and get your tickets, car and motel. They will send you an itenerary that will also need to be signed by you and approved by Dean. Then you will be good to go. Until Concur gets up and running on the 8th, this will be the way we do any travel. I sure hope I don't have too many people traveling between now and then.

Have a great weekend.

[Quoted text hidden]

Rundle, Dean <dean_rundle@fws.gov> Tue, Sep 24, 2013 at 3:03 PM
To: Brian Upton <brianu@cskt.org>
Cc: Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>

Brian: Thanks for the information - unfortunate that the Chairman and Tom cannot make it.

Kim Greenwood is no longer with R6, she left last winter. Ivy Allen is the new Tribal Liaison in the external affairs office. I'll check with Will and see if she is available.

We are scheduled for 0900 - noon on Tuesday. You can call me at 303/236-4306 when you get here and I'll come get you in the door - I'll probably just be down there waiting on you.

My hopes budget action are waning. We may have to connect on Thursday or Friday as we get additional instructions from HQ on what we will have to do if appropriations lapse on Monday at midnight. I don't want to postpone this meeting, but also don't want you and the Council travelling here on Monday if we are shut down and ordered not to work on Tuesday. Let's hope for a CR later this week and if there isn't one, we'll have to discuss options.

Will is travelling through Thursday this week, but will be in the office on Friday. We'll circle back to you then if there is no appropriation.

Dean

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

On Tue, Sep 24, 2013 at 1:53 PM, Brian Upton <brianu@cskt.org> wrote:

> I forgot to ask in my email below – is Kim Greenwood available to attend the 10/1 meeting? If so, we'd appreciate her presence.
>
> ---
>
> **From:** Brian Upton [mailto:brianu@cskt.org]
> **Sent:** Tuesday, September 24, 2013 11:20 AM
> **To:** Dean_Rundle@fws.gov
> **Cc:** will_meeks@fws.gov

Subject: 10/1 meeting

Dean and Will,

Unfortunately, Chairman Durglo and Tom McDonald cannot make the 10/1 meeting and Dale Becker is on leave. The folks attending for CSKT are as follows:

1) Ron Trahan, Council Member and Tribal Council Treasurer
2) Reuben Mathias, Council Member and Tribal Council Secretary
3) Steve Lozar, Council Member
4) Jim Malatare, Council Member
5) Terry Pitts, Council Member
6) Myself

Please let me know who we should call when we get to your Lakewood offices. It's my understanding that we are scheduled for 9:00am-noon.

Thanks,

BU

Fwd: 10/7 meeting

1 message

Jeff King <jeff_king@fws.gov> Mon, Sep 30, 2013 at 4:24 PM
To: Laura King <Laura_King@fws.gov>

Sent from Jeff's iPhone

Begin forwarded message:

From: "Rundle, Dean" <dean_rundle@fws.gov>
Date: September 30, 2013, 4:21:40 PM MDT
To: Brian Upton <brianu@cskt.org>
Cc: Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>
Subject: Re: 10/7 meeting

Brian: I see Will already sent you the time from Noreen for a meeting next Monday. If we still have no CR by Friday, I would agree that you would be wise to postpone again. I am willing to come back after October 27. If we are not at work next Monday, I've instructed HR to pull my application, and I would likely reapply for retirement effective Nov. 1. So, I'd be on duty the week of 10/28 - 11/1. If there's no CR on Friday and you cancel, and we are back at work on Monday 10/7, and HR files my application with OPM, I would still be willing to come back to a meeting the week of 10/28.

Dean

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

On Mon, Sep 30, 2013 at 11:12 AM, Brian Upton <brianu@cskt.org> wrote:

> Thanks Dean, and thanks for the heads-up about the possible delay in your retirement if the federal government is still shut down as of 10/7.
>
> I hope it doesn't get to this but, if there is no CR by late afternoon on Friday 10/4, we will likely want to cancel the 10/7 meeting so as not to waste the time/travel/money. If you would be willing to come back to Lakewood for a meeting after 10/27 when you return from Italy, I think we'd want to try to schedule that. If you don't think you would be likely to return for a meeting after 10/27 for whatever reason, please let me know so I can advise the Council.

From: Rundle, Dean [mailto:dean_rundle@fws.gov]
Sent: Monday, September 30, 2013 10:41 AM
To: Brian Upton
Subject: Re: 10/7 meeting

Thanks Brian - I just got your voice mail as well. Will is upstairs with Noreen right now, they're all swamped with shut-down/furlough prep. I asked him to get a time for the 10/7 meeting w/Noreen and e-mailed his Iphone that you prefer early in the day.

Just FYI, if there is no CR by COB on Friday, I don't know what we do about a meeting on Monday. I've informed HR that if they are not back to work by Monday 10/7, I am going to delay my retirement. Lets hope this budget stuff is resolved this week.

dean

Dean Rundle

Refuge Supervisor, MT/WY/UT

Region 6, Lakewood, CO

303-236-4306

On Mon, Sep 30, 2013 at 10:08 AM, Brian Upton <brianu@cskt.org> wrote:

Dean and Will,

I just updated the Chairman and Council about rescheduling our meeting to Monday, October 7th. They would like to confirm that meeting date. They are going to check their calendars to figure out which of them may be able to attend the meeting, so I'll follow up with them and hopefully get back with you by later this afternoon with a headcount. Steve Lozar will definitely be able to attend. It sounds like Leonard Gray will stay here to volunteer at the Bison Range Round-Up, which is scheduled for the same time.

Please let me know when the meeting would be scheduled on 10/7. As I'd mentioned in a voicemail to Dean, the earlier the better on our end. The Council Members need to fly back that evening for the 10/8 Council session.

BU

Fwd: FW: Date for Noreen Walsh, Regional Director to meet with CSKT

1 message

King, Jeff <jeff_king@fws.gov> Wed, Apr 10, 2013 at 2:32 PM
To: Laura King <Laura_King@fws.gov>

fyi

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

---------- Forwarded message ----------
From: **Rundle, Dean** <dean_rundle@fws.gov>
Date: Wed, Apr 10, 2013 at 2:30 PM
Subject: Fwd: FW: Date for Noreen Walsh, Regional Director to meet with CSKT
To: Jeff King <Jeff_King@fws.gov>

Jeff: I will make sure that you are also included for this hour-long meeting w/Noreen to discuss NBRC issues with Council on May 15.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

---------- Forwarded message ----------
From: **Rundle, Dean** <dean_rundle@fws.gov>
Date: Wed, Apr 10, 2013 at 2:29 PM
Subject: Re: FW: Date for Noreen Walsh, Regional Director to meet with CSKT
To: Brian Upton <brianu@cskt.org>

Thanks Brian. It looks like I will be with Noreen for the meeting on the 15th.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

On Wed, Apr 10, 2013 at 1:55 PM, Brian Upton <brianu@cskt.org> wrote:

From: Sharon Silberman [mailto:ssilberman@cskt.org]
Sent: Wednesday, April 10, 2013 1:41 PM
To: Debbie Schreiner
Cc: richj@cskt.org; tomm@cskt.org; daleb@cskt.org; brianu@cskt.org; jdurglo@cskt.org
Subject: Date for Noreen Walsh, Regional Director to meet with CSKT

Debbie, Chairman Durglo and staff members would like to meet with Noreen Walsh for an hour-long meeting here at Council Chambers in Pablo to discuss the NBRC issues, as well as discuss some other joint projects/work. NRD staff members would also like to extend an invitation to Noreen for a short tour of some of the Reservation wildlife projects so that she can get a better idea of the various kinds of work they do and have accomplished. The tour would be a couple of hours, so it would be a three hour time commitment all together. We are open to whatever time best suits Noreen's schedule for May 15th. If you have any questions or suggestions about this meeting please let me or chairman Durglo know. He can be reached at 406-675-2700 ext. 1007. Thank you, Sharon Silberman

King, Jeff <jeff_king@fws.gov>

Got your message

2 messages

Rundle, Dean <dean_rundle@fws.gov> Thu, Jan 24, 2013 at 11:44 AM
To: Brian Upton <brianu@cskt.org>
Cc: Jeff King <Jeff_King@fws.gov>

Brian: I'm afraid that it will just be Jeff and myself next week. I have talked with both the RD/DRD about the need for an executive level meeting with the Tribal Council this year. They are still both very new and working on their annual calendars. Would not surprise me if one or both of them try to schedule an opportunity to meet with Tribal Council around the time of the IGBC meetings. I don't have a dog in the IGBC, but I know CSKT does and I think those meetings are usually in early spring. Dale or Tom would know when/where the next meeting is.

I'll be working with Jeff and his team on the EA at NBR on Monday. My flight home on Tuesday leaves Missoula at 5:00 p.m.,so I would have all day Tuesday to meet with you - before or after the Council session, up to about 2:30 p.m. Perhaps the best thing would be to come to your office early Tuesday morning. Let me know what time.

Dean

Rundle, Dean <dean_rundle@fws.gov> Fri, Jan 25, 2013 at 7:09 AM
To: Brian Upton <brianu@cskt.org>
Cc: Jeff King <Jeff_King@fws.gov>

I think the group I'm thinking about is called IGBC and that those initials stand for the Interagency Grizzly Bear Committee (or Council). We'll be at your office at 0915 on Tuesday.

dean

On Thu, Jan 24, 2013 at 4:08 PM, Brian Upton <brianu@cskt.org> wrote:

> Thanks Dean. Why don't you come by my office around 9:15 or so on Tuesday? That would give us some time to talk and then head over to Council a little before 10:00am, when you're scheduled on the agenda. Tom and John Harrison may join us at my office.
>
> By the way, what's the IGBC?
>
> **From:** Rundle, Dean [mailto:dean_rundle@fws.gov]
> **Sent:** Thursday, January 24, 2013 11:45 AM
> **To:** Brian Upton
> **Cc:** Jeff King
> **Subject:** Got your message

Brian: I'm afraid that it will just be Jeff and myself next week. I have talked with both the RD/DRD about the need for an executive level meeting with the Tribal Council this year. They are still both very new and working on their annual calendars. Would not surprise me if one or both of them try to schedule an opportunity to meet with Tribal Council around the time of the IGBC meetings. I don't have a dog in the IGBC, but I know CSKT does and I think those meetings are usually in early spring. Dale or Tom would know when/where the next meeting is.

I'll be working with Jeff and his team on the EA at NBR on Monday. My flight home on Tuesday leaves Missoula at 5:00 p.m.,so I would have all day Tuesday to meet with you - before or after the Council session, up to about 2:30 p.m. Perhaps the best thing would be to come to your office early Tuesday morning. Let me know what time.

Dean

King, Jeff <jeff_king@fws.gov>

Meeting w/CSKT

2 messages

Rundle, Dean <dean_rundle@fws.gov> Fri, Sep 27, 2013 at 4:33 PM
To: Noreen Walsh <noreen_walsh@fws.gov>, Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>

Brian Upton just called back, CSKT has agreed to cancel the meeting scheduled for October 1. They would like to take the meeting date offered for Monday, October 7. Several Council members said they would rearrange for 10/7, Chairman Durglo not confirmed, but Brian will work with him on that over the weekend.

We agreed to cancel 10/1, and get back with Brian on the phone Monday morning to confirm time on 10/7 with the RD.

Jeff should cancel his flight on 9/30.

When I asked Norren for dates, I failed to recall that the NBR Roundup is Monday 10/7 and Tuesday 10/8. Jeff will need to be at Roundup and would not be able to attend a meeting here in the RO that day. We will have to discuss on Monday how that affects things.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

Jeff King <jeff_king@fws.gov> Sat, Sep 28, 2013 at 9:06 PM
To: Kim Pennington <Kim_Pennington@fws.gov>

Kim. Called you as soon as I received this but you had left for the day. Can you cancel everything and I will let you know if its rescheduled.
Thanks.
jk

Sent from Jeff's iPhone

Begin forwarded message:

> **From:** "Rundle, Dean" <dean_rundle@fws.gov>
> **Date:** September 27, 2013, 4:33:47 PM MDT
> **To:** Noreen Walsh <noreen_walsh@fws.gov>, Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>
> **Subject: Meeting w/CSKT**

[Quoted text hidden]

King, Jeff <jeff_king@fws.gov>

Meeting with CSKT

2 messages

Rundle, Dean <dean_rundle@fws.gov> Mon, Sep 16, 2013 at 8:59 AM
To: Debbie Schreiner <debbie_schreiner@fws.gov>, Noreen Walsh <noreen_walsh@fws.gov>, Will Meeks <will_meeks@fws.gov>, Matt Hogan <matt_hogan@fws.gov>, Sharon Brenna <Sharon.Brenna@sol.doi.gov>, Dana Jacobsen <dana.jacobsen@sol.doi.gov>, Jeff King <Jeff_King@fws.gov>

CSKT Attorney Brian Upton called and left me a message that the morning of Tuesday Oct. 1 is an acceptable time for Tribal Council representatives to meet with the RD, ARD, others re. the NBR AFA EA process at the RO in Lakewood.

Brian is out of his office until Thursday this week and said he would get me a list of CSKT participants later this week. He anticipates Tribal Chairman Durglo, maybe 3 - 4 other Tribal Council members and himself will travel to Denver for the meeting.

Debbie: I know you had the whole day blocked off on RD's calendar, please advise what time RD would want to meet on morning of 10/1, and I will relay that information to the tribe.

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

Debbie Schreiner <Debbie_Schreiner@fws.gov> Mon, Sep 16, 2013 at 1:20 PM
To: Dean Rundle <dean_rundle@fws.gov>, Noreen Walsh <noreen_walsh@fws.gov>, Will Meeks <will_meeks@fws.gov>, Matt Hogan <matt_hogan@fws.gov>, Sharon Brenna <sharon.brenna@sol.doi.gov>, Dana Jacobsen <dana.jacobsen@sol.doi.gov>, Jeff King <jeff_king@fws.gov>

We can schedule the meeting from 9:00 a.m. – 11:00 or either 10:00 a.m. – 12:00. If you need more than 2 hours, we can go with the 9:00 a.m. – 12:00. Let me know.

From: Rundle, Dean [mailto:dean_rundle@fws.gov]
Sent: Monday, September 16, 2013 8:59 AM
To: Debbie Schreiner; Noreen Walsh; Will Meeks; Matt Hogan; Sharon Brenna; Dana Jacobsen; Jeff King
Subject: Meeting with CSKT

[Quoted text hidden]

My projects

1 message

King, Laura <laura_king@fws.gov> Wed, Jul 3, 2013 at 1:23 PM
To: Laurie Shannon <laurie_shannon@fws.gov>, Toni Griffin <toni_griffin@fws.gov>

Hi Laurie and Toni,

Here on my thoughts on the projects I'm responsible for, based on the request made by Will yesterday.

[redacted]

NBR:

1. We have not issued an NOI
2. We have had quite a few inquiries from the public (including NGOs) as to when we plan to begin the CCP process
3. We have been collecting information and analyzing data for almost two years in preparation for the CCP. Some internally and some through contracts:
    a. MSU habitat assessment project (50k)
    b. HGM report for the satellite refuges (50k)
    c. Analyzing legacy data for trend analysis (I&M staff)
    d. Compiling and summarizing ongoing research (researchers and refuge staff)
    e. Pre-CCP focus group initiative ((researchers, CSKT, I&M staff) will be started this fall with funding from I&M (21k)
4. This CCP was delayed as a direct result of AFA negotiations and rescinded agreements, not a lack of desire or need
5. The refuge staff is very supportive of developing a CCP and wants to proceed

6. There are a lot of issues (none that I believe would warrant an EIS) related to management and public use programs that have been identified that we had planned to resolve through this CCP process. Several needed step-down plans, in particular the Fenced Animal Management and Visitor Services plans, need to be updated, but again, were put on hold until the CCP could be initiated.
7. I would recommend that this CCP be given high priority on any proposed project list.

Hope that helps. Let me know if you need anything else.

Thanks,

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

King, Jeff <jeff_king@fws.gov>

powerpoint presentation

1 message

King, Laura <laura_king@fws.gov> Mon, Oct 28, 2013 at 4:03 PM
To: Will Meeks <will_meeks@fws.gov>, Jeff King <jeff_king@fws.gov>

Hi Will,

Attached is the powerpoint presentation for the alternatives. I included some additional slides at the end just for reference--as needed during your discussion with Noreen or CSKT. I will be here tomorrow if you want to visit or need me to make any changes.

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
[redacted]

[redacted]



King, Jeff <jeff_king@fws.gov>

Re: 10/7 meeting

3 messages

Rundle, Dean <dean_rundle@fws.gov> Mon, Sep 30, 2013 at 4:21 PM
To: Brian Upton <brianu@cskt.org>
Cc: Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>

Brian: I see Will already sent you the time from Noreen for a meeting next Monday. If we still have no CR by Friday, I would agree that you would be wise to postpone again. I am willing to come back after October 27. If we are not at work next Monday, I've instructed HR to pull my application, and I would likely reapply for retirement effective Nov. 1. So, I'd be on duty the week of 10/28 - 11/1. If there's no CR on Friday and you cancel, and we are back at work on Monday 10/7, and HR files my application with OPM, I would still be willing to come back to a meeting the week of 10/28.

Dean

Dean Rundle
Refuge Supervisor, MT/WY/UT
Region 6, Lakewood, CO
303-236-4306

On Mon, Sep 30, 2013 at 11:12 AM, Brian Upton <brianu@cskt.org> wrote:

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>
> **From:** Rundle, Dean [mailto:dean_rundle@fws.gov]
> **Sent:** Monday, September 30, 2013 10:41 AM
> **To:** Brian Upton
> **Subject:** Re: 10/7 meeting
>
> Thanks Brian - I just got your voice mail as well. Will is upstairs with Noreen right now, they're all swamped with shut-down/furlough prep. I asked him to get a time for the 10/7 meeting w/Noreen and e-mailed his Iphone that you prefer early in the day.

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dean

Dean Rundle

Refuge Supervisor, MT/WY/UT

Region 6, Lakewood, CO

303-236-4306

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Dean and Will,

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Please let me know when the meeting would be scheduled on 10/7. As I'd mentioned in a voicemail to Dean, the earlier the better on our end. The Council Members need to fly back that evening for the 10/8 Council session.

BU

Jeff King <jeff_king@fws.gov> Mon, Sep 30, 2013 at 4:24 PM
To: Laura King <Laura_King@fws.gov>

Sent from Jeff's iPhone

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Date: September 30, 2013, 4:21:40 PM MDT
To: Brian Upton <brianu@cskt.org>
Cc: Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>
Subject: Re: 10/7 meeting

[Quoted text hidden]

Brian Upton <brianu@cskt.org> Tue, Oct 1, 2013 at 9:38 AM
To: "Rundle, Dean" <dean_rundle@fws.gov>
Cc: Will Meeks <will_meeks@fws.gov>, Jeff King <Jeff_King@fws.gov>

Dean,

Thanks for the info below and your willingness to meet even if the shutdown complicates the effort. Hopefully we'll be able to get together next Monday.

From: Rundle, Dean [mailto:dean_rundle@fws.gov]
Sent: Monday, September 30, 2013 4:22 PM
To: Brian Upton
Cc: Will Meeks; Jeff King
Subject: Re: 10/7 meeting

[Quoted text hidden]

King, Jeff <jeff_king@fws.gov>

RE: rescheduling

1 message

Will Meeks <Will_Meeks@fws.gov> Fri, Oct 18, 2013 at 1:27 PM
To: Brian Upton <brianu@cskt.org>
Cc: Dean Rundle <dean_rundle@fws.gov>, Jeff King <jeff_king@fws.gov>, Debbie Schreiner <debbie_schreiner@fws.gov>

Brian,

I spoke with Noreen this morning and the only time she has available prior to Dean's new retirement date is the afternoon of 10/31/13.

Can you let me know if this works? We could meet here from 1:00 pm - 4:00 pm.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
Assistant Regional Director
NWRS and PFW
303-236-4303 (work)
720-541-0310 (cell)

-----Original Message-----
From: Brian Upton [mailto:brianu@cskt.org]
Sent: Thursday, October 17, 2013 9:52 AM
To: 'Will Meeks'
Subject: rescheduling

Will,
Do you have any proposed dates for rescheduling our meeting with you, Regional Director Walsh, and Dean? I understand that Dean is overseas until October 27th but, if you and he had discussed any potential meeting dates
after his return, please advise. This meeting is a high priority for the Tribal Council and I'd like to be able to propose some dates for them as soon as possible.

Thanks,
Brian

-----Original Message-----
From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Friday, October 04, 2013 10:19 AM
To: Brian Upton
Subject: Seems we have to postpone

Brian,

With the continued gridlock in Washington and the government shutdown, it seems most prudent to postpone our meeting on Monday.

I know this isn't ideal, but I don't believe we have another option.

We'll be in contact after the government is back on-line.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303

King, Jeff <jeff_king@fws.gov>

Revised EA schedule

1 message

King, Jeff <jeff_king@fws.gov> Tue, Jul 2, 2013 at 2:04 PM
To: Brian Upton <brianu@cskt.org>

Brian,

I will follow this up with a phone call.

If I'm reading things accurately, it looks like we are about 4 months behind from the original. In the original we had not allotted time for internal review. I added 3-weeks in this one for that.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

version 3 Proposed AFA EA schedule.docx
21K

King, Jeff <jeff_king@fws.gov>

Tribal Council agenda

2 messages

Brian Upton <brianu@cskt.org> Tue, Mar 4, 2014 at 10:42 AM
To: will_meeks@fws.gov
Cc: Jeff_King@fws.gov, Tomm@cskt.org, dale@cskt.org

Will,

I confirmed that you're on Tribal Council's agenda from 10:00am-11:00am on Thursday, March 27th for the AFA/EA progress report, and I've let people know that you're planning on being here in person.

BU

Will Meeks <will_meeks@fws.gov> Tue, Mar 4, 2014 at 10:45 AM
To: Brian Upton <brianu@cskt.org>
Cc: "Jeff_King@fws.gov" <Jeff_King@fws.gov>, "Tomm@cskt.org" <Tomm@cskt.org>, "dale@cskt.org" <dale@cskt.org>

Thanks Brian; looking forward to it.

Can you send me the physical address of the meeting site? Thanks.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

King, Jeff <jeff_king@fws.gov>

voicemail from Brian Upton

5 messages

King, Jeff <jeff_king@fws.gov> Wed, Feb 12, 2014 at 3:29 PM
To: Will Meeks <Will_Meeks@fws.gov>

Will,

Brian left me a voicemail about a meeting with CSKT next Tuesday or Thursday in Pablo. Have you heard about this?

Before I call Brian back I wanted to hear from you.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

Will Meeks <will_meeks@fws.gov> Wed, Feb 12, 2014 at 3:31 PM
To: "King, Jeff" <jeff_king@fws.gov>

He and I did visit about it on Monday. I suggested he just go straight to you as opposed to me? I meant to send you a heads up, but it slipped my mind. I can also call in if needed.

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

King, Jeff <jeff_king@fws.gov> Wed, Feb 12, 2014 at 3:39 PM
To: Will Meeks <will_meeks@fws.gov>

Give me a call when you have a minute.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

[Quoted text hidden]

Will Meeks <will_meeks@fws.gov> Wed, Feb 12, 2014 at 3:41 PM
To: "King, Jeff" <jeff_king@fws.gov>

I mis-spoke in the email below . . . I meant I can call in to the Council meeting as needed (or as expected). I can try to call, but I am in a meeting (multi-tasking).

Will Meeks
U.S. Fish and Wildlife Service
R6 - Assistant Regional Director
NWRS and PFW
303-236-4303
[Quoted text hidden]

King, Jeff <jeff_king@fws.gov> Wed, Feb 12, 2014 at 5:02 PM
To: Will Meeks <will_meeks@fws.gov>

Will,

Talked to Brian a few minutes ago. If you have time tomorrow, give me a call. Sounds like the council wants and update on the EA and wants you involved. Next week is bad for me but I'm available the following week. We can discuss more when you call. I told Brian I'd call him back tomorrow after I caught up with you.

Thanks,

jk

Jeff King, Project Leader
National Bison Range Complex
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 204

[Quoted text hidden]

King, Jeff <jeff_king@fws.gov>

Wednesday meeting

1 message

Brian Upton <brianu@cskt.org> Mon, May 13, 2013 at 4:46 PM
To: Debbie_Schreiner@fws.gov, Dean_Rundle@fws.gov, Jeff_King@fws.gov
Cc: clayton@cskt.org, richj@cskt.org, Tomm@cskt.org, DaleB@cskt.org, ssilberman@cskt.org

Debbie, Dean and Jeff,

The location for the 1:00pm meeting this Wednesday will be in the conference room behind the Tribal Council Chambers in Pablo.

From: Dean Rundle <Dean_Rundle@fws.gov>
To: brianu@cskt.org; tomm@cskt.org
Cc: Jeff_King@fws.gov; Cathey_Willis@fws.gov
Subject: Draft NOI
Date: Friday, May 04, 2012 12:19:22 PM

Brian/Tom: Attached is a draft Notice of Intent and request for public scoping comments for our EA on the new AFA. Cathy Willis and Jeff King will finish this up next week and get it released through our external affairs office. I think its pretty good and accurate - but let us know if you see any errors or feel we've mischaracterized any thing we've said about CSKT. Please contact Jeff or Cathy directly with comments. Thanks.

Dean

[attachment "Notice of Intent To Prepare an.dr1.doc" deleted by Jeff King/R6/FWS/DOI]

Hon. John C. McKeon
District Judge
17th Judicial District
P.O. Box 470
Malta, MT 59538
Telephone: (406) 654-1062

FILED
MAR 22 2012
BLAINE CO. DISTRICT COURT

MONTANA SEVENTEENTH JUDICIAL DISTRICT COURT, BLAINE COUNTY

CITIZENS FOR BALANCED USE; SEN. RICK RIPLEY; VALLEY COUNTY COMMISSIONERS; DUSTIN and VICKI HOFELDT; KEN HANSEN; JASON A. and SIERRA STONEBERG HOLT; ROSE A STONEBEFG, UNITED PROPERTY OWNERS OF MONTANA; and MISSOURI RIVER STEWARDS, Plaintiff, vs. JOSEPH MAURIER; MONTANA DEPARTMENT OF FISH, WILDLIFE & PARKS; and MONTANA, FISH, WILDLIFE & PARKS COMMISSION, Defendants.	No. DV-2012-01 **TEMPORARY RESTRAINING ORDER AND ORDER SETTING SHOW CAUSE HEARING**

Before the Court is Plaintiffs' second Application for Temporary Restraining Order filed March 20, 2012 ("TRO Application"). Upon due review of the TRO Application and other pleadings on file herein, the Court finds that:

(1) By their Amended Complaint filed March 9, 2012, Plaintiffs seek declaratory and injunctive relief and, among other allegations, assert violation of their rights to know and participate under Montana Constitution, Article II, §§ 8 and 9 and violation of statutory obligations imposed on Defendants by § 87-1-216, MCA (2011).

(2) In their Amended Complaint, Plaintiffs specifically allege violation of stated responsibilities under § 87-1-216(2)-(6), MCA (2011). These provisions impose certain management responsibilities on Defendant Montana Department of Fish, Wildlife & Parks (MFWP) that include the development and adoption of a management plan before the release or transplant of wild buffalo or bison and the providing of opportunity for public comment and holding of "a public hearing in the affected county or counties" when developing this management plan. Under these statutory provisions, the management plan must include, among other matters, "measures to comply with ... applicable animal health protocol" set out in statute or by the state veterinarian, "animal containment measures" to include required fencing, an appropriate "animal identification and tracking protocol" and identification of "a reasonable maximum carrying capacity for any proposed designated area using sound management principles." §§ 87-1-216(2)-(6), MCA

(3) Within their Amended Complaint, Plaintiffs also made application for injunctive relief to prohibit Defendants "to translocate" bison from Yellowstone national park ("YNP bison") or entering Memorandums of Understanding ("MOU") or similar agreement with Tribal entities or any other private or public entity to receive transferred YNP bison until compliance with § 87-1-216, MCA.

(4) Defendants have not yet filed a responsive pleading to the Amended Complaint.

(5) With their TRO Application, Plaintiffs no longer seek a temporary restraining order without notice to Defendants.[1] The TRO Application states Defendants have been contacted through counsel and they oppose the application.[2]

[1] Plaintiffs' first application was denied for failure to give this notice and to comply with § 27-19-315, MCA.

(6) In their TRO Application, Plaintiffs renew the allegations of their Amended Complaint, assert that Defendants wrongly transplanted YNP bison to the Fort Peck Indian Reservation (FPR) on or about March 19, 2012 and seek, among other matters, a temporary order to restrain Defendants from commingling any of the transplanted YNP bison with livestock or commercial bison herds on FPR and transplanting YNP bison from FPR to the Fort Belknap Indian Reservation (FBIR). Plaintiffs further seek a show cause hearing "in the immediate future" on its application for preliminary injunction.

(7) Plaintiffs present as Exhibit 1 to the TRO Application an MOU and Addendum dated March 16, 2012 signed by Defendant Joseph Maurier on behalf of MFWP. The MOU appears to reflect an agreement with tribes of FPR whereby MFWP has or will transplant 64 YNP bison to FPR under terms that include the transfer to the tribes of certain management responsibilities and after 5 years the transfer of "sole jurisdiction" over the bison. The Addendum appears to reflect an agreement that half of the YNP bison will be transplanted to FBIR "as soon as is practical, following MFWP's indication that adequate facilities are in place."

(8) Exhibit 4 to the TRO Application is the Affidavit of Plaintiff Ken Hansen ("Hansen") who states, among other matters, that he has a family ranch near FBIR, that he has suffered damages due to bison escape from FBIR pastures, that the MOU and Addendum was signed by tribes of FPR and MFWP, that he is concerned regarding the "unknown future time" provided in the Addendum for shipment of YNP bison to FBIR, that YNP bison "carry an additional disease threat beyond the general threat to property and safety," that the

---

[2] Defendants MFWP and Montana Fish, Wildlife & Parks Commission ("Commission") are represented to be an agency and appointed commission of state government. Defendant Joseph Maurier is represented to be Director of MFWP. Plaintiffs represent its contact was through MFWP's legal unit.

"additional risks from YNP bison" are "the possibility of brucellosis transmission to my cattle, the threat of mitochondrial disease transmission to my cattle, and also the inability of local law enforcement officials to control animals that threaten me and my property," that bison currently at FBIR "cross out of their pasture on a regular basis," that FBIR needs to construct fences "to meet requisite standards" and that absent these "requisite" fences, he will suffer "irreparable harm."

Analysis. Based on the foregoing findings, the Court considers the TRO Application.

Under Montana statute, this Court has discretion to issue a temporary restraining order upon application for preliminary injunction. § 27-19-314, MCA. Like a preliminary injunction itself, the function of a temporary restraining order should be to preserve the status quo and to minimize harm to parties. However, unlike a preliminary injunction, it is not to preserve the status quo pending trial but only the status quo pending a timely hearing on the application for preliminary injunction. Further, in determining whether to grant a temporary restraining order, the court cannot anticipate the ultimate determination of issues involved; rather, it merely decides whether a sufficient case has been made to warrant temporary preservation of the status quo. cf. *City of Whitefish v. Bd. Of County Commissioners,* 2008 MT 436, ¶ 18, *Yockey v. Kearns Properties, LLC,* 2005 MT 27, ¶ 18.

With Hansen's affidavit and the allegations regarding the MOU and violation of constitutional provisions and § 87-1-216, MCA, Plaintiffs have presented a sufficient case to warrant a temporary restraining order. Here, the Court also notes that § 87-1-216, MCA (2011) includes a legislative finding that "significant potential exists for the spread of contagious disease to persons or livestock in Montana and for damage to persons and property by wild buffalo or bison" and stated purposes that include "to designate publicly owned wild

buffalo or bison originating from Yellowstone national park as a species requiring disease control" and "to set out specific duties for the [MFWP] for management of the species." § 87-1-216(1), MCA.

An applicant for preliminary injunction must either establish a prima facie case, or show that it is at least doubtful whether or not he will suffer irreparable injury before his rights can be fully litigated. *Benefis Healthcare v. Great Falls Clinic, LLP*, 2006 MT 254, ¶ 14. An injunction may be granted in the following cases, among others:

> (1) When it appears that the applicant is entitled to the relief demanded and the relief or any part of the relief consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
>
> (2) When it appears that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the applicant;
>
> (3) when it appears during the litigation that the adverse party is doing or threatens or is about to do or is procuring or suffering to be done some act in violation of the applicant's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

§ 27-19-201(1)-(3), MCA. Only one subsection need be met for an injunction to issue. *Sweet Grass Farms, Ltd. V. Board of County Commissioners*, 2000 MT 147, ¶ 27.

Plaintiffs present sufficient fact allegations for hearing to show cause why a preliminary injunction should issue under any of the subsections in § 27-19-201(1)-(3), MCA. Parties are reminded that at said show cause hearing, the Court's function is not to adjudicate the ultimate issues of law and fact. Those issues are reserved for trial. Rather, the show cause hearing is limited to whether Plaintiffs are entitled to a preliminary injunction to preserve the status quo pending trial. In this regard, "status quo" means the last actual, peaceable, non-contested condition which preceded the pending controversy. *Benefis Healthcare*, ¶ 14; *Sweet Grass*, ¶ 28. However, an injunction cannot issue to restrain an act already committed; it is

not an appropriate remedy to procure relief where the entire injury complained of is in the past. *State v. BNSF Railway Company,* 2011 MT 108, ¶¶ 19, 23. Good cause appearing,

IT IS HEREBY ORDERED that effective immediately, Plaintiff's TRO Application is GRANTED TO THIS EXTENT:

1. Defendants are temporarily restrained from entering into any memorandum of understanding or similar agreement with Tribal entities or any other private or public entity for the purpose of transplanting or receiving transplanted YNP bison.
2. Defendants are temporarily restrained from transferring or transplanting any YNP bison from existing facilities.
3. Defendants are temporarily restrained from transferring or transplanting to the Fort Belknap Indian Reservation any of the YNP bison on the Fort Peck Indian Reservation as a result of the MOU.
4. Defendants are temporarily restrained from allowing those YNP bison on the Fort Peck Indian Reservation to commingle with existing commercial bison or livestock herd(s).

IT IS ALSO ORDERED that parties shall appear for show cause hearing on why a preliminary injunction should issue on **Wednesday, April 11, 2012 at 10:00 o'clock A.M. at the courtroom of the Blaine County Courthouse in Chinook, Montana.** Expected length of hearing is four (4) hours.

The Clerk shall forthwith send a copy of this order to parties.

DATED Thursday, March 22, 2012 at 8:30 A.M.

John C. McKeon
District Judge

From:	"Brian Upton" <brianu@cskt.org>
To:	Dean_Rundle@fws.gov; Jeff_King@fws.gov
Cc:	"Thomas McDonald \(Thomas McDonald\)"; tonyh@cskt.org; jksteele@cskt.org
Subject:	fire program discussion
Date:	Wednesday, June 08, 2011 4:17:31 PM

Dean and Jeff,

I spoke with Tony Harwood today and it sounds like he and Jim Steele met with Louis Harjes (sp?) this morning and had a productive discussion about the fire program and how it could be addressed in a new AFA. Unfortunately, Tony is in Duluthnext week, and Jim Steele is taken up with flooding issues these days but should have some time next Monday afternoon. Hopefully Monday afternoon would work for the federal team members to discuss all of this, but please let us know.

Thanks,
BU

Division of Refuge Planning Project Schedule
[updated May 14, 2014]

FY 2014/2015 Deliverables	Internal Review (to editor)	Public Draft (to public)	FONSI/ROD (to RD)	Post Production (distribution date)
Bison Range AFA EA	complete	July 2014	October 2014	November 2014
COMPREHENSIVE CONSERVATION PLANS				
Quivira NWR CCP	complete	complete	complete	May 2014
Cokeville Meadows NWR CCP	complete	complete	complete	June 2014
National Elk Refuge CCP	complete	June 2014	FY14	FY15
San Luis Valley CCP	complete	Summer 2014	FY15	FY15
Rocky Mtn Arsenal NWR + Two Ponds NWR	FY14	FY15	FY15	FY16
LAND PROTECTION PLANS				
San Luis Valley LPP	complete	complete	June 2014	Director Approval required [FY14]
Wyoming Toad LPP	complete	Summer 2014		Director Approval required [FY15]
Ponca/Niobrara (LPP)	complete	complete	September 2014	Director Approval required [FY15]
NEW STARTS				
National Bison Range + NW MT WMD CCP	Preplanning started			
CMR Satellite Refuges/WMD CCP				
Bear River MBR				
John & Louise Seier CCP (on hold)				
Valentine NWR CCP Revision (on hold)				
Fort Niobrara NWR CCP Revision (on hold)				
Crescent Lake NWR CCP Revision (on hold)				

United States Department of the Interior

OFFICE OF THE SOLICITOR

Pacific Northwest Region
500 N.E. Multnomah Street, Suite 607
Portland, Oregon 97232

Bureau of Indian Affairs
JUN 23 1986

JUN 23 1986

Office of the Area Director

BIA.PN.1056

TO: Area Director, PAO, BIA

FROM: Office of the Regional Solicitor

SUBJECT: Authority of Tribes to Direct Activities of Federal Employees Under 25 U.S.C. § 48

You have asked us to review the Secretary's authority to transfer the direction of the activities of federal employees to tribal governments. It is our conclusion that 25 U.S.C. § 48 provides clear authority for such a transfer, subject to some limitations discussed below, through the mechanism of an agreement between the Bureau of Indian Affairs and an Indian tribal government.

25 U.S.C. § 48 provides that "where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of ... persons engaged for them, the direction of such persons may be given to the proper authority of the tribe." This statute represents a codification of Section 9 of the Act of June 30, 1834, 4 Stat. 737. Solicitor's Opinion M-36803, dated April 2, 1970, concluded the statute has continuing validity and outlined the general considerations the Bureau must take into account in entering into such an agreement. The statute is implemented through Department regulations and provisions in the Bureau manual. 25 C.F.R. § 275.3(a)(3) provides for agreements in connection with contracts administered under section 102 of the Indian Self-Determination Act. 44 BIAM Chapter 990 sets forth the procedures for entering into agreements with tribes for direction of the day-to-day activities of the Bureau employees either in association with a contracted program or as a method of transferring direction of programs on a reservation without contracting. See 44 BIAM 990 2.2. Subchapter 2 of Chapter 990 sets forth general considerations. Subchapter 3 details the effect of such contracting on Bureau employees and employment rights. Subchapter 4 sets forth in specific detail the policy and program considerations which must be figured into any agreement with a tribe for transfer of the direction of federal employees to the tribe. Therefore, these Subchapters of 990 must be reviewed carefully when drafting and organizing the components of any proposed agreement. For the most part the BIAM guidelines are self-explanatory. However, we want to emphasize a few of the most important and significant procedural and programmatic considerations which must be taken into account in drafting an agreement.

1. The Department Manual restricts the Commissioner (now the Assistant Secretary for Indian Affairs) from redelegating authority to permit Indian tribes to direct Bureau employees under 25 U.S.C. § 48. See 230

D.M. 1.3. Therefore an agreement must be worked out between the affected tribe, the Agency Superintendent, and the Area Director and then approved by the Assistant Secretary. 44 BIAM 990 2.2.a.

2. The organizational component of the activity considered for tribal direction should reflect effective management principles. For example, the BIAM guidelines state that for an activity under the direction of an Agency, a branch level organization should remain intact, noting that "further division of an integral program or service unit would be contrary to effective management because direction to the employee would stem from two sources—the Bureau and the Tribe." 44 BIAM 990 2.2.a (1) b. This is a practical consideration to ensure that the Bureau program or part thereof to be transferred remains an effective, functional operational unit.

3. The delegation of authority to a tribe under an agreement extends only to directing the daily performance or assignments of Bureau employees within the general range of duties prescribed in the employee's Bureau position. 44 BIAM 990, 4.4.b. It is also important to note that an Indian tribe may not be regarded as standing in the place of the Bureau superintendent with the prerogatives or obligations of that office. 44 BIAM 990, 4.7.a. Therefore the agreement must set forth the policy and programmatic functions that must remain under Bureau direction and control, so that the functions performed by the tribe in directing the daily activities of the Bureau employees are clearly outlined.

4. Bureau employees must retain their status and rights as federal employees while under the direction of the Tribe. The Bureau must maintain "supervision of Bureau employees," meaning that the Bureau is responsible for appointment, promotion, reassignment, performance evaluation, pay increase, disciplinary action, or separation. See 44 BIAM 990, 4.2. Therefore, as a practical matter, the agreement must provide that Bureau officials maintain involvement with the program sufficient to fulfill this supervisory role. Employees must also be given the option of remaining in their current positions to work under tribal direction or of requesting reassignment within the Bureau. See 44 BIAM 990, 4.7. See also 44 BIAM 990, 4.10, for more specific information which must be provided employees subject to such an agreement.

5. The authority to expend or encumber appropriated federal funds cannot be delegated to a tribe. 44 BIAM 990, 4.8.c. See also Solicitor's Opinion dated April 2, 1970, p. 5. Therefore the agreement would have to clearly spell out the Bureau's continuing responsibilities with respect to disbursement of federal funds.

6. 44 BIAM 990, 4.8 outlines the specific restrictions on the delegations of authority, including such things as the Superintendent's authority, matters affecting the trust responsibility, federal statutory responsibility for regulations, and Department responsibility to review tribal constitutions or actions.

Some of the criteria and standards which must be taken into account in drafting an agreement for tribal direction of Bureau employees are particular and specific; others are more general in nature and require close assessment on a case-by-case basis when drafting any agreement. We would be happy to assist in reviewing the details on any Bureau program considered for contracting with a tribe under this provision.

For the Regional Solicitor

Arthur V. Biggs
Assistant Regional Solicitor
Pacific Northwest Region

cc:
Tim Vollmann, Associate Solicitor, Indian Affairs

CSKT Input for the Draft Environmental Assessment Regarding an Annual Funding Agreement at the National Bison Range Complex

August 22, 2012

The Confederated Salish & Kootenai Tribes (CSKT, or Tribes) have reviewed the comments submitted to the U.S. Fish & Wildlife Service (FWS, or Service) in response to FWS' Notice of Intent (NOI) to Prepare an Environmental Assessment (EA) regarding CSKT's request to enter into a new Annual Funding Agreement (AFA) under the Tribal Self-Governance Act for programs at the National Bison Range Complex (NBRC).

Although there were few commenters (17 in total), they raised a variety of issues. While CSKT does not believe that the comments provide any information that would require the Service to change its course from preparing an EA, the Service should fully address all of the issues raised. In this document, CSKT submits its input for the Service's consideration. For the Service's convenience, at the end of this document there is a summary of CSKT's recommendations for easy reference.

I. Allegations Under First AFA and Requests for an EIS

Allegations Under the First AFA

A number of commenters stated their belief that approval of the draft AFA would require an environmental impact statement (EIS) in order to comply with the National Environmental Policy Act (NEPA). Some commenters based this assertion on the allegations under the first (FY 2005-06) AFA between CSKT and FWS (*e.g.*, comment of Public Employees for Environmental Responsibility [PEER], at p. 3, asserting that a "full EIS is required due to the actual significant impacts on the environment engendered by the FY 2005 AFA."). These comments confuse, perhaps intentionally, bare allegations with actual facts or the type of findings that are made after providing due process and opportunity to respond.

One party asserted that, in response to its litigation challenging the last AFA, a federal district court had "required that FWS do a NEPA analysis for the FY 2009-11 AFA." (*See* PEER comment at pp. 2-3). Contrary to the inference in that comment, the court had not required the Service to conduct either an EA or an EIS in conjunction with the contested AFA. In its 2010 decision rescinding the last (FY 2009-11) AFA, the federal district court held only that, based upon the record before it, and in light of potential extraordinary circumstances, FWS needed to explain its invocation of a categorical exclusion for its decision to approve the AFA. Specifically, the court said the following:

> The agency's failure to explain its application of a categorical exclusion, in light of substantial evidence in the record of past performance problems by the CSKT, is arbitrary and capricious.
>
> *Reed v. Salazar*, 744 F.Supp.2d 98, 118 (D.D.C. 2010).

With respect to the referenced "record of past performance problems", the court acknowledged that: CSKT had disputed those alleged performance problems and had submitted detailed responses to them; CSKT had appealed the AFA termination on those grounds to the Interior Board of Indian Appeals (IBIA); and other individuals had criticized FWS staff for being hostile towards CSKT. *Reed v. Salazar* at 107. Ultimately, the court found that

> the persuasiveness of the evidence in the record as to the CSKT's performance is not a question for this Court to decide in the first instance. FWS might have reasonably concluded that the allegations of the CSKT's poor performance were speculative and thus could be disregarded for purposes of NEPA. Such a decision would be afforded great deference under the APA.
>
> *Id.* at 118.

Although the Service terminated the first AFA in December 2006, before CSKT was provided with any information about the allegations, it never made any specific determinations or conclusions regarding the allegations after having received CSKT's responses to them. CSKT viewed the Service's decision to enter into a second AFA, and thereby settle CSKT's IBIA claims, as an acknowledgement that it had been a mistake to have accepted the allegations as having merit without providing due process to CSKT.[1] The second AFA was documented to have been successful and was commonly acknowledged as such, further calling into question the allegations that had been made against CSKT under the first AFA.[2]

---

[1] This position found support in, among other things, a December 29, 2006 memo from the Interior Deputy Secretary, in which she expressed her "disappointment that problem resolution mechanisms set forth in the AFA may not have been properly utilized" and that the AFA termination "did not follow expected procedures – those that require the identification of problems and afford a reasonable opportunity to correct them". See memo at p. 3 (copy attached to this document as Appendix "A").

[2] The periodic status reports on AFA implementation reflect this success. In a September 10, 2009 email transmitting one such report, FWS Refuge Supervisor Dean Rundle stated that:

(*footnote continued on next page*)

CSKT agrees that the Service needs to address the allegations which had arisen under the first AFA, taking into consideration CSKT's responses. As the Service stated in its above-referenced Notice of Intent, the Service's termination of the first AFA did not follow the procedures in that agreement and CSKT had not been afforded any opportunity prior to the termination to either demonstrate that the alleged performance deficiencies did not exist or correct any actual deficiency. Once CSKT was provided the information upon which the allegations were based, which was well after the AFA was terminated, CSKT provided the Service with detailed responses largely denying the allegations.[3] The EA should explain the Service's decision to enter into a second agreement after the allegations which had arisen under the first AFA and CSKT's responses to them.

In its comment, the Blue Goose Alliance (BGA) referenced an investigator's report regarding FWS staff allegations involving tribal staff (*see* BGA comment at p.7). Although FWS had hired the investigator (an ex-federal employee) in the fall of 2006 to look into the allegations, FWS had provided no information to CSKT as to what the exact allegations were, thereby preventing CSKT from trying to determine whether there was any merit to the allegations. The first AFA had included a mechanism to notify CSKT of any performance issue so it could investigate and either prove that no deficiency existed or correct any true deficiency. *See* Section 10.A.3.b(2) of the FY 2005-06 AFA. Unfortunately, FWS never utilized that mechanism to afford CSKT due process. CSKT's attempts to get information regarding the allegations through the FOIA process, including an administrative appeal, were denied. Due to

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> [o]ur partnership is getting a lot of very good work done. I was impressed in the August accomplishments on all fronts, from the biological program – particularly the work addressing invasive weeds, and bison research – to the public use program where visitation was up significantly over the same period in 2008. I suspect that lower fuel prices are part of the reason for increased visitation – but its clear [that] the general public is viewing the operation as seamless, and that the partnership is well meeting public expectations.

A year later, in Associate Deputy Secretary Laura Davis' June 9, 2010 testimony before the House Natural Resources Committee regarding Tribal Self-Governance legislation, she stated that "[a] true partnership and spirit of cooperation has developed from the history of controversy between the FWS and the Confederated Salish and Kootenai Tribes . . . over the National Bison Range Complex in Montana", noting that "the bison round-up event in October 2009 was highly successful." *See* Appendix "B" for the excerpt of this testimony.

Office of Inspector General Report No. NM-EV-FWS-0001-2010, discussed later in this document and attached as Appendix "C", had found no merit to a number of allegations of performance problems under the second AFA, instead stating that

> Interviewees told us that the FWS manager and the CSKT tribal deputy manager worked well together and collaborated on operational decisions. They stated that managers sought out experienced NBR staff regarding their opinions on various issues and did not differentiate according to whether they were FWS or CSKT employees. Interviewees also said that free and open communication existed between FWS and CSKT employees.
>
> OIG Report at p. 4.

[3] In addressing the issue of the allegations under the first AFA, it would be useful to include the dates on which CSKT was first provided information supporting the allegations.

this withholding of information, CSKT did not make its staff available to the investigator hired by FWS.

The investigator's report, while noting that his lack of access to CSKT staff resulted in the tribal side being unknown, went on to largely just repeat the allegations made by FWS staff. In one of the few instances where the investigator had tried to corroborate an allegation, he found that the allegation by an FWS staff member was not true.[4] Despite this red flag, and despite the fact that the FWS staffers who had made the allegations had signed a letter opposing the AFA before it was even signed,[5] the investigator's report continued to treat the allegations as facts even in the absence of any corroborating evidence. This type of outdated hearsay information is no longer relevant to the draft AFA, but the Service needs to directly address the issue in order to put the matter to rest.

When CSKT officials discussed this issue with the Director of the Interior Department's Office of Civil Rights, they were told by the Director that the FWS "investigation" had problems and that the matter was being referred to the Department's Equal Employment Opportunity (EEO) office. During that EEO process, CSKT provided information to one of the counselors assigned to the matter and offered to make its staff available for interviews. After speaking to EEO counselors, who also advise potential complainants of the consequences for filing fraudulent complaints, none of the FWS staffers filed formal EEO complaints regarding their allegations. This failure to file formal complaints further calls into question the investigator's "findings" as described in his report.

The misrepresentation of CSKT's performance under the first AFA was widely recognized. In their May 15, 2007 joint letter to the Interior Secretary regarding the NBRC, the Chairman and Ranking Minority Member of the House Natural Resources Committee said that they were "concerned that the lack of support of [the first AFA] by some individuals within the FWS may have resulted in a distorted record concerning NBR activities under the AFA."[6] The Montana Human Rights Network (MHRN), in a January 31, 2007 letter to PEER, questioned the

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[4] The investigator's report stated that "[FWS employee] Skip Palmer had told me that his son-in-law, Jereme Nicholoson [*sic*], had found tribal member and NBR maintenance worker TJ Hanes [*sic*] on his property in the distant past hunting elk illegally. I asked Nicholson about this and he said that wasn't true." *See* investigator's report at p. 27. Mr. Palmer is one of the individuals who submitted scoping comments, in response to the Service's recent NOI, in which he continues to make allegations against CSKT.

[5] In their letter, dated October 8, 2004, and addressed to then-Regional Director Ralph Morgenweck, the signatory FWS NBRC employees stated their opposition to the proposed FY 2005-06 AFA. They stated that the AFA: would provide "biased opportunity" to tribal members; "is offensive to us as employees and Americans"; and "would convert the special purpose of the NWRS from 'Wildlife First' to a social program for a select segment of society." *See* letter (without attachments), attached as Appendix "D", at pp. 3-4. Skip Palmer was one of the signatories to this letter.

[6] A copy of this letter is attached as Appendix "E" to this document.

merit of the accusations against CSKT staff, noting one federal staffer's connections to what MHRN designated the "anti-Indian movement".[7] The court's opinion in *Reed v. Salazar* also took note of individuals who had criticized the FWS Project Leader and other FWS staff for being "hostile towards the CSKT."[8]

While some of the commenting parties may be interested in characterizing allegations as "actual significant impacts", the EA should address the fact that the record does not support such a characterization when taking into account: CSKT's responses to the allegations; CSKT's appeal of the AFA termination to the IBIA; FWS' subsequent decision to enter into a second AFA; CSKT's performance record under the second AFA; and the Interior Office of Inspector General's evaluation, and disproving, of allegations made by PEER regarding performance under the second AFA. While it characterizes the allegations as facts in its comment, PEER itself concedes that CSKT has denied the allegations and that "it is unclear what the FWS's [sic] position is." *See* comment of PEER at p. 5.

CSKT believes that, in the EA, the Service needs to explain/clarify its position with respect to the allegations made against CSKT under the first AFA. CSKT appreciates the Service's acknowledgement in its NOI that its termination of the FY 2005-06 AFA did not comply with the notice procedures in that AFA, and that CSKT had not been afforded a reasonable opportunity to either demonstrate that the alleged deficiencies were false or to correct any actual deficiencies (*see* NOI at p. 3). CSKT believes it is critical for the EA to include a clear explanation from the Service describing its rationale for approving the FY 2009-11 AFA in light of its termination of the first AFA.

Request for an EIS

In addition to attempting to characterize past allegations as facts which represent significant impacts for purposes of NEPA, the commenters also try to portray the past NBRC AFA's, and the draft AFA, as something more than they are.[9] The draft AFA would not result in significant changes to the operations of the NBRC; rather, it would only create some changes in the parties involved – while maintaining overall FWS control over the Refuge Complex. The EA should acknowledge that, under the draft AFA, CSKT involvement in NBRC operations would

[7] A copy of MHRN's letter is attached as Appendix "F" to this document. While MHRN's letter describes its concerns about FWS staffer Skip Palmer on the basis of Skip's father's long-time involvement with the anti-Indian movement, MHRN had earlier reported on Skip's own involvement in the movement, as discussed later in this document and in the Montana Human Rights Network report titled Drumming Up Resentment: The Anti-Indian Movement in Montana, attached as Appendix "G".

[8] *Reed v. Salazar* at 107 (citing the December 15, 2006 statement by Paul Bishop in the administrative record).

[9] *E.g.*, comments characterizing the AFA as a program "aimed at achieving cultural and social goals" (BGA comment at p. 3), or describing the AFA's purpose as satisfaction of "an essentially political demand made by the CSKT" (PEER comment at p. 4).

represent a change in some of the people involved, but the EA should clearly set out the Service's determinations that:

1) the draft AFA, as with the past AFA's, would not significantly change the way the Service manages the NBRC, but would simply involve CSKT participants in that management, as provided under the Tribal Self-Governance Act;
2) the physical, ecological and social aspects of NBRC management would not substantially change due to the draft AFA;
3) ownership and overall management and administration of the NBRC would remain with the Service under the draft AFA;[10] and
4) based upon the Service's professional judgment and expertise, there would be no significant on-the-ground consequences of incorporating CSKT involvement in the operations of the NBRC because the draft AFA, as with past AFA's, would ensure that the fundamental aspects of NBRC management would remain the same.

The EA should also make clear that the draft AFA would not permit CSKT to by itself create significant impacts to the NBRC, such as constructing buildings, altering the size of the bison herd, building new roads, or making other profound changes to the landscape or ecology. Any significant changes in management or operations would need to be approved by the FWS Refuge Manager. The EA should explain how, under the draft AFA, as with past AFA's, the visiting public would experience the NBRC in largely the same manner as it does in the absence of an AFA.

Some commenters assert that an EIS is required due to the alleged presence of various "significance factors" identified in the Council on Environmental Quality (CEQ) regulations. *See* 40 CFR § 1508.27(b). CSKT addresses those factors in Section III of this document.

One commenter stated that FWS should prepare a programmatic EIS which would take into account the potential for future AFA's (*see* comment of BGA at pp.7-8). The Service may want to respond to that suggestion in the EA. CSKT understands that any future AFA's will be evaluated on their own merits, and that the draft AFA is not part of any larger initiative on the part of the Service. Based upon that, and the fact that there does not seem to be any great increase in other tribes requesting AFA's with FWS, CSKT does not see a need for a programmatic EIS.

In summary, CSKT believes that the Service's decision to analyze the issues through the preparation of an EA is appropriate. CSKT has encouraged and supported the incorporation of robust public participation as part of the process and believes that the comments will result in better evaluation and analysis.

[10] The EA should similarly note that, under the draft AFA, beneficial ownership of the lands upon which the Ninepipe and Pablo National Wildlife Refuges are located would remain with CSKT.

II. Range of Alternatives

Several parties wanted the EA to evaluate more than the two alternatives identified in the NOI. Some of the comments suggested alternatives involving FWS contracting fewer programs to CSKT, or involving a non-Self-Governance contracting vehicle such as a cooperative agreement.

The range of alternatives to be evaluated will obviously be determined by the Service's stated purpose and need for the proposed action. CSKT agrees that it would be a good idea for the EA to evaluate other alternatives in addition to the two identified in the NOI. Such alternatives could include an AFA contracting more activities to the Tribes, as well as an AFA that contracts fewer activities.

While CSKT understands that, to some, a cooperative agreement or other similar arrangement may appear to be a reasonable alternative to an AFA, such vehicles would not fall within the laws and regulations established under the Tribal Self-Governance Act and would therefore neither: 1) advance federal Self-Governance objectives as set forth in both the Tribal Self-Governance Act and federal regulations; nor 2) advance CSKT's Self-Governance objectives, allowing CSKT to operate within the parameters established by law and regulation. Included in the Congressional declaration of Tribal Self-Governance policy is the intent to "permit each Tribe to choose the extent of its participation in self-governance." 25 C.F.R. §§ 1000.4(b)(2). One of the commenting parties specifically recognized this, expressing its strong belief that the FWS-CSKT partnership "should be formalized through a new self-governance AFA. . . ." *See* comment of National Wildlife Federation at p. 1.

For these reasons, CSKT believes that a cooperative agreement would not fulfill the federal or tribal purposes of CSKT's request for a Self-Governance AFA, hence it may be more appropriate for the Service to have the EA identify cooperative agreements as a suggested option, but explain why it would not warrant further analysis as an alternative. CSKT strongly encourages the Service to similarly identify in the EA all suggested, or otherwise considered, alternatives and, for those that would not fulfill the stated purpose/need, explain why they do not warrant further analysis as alternatives.

One commenter encouraged having both tribal and federal employees working within each contracted program, but recommended not contracting whole programs to the Tribes (*see* comment of Tim Miller). CSKT believes that a categorical policy of not contracting whole programs at a relatively small operation like the NBRC would undermine, if not entirely contravene, federal Self-Governance policies. CSKT has long maintained that contracting of whole programs at the NBRC is generally the most effective and efficient way to realize Self-Governance objectives at that particular facility. Some commenters suggested that the Service should consider contracting some very limited activities but retaining some or most of the

program's activities. *See, e.g.*, BGA comment at p. 2. However, such piecemeal contracting would do little to effectively advance federal and tribal Self-Governance objectives.

One commenter cited *Trustees for Alaska v. Watt*, 524 F. Supp. 1303 (D.Alaska 1981), for the proposition that "administration" equates to "management" (*see* comment of BGA at p. 4). The comment said that the NEPA analysis should "include alternatives that would retain full federal control and supervision of the public use program" at the NBRC. The EA should distinguish the draft AFA from the situation before the court in *Trustees for Alaska*, and explain how the draft AFA already includes the retained federal control and supervision referenced by the commenter: under Section 7, the federal government (through the Refuge Manager) retains full control and supervision over the entire NBRC operation, including the public use programs. This contrasts sharply with the facts in the case of *Trustees for Alaska*, in which Interior Secretary James Watt had transferred to the U.S. Geological Service (USGS) lead responsibility for development of a report and exploration regulations concerning oil and gas exploration at the Arctic National Wildlife Refuge. No duty or responsibility which CSKT would contract under the draft AFA, or which it had contracted under past AFA's, even approaches the sort of administrative control that the USGS had been given in the situation of *Trustees for Alaska*, and which the court in that case found to have violated the National Wildlife Refuge System Administration Act (NWRSAA).

CSKT believes that development and evaluation of alternatives involving other AFA's would be helpful and it encourages the Service to do so.

III. NEPA Significance Factors

As part of the regulations it promulgated under NEPA, the CEQ provided guidance for interpretation of the term "significantly", within the context of NEPA's requirements for federal actions that significantly affect the human environment. The regulations state that such interpretation requires considerations of both context and intensity. 40 C.F.R. § 1508.27. Subsection § 1508.27(b) then provides a list of factors that "should be considered in evaluating intensity". These are commonly referred to as "significance factors".

In this section, CSKT provides its perspectives on CEQ "significance factors" identified in the scoping comments. For the sake of clarity, CSKT believes that the EA should address all of the factors identified in 40 CFR § 1508.27(b), explaining the Service's consideration of each.

A. Public Health and Safety. One commenter cited public health and safety issues as requiring an EIS. The commenter simply cited an unspecified statement that the first AFA was cancelled in part due to some activities which involved public health and long-term maintenance of vehicles and heavy equipment, allegedly not having been completed at a satisfactory level (*see*

comment of PEER at p. 7). No further information was included in the comment beyond the reference to those allegations. The CEQ regulations describe this significance factor as follows:

> The degree to which the proposed action affects public health or safety.
>
> 40 CFR § 1508.27(b)(2)

The allegations which had accompanied the termination of the first AFA are addressed by CSKT in Section I of this document. Taking this input into account, as well as the experience under the FY 2009-11 AFA and the OIG report disproving allegations made during that agreement, the Service should address in the EA the degree to which the proposed action would affect public health or safety.

B. Unique Characteristics of the Geographic Area. At least one commenter appeared to implicate the CEQ significance factor involving unique characteristics of a geographic area (*see* comment of PEER at pp. 4-5). The CEQ regulations describe this factor as follows:

> Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.
>
> 40 CFR § 1508.27(b)(3)

PEER's comment is again predicated on its characterization of allegations under the first AFA as facts. It then asserts that those allegations, along with PEER's generalized grievances regarding other parts of the draft AFA, demonstrate the potential for significant impacts on the environment at the NBRC. With respect to the allegations upon which PEER bases it concerns, CSKT refers to Section I of this document.

In addressing this comment and its corresponding significance factor, CSKT believes FWS should: 1) identify in the EA the unique characteristics of the NBRC and explains how those characteristics would not be altered under the draft AFA; 2) explain how the Service has taken the NBRC's unique characteristics into account when evaluating the draft AFA and its alternatives; and 3) explain why approval of the draft AFA would not result in any significant impacts to these unique characteristics.

C. Controversy. A few parties asserted that the presence of controversy supported or required preparation of an EIS. The CEQ regulations describe this factor as follows:

> The degree to which the effects on the quality of the human environment are likely to be highly controversial.
>
> 40 CFR § 1508.27(b)(4)

The EA should acknowledge the fact that federal courts have made clear that, in order for a matter to be deemed "highly controversial" within the meaning of this regulation, there has to be something more than just people who are opposed to a proposed action and who may be willing to litigate it. Instead, there must be a substantial dispute about the size, nature or effect of an action rather than just opposition to it. Courts have also recognized that just because a party may be able to cherry-pick information out of an administrative record does not mean that a proposed action is highly controversial or highly uncertain.

In justifying their assertions of "highly controversial" effects, the commenting parties do not identify a substantial dispute about the size, nature or effect of the draft AFA, nor do they describe any sort of scientific controversy about the effects of the AFA. Instead, they rely almost exclusively on the disputed allegations which had arisen under the first AFA. One party incorrectly asserts that "controversy" had caused FWS to terminate the first AFA, but otherwise identifies no specific disputes that are "highly controversial" (*see* BGA comment at pp. 6-7). Another commenter asserts that the draft AFA "presents potential effects on the environment which are likely to be highly controversial, as evidenced by the FWS's cancellation of the 2005 AFA. . . ." *See* PEER comment at p. 5.

With respect to these references to the allegations under the first AFA, CSKT refers to Section I of this document. As mentioned in that section, the Service has since admitted that it acted upon those allegations without affording due process to CSKT and without complying with AFA provisions for notifying CSKT of alleged performance deficiencies. Once the Service had the benefit of CSKT's responses, and after CSKT had filed an administrative appeal of the termination with the IBIA, FWS chose to enter into a new AFA with CSKT, thereby settling the appeal. The record is devoid of any determinations by FWS, after it had the benefit of CSKT responses, that any of the allegations cited in its termination of the FY 2005-06 AFA had merit. There is accordingly little support for the commenting parties' characterization of the allegations as constituting either significant impacts or a "highly controversial" matter requiring preparation of an EIS, bearing in mind that, in order meet this standard, there must be a genuine environmental controversy and not just differing viewpoints or subjective impressions.

Further undermining the allegations, and the attendant claims that they make the draft AFA "highly controversial" for NEPA purposes, is the fact that one of the commenting parties had made similar allegations under the second AFA, and had requested an investigation by the Interior Office of Inspector General (OIG), which subsequently found no merit to any of the

substantive allegations. Aside from a work plan that had not been updated as called for in the FY 2009-11 AFA,[11] the OIG's March 2011 report "did not find any current evidence to support allegations of operational deficiencies in the other programs included in the PEER allegations." *See* Appendix "C", at March 30, 2011 transmittal memo found at beginning of the report.

While the record reflects opposition to the draft AFA, the commenting parties do not provide any evidence or credible claims that the draft AFA is "highly controversial", within the meaning of NEPA, regarding effects on the human environment. Once the Service addresses the issue of the allegations under the first AFA, and once it provides a full explanation as to why it does not believe that the proposed action is "highly controversial", CSKT believes that the record will demonstrate that there is no basis under this CEQ standard for a finding of significant impact. To this end, CSKT believes the Service should:

1. acknowledge the opposition to the draft AFA, as well as past AFA's, and fully explain why this opposition or controversy does not involve "highly controversial" effects on the quality of the human environment;
2. distinguish between policy disputes versus actual controversies or disputes about potentially significant impacts that may occur on the ground as a result of the draft AFA; and
3. ensure that the EA: demonstrates the lack of highly controversial effects under the draft AFA; identifies and analyzes any likely impacts of the draft AFA; and, if any impacts, identifies and discusses any mitigation measures put in place for such impacts.

D. Highly Uncertain Effects and/or Unknown Risks. One commenter asserted that environmental effects of the draft AFA are unknown or highly uncertain (*see* comment of PEER at p. 6). The CEQ regulations describe this factor as follows:

> The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.
>
> 40 CFR § 1508.27(b)(5)

In support of its assertion of highly uncertain effects or unknown risks, PEER cites the following:

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[11] Putting this issue in perspective, the OIG investigators noted that, although a 2009 work plan had not been completed, "NBR managers said they followed the 2008 work plan for 2009 operations and that operations had not changed significantly between those years." OIG Report at p. 3. The report found no negative impacts from the use of a prior year's work plan.

1. It is "not known which of the adverse environmental effects stemming from previous AFA's will be repeated";
2. The draft AFA "aims to incorporate the management of the NBRC into the overall management of Tribal lands";
3. The draft AFA released by FWS does not include its four appendices, including the budget;
4. The draft AFA "contains many uncertainties as to what activities and functions it will cover and how resources will be allocated";
5. The effective date of the draft AFA is "uncertain" and "may be phased in"; and
6. The draft AFA "is structured to restrict the public's right to know what is happening at the NBRC, and therefore builds in an ongoing uncertainty as to the environmental effects of the agreement."

PEER comment at pp. 6-7.

CSKT addresses each of the above assertions in turn and encourages the Service to address them in the EA:

1. **Prior Allegations.** In asserting highly uncertain effects or unknown risks, PEER's initial justification is that it is "not known which of the adverse environmental effects stemming from previous AFA's will be repeated." As CSKT discusses in Section I of this document, and as the record reflects, no determinations of adverse environmental effects had been made by FWS under the first AFA once CSKT was able to respond to the allegations made against it and its staff. Under the second AFA, the Interior Office of Inspector General refuted PEER's allegations regarding bison care, pesticide application, management problems, etc. *See* Appendix "C".

   PEER provides no support for its conclusory statement falsely attributing adverse environmental impacts to previous AFA's. Nor does PEER explain how the allegations constitute "unknown" or "highly uncertain" effects. The Service should address that issue for the record in this EA. Once the record more directly addresses the issue of the allegations under the first AFA, it will be clear that they, as with the disproven allegations under the second AFA, do not result in unknown or uncertain effects under the draft AFA.
2. **Incorporation of NBRC Management into Overall Management of Tribal Lands.** After a listing of AFA benefits to the Service, Section 2.C.2.c of the draft AFA states that one of the benefits to CSKT is that the AFA "better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation." This simply reflects the fact that, if CSKT

has a role in NBRC operations, it can be more effective in coordinating natural resources issues that transcend the boundaries between the NBRC and the surrounding Flathead Indian Reservation. It also reflects the fact that two of the NBRC refuges (Ninepipe and Pablo) are located on lands for which CSKT is the beneficial owner and for which CSKT has obvious natural resources management interests.

PEER misconstrues and/or misrepresents this as aiming "to incorporate the management of the NBRC into the overall management of Tribal lands", insinuating that somehow CSKT would be removing NBRC from FWS management and subjecting it to a different tribal management regimen. PEER can cite no support for such an assertion, and the draft AFA itself repeatedly makes clear that NBRC management will continue to be under federal control and will continue to be performed in conjunction with all existing laws, regulations and operational standards governing refuges. *E.g.*, draft AFA at Sections 1, 2.A, 3.C, 7.A, 7.B, 7.D, and 10.A.

The Service's Native American Policy, in discussing the agency's efforts to seek partnerships with Indian tribes, observes that such partnerships "provide opportunities to better address ecological systems as a whole and do so with maximum assistance and support." Policy at p. 1. The draft AFA provision that causes PEER concern therefore actually furthers the Service's own goals for ecology-based partnerships.

3. **Draft AFA Does Not Include Its Appendices.** PEER attributes outsized importance to the fact that, intentionally or not, the Service did not include any of the draft AFA's referenced attachments when it released the draft AFA along with its NOI. CSKT supports inclusion of the appendices/attachments as part of the release of the draft EA. CSKT also recommends that the draft EA be accompanied by copies of the past two NBRC AFA's, along with their attachments, so members of the public can compare the three and see the past budgets for the AFA's. CSKT disagrees that the present absence of the attachments to the draft AFA supports claims of highly uncertain environmental effects and/or unknown risks, and PEER has provided no credible support for such a claim.
4. **AFA Contains Many Uncertainties as to What Activities/Functions It Covers.** Contrary to PEER's claims, the draft AFA describes the covered Activities in a similar manner as did the last AFA. *See* Section 6.A of the draft AFA. Given that PEER itself states that the draft AFA "duplicates, with minor changes, a predecessor FY 2009-2011 AFA", and given that there were no uncertainties under the prior AFA as to what activities/functions would be covered, PEER provides no information to support its assertion of highly uncertain effects and/or unknown risks. *See* PEER comment at p. 2.

5. **Uncertain Effective Date and/or Phase-In of AFA.** The provisions cited by PEER in Section 25.A of the draft AFA are nearly identical to the corresponding provisions in the last AFA. PEER does not claim that the provisions in the last AFA resulted in any highly uncertain environmental effects or unknown risks, nor does it cite any reason for how such provisions in the draft AFA could result in such effects or risks. Given the timeframe uncertainties of the AFA negotiations, the attendant NEPA process, and any finalizations, it seemed to make little sense to try to identify a specific date in the draft AFA as the effective date for the agreement.
6. **Restricting the Public's Right to Know.** PEER's final rationale for why the draft AFA involves highly uncertain environmental effects or unknown risks is its allegation that the AFA "is structured to restrict the public's right to know", thereby resulting in unknown risks. For support, PEER outlines its belief that the AFA's provisions regarding the Freedom of Information Act (FOIA) and its provisions regarding maintenance of Activity Records could somehow result in less information being made available in response to public requests. PEER provides no support for such a claim. PEER has made repeated FOIA requests to the Service's NBRC staff during past AFA's and, to CSKT's knowledge, has never contested, appealed or disputed any of the Service's FOIA responses to those requests. Given PEER's statement that the draft AFA "duplicates, with minor changes" the predecessor NBRC AFA, PEER cites no justification for its assertion of highly uncertain effects and/or unknown risks.

In addition to PEER's claims regarding alleged uncertainties, BGA's comment asserted that

> [a]ttempting to install an untested program with untrained employees having divergent motivations and uncertain supervision aimed at achieving cultural and social goals rather than the "wildlife first" mandate of the refuges represents a major deviation in the normal operation of every refuge in the national system.
>
> BGA comment at p. 3.

This assertion is wrong on a number of levels. First and foremost, it is inaccurate to describe CSKT's Natural Resources Department, which has staffed the NBRC under the past AFA's and would continue to do so under the draft AFA, as an "untested program with untrained employees". While the Service is well aware of NRD's management record, CSKT is including for the record a list of sample accomplishments (*e.g.*, establishment of first tribally-designated wilderness in the nation, species reintroductions, staff awards, etc.). *See* Appendix "H" to this

document. Additionally, the National Wildlife Federation noted in its scoping comments that, earlier this year, it awarded CSKT with its National Government Conservation Achievement Award.

BGA provides no explanation or support for its allegations of "divergent motivations" and "uncertain supervision" with respect to CSKT, nor does the record under the past AFA support either contention. While BGA's belief that the AFA's purpose is to achieve "cultural and social goals", rather than wildlife-centric objectives, is similarly unsupported, it speaks volumes about the motivation for its opposition to Self-Governance partnerships at the NBRC. One could argue that BGA's insistence that only federal employees should perform certain Refuge work is intended to achieve its own "cultural and social goals" rather than wildlife-based objectives.

E. Precedent. Several comments raised the issue of precedent in asserting that an EIS should be prepared. The CEQ regulations describe this factor as follows:

> The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.
>
> 40 CFR § 1508.27(b)(6)

In most respects, Tribal Self-Governance AFA's are nothing new for the Interior Department. Since the Tribal Self-Governance Act was signed into law in 1994, the Bureau of Indian Affairs (BIA) has entered into hundreds or thousands of AFA's with tribal governments for everything from natural resources management, to law enforcement, to land management. The National Park Service (NPS) was the first non-BIA agency to enter into an AFA when it did so with the Grand Portage Band of Lake Superior Chippewa in 1998 for work at the Grand Portage National Monument. FWS first entered into an AFA in 2004 with the Council of Athabascan Tribal Governments (CATG) regarding work at the Yukon Flats National Wildlife Refuge in Alaska. The Bureau of Reclamation has also entered into AFA's with tribes.

The EA, in acknowledging the differences between the draft AFA and other non-BIA AFA's, should explain how: differences amongst AFA's have always existed and will continue to exist; each AFA is evaluated according to its individual merits, purposes and need; and approval of one is not dependent on other AFA's. The differences amongst AFA's reflect not only the different situations and needs of the subject facilities and operations, but also the differences amongst tribal governments.

Non-BIA agencies have discretion as to whether or not they will enter into AFA's under 25 U.S.C. § 458cc(c), which authorizes agreements for programs which are of special

geographic, historical or cultural significance to the requesting tribe. In addressing comments regarding precedent, the Service should explain, and provide examples of, how:

1. the Service considers requests for an AFA under this authority on a case-by-case basis, evaluating each on its own merits, including the qualifications of the requesting tribe and the needs of the subject Refuge;
2. a decision to enter into an AFA with one tribe for a certain facility does not constitute, under either the law or past practice, a decision to enter into any future agreements with other tribes for other facilities;
3. AFA's are for limited terms, with FWS retaining the discretion for continuing the agreements in future years;
4. AFA's are always subject to reassumption by the Service, consistent with Self-Governance statutes and regulations; and
5. the Service would have to comply with the requirements of NEPA for any future decisions to approve an AFA.

The Service's Native American Policy specifically recognizes the case-by-case basis upon which its relationships with tribal governments, including under the Indian Self-Determination and Education Assistance Act, are based. The Policy states that the Service's working relationships with tribal governments "will vary according to the legal basis and management requirements of each relationship." Policy at p. 1. The Policy also recognizes that its relationships with tribal governments will be guided by tribal-specific treaties, reserved rights doctrines, and other authorities. *Id.*

None of the comments appear to state that a decision by the Service with respect to an AFA at the NBRC represents a decision in principle about any future AFA within the meaning of the above-cited CEQ standard's last clause. There is good reason for this: the history of non-BIA AFA's does not support a contention that any past AFA has become a decision in principle about how future AFA's with other tribes for other federal programs would look. The past two NBRC AFA's were quite different from those that FWS had entered into with CATG, which predate the NBRC AFA's. A survey of AFA's between tribes and the National Park Service also shows a diversity that would undermine any assertion that one AFA becomes a cookie cutter model for the substance of later AFA's. This is a logical reflection of the vast differences amongst tribes and refuges (or parks). While some boilerplate provisions in non-BIA AFA's are duplicated, some are not and the substance and extent of programs being contracted are quite different from one agreement to another.

The commenters who cite precedent as justification for an EIS appear to be basing their positions on the first part of § 1508.27(b)(6): the degree to which the action may "establish a precedent". Their comments express concern that, as stated by PEER, the Interior Department

"may unwittingly be creating a template for future agreements" (*see* comment of PEER at p. 7). As explained above, one AFA does not constitute, "unwittingly" or otherwise, the establishment of a precedent. A particular AFA provision may be justified in one situation due to unique aspects of the Refuge and/or tribe involved, whereas it may not be justified in a situation involving a different Refuge and different tribe. By way of example, the Act creating the Grand Portage National Monument had provided a statutory role for the Grand Portage Band of Lake Superior Chippewa in the operation of the Monument, making the NPS negotiations with that tribe unique from other AFA's. *See* 16 U.S.C. § 450oo *et seq.*

The circumstances of the NBRC and CSKT are highly unique and readily distinguishable from any other situation, undermining any claims that a precedent would be set by the draft AFA. The EA should identify these distinctive characteristics:

1. the National Bison Range and all of the NBRC properties subject to the draft AFA are located wholly within the exterior boundaries of the Flathead Indian Reservation;
2. CSKT is the beneficial landowner of two of the NBRC Refuges (Ninepipe and Pablo Refuges) and retains rights at both locations;[12]
3. CSKT has a documented history with the NBR bison in that the present herd descends in large part from a herd owned by CSKT tribal members that predated the establishment of the National Bison Range; and
4. FWS and CSKT have a decades-long history of successfully working together on projects of mutual interest.[13]

The Service should ensure that the EA addresses how:

1. the draft AFA would not establish a precedent or template for approval of any AFA involving other Refuges or FWS facilities, nor would it be a first step in an FWS initiative to replicate similar agreements with other tribes for other FWS facilities;
2. the programs contracted to CSKT under the draft AFA are those that have long been identified in Federal Register listings as being eligible for Self-Governance contracting;
3. the draft AFA has been tailored to the specific situation and needs of the NBRC; and

[12] CSKT's reserved rights in the lands upon which the Ninepipe and Pablo Refuges are located were recognized by Congress in § 5(b) of the Act of May 25, 1948 (62 Stat. 269). That Act, while granting FWS perpetual easements for Refuge purposes, reaffirmed that CSKT "shall have the right to use such tribal lands, and to grant leases and concessions thereon, for any and all purposes not inconsistent with such permanent easement."

[13] Examples of past CSKT cooperation and coordination with FWS include: peregrine falcon reintroduction; trumpeter swan reintroduction; grizzly bear management; noxious weed management; surplus elk and pronghorn antelope relocation; bald eagle surveys, and migratory waterfowl projects and surveys.

4. at the end of any AFA's term, the Service retains the discretion as to whether or not to continue the agreement

Anecdotally, over the 18 years that the Tribal Self-Governance Act has been in effect, CSKT is unaware of many tribes expressing interest in Self-Governance contracting at National Wildlife Refuges. Nonetheless, CSKT believes that the Service needs to fully address the comments regarding precedent and explain why approval of the draft AFA would neither "establish a precedent" nor represent "a decision in principle about a future consideration" within the meaning of the CEQ regulations. As part of its response, it would be helpful for the EA to describe other Service contracts or relationships, past or present, with non-federal entities for the types of work that CSKT would perform under the draft AFA.

F. Cumulative Impacts. One commenter asserted that the AFA is related to other actions with cumulative significant effects (*see* comment of PEER at p. 7). The CEQ regulations identify cumulative impacts as a factor in determining significance, as follows:

> Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.
>
> 40 CFR § 1508.27(b)(7)

The only support PEER made for its assertion of cumulative impacts is that the AFA is likely to be a precedent for similar agreements at other Wildlife Refuges. CSKT addressed the precedent factor in the preceding section of this document. PEER did not identify any other cumulative impacts, nor did any other commenter. CSKT is not aware of any cumulative impacts that would be involved with approval of the draft AFA, but CSKT encourages the Service to address this issue in the EA and explain how cumulative impacts are not involved in the proposed action or, if the Service believes that any cumulative impacts exist, to identify them and explain why they would or would not result in significant impacts.

G. Endangered/Threatened Species. One party mentioned endangered or threatened species in passing (*see* BGA comment at pp. 5, 7), and one party asserted that the "presence" of listed species supports preparation of an EIS (*see* PEER comment at p. 5). The CEQ regulations describe this factor as follows:

> The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.
>
> 40 CFR § 1508.27(b)(9)

As the plain language of the CEQ regulations make clear, the presence of an endangered or threatened species, or its habitat, does not automatically require preparation of EIS. Instead, the regulations require a federal agency to take into account whether, and to what degree, an action may affect one or more listed species. CSKT understands that, prior to approval of the draft AFA, the Service would conduct an intra-Service consultation, as laid out in the FWS Endangered Species Consultation Handbook, to determine whether the evaluated actions would have any effects. The EA should: identify any listed species relevant to its analyses; explain why the draft AFA would involve no significant impacts to such listed species; and describe in detail how the Service would fulfill its responsibilities under the Endangered Species Act and NEPA if it approved the draft AFA.

With respect to listed species, CSKT's Tribal Wildlife Program has compiled a brief status summary of present and former listed species for the Service's consideration. *See* Appendix "I". If the Service has information that conflicts with this status summary, this could be identified and discussed in the EA.

H. Violation of Federal Laws. Several commenters cited alleged violations of federal laws as a basis for preparing an EIS. The CEQ regulations, at 40 CFR § 1508.27(b)(10), describe this factor as follows:

> Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

The commenters primarily allege that the draft AFA would violate the NWRSAA, as amended, and/or the Tribal Self-Governance Act. Some commenters claim that the draft AFA would violate the Tribal Self-Governance Act's prohibition on contracting out "inherently Federal" functions; two commenters asserted that the draft AFA would contract programs to CSKT that are not authorized by the NWRSAA, thereby violating both the NWRSAA and the Tribal Self-Governance Act's prohibition on contracting out programs whose underlying statutes do not

authorize such participation. *See* 25 U.S.C. § 458cc(k).[14]

Inherently Federal Functions

With respect to claims that the AFA would contract inherently federal functions to CSKT, none of the commenters provide any legal or other support for such claims. One party makes the conclusory statement that "the biological program on refuges is at the core of the inherently federal functions to be performed", but provides no support for such an assertion (*see* comment of BGA at p. 4).

PEER's comment alleges the following five contracted activities to be inherently federal functions: 1) supervising federal employees working under an Intergovernmental Personnel Act assignment; 2) managing contracted programs, or portions of programs through a newly-created Wildlife Refuge Specialist; 3) selecting and supervising refuge volunteers; 4) selecting and managing additional employees when positions other than the Refuge Manager, Deputy Refuge Manager, and law enforcement officers are vacated; and 5) jointly developing the Work Plan for the NBRC and setting work priorities. CSKT addresses each of these as follows:

1. **Supervising Federal Employees Working Under an IPA Assignment.** One of the purposes of the Intergovernmental Personnel Act (IPA) is to provide for assignment of federal employees to State, local and/or tribal governments. The IPA defines "local government" to include federally-recognized Indian tribes. 5 U.S.C. § 3371(2)(C). The statute provides that "supervision of the duties of an employee on detail may be governed by agreement between the Federal agency and the State or local government concerned." 5 U.S.C. § 3373(a). That provision recognizes that, for the limited purposes of an IPA assignment, the manner of supervision may be negotiated between the federal agency and the state/local/tribal government involved. This is not a new concept, and has been addressed in another context in a June 23, 1986 memo from the Bureau of Indian Affairs' Office of the Regional Solicitor, Pacific Northwest Region, which had found other statutory authority for tribal government direction of a federal employee. *See* memo, attached as Appendix "J".

[14] 25 U.S.C. § 458cc(k) reads as follows:

> Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under subsection (b)(2) of this section and section 458ee(c)(1) of this title with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: *Provided*, however an Indian tribe or tribes need not be identified in the authorizing statute in order for a program or element of a program to be included in a compact under subsection (b)(2) of this section.
>
> [italics in original]

Under past NBRC AFA's, federal employees assigned to work with the Tribes under the AFA had received day-to-day direction from CSKT strictly with regard to the activities contracted under the AFA and for which the federal employees had been assigned under the IPA. They remained under the ultimate control of the FWS Refuge Manager. This would continue under the draft AFA, with all of the disciplinary, payroll, performance evaluation, and related personnel functions remaining with FWS. *See* draft AFA at Section 13.B.1 and B.2.

In short, nothing in the draft AFA runs counter to the IPA statute or regulations, nor would the limited tribal day-to-day supervision of IPA employees assigned to work with CSKT constitute an inherently federal function.

2. **Managing Contracted Programs Through a Wildlife Refuge Specialist.** PEER does not provide any reasons for its claim that CSKT's use of a tribally-contracted Wildlife Refuge Specialist position would somehow implicate an inherently federal function. Since PEER describes the Specialist position as being supervised by the Manager of CSKT's Division of Fish, Wildlife, Recreation and Conservation, it appears to insinuate that this tribal supervision is the problem, but it is unclear due to the absence of any sort of explanation.

   While any CSKT staff work under the AFA will necessarily involve some level of tribal supervision, it also bears repeating that, for any such work, the Service's Refuge Manager would retain ultimate decision-making authority under Section 7 of the draft AFA. Section 13.B.2 further clarifies that the Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist. PEER provided nothing to justify or otherwise support its claim that use of a contracted Wildlife Refuge Specialist position under the draft AFA could be deemed an inherently federal function.

3. **Selecting and Supervising Refuge Volunteers.** Section 6.A.5 of the draft AFA makes clear that CSKT would not be contracting, or otherwise responsible for, volunteer coordination activities. Section 13.I.2 provides that CSKT will select and direct volunteers working in the activities contracted by CSKT under the AFA, and FWS will select and direct the work of volunteers working in activities retained by the Service. PEER's comments provide no explanation for how CSKT selection and direction of volunteers working in contracted activities would be any different than CSKT selection/direction of tribal employees working in its contracted activities, or how it could constitute an inherently federal function.

4. **Selecting and Managing Additional Employees.** Section 13.A.3 of the draft AFA would allow for the possibility of CSKT contracting additional positions at the NBRC, with the exceptions of the Refuge Manager, Deputy Refuge Manager and Law Enforcement Officer positions. Tribal selection and management of any

additional staff under the AFA would be conducted in a similar manner as tribal employee selection and management performed at the outset, and through the duration, of the agreement. Section 13.A.3 of the draft AFA section includes a caveat confirming that, under any such additional contracting, the Service would not transfer to CSKT any work that is inherently federal. PEER's comment fails to explain how tribal selection of tribal employees for as-yet-unspecified additional work contracted under the AFA: A) is different from initial tribal hiring of employees at the commencement of the AFA; or B) could be interpreted as an inherently federal function.

5. **Jointly Developing the NBRC Work Plan and Setting Work Priorities.** PEER's comment seems to oppose the general concept of collaborative work by FWS with an Indian tribe (*see* PEER comment at pp. 3-5). It is not clear whether PEER has similar reservations about collaborative work with States. In any case, a decision by federal officials to work cooperatively with another entity does not constitute the contracting out of an inherently federal function within the meaning of the Tribal Self-Governance Act. This is especially true in a case where, as here, the other entity owns land upon which some of the Refuges are located. This sort of cooperation is not only explicitly intended by the Self-Governance Act, but it is encouraged by the NWRSAA, as amended, as well as by Executive Order No. 12996 and the Service's own policy manual. *See* 16 U.S.C. § 668dd(a)(4)(E) and 603 FW 2.10(B)(1). If such cooperative or collaborative work were somehow interpreted to infringe upon "inherently" federal functions, then the cooperative agreements with State fish and wildlife agencies authorized under 16 U.S.C. § 668dd(b)(4) would similarly be disallowed, yet PEER appears to have made no such claim with respect to cooperation with States.

   With regard to setting of priorities, PEER provides no support for its contention that CSKT would set work priorities under the draft AFA. The draft AFA would actually establish the opposite, with the Service's Refuge Manager retaining full authority for setting work priorities. *See* Sections 7.E.1 and 10.A of the draft AFA.

In addressing claims that the AFA involves inherently federal functions, it would be helpful for the EA to reference the types of contracting that the Service engages in with non-federal parties at other facilities, whether they are Refuges or not. If an activity is "inherently federal" then its performance would be reserved for federal employees regardless of location or agency involved. It may also be useful to address work performed for the National Park Service by the Navajo Nation at Canyon de Chelly National Monument and by the Lakota Sioux at Badlands National Park. While that work is not done under the Tribal Self-Governance framework, any activities performed by tribes at those locations could not be claimed to be "inherently" federal elsewhere.

NWRSAA Authorization for Types of Programs

Two parties commented that the draft AFA would violate the NWRSAA and the Tribal Self-Governance Act by including programs which the NWRSAA does not authorize to be contracted to tribes (*see* comments of BGA at 2, and PEER at 3). BGA claims that this is so because the NWRSAA only allows FWS to enter into cooperative agreements with "State" fish and wildlife agencies (*see* BGA comment at pp. 1-2). PEER claims that the draft AFA would "transfer administration of the NBRC away from the Secretary and FWS" in violation of the NWRSAA requirement for the Interior Secretary to administer the Refuge System through the FWS (*see* PEER comment at p. 3).

BGA cites a portion of legislative history, as well as unspecified comments by then-Secretary of Interior Bruce Babbitt, for the proposition that Congress had intentionally limited the reach of what would become 16 U.S.C. § 668dd(b)(4) to only State fish and wildlife agencies. BGA subsequently claims that the NWRSAA does not authorize the type of participation sought by CSKT since that Act only authorizes agreements with States.

This misconstrues the plain language of the Tribal Self-Governance Act, which only prohibits contracting of programs if the programs' underlying statute does not authorize the "type of participation" sought by a tribe. The Self-Governance Act makes clear in the very next line that Indian tribes "need not be identified in the authorizing statute in order for a program [to be contracted]." 25 U.S.C. § 458cc(k); *see also* 25 C.F.R. § 1000.130. The Act further requires the Interior Secretary to interpret "each Federal law and regulation", which includes the NWRSAA, in a manner that facilitates "the inclusion of programs" into Self-Governance agreements. 25 U.S.C. § 458cc(i)(1). The EA should acknowledge these statutory provisions, as well as legislative history stating congressional intent that "any federal activity carried out by the [Interior] Secretary within the exterior boundaries of [a] reservation shall be presumptively eligible for inclusion in [a] Self-Governance funding agreement."[15]

BGA's comment disregards the fact that it is the Tribal Self-Governance Act that authorizes the agreement between FWS and CSKT. Since the NWRSAA authorizes the "type of participation", via its provision allowing agreements with States for management of refuge programs, the program does not fall within the above-referenced prohibition and is therefore eligible for inclusion in an AFA under the Tribal Self-Governance Act. This interpretation has been communicated directly to BGA in the past by federal officials. In a June 26, 2008 letter, then-Assistant Secretary for Fish, Wildlife and Parks Lyle Laverty stated the following:

> Additionally, a number of Congressional findings provide additional guidance in determining what level of management on NWRS lands can be accomplished by entities other than the Service. This includes House Report 105-106, and the proceedings of the

[15] House Report No. 103-653 (accompanying HR 3508) at p. 10.

> Committee on Resources, in reporting on H.R. 1420 (which became the Refuge Improvement Act). The intent of Congress is clear that it did not intend to allow any present or future National Wildlife Refuges to be transferred, and we will not allow the NBRC to be transferred to the control of the CSKT. However, it is also clear that the Secretary of the Interior is authorized to enter into cooperative agreements with State fish and wildlife agencies to manage programs on a refuge, "subject to standards established by, and the overall management oversight" of the Service.
>
> We find the discussions of State involvement in refuge management to be instructive, and believe that it is appropriate to follow the guidance provided by Congress for involving States in refuge management when applying the mandates of Indian tribal self-governance to the NWRS to allow Tribes to manage programs on refuges, subject to Service standards, and with final decision authority retained by the Service. In doing so, we have not exceeded our authority to define "inherently federal functions", since no inherently federal functions will be included in any AFA with any Tribe. . . . The best way to move forward for the NBRC is to recognize the validity of both self-governance and refuge laws, and work in partnership with the CSKT in legal and appropriate ways through a new AFA.
>
> Laverty letter at pp. 1-2 (attached as Appendix "K").

PEER includes little support for its generalized claim that the draft AFA constitutes a "transfer of administration" away from the FWS in derogation of the NWRSAA. PEER dismisses the terms of the draft AFA, which repeatedly acknowledge the Refuge Manager's authority over the Refuge, simply by saying that "the mere repetition of those claims does not make it so." *See* PEER comment at p. 3. Under its own logic, PEER's repetition of its claim that the draft AFA results in a loss of FWS control over the NBRC also fails to "make it so"- especially in the absence of any evidence demonstrating that the FWS loses its administrative control over the Refuge when it enters into an AFA with CSKT. The previously-referenced OIG report evinced no indication that FWS had lost any such control under the last AFA. To the contrary, in response to PEER allegations regarding management problems at the NBRC, the OIG report stated that it "did not find any significant information to support this allegation." Appendix "C" at p. 4.

In support of its assertion that the draft AFA would illegally transfer authority away from FWS, PEER speculates that the existence of the draft AFA's dispute resolution process, as well as other administrative appeal remedies provided under law, "could" subject the Refuge Manager to "onerous" procedures that, PEER claims, could essentially negate the Refuge Manager's authority (*see* PEER comment at p. 3). PEER provides no support, legal or factual, for its claim.

The record under the last AFA shows that CSKT never once availed itself of the dispute resolution procedures, nor did it otherwise appeal any decision of the Refuge Manager. Dispute resolution is addressed in some more detail on pp. 30-31 of this document.

Freedom of Information Act

While none of the comments directly alleged that the draft AFA would violate the Freedom of Information Act (FOIA), PEER's comment noted that its prior lawsuit against federal officials over the last AFA had included allegations of FOIA violations; the comment then stated that the draft AFA "fails to remedy the statutory violations inherent in the prior AFA" (*see* comments of PEER at p. 3). PEER's comment elsewhere expresses concern that information will be less available through FOIA under the draft AFA. BGA's comment suggests, without support or explanation, that FWS may need to "maintain additional federal employees" at the NBRC for the sole purpose of collecting and filing records that could be requested pursuant to FOIA (*see* BGA comment at p. 9). Federal guidance has made clear that assisting a federal agency with a FOIA response is not an "inherently governmental" activity. *See* 48 C.F.R. § 7.503(d)(10). A more recent Policy Letter issued by the Office of Federal Procurement Policy (and discussed in the next section) confirmed this by including "preparation of responses" to FOIA requests on a list of activities that are not considered to be inherently governmental. *See* OFPP Policy Letter 11-01, Appendix B, §1(f).

CSKT addressed related FOIA comments on p. 14, noting that PEER has not appealed or otherwise disputed responses to its past FOIA requests to FWS under the prior AFA. It may be helpful for the EA to recognize that the FOIA provisions in Section 11.D of the draft AFA repeat almost verbatim the text found in federal statutes and regulations.

OFPP Policy Guidance

One commenter stated that FWS should identify "critical functions" at the NBRC, in accordance with guidance recently issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). *See* comment of BGA at pp. 11-12. BGA asserted, without explanation, that the number of federal employees was insufficient under the draft AFA to assure that CSKT did not "intrude" upon any unspecified inherently federal functions. *Id.* at 12.

The OFPP published the final text of Policy Letter 11-01 on September 12, 2011. 76 Fed.Reg. 56227, 56236. The stated purpose of that Letter is to

> assist agency offices and employees in ensuring that only Federal employees perform work that is inherently governmental or otherwise needs to be reserved to the public sector. The policy is further intended to help agencies manage functions that are closely

> associated with inherently governmental functions and critical functions, which are often performed by both Federal employees and contractors.
>
> 76 Fed.Reg. at 56236.

The Letter recites the definition of "inherently governmental function" that is found in the Federal Activities Inventory Reform Act (Public Law 105-270, *see* 31 U.S.C.A. § 501 note) but also creates the new term "critical function", which the letter defines as "a function that is necessary to the agency being able to effectively perform and maintain control of its mission and operations." *Id.* at 56236. The letter encourages agencies to give consideration to such functions when contracting work to non-federal entities.

CSKT believes that the Service has already given such consideration with respect to Self-Governance contracting at the NBRC. One example of this is found in Section 7.B of the draft AFA, which reiterates the Refuge Manager's ultimate authority over the NBRC and enumerates various actions reserved to the Refuge Manager. Related deliberation also took place during the negotiations for the second AFA, as evidenced by then-Assistant Secretary for Fish, Wildlife and Parks Lyle Laverty's January 9, 2008 letter to the Blue Goose Alliance, in which he stated the following:

> Some of the confusion surrounding any AFA concerns the issue of inherently federal functions. Congress did not define this term in the Tribal Self-Governance Act. We will use a common sense approach in determining what work at NBRC is "inherently federal," as they [*sic*] enter negotiations with the CSKT. There are certain refuge functions that are "inherently federal," including making Appropriate Use and Compatibility Determinations; decisions on the contents of CCPs and other refuge management plans; other decisions about what wildlife population and habitat management activities shall be conducted, and other decisions on work priorities necessary to administer/manage refuges. This responsibility does not preclude a collaborative decision [*sic*] environment, but it remains clearly the responsibility of the Refuge Manager.
>
> However, it is incorrect to assert that National Wildlife Refuge System and National Parks are entirely inherently federal responsibilities. It is quite clear that many operational and maintenance functions at refuges do not have to be, and are not now, performed only by federal employees. The Service routinely contracts and cooperates with private and public entities to perform a variety maintenance [*sic*], construction, biological, planning, and other work at refuges. Such functions are eligible and available

> through government-to-government negotiations for inclusion in AFAs with qualifying tribes.
>
> Laverty letter at p. 2 (attached as Appendix "L").

While the contracted AFA activities do not include any that are described in Appendix A of the Policy Letter, it may be helpful for the Service to address in the EA, or the accompanying record, how it has handled the Letter's guidance, including the management responsibilities described in Section 5-2 of the Letter.[16]

I. Weeds and Invasive Plants. A number of parties addressed the issue of weeds and/or invasive plant species in their comments. The CEQ regulations do not include weeds as a separate significance factor, but the issue is identified elsewhere as an 'extraordinary circumstance' which could bar the use of a categorical exclusion. The Interior Department regulations describe this circumstance as follows:

> Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and EO 13112).
>
> 43 C.F.R. § 46.215(*l*).

CSKT believes it would be helpful for the EA to address whether, and how, the proposed action would affect the Service's ability to discharge its responsibilities under federal law and Executive Order No. 13112 regarding noxious weeds and non-native invasive species.

One party appeared to assert in his comment that the presence of noxious weeds on the NBRC was due to CSKT's management of tribal lands on the Flathead Indian Reservation (*see* comment of Gravning). No explanation or support was provided with the allegation. Such comments from tribal opponents are not new but, as most Montanans know, the problem of noxious weeds and non-native invasive plants is hardly unique to the NBRC or the Flathead Reservation.

One commenter posited that, under the 2008 AFA, "the Tribes set priorities for management decisions." *See* comment of Palmer at p. 2. The comment goes on to critique weed

[16] While item #11 of the Policy Letter's Appendix A lists "direction and control of Federal employees" as an inherently governmental function, the limited tribal day-to-day direction of IPA-assigned employees comports with federal law, as described on p. 20 of this document. Section 7 of the draft AFA is clear that the Refuge Manager would retain ultimate direction and control over the NBRC, including its employees.

spraying and concludes that the Tribes "should not be allowed to set priorities or work plans." (*Id.*).[17]

Mr. Palmer's allegations regarding weed management provided almost no supporting details and seemed to primarily be the springboard for his comment that the Tribes should not be able to set priorities. The second AFA clearly stated that CSKT's activities under the AFA were [s]ubject to the final authority of the Refuge Manager". Section 7.A of FY 2009-11 AFA. It also stated that the Refuge Manager "will retain final responsibility and authority for directing and controlling the operation of the NBRC" and that the Refuge Manager shall retain "sole and final authority" with respect to "[s]etting work priorities through the NBRC Work Plan". *Id.* at Sections 7.B and 7.B.1. The draft AFA would maintain these provisions and would further recognize the Refuge Manager's authority for prioritization in Section 10.A ("Operational Standards"). Given these AFA provisions, the allegations involving noxious weeds do not implicate CSKT decision-making authority.

One commenter made references to the Palouse prairie lands within the National Bison Range, at one point citing "reports" from unnamed "locals" who have "raised concerns about deteriorating Palouse Prairie habitats" within the Bison Range (*see* BGA comment at pp. 5, 7). While the commenter does not draw any direct connections between past AFA's, or the draft AFA, and the NBRC Palouse prairie lands, it may be helpful for the Service to address the fact that neither management objectives nor day-to-day operations for those lands is altered when an AFA is in effect.

The above-referenced comments and allegations do not provide any information demonstrating that the Service's prioritization and direction regarding weed control are in any way negatively impacted or altered while an AFA is in effect. To the contrary, under the last AFA, the Service had indicated that it was impressed with work done by CSKT regarding invasive weeds, and the previously-referenced OIG report had determined that allegations of deficiencies in pesticide application by tribal staff were baseless.[18] Clarifying this issue in the EA would be helpful.

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[17] As an initial matter, this commenter ("Skip" Palmer) is not an entirely disinterested party. Mr. Palmer had chosen not to be assigned to work for CSKT under the second (FY 2009-11) AFA; he instead chose the option of transfer to another Refuge. More information on Skip Palmer's history with the NBRC and CSKT is provided on pp. 5 (fn. 7) and. 33 (fn. 21) of this document, as well as in the Montana Human Rights Network's Drumming Up Resentment: The Anti-Indian Movement in Montana, attached as Appendix "G" to this document.

[18] For FWS recognition of CSKT staff's work with invasive weeds, see footnote 2 on pp. 2-3 of this document. For the OIG determination, see pp. 2-3 of that report (attached to this document as Appendix "C").

IV. Other Issues Raised

A. Absence of Comprehensive Conservation Plan and National Policy Regarding AFA's. Several commenters asserted that, prior to entering into a new AFA, the Service should: complete a Comprehensive Conservation Plan (CCP) for the NBRC; and/or establish a Service-wide policy concerning negotiation and implementation of Self-Governance agreements. The NWRSAA, as amended, requires each Refuge to have a CCP in place by October 8, 2012. CSKT understands that there are numerous Refuges across the country that will not meet that deadline, including the NBRC. Nothing in the NWRSAA requires that the CCP be in place before an AFA may be implemented. It is worth noting that CSKT's initial 1994 request for an AFA at the NBRC predates the 1997 NWRSAA amendments which established the CCP requirement. In any case, addressing this comment in the EA, including the current status of a CPP for the NBRC, would be helpful.

Over recent years, the Service has initiated development of a draft FWS policy on AFA negotiations. The Service has not yet circulated a draft for tribal consultation or comment. Whether or not a Service AFA negotiation policy is adopted, Departmental guidance for AFA's, including non-BIA agreements, already exists in the form of regulations. *See, e.g.*, 25 C.F.R. Part 1000, Subpart "F" ("Non-BIA Annual Self-Governance Compacts and Funding Agreements"). This Departmental regulatory guidance is supplemented and complemented by the Service's existing Native American Policy, which expresses support for agreements under the Indian Self-Determination and Education Assistance Act (which includes the Tribal Self-Governance the Act).[19] Furthermore, FWS has already entered into Self-Governance agreements and is currently implementing one at the Yukon Flats National Wildlife Refuge. Given these facts, delaying an AFA at the NBRC, or anywhere else, pending adoption of an AFA negotiation

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[19] The FWS Native American Policy states the following:

> *Support for Self-Determination*
>
> The Service favors empowering Native American governments and supporting their missions and objectives in assuming program management roles and responsibilities through contracting and other mechanisms. Therefore, the Service supports the rights of Native Americans to be self-governing, and further supports the authority of Native American governments to manage, co-manage, or cooperatively manage fish and wildlife resources, and to protect their Federally recognized authorities.
>
> *Indian Self-Determination and Education Assistance Act (Public Law 93-638, as amended)*
>
> The Service is committed to entering into contracts, cooperative agreements, or grants with Native American governments at their request for the administration of fish and wildlife conservation programs under the terms, conditions, and to the extent provided by the Indian Self-Determination and Education Assistance Act.
>
> FWS Native American Policy at p. 4.

policy would be an arbitrary action. As with the above-referenced CCP, CSKT encourages FWS to address the comments regarding an AFA negotiation policy as well.

B. Evaluations, Program Redesign and Reallocation of Funds. Two commenters address the topic of evaluations under the draft AFA (*see* comments of BGA at pp. 5-6, and PEER at pp. 4-5). Both appear to take issue with the fact that the draft AFA seeks to ensure that any report or evaluation includes the views of both parties in the event of any disagreement. *See* Draft AFA at Sections 12.A.2, 12.B. Aside from basic notions of fairness and due process, these draft AFA provisions are intended to prevent any recurrence of allegations being prematurely acted upon, as under the unfortunate circumstances of the first AFA. It may be helpful for the EA to reiterate that nothing in the draft AFA prevents the Service from undertaking its own evaluation.

Serving some of the same purposes as an evaluation, the parties had prepared periodic status reports under the second AFA regarding work performed under that agreement. This worked well and would be continued under Section 12.C. of the draft AFA.

BGA alleged that the draft AFA provisions addressing the ability of CSKT to redesign programs, reallocate funds, or request a waiver of regulations, offer "stark contradictions of statements in the document of intent to abide by refuge policies, practices, regulations, and standards." *See* BGA comment at p. 5 (*see also* PEER comment at p. 6). In reality, those draft AFA provisions simply reflect the law found in 25 U.S.C. §§ 458cc(b)(3) and (i)(2). CSKT did not request to waive any regulations under either of the two past AFA's. In accordance with federal law and Section 6.B of the draft AFA, program redesign and reallocation of funds for non-BIA programs would require concurrence by the Refuge Manager. Section 14.F of the draft AFA would continue the provision in past NBRC AFA's that require CSKT to use any AFA funds, or interest from those funds, only for programs covered under the AFA.

C. Dispute Resolution and Collaboration. Two commenters were critical of: 1) the dispute resolution procedures contained in Section 20.A of the draft AFA; and 2) the collaborative approach described in the draft AFA. *See* comments of BGA at pp. 8, 10, and PEER at pp. 3, 5.

Dispute Resolution. The dispute resolution procedures represent the parties' best efforts to create an efficient system for informally resolving any disputes that may arise. The procedures represent a good faith, proactive approach towards prevention of any significant or protracted disputes. Establishment of dispute resolution procedures in agreements is common and is not new to the Service. *E.g.*, Cooperative Agreement Between the U.S. Fish and Wildlife Service and the Nisqually Indian Tribe, signed on February 23, 2005, at § 18.

Both BGA and PEER employ hyperbole when they assert that the very existence of these procedures would somehow negatively impact the Refuge Manager's decision-making. BGA

characterizes the procedures as creating a "sword of Damocles" over the Refuge Manager's head (*see* BGA comment at p. 10). PEER calls the dispute resolution procedures "a bureaucratic nightmare designed to daunt even the most adamant Refuge Manager from making any decision (*see* PEER comment at p. 5). Neither commenter provides any support for such apocalyptic predictions.

The record under the past AFA, which included essentially the same framework, contradicts these alarmist claims. Under that AFA, CSKT never invoked the dispute resolution procedures. Far from dissuading the Refuge Manager from making any decision, the procedures provide him with the knowledge that, even if CSKT were to disagree with a decision, a defined process exists by which any disagreement would be resolved in a timely manner. The dispute resolution procedures in the draft AFA involve only FWS officials, unlike the last AFA which, although never utilized, included other senior Departmental officials at the final level of appeal.

Collaboration. BGA and PEER's criticisms of the collaboration described in the draft AFA offer some transparency regarding those organizations' general opposition towards Self-Governance agreements with Indian tribes (*see* comments of BGA at pp. 8, 12, and PEER at pp. 3-4). BGA claims, without support, that CSKT's involvement under the draft AFA would be so extensive as to "effectively preempt [*sic*] Federal officials' decision-making processes." (BGA at p. 12). Consistent with its focus on federal employees, BGA states in the very next line that "[t]he number of federal employees available to oversee the project is insufficient". PEER expresses its worry that the draft AFA would encourage the Refuge Manager to exercise authorities in collaborative fashion (PEER at p. 3).

Both BGA and PEER gloss over the fact that the draft AFA states, as did the previous AFA, that the Refuge Manager has final decision-making authority and that, if collaborative efforts fail, the Refuge Manager's decision shall prevail. *See* Sections 7.A, 7.D.5. The draft AFA, while explicitly preserving the Refuge Manager's authority, encourages the same kind of collaboration espoused in both the NWRSAA and Executive Orders. *See* 16 U.S.C. § 668dd(a)(4)(C), (E), (M), and Executive Order No. 12996. This is consistent with the numerous other activities for which the Service and CSKT have collaborated over past decades.[20] It would be useful for the EA to address how the Service retains its decision-making responsibilities while collaborating under past, and proposed, AFA's with CSKT.

D. Budget-Related Issues. A couple of commenters raised various issues relating to the budget (*see* general comments of BGA and PEER). CSKT lists and addresses them in turn:

Lack of Information Regarding Costs. BGA and PEER both take issue with the fact that the draft AFA released by the Service did not include Attachment "B", which would identify the funds to be transferred to CSKT. That information is not yet available, as it would depend on

[20] See footnote 13 of this document for a sampling of FWS-CSKT collaborative work.

several factors, including when during the fiscal year the AFA would become effective. Elsewhere in this document, CSKT has encouraged the Service to include with the draft EA copies of the last two AFA's, both of which utilized similar Attachments to identify funding to be transferred to CSKT. With this information, the public would be able to see the general type of budgetary detail that would accompany the draft AFA. Both BGA and PEER already have copies of the past two AFA's, including the Attachment "B" funding and budgetary information.

Retrocession or Reassumption. BGA asserted that NEPA review should address the ability of the Service to obtain the return of funding under any retrocession or reassumption of duties under the AFA (*see* BGA comment at p. 10). The Interior Department has already addressed this issue in federal regulations. 25 C.F.R. Part 1000, Subparts "M" ("Reassumption") and "N" ("Retrocession"). The draft AFA addresses these matters in Section 18. CSKT believes it could be helpful for the Service to address this fact in the EA.

Carry-over. BGA asserts that the funding "carry-over" provisions in the draft AFA "holds great potential for CSKT to assume inherent federal responsibilities" [*sic*] (BGA comment at p. 10). BGA does not fully explain exactly how such a result could occur, nor does it address the fact that carry-over of funding is allowed by law under the Indian Self-Determination and Education Assistance Act. 25 U.S.C. §§ 458cc(*l*) and 450j-1(a)(4)(B); *see also* 25 C.F.R. § 1000.402. Given the existing statutory authority, BGA has not met its burden in supporting its claim that the existence of carry-over constitutes a problem, much less implicates inherently federal functions within the meaning of the Tribal Self-Governance Act.

E. Compatibility. One commenter claimed past "undisputed violations" of the NWRSAA by CSKT, consisting of alleged incompatible grazing activities at the Ninepipe Refuge and overhead power line installation at the Pablo Refuge (*see* comment of David S. Wiseman at p. 3). The commenter is incorrect on both counts: the allegations were disputed, and they were not violations of the NWSRAA. CSKT addressed this issue in detail in a May 3, 2004 letter to then-Regional Director Ralph Morgenweck.

Among other things, that letter clarified that the overhead power lines at the Pablo dam had been installed as part of the Bureau of Indian Affairs' irrigation project for which the dam had been built, and for which the United States holds the primary easement over the Pablo reservoir property (see p. 6 of the May 3rd letter). In any case, CSKT had agreed to have the overhead power lines buried, and it did so after the letter was sent.

A copy of the May 3, 2004 letter is attached to this document as Appendix "M".

F. Social/Cultural Impacts; Impacts on Federal Employees.

Social & Cultural Impacts

One commenter claimed, without any detail or supportive explanation, that the draft AFA would "further divide the community socially and culturally" (*see* comment of David S. Wiseman at p. 4). His real concern is somewhat illuminated by a later comment on the same page where he asserted that implementation of the draft AFA would "degrade non-tribal members [*sic*] sense of community by giving the CSKT government another influence over their lives after such areas as water rights, electric utilities, and hunting and fishing privileges." He does not explain how additional tribal government "influence" would result in a degradation of non-tribal members' "sense of community".

CSKT does not believe the claim has any merit. With respect to the fears of community members, the last AFA was the subject of little, if any, visible local public opposition during its term prior to the September 2010 court decision rescinding it. Nor did the negotiations for the draft AFA, which were the subject of local media coverage, result in any significant or visible public opposition. To the extent that some members of the Reservation community have generally opposed tribal "influence", the Montana Human Rights Network compiled an informative report in 2000 that describes some of that opposition. *See* Drumming Up Resentment: The Anti-Indian Movement in Montana, attached as Appendix "G" to this document. Although it is now dated, the report includes a section specific to the National Bison Range and local opponents of CSKT's participation at the Range. Appendix "G" at pp. 35-37. The description of the activities and vocal opposition to a CSKT presence at the NBRC in the 1990's contrasts greatly with the near absence of such hostility/opposition over recent years, including the entire term of the last AFA and up until the present.

Of course, there remain some individuals and organizations that still harbor general resentment towards CSKT, or Indian tribes generally. For example, one commenter, who had previously been a board member for what was deemed an anti-Indian group, maintained that "any" AFA – regardless of its form or content - would "split" the NBRC away from the rest of the Refuge System (*see* comment of Palmer at p. 1).[21] Another commenter maintained, without

[21] The Montana Human Rights Network documented Skip Palmer as a 1990's board member of a group called "All Citizens Equal" (ACE), which the Network described as an anti-Indian organization. See Appendix "G" at pp. 34, 38, and 43. Mr. Palmer worked as an FWS employee at the NBRC during this period. During the first AFA, Mr. Palmer had been assigned to work with CSKT under an IPA agreement. Mr. Palmer did not work at the NBRC by the time the second AFA was implemented, having chosen to be transferred to a different Refuge.

In his scoping comment, Mr. Palmer alleges that he "was told that I would not be returning to the NBR under any circumstances, because the Tribe would not negotiate with the FWS in good faith if I were there." (Palmer comment at p. 2). Mr. Palmer does not say who made the alleged statement.

Far from expressing any refusal to negotiate with FWS while Mr. Palmer was employed at the NBRC, CSKT and FWS negotiated and signed the FY 2009-11 AFA during Mr. Palmer's tenure as an NBRC employee. CSKT then negotiated with federal officials over the terms of IPA agreements for FWS employees affected by the AFA, including Mr. Palmer. After IPA agreement terms had been negotiated, CSKT understood that Mr. Palmer at

explanation, that "[n]ot only is the tribe not capable of managing the land and wildlife, they have also shown themselves incapable of dealing with the personnel, finances, and public." *See* comment of Gravning. Such comments were countered by others who spoke out in favor of the draft AFA. *See* comments of National Wildlife Federation, Whisper Means, and Kathleen Huntley. The National Wildlife Federation, for example, stated its belief that an FWS-CSKT partnership under the draft AFA "will produce numerous long-term benefits to the Tribes, the Service and all Americans" (*see* NWF comment at p. 2). The Federation described CSKT's qualifications as follows:

> The CSKT is unparalleled in their methods, efforts, conservation ethic and follow through to achieve sustainable conservation outcomes. Known throughout the country for their scientific and cultural knowledge, their partnerships with other governments and long history of conserving, managing and restoring wildlife habitat, the CSKT Division of Fish, Wildlife, Conservation and Recreation are more than qualified to partner with the Service to manage NBR's resources.
>
> NWF comment at p. 1.

CSKT understands that FWS will address these issues in the EA.

Impacts on Federal Employees

A number of commenters addressed alleged impacts on federal employees. The comments largely disregard: 1) the federal purpose of, and objectives behind, Tribal Self-Governance; 2) the fundamental role that tribal contracting plays within the Self-Governance framework; and 3) CSKT and FWS efforts to provide employment options to federal workers, despite there being no requirement to do so. CSKT believes that, from a NEPA perspective, these comments greatly overstate any potential impacts on federal workers.

Some of the commenters asserted impacts on FWS staff based upon the allegations raised under the first AFA, which included claims of CSKT staff harassing FWS staff at the Bison Range. Putting aside the fact that CSKT employees had been quite surprised that they were being accused of harassment, rather than the other way around, CSKT addressed the issue of those allegations under the first AFA in Section I of this document.

CSKT believes that an objective evaluation of impacts on federal employees will not demonstrate any significant impacts for the purposes of NEPA, and CSKT believes the EA should address this point. Ever since the first AFA was negotiated, CSKT and FWS have jointly endeavored to provide as many employment options as possible to impacted federal staff. These options, which would continue to be offered in Section 13.F.3 of the draft AFA, include several

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that time had exercised his option under the AFA to be relocated to another Refuge. The Service may want to address Mr. Palmer's allegation for the record.

choices allowing the employee to maintain either federal employment or federal benefits. The commenters' concerns are further undermined by the fact that, under the second AFA, CSKT recruited a former FWS NBRC maintenance worker, who had relocated to another Refuge, to return to the NBRC as a federal worker and perform AFA work under an IPA assignment. The FWS employee accepted and is still employed at the NBRC.

BGA's comment included an erroneous assertion regarding federal staffing levels at the NBRC. It asserts that "[p]rior to installing the first AFA at the Complex (*circa* 2000), the refuge staff was much larger (up to 21 federal employees and a number of active volunteers)." (*See* BGA comment at p. 4). BGA incorrectly describes the first AFA as having been implemented around the year 2000 when it actually went into effect in March 2005. This is significant because, according to what is apparently an FWS document, the federal staffing levels BGA describes actually fluctuated up and down well before the first AFA. The document shows that the staffing level at the NBRC was increased from 14 FTE to 27 FTE between 2001 and 2002, and was then reduced from 27 FTE to 15 FTE in between 2002 and 2003 – well before the first AFA was signed and implemented (*see* Appendix "N" for copy of apparent FWS document showing actual or planned NBRC staffing levels between 2001 and 2008). BGA's efforts to tie reduced staffing levels to AFA implementation do not find support in the record.

V. Conclusion

CSKT appreciates the Service's decision to invite public comments as part of the scoping process. While several commenters identified a number of issues or allegations which they believe support preparation of an EIS rather than an EA, the comments do not provide any information supporting such contention. CSKT believes that the Service's decision to prepare an EA is appropriate and, as discussed in this document and its recommendations, CSKT believes that the Service can appropriately respond to the issues raised in the comments.

Immediately following this memo are: 1) a summary of the core CSKT recommendations discussed in this document; and 2) the Appendices referenced in this document.

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Republican Staff Director

May 15, 2007

Honorable Dirk Kempthorne
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Secretary,

As Chairman and Ranking Member of the Committee with jurisdiction over Indian legislation and the National Wildlife Refuge System, we wish to convey our support for the proposal by the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation to manage and operate the National Bison Range Complex (NBRC) via an Annual Funding Agreement (AFA) with the U.S. Fish & Wildlife Service (FWS) under the Tribal Self-Governance Act. We also are concerned that the lack of support of this agreement by some individuals within the FWS may have resulted in a distorted record concerning NBR activities under the AFA.

The Indian Self-Determination Act and the Tribal Self-Governance Act allow qualified tribes to contract to perform the activities of the Federal government for local program management. As part of the Tribal Self-Governance Act (Act), Congress specifically authorized tribes to manage certain types of non-Bureau of Indian Affairs programs within the Department of the Interior (Department). The Committee Report accompanying the Act (H. Rpt. 103-653) makes it clear that the Act applies to FWS programs and, in particular, to circumstances such as those found at the NBRC. We specifically stated in the Committee Report: *"The Committee intends this provision in conjunction with the rest of the Act, to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."* As you know, the entire National Bison Range, along with its ancillary Ninepipe and Pablo Refuges, are located within the exterior boundaries of the Flathead Indian Reservation.

CSKT's connections to the NBRC, and its bison, make for unique circumstances. Also in this instance, CSKT owns the land on which two of the NBRC's ancillary refuges are located. In fact, the Ninepipe and Pablo National Wildlife Refuges are operated by FWS pursuant to easements obtained from CSKT. Another compelling fact is that the bison at the NRBC consist of descendants of a bison herd that was owned by CSKT Tribal members over a century ago. That herd was started and managed by Tribal members at a time when the bison were on the verge of extinction due to non-Indian activities.

Under the Act, the Department is required to publish annually a list of non-BIA Interior programs that are eligible for compacting under Self-Governance. Currently, of the 546 refuges that exist in this country, the FWS list identifies only 18 in the lower 48 states and 16 in Alaska as eligible. Three of the 18 are wholly located within the Flathead Indian Reservation and are part of the NRBC. Since enactment of the Act, 13 years ago, there have been only two AFAs with the FWS: the first involving the Council of Athabascan Tribal Governments exclusively for project work at the Yukon Flats National Wildlife Refuge in Alaska; and the second being the CSKT-FWS AFA for the NBRC. In short, a very small percent of the Refuge System is listed as even being eligible for contracting, and of those 34 refuges, only two have tribal contracts associated with them.

The National Wildlife Refuge Administration Act (the Administration Act) does not prohibit the delegation of management activities to non-federal entities. To the contrary, the Administration Act makes multiple references to working with State governments on refuge programs: mandates that the Interior Secretary ensure coordination, interaction, and cooperation with adjacent landowners and State fish and wildlife agencies; requires the Interior Secretary to cooperate and collaborate with Federal agencies and State fish and wildlife agencies when managing refuges; and specifically authorizes FWS to "enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." (16 U.S.C. § 668dd (b)(4)) (*emphasis added*). Working with Tribal governments in the same manner under the authorization of the Tribal Self-Governance Act should not be viewed any differently than partnering with State governments especially in this instance where the tribe owns the land on which the ancillary facilities of the NRBC National Bison Range Complex are located.

Some critics of the AFA have said that the principle of the 1976 amendments to the Administration Act was that there should never be any attempt to establish a second National Wildlife Refuge System by delegating FWS authorities to non-federal entities. We do not believe allowing CSKT to help manage the NBRC is creating a second refuge system. To the contrary, we see it as a logical partnership under both the Administration Act and the Tribal Self-Governance Act. Although the Refuge System's organic Act was significantly amended by the 1997 National Wildlife Refuge System Improvement Act, this law did not prohibit Tribal Self-Governance agreements.

This type of partnership is even encouraged by Executive Order 12996, entitled "Management and General Public Use of the National Wildlife Refuge System." Section 2(e) says:

"Partnerships. America's sportsman and women were the first partners who insisted on protecting valuable wildlife habitat within wildlife refuges. Conservation partnerships with other Federal agencies, State agencies, Tribes, organizations, industry, and the general public can make significant contributions to the growth and management of the Refuge System."

As we are both strong supporters of the Refuge System, we would be concerned if the NBRC AFA could serve as a precursor to privatization of refuges. Yet we are convinced that this is not the

case. Agreements with other governments — be they State or Tribal — are not comparable to privatization schemes where for-profit entities take over federal programs. A Tribal government is not a corporate entity any more than a federal, state or local government is a corporate entity. Under the AFA and the Tribal Self-Governance Act, the NBRC remains a federally-owned Refuge and all applicable federal statutes and regulations that apply to the Refuge System continue to apply under the AFA. In the absence of compliance with this requirement, we would not support the NBRC AFA.

The CKST have demonstrated a high level of performance in contracting a wide variety of other federal programs. Under their AFA, CSKT has stated repeatedly its commitment to operate the NBRC pursuant to the laws and regulations applicable to all refuges. In fact, the Act contains safeguards that protect against any jeopardy to natural resources or other federal assets. We understand that CSKT is the first tribe to designate an official wilderness: the Mission Mountain Tribal Wilderness Area. Their efforts have led to that area being one the few places in Montana where there are grizzly bears. The CSKT also manage a large herd of Bighorn sheep, and they worked with the FWS to reintroduce the Trumpeter Swan to the Flathead Valley. In short, CSKT has excellent credentials to manage wildlife-related programs at the NBRC.

We also understand that, beyond the scope of work required of it through the AFA, the CSKT has devoted extensive tribal resources to the NBRC. At a time when the overall National Wildlife Refuge System budget has suffered, CSKT employees and volunteers literally worked thousands of hours at the NBRC. If a new AFA, with broader tribal management, might result in a continuation of that degree of tribal supplementation at a federal refuge, we would think the Department would do everything in its power to make it happen.

Finally, we are concerned to hear of the recent development wherein the FWS is proposing to radically downsize the number of staff and bison at the NBRC. The proposed reduction from 20 full time staff down to 6 staff is no way for the FWS to treat the refuge it recently referred to as the Refuge System's "Crown Jewel" nor does it make sense to reduce the number of bison from over 300 animals down to 100. Such cuts are not merely the NBRC's proportionate share of agency wide reductions, rather, they have every appearance of being proposals intended to make the CSKT disinterested in future management of the NBRC. We hope you will immediately reverse these proposed reductions.

We hope you agree that promoting a fair implementation of a Tribal Self-Governance AFA at the National Bison Range furthers important congressional and federal objectives as identified in both the Administration Act and the Tribal Self-Governance Act.

Sincerely,

NICK J. RAHALL, II
Chairman

DON YOUNG
Ranking Member

NATIONAL BISON RANGE

Limitations on Shifting Funding and Staffing:

Current reprogramming direction from the House and Senate appropriations subcommittees defines a reprogramming as "any significant departure from the program described in the agency's budget justification. Reprogramming procedures issued in the House, Senate, and Conference reports accompanying the 2006 appropriations act, and still in effect, provide the following guidelines:

- A reprogramming should only be made when an unforeseen situation arises, and then only if postponement of the project or activity until the next appropriation year would result in actual loss or damage.
- In cases where unforeseen events or conditions are deemed to require such changes, proposals shall be submitted in to the Committee in writing prior to implementation if it exceeds $500,000 annually or results in an increase or decrease of more than ten percent annually in affected programs.

The funding and staffing shown below were presented in the FWS Budget Justifications.

NATIONAL BISON RANGE, MONTANA FUNDING HISTORY ($000)
Based on Actual Allocations Reported in FWS Field Station List

	2001 Actual	2002 Actual	2003 Actual	2004 Actual	2005 Actual	2006 Actual	2007 Planned	2008 Planned
Funding	1,288	1,393	1,628	1,698	1,466	1,482	1,585	1,448
FTE	14	27	15	14	13	12	16	12



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January 31, 2007

Jeff Ruch
PEER
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Washington D.C. 20036

Dear Mr. Ruch:

As an organization that supports tribal sovereignty and has worked with PEER in the past, we're very concerned with your group's stance on and rhetoric surrounding the National Bison Range. While we share PEER's opposition to the privatization plans of the Bush Administration, we feel PEER's objection to tribal management is misguided. Additionally, its rhetoric is providing anti-Indian activists a new way to frame the racism running right below the surface of the controversy.

We believe "privatization" is not the correct framework to use in evaluating joint management of the Bison Range with the Confederated Salish and Kootenai Tribes. The Tribes are a sovereign nation with a connection to the area that pre-dates any federal management. This structure is why the Tribal Self-Government and Indian Self-Determination Acts were passed in the 1990s. Joint management with the Tribes is very different than if the government was trying to turn the Bison Range over to Halliburton or another private company. This is not a case of privatization, but a partnering between nations.

While the issue of privatization may be used in the media, we cannot ignore the racism that is always near the surface of the Bison Range controversy. By taking such a strong stance against joint management, PEER injected itself into a racially-charged controversy. Many of the local opponents to joint management are key players in Montana's anti-Indian movement. This movement is a systematic effort to deny legally-established rights to a group of people who are identified on the basis of their shared culture, history, religion and tradition. The movement meets the classic definition of racist, as shown in the Human Rights Network's 2000 report *Drumming Up Resentment.* I have included a copy of the report with this letter.

Anti-Indian activists always try to downplay the issue of race. What PEER and its allies have done is added a new argument to their arsenal. Enclosed materials by Lisa Morris

printed on recycled paper

and Rita Senkler, who have been active with anti-Indian groups in the Flathead Valley, help to show how anti-Indian activists have adopted some of PEER's talking points. PEER spokespeople have also accelerated their attacks on the Tribes by reinforcing traditional racist stereotypes—Indians are lazy and not getting work done, they are hostile to white people, etc. Many of the accusations appear to come from grievances filed by federal workers at the Bison Range. We question the merit of some of these reports, since Skip Palmer is among the employees. His father, Del Palmer, has been a consistent force within the anti-Indian movement for decades, as he has opposed the Tribes on issue after issue. Del Palmer has also circulated anti-Semitic publications around the Flathead Reservation and claimed that Native Americans holding elected office is a threat to society.

The reason we are writing to PEER is that we have long considered it an ally. Back in 2000, Forest Supervisor Gloria Floria resigned her post in Nevada when anti-government extremists began terrorizing her employees. She left her position in order to shine the light of public scrutiny on the "Jarbidge Rebellion." We brought her to Montana for a speaking tour, as the situation was similar to what was going on in the Flathead Valley. PEER co-sponsored the tour with us.

As I mentioned before, we also share PEER's concerns about attempts to privatize federal agencies. Because of our past relationship, we wanted to raise our concerns and provide you with the enclosed information.

Sincerely,

Travis G. McAdam

Travis McAdam
Interim Director
travismc@mhrn.org

Cc: Rob McDonald
Confederated Salish and Kootenai Tribes

Sen. Carol Juneau
Native American Caucus

Reno Charette
Office of Indian Affairs

EVALUATION

OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

THE NATIONAL BISON RANGE

Report No.: NM-EV-FWS-0001-2010

March 2011

OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

MAR 3 0 2011

Memorandum

To: Rowan W. Gould
Acting Director, U.S. Fish and Wildlife Service

From: Mary L. Kendall
Acting Inspector General

Subject: Evaluation – The National Bison Range
Report No. NM-EV-FWS-0001-2010

This memorandum transmits the findings of our evaluation of the National Bison Range (NBR) operations in response to a complaint from Public Employees for Environmental Responsibility (PEER). PEER alleged that specific operational and management deficiencies involving law enforcement, bison containment, pesticide application, work planning, and management activities existed at NBR.

At the time of our evaluation, NBR operated as a partnership between the U. S. Fish and Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes (CSKT). CSKT participated in NBR operations under an annual funding agreement signed with FWS. CSKT is not presently involved in NBR operations due to the rescission of the agreement by a U.S. District Court judge.

We found deficiencies in work planning activities required by the annual funding agreement, as PEER alleged. We did not find any current evidence to support allegations of operational deficiencies in the other programs included in the PEER allegations. In a draft report, we offered two recommendations to improve NBR operations.

In FWS's February 10, 2011 response to the draft report, the acting director concurred with our recommendations and provided a corrective action plan (See Attachment 3). We consider one recommendation to be resolved and implemented, and the other resolved but not yet implemented.

If you have any questions about this report, please do not hesitate to contact me at 202-208-5745.

Attachments (3)

Background

The National Bison Range (NBR) is part of the National Wildlife Refuge System and was established in 1908 for the preservation of the American bison at a time when these animals were threatened by extinction. NBR is located within the Flathead Indian Reservation, home to the Confederated Salish and Kootenai Tribes (CSKT). These tribes claim an ancestral connection to the origins of the bison herd.

The U. S. Fish and Wildlife Service (FWS) and CSKT entered into annual funding agreements for joint NBR operation in accordance with provisions of the Indian Self-Determination Act Amendments of 1994 (Tribal Self-Governance Act). The first agreement became effective March 15, 2005. In September 2006, the Office of Inspector General (OIG) received allegations that senior U. S. Department of the Interior officials improperly influenced the creation of that agreement. We conducted an investigation and concluded that nothing improper or illegal occurred.

In June 2008, FWS and CSKT signed a second annual funding agreement for NBR operations. That agreement, which was in effect during our current evaluation, was set to expire on September 30, 2011. The agreement specified that CSKT would perform substantive management activities involving biological, fire, maintenance, and visitor services activities at NBR. FWS retained the refuge manager and deputy refuge manager positions, as well as responsibility for the law enforcement program.

On February 24, 2010, Public Employees for Environmental Responsibility (PEER) contacted the OIG with specific allegations of operational and management deficiencies in NBR activities involving law enforcement, bison containment, pesticide application, work planning, and management. PEER asserted that the responsibilities assigned to CSKT by the annual funding agreement had precipitated the deficiencies.

On September 28, 2010, a U.S. District Court judge in Washington, DC, rescinded the annual funding agreement in response to a lawsuit filed by PEER and other plaintiffs. The judge ruled that the annual funding agreement was an arbitrary and capricious agency action in that FWS failed to formally invoke a categorical exclusion for an environmental analysis as required under the National Environmental Policy Act. CSKT involvement in NBR operations ceased the following day.

Law Enforcement Coverage

PEER alleged that an inadequate law enforcement presence at NBR resulted in the inability to respond to acts of arson, poaching, and illegal hunting. PEER based its complaint on a memorandum, *Law Enforcement Status Report for 2009*, which the NBR deputy refuge manager sent to the NBR refuge manager on September 8, 2009. In that memorandum, the deputy manager, who is responsible for law enforcement as a collateral duty, wrote that inadequate law enforcement coverage precluded him from properly investigating criminal incidents. He recommended that NBR hire either two dual-function officers or one full-time officer to handle law enforcement duties.

While insufficient law enforcement coverage may have existed at the time the memorandum was written, we found that law enforcement coverage at NBR was adequate. We interviewed FWS and CSKT managers and employees assigned to NBR about the adequacy of law enforcement coverage. None of the interviewees, including the deputy refuge manager who wrote the September 2009 memorandum, expressed concerns that law enforcement coverage was insufficient.

In July 2010, FWS hired a full-time law enforcement officer at NBR in response to a request from NBR management. We noted, however, that the officer's occasional absence from the refuge on temporary assignments may result in brief periods where only the deputy refuge manager is available to perform law enforcement duties.

Bison Containment

PEER alleged that repeated fence openings at NBR allowed the bison to wander. This allegation was based on the previously cited memorandum, *Law Enforcement Status Report for 2009*, which reported an August 22, 2009 incident when 150 bison had to be rounded up and returned to their assigned grazing unit after they wandered into another pasture through an unlatched gate. The memorandum referenced two other similar incidents that occurred since October 2007.

We found that during the incidents cited by PEER, bison did not wander outside NBR boundaries. Rather, they moved between fenced pastures. The bison were neither in danger nor did they suffer food deprivation. They merely found their way into the wrong pastures. Employees recounted only one occasion in the 1990s when bison crossed outside of NBR boundary lines into an adjoining rancher's pasture. We observed that both exterior boundary and interior pasture fencing were well maintained and appeared adequate to retain the herd. Damaged fences were promptly repaired.

Interviews with NBR staff indicated that such incidents were commonplace and rectified in the normal course of operations. CSKT and FWS managers and employees explained that incidents of bison wandering into the wrong pasture occurred long before CSKT assumed specific NBR functions. One employee, who has 25 years of experience at NBR, said that such escapes occurred daily before electrified fencing was installed in the 1990s. Since then, elk have continued to jump into the pastures and ground out the electricity, thus allowing bison to get through fences. Gates between pastures also have been left unlatched, facilitating the animals' passage between pastures. Another employee, who has 16 years of NBR experience, said that bison getting into the wrong pasture "always happens. You just go and get them, it's no big deal."

Pesticide Application

PEER alleged that CSKT workers routinely violated pesticide label instructions when applying the chemicals. The allegation included an FWS employee's May 22, 2009 written account of employees violating label instructions for high wind speeds during a specific spraying application.

We randomly reviewed NBR 2010 pesticide application records to evaluate whether or not chemicals had been applied according to application instructions. We did not find any instance where an NBR employee violated pesticide application instructions. We identified only one instance of noncompliance where the specified rate of pesticide application was exceeded by a member of the FWS Invasive Species Strike Team, which travels among refuge system sites to conduct necessary spraying. An FWS representative acknowledged that the incident was a mistake made by a team member, not an NBR employee.

We also interviewed the FWS employee who wrote the critical May 22, 2009 account cited by PEER. The employee said that his comments were taken out of context and that the situation was a "non-issue." All other FWS and CSKT managers and employees we interviewed expressed no concerns about pesticide application.

In September 2010, the U.S. Environmental Protection Agency (EPA) performed a routine inspection at NBR that compared pesticide use to pesticide label instructions. The EPA inspection did not result in any adverse findings.

Work Plans

PEER alleged that 2009 and 2010 NBR operational work plans required by the annual funding agreement were not completed. The allegation also included an August 11, 2009 email from the CSKT tribal deputy refuge manager to other NBR employees that indicated the 2009 plan of work was significantly past due.

The annual funding agreement required that an operational work plan be completed by the start of each fiscal year (FY). This plan was expected to contain routine, ongoing, and project-specific work descriptions. We found that the FY2009 plan was never completed and that the FY2010 plan was not completed in a timely manner. The FY2010 work plan was not completed until April 2010. The FWS refuge manager acknowledged that the plan should have been completed by October 2009.

FWS and CSKT managers and staff told us that they were unable to create the 2009 plan due to the basic demands of NBR operations while CSKT staff was being hired. The CSKT tribal deputy refuge manager started in December 2008 and most CSKT employees were hired in the second quarter of the fiscal year. A CSKT employee who started at NBR in December 2008 said that he and many other new CSKT employees were "scrambling all year just to get things done." NBR managers said they followed the 2008 work plan for 2009 operations and that operations had not changed significantly between those years.

Management

PEER alleged that NBR management was "adrift" and that the bison range was experiencing a "leaderless malaise." The allegation included a May 27, 2009 internal communication from the NBR deputy manager to the manager, expressing a lack of direction, specifically in the biological program.

We did not find any significant information to support this allegation. Nearly all FWS and CSKT employees that we interviewed said they had no major concerns with management. Interviewees told us that the FWS manager and the CSKT tribal deputy manager worked well together and collaborated on operational decisions. They stated that managers sought out experienced NBR staff regarding their opinions on various issues and did not differentiate according to whether they were FWS or CSKT employees. Interviewees also said that free and open communication existed between FWS and CSKT employees.

The NBR lead biologist position, which is a CSKT position under the annual funding agreement, was vacant at the time of our evaluation. CSKT officials said the position had been advertised but that hiring requirements hindered finding a qualified person. NBR managers and staff said that the position's duties were capably handled in the interim by a highly regarded CSKT staff member who was also a biologist. Furthermore, the FWS employee who wrote the critical document cited by PEER in its complaint reported that operation of the biology program had improved and that the interim lead employee provided excellent direction.

One employee expressed concern that the NBR leadership team did not meet weekly as required by the annual funding agreement. NBR managers stated that this requirement was unreasonable and that the intent of these meetings was being fulfilled through regular, informal communication among leadership team members and staff. We found no evidence that NBR suffered from a lack of formal weekly meetings.

Recommendations

We recommend that NBR management:

1. Monitor and control pesticide applications performed by outside parties.

   Department Response: The Refuge Manager will ensure that all pesticide applications at the National Bison Range Complex, including those performed by outside parties, are in compliance with 242 FW 7, Pesticide User's Safety, and 569 FW 1, Integrated Pest Management

   OIG Reply: We consider this recommendation to be resolved and implemented.

2. Reconsider the hiring requirements for the lead biologist and fill the position.

   Department Response: The hiring requirements for the lead biologist position at NBR has [sic] been revised. The opening will be advertised as a career ladder position and filled below the full performance level, GS-12. The positions will reflect the Office of Personnel Management's qualification standards for federal employees, not the more stringent qualification standards used by the CSKT (Confederated Salish and Kootenai Tribes). It is the intent of the Service to fill this position in the current fiscal year pending final appropriation legislation from Congress, and decisions regarding what, if any, type of involvement the CSKT will have at the NBR. While the position is currently vacant, we believe we have met the

intent and purpose of Recommendation #2 and consider no further action is required.

OIG Reply: We consider this recommendation to be resolved but not yet implemented until the position is filled.

Scope and Methodology

Scope

We performed our evaluation in accordance with the President's Council on Integrity and Efficiency "Quality Standards for Inspections." Our evaluation focused on NBR operations in response to allegations received from PEER. Our objective was to determine if specific mismanagement and operational deficiencies existed as PEER alleged.

Methodology

We performed our evaluation from June to October, 2010. Documents reviewed included the PEER allegations, the annual funding agreement between FWS and CSKT, and NBR pesticide application records. Interviews included FWS and CSKT managers and staff, CSKT tribal personnel, former NBR employees, and EPA inspection personnel. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

FEB 10 2011

In Reply Refer To
FWS/ABHC/PDM/047309

To: Assistant Inspector General for Audits, Inspections, and Evaluations

From: Acting Director

Subject: USFWS (Service) response to Draft Evaluation - The National Bison Range
Report No. NM-EV-FWS-0001-2010

This memorandum is in response to your January 6, 2011, memorandum that transmitted the findings of your draft evaluation of the National Bison Range (NBR) operations. Your evaluation was completed in response to a complaint from Public Employees for Environmental Responsibility who alleged that specific operational and management deficiencies involving law enforcement, bison containment, pesticide application, work planning, and management activities existed at NBR.

The Service has reviewed the draft report and has no recommended changes. The report offered two recommendations for improved operations at NBR. Management actions are already underway in response to this evaluation and recommendations as indicated in the attached corrective action plan.

Attachment

TAKE PRIDE® IN AMERICA

CORRECTIVE ACTION PLAN
Draft Evaluation - The National Bison Range
Report No. NM-EV-FWS-0001-2010
January 6, 2011

The draft evaluation contains two recommendations and corrective actions are underway as indicated below:

Recommendation #1. Monitor and control pesticide applications performed by outside parties.

The Refuge Manager will insure that all pesticide applications at the National Bison Range Complex, including those performed by outside parties, are in compliance with 242 FW 7, Pesticide User's Safety, and 569 FW 1, Integrated Pest Management. These manual chapters contain current U. S. Fish and Wildlife Service policy that requires pesticide application consistent with the rates specified on the label and applicable state and local requirements. No further action required.

Responsible Official: Refuge Manager, National Bison Range Complex

Recommendation #2. Reconsider the hiring requirements for the lead biologist and fill the position.

The hiring requirements for the lead biologist position at NBR has been revised. The opening will be advertised as a career ladder position and filled below the full performance level, GS-12. The positions will reflect the Office of Personnel Management's qualification standards for federal employees, not the more stringent qualification standards used by the CSKT (Confederated Salish and Kootenai Tribes). It is the intent of the Service to fill this position in the current fiscal year pending final appropriation legislation from Congress, and decisions regarding what, if any, type of involvement the CSKT will have at the NBR. While the position is currently vacant, we believe we have met the intent and purpose of Recommendation #2 and consider no further action is required.

Responsible Official: Regional Director

Report Fraud, Waste, and Mismanagement

Fraud, waste, and mismanagement in Government concern everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and mismanagement related to Departmental or Insular Area programs and operations. You can report allegations to us in several ways.

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By Phone: 24-Hour Toll Free: 800-424-5081
Washington Metro Area: 703-487-5435

By Fax: 703-487-5402

By Mail: U.S. Department of the Interior
Office of Inspector General
Mail Stop 4428 MIB
1849 C Street, NW.
Washington, DC 20240

Partial List of CSKT Natural Resources Management Highlights

- The CSKT were the first tribes in the United States to establish a 90,000 acre Tribally-designated wilderness, known as the Mission Mountain Tribal Wilderness Area. We also designated a buffer zone on the west boundary of the wilderness. Our vigilance in protecting this vast expanse of pristine land has created a land base with large and diverse populations of wild animals, including one of the few places in Montana still inhabited by bull trout and grizzly bears.
- The CSKT Natural Resources Department is one of the largest of any Tribe in the country and consists of comprehensive programs for the conservation of habitat, fish and wildlife populations, air and water quality and environmental protection.
- CSKT is a member of Ducks Unlimited, Foundation for North American Wild Sheep, The Wildlife Society, and the Wildlife Management Institute.
- CSKT is, to our knowledge, the only tribe in the United States to become a member of the Association of Fish and Wildlife Agencies. As a member, we have been active on numerous fronts within that organization.
- CSKT Wildlife Program Manager Dale Becker is past President of the Montana Chapter of The Wildlife Society (TWS), was named its Wildlife Biologist of the Year, is founder of TWS Native Peoples' Wildlife Management Working Group, and also serves on the Board of Directors for the Trumpeter Swan Society and other conservation organizations.
- CSKT Wildlife Program Manager Dale Becker and Wildlife Biologist Janene Lichtenberg are Certified Wildlife Biologists through The Wildlife Society. CSKT staff biologists Art Soukkala, Stacy Courville, Brett Gullett, George Barce and Stephanie Gillin are expected to soon receive professional Certified Wildlife Biologist status. Art Soukkala was named Wildlife Biologist of the Year in 2006 by the Montana Chapter of The Wildlife Society. Mary Price, CSKT's Tribal Wetland and Riparian Ecologist is certified by the Society of Wetland Scientists.
- We have taken the lead in working with the USFWS on reintroduction of trumpeter swans to Mission Valley potholes and reservoirs. Two of the reservoirs, Pablo and Ninepipe, are components of the NBRC that are located on Tribally-owned lands for which we granted easements to the Service for refuge purposes.
- We have also taken the lead in working with the USFWS on reintroduction of peregrine falcons, northern leopard frogs, and Columbian sharp-tailed grouse to the Flathead Indian Reservation.
- Since 1998, CSKT has contracted with Ducks Unlimited for Ducks Unlimited to provide technical assistance to CSKT in wetland mitigation design and construction oversight on the Flathead Reservation.
- We have applied for, and received, two grants from the Foundation for North American Wild Sheep for relocation and establishment of two new bighorn sheep populations on the Reservation.
- In 2000, Dale Becker worked with the staff of the Wildlife Management Institute to develop and present a session on Tribal fish and wildlife management at the North American Wildlife and Natural Resources Conference to familiarize state and federal wildlife management activities. A similar symposium was developed for The Wildlife Society's first national conference in 1994.

Partial List of CSKT Natural Resources Management Highlights, *continued*

- We manage large herds of wild elk and bighorn sheep and we continue to purchase land to help protect, and ensure the viability of, these herds. CSKT has created the Ferry Basin Elk Conservation Area for long-term elk population management and winter range conservation. We have also created the Little Money Bighorn Sheep Conservation Area for its year-round bighorn sheep habitat and sheep population values.
- CSKT's efforts in achieving wildlife and wetland mitigation on the U.S. Highway 93 reconstruction project have been recognized as outstanding by several conservation groups and resulted in a Special Achievement Award from the Yellowstone to the Yukon Initiative in 2005.
- The CSKT developed a comprehensive loss assessment and mitigation plan for the impacts of Kerr Dam upon fish/wildlife, and succeeded in obtaining FERC approval of the plan. Under this plan, we have completed acquisition of around 8,000 acres of wetland/riparian habitat for migratory birds, federally-listed species, and other nongame and big game species. Ongoing discussions address impacts of other off-Reservation hydroelectric facilities on fish/wildlife resources and habitats.
- CSKT has established a 10,000 acre Grizzly Bear Conservation Area in the Mission Mountains Tribal Wilderness Area, with seasonal recreation closures for grizzly bear feeding habitat security. We have also enacted seasonal recreation closures in key Mission Front feeding habitats. We have recently completed substantial habitat acquisitions of key seasonal grizzly bear habitat along the Mission Front.

Status of Current and Former Federally-listed Endangered and Threatened Species With Respect to the National Bison Range Complex

This information was compiled by the CS&KT Wildlife Management Program in August , 2012 for submission to the U. S. Fish and Wildlife Service as part of the NEPA process for the Proposed AFA.

Former Listed Species

Bald Eagle - Bald eagles nest on the Flathead Indian Reservation on islands and shorelines of Flathead Lake, the lower Flathead River, on several smaller tributaries and at several irrigation reservoirs. On the NBRC, nesting bald eagles occur on Ninepipe and Pablo National Wildlife Refuges. The Tribal Wildlife Management Program has monitored reproduction of these and all known bald eagle territories since 1988. Wildlife Biologists with the U. S. Bureau of Indian Affairs annually monitored these territories from 1978 through 1987.

Peregrine Falcon - Prior to 1991, no active peregrine falcon territories had been known to exist since the 1970s. None had been documented on the NBRC. The Tribal Wildlife Management Program funded reintroduction of peregrine falcons during the 1990s, in cooperation with The Peregrine Fund and the U. S. Fish and Wildlife Service. One of the two release sites was located on a USFWS Waterfowl Production Area. During the last Tribal Wildlife Management Program in the 2008, nesting activity was documented at three sites on or near the Reservation, none of which were located on the NBRC.

Northern Gray Wolf – Northern gray wolf activity on the Flathead Indian Reservation has been documented and monitored constantly by

the Tribal Wildlife Management Program since the early 1990s. The Tribal Wildlife Management Program has not documented any verified observations of wolf activity on the NBRC to date. In addition, no verified observations of wolf activity have been reported by NBRC staff.

Currently-listed Species

Grizzly Bear – Grizzly bears on the Flathead Indian Reservation inhabit the Mission Mountains and occasionally spend time in the Mission Valley. They have also been verified in the mountains to the south of the National Bison Range. Grizzly bears have been observed and verified on Ninepipe National Wildlife Refuge and near some Waterfowl Production Areas. Grizzly bear observations have been reported near and on the National Bison Range, but these observations have not been verified.

Canada Lynx – Canada lynx have been documented in several areas in the mountains on the Flathead Indian Reservation. No verified observations of Canada lynx have been recorded on the NBRC, nor does the U. S. Fish and Wildlife Service-designated critical habitat occur on the NBRC.

Bull Trout – Bull Trout occur in Flathead Lake and several streams on the Flathead Indian Reservation, including the Jocko River, which passes through the southern edge of the National Bison Range. The Tribal Fisheries Management Program actively monitors bull trout and other fish species on the Jocko River and elsewhere on the Reservation, The Tribal Fisheries Management Program is currently involved in a large-

scale watershed restoration project throughout the Jocko River Drainage.

Water Howellia – Water howellia has been documented in Lake County, Montana. According to the Montana Natural Heritage Program, water howellia has been documented in the Swan Valley, east of Flathead Indian Reservation. No verified occurrences of this species have been documented on either the Flathead Indian Reservation or the NBRC.

Spaulding's Catchfly – Spaulding's catchfly has been documented in Lake County, Montana. This species has been documented at two locations on the Flathead Indian Reservation, on Wildhorse Island and in the Niarada area. The species has not been documented on the NBRC.

TESTIMONY
OF
LAURA DAVIS
ASSOCIATE DEPUTY SECRETARY
U.S. DEPARTMENT OF THE INTERIOR
BEFORE THE
HOUSE NATURAL RESOURCES COMMITTEE
ON
H.R. 4347 THE DEPARTMENT OF THE INTERIOR
TRIBAL SELF-GOVERNANCE ACT

JUNE 9, 2010

Good morning, Chairman Rahall, Ranking Member Hastings, and Members of the Committee. Thank you for the opportunity to appear before you today to discuss the Department of the Interior's Tribal Self Governance program and H.R. 4347, the Department of the Interior Tribal Self-Governance Act. President Obama recognizes that federally recognized Indian tribes are sovereign, self-governing political entities that enjoy a government-to-government relationship with the United States government, as expressly recognized in the U.S. Constitution. Secretary Salazar too is a strong supporter of the principle of tribal self-determination and he is committed to working to fully enable tribal self-governance. . . .

* * *

A true partnership and spirit of cooperation has developed from the history of controversy between the FWS and the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Nation over the National Bison Range Complex in Montana. Effective on October 1, 2008, a funding agreement for fiscal years 2009–2011 provides for an on-the-ground partnership in the management of programs by the CSKT on 4 units of the Refuge System, located on the Flathead Indian Reservation in Montana. In January 2009, under the direction and decision-making authority of the Refuge Manager, CSKT assumed management of the biological, maintenance, fire management and portions of the visitor services programs. CSKT staff have participated in a variety of FWS sponsored trainings and the bison round-up event in October 2009 was highly successful. In fiscal year 2009, FWS provided approximately $1.7 million to CSKT, including a $650,000 for a ARRA-funded bridge replacement project. Approximately $986,000 will be transferred to the CSKT for operations in fiscal year 2010.

INTERTRIBAL
—BUFFALO—
COUNCIL

InterTribal Buffalo Council
2497 West Chicago Street
Rapid City, SD 57702
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Fax: (605) 394-7742
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November 29, 2011

Governor Brian Schweitzer
Office of the Governor
Montana State Capitol Bldg.
P.O. Box 200801
Helena MT 59620-0801

Dear Governor Schweitzer:

The InterTribal Buffalo Council (ITBC) Board of Directors has reviewed and discussed your proposal to partner with the United States Department of Interior and the Confederated Salish and Kootenai Tribes to utilize the National Bison Range serving as a repository for Yellowstone buffalo released from quarantine. As you are aware, the ITBC has been involved in first, the Greater Yellowstone Inter-Agency Brucellosis Committee and now, the Inter-Agency Brucellosis Management Plan work group as the Native American voice for buffalo/bison protection, preservation and restoration issues. ITBC's primary concern is to prevent the needless killing of buffalo that forage outside the boundaries of the Yellowstone Park and seek options that will preserve and enhance the genetic integrity of the Yellowstone buffalo/bison.

In the spirit of protection, preservation and restoration of genetically pure buffalo, ITBC supports the concept of continuing a quarantine program that will eventually result in the distribution of disease-free Yellowstone bison to Indian Tribes. ITBC member Tribes have long-awaited the point when Yellowstone bison might be awarded and relocated to Indian lands throughout the west. Thus, ITBC supports the concept of utilizing the National Bison Range as a repository for disease-free Yellowstone bison with the objective of eventually awarding the disease free animals to Tribes.

While ITBC supports the overall concept, we must express the following caveats:

1. ITBC does not want the proposal to interfere or delay the current prospect of awarding disease-free Yellowstone bison to the Assiniboine and Sioux Tribes of the Fort Peck Reservation or the Gros Ventre and Assiniboine Tribe of the Fort Belknap Reservation.

Member Tribes

• Blackfeet • Cheyenne & Arapaho Tribes of OK • Cheyenne River Sioux • Chippewa Cree Tribe of Rocky Boy's Reservation •
• Confederated Salish & Kootenai • Confederated Tribes of the Umatilla • Crow Creek Sioux • Crow Tribe • Flandreau Santee Sioux •
• Fort Belknap Gros Ventre & Assiniboine • Fort Peck Tribes • Ho-Chunk Nation • Iowa Tribe of OK • Jicarilla Apache • Kalispel • Lower Brule Sioux •
• Mesa Grande Band of Mission Indians • Modoc Tribe of OK • Nambe' Pueblo • Nez Perce • Northern Arapaho •
• Northern Cheyenne • Oglala Sioux Tribe • Omaha Tribe of NE • Oneida Nation of WI • Picuris Pueblo • Pit River Tribe • Pojoaque Pueblo •
• Ponca Tribe of NE • Prairie Band of Potawatomi Nation • Prairie Island Dakota • Rosebud Sioux • Round Valley Tribes • Sac & Fox of the Mississippi in Iowa •
• Salt River Pima-Maricopa Indian Community • San Juan Pueblo • Sandia Pueblo • Santee Sioux of NE • Seneca Cayuga Tribe of OK •
• Shoshone-Bannock • Sisseton-Wahpeton Oyate • Southern Ute • Spirit Lake Sioux • Spokane • Standing Rock Sioux •
• Stevens Village IRA Council, AK • Stillaguamish Tribe of Indians • Taos Pueblo • Three Affiliated Tribes • Turtle Mountain Band of Chippewa •
• Ute • Winnebago of NE • Yakama Nation • Yankton Sioux

2. ITBC does not want the proposal to interfere with the treaty hunting rights to Yellowstone bison of the Yakima, Nez Perce, Shoshone Bannock and CSKT Tribes.

Further, ITBC actively supported the Confederated Salish and Kootenai Tribes in their long-standing negotiations with the Department of Interior to assume management responsibility of the National Bison Range. ITBC, along with the CSKT, have been disappointed by the Department of Interior's hesitation to allow the CSKT complete management authority of the National Bison Range. Therefore, we are hopeful this proposal does not affect the fragile co-management agreement currently in place between the Department of Interior and the CSKT.

Finally, we understand that the CSKT have expressed a desire to protect the current NBR herd due to its cultural and historical significance to the Tribe. Thus, we support the use of the NBR for Yellowstone bison if concerns of the CSKT are resolved.

As you and I have a long history in working together on difficult issues affecting Tribes, I am confident we can work together on your proposal to forward a meaningful, tribally accepted alternative to the current ongoing Yellowstone bison management discussion. Thank you for directly conferring with the ITBC in this critical matter. Please do not hesitate to contact me at (406) 450-2443 or Jim Stone, ITBC Executive Director, at (605) 394-9730, or our legal counsel, Majel Russell, at (406) 259-8611.

Respectfully,

Ervin Carlson
President

State/Unit Name	Acres (as of September 30, 2011)		1st Generation CCP Approved	1st Generation Amendments	2nd Generation	Completion Year 1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Colorado																							
Alamosa	12,026		9/29/2003		Underway							1											
Arapaho	25,521		9/16/2004										1										
Baca	85,502		~~		Underway																		
Browns Park	12,150		9/22/1999					1															
Colorado River WMA	339		~~																				
Monte Vista	14,834		9/29/2003		Underway							1											
Rocky Flats	3,963		4/19/2005													1							
Rocky Mountain Arsenal	15,988		9/30/2007													1							
Two Ponds	72		9/30/2007													1							
Coordination Areas																							
Hot Sulphur		*1,115*																					
Mack Mesa		*38*																					
FSA Interest CO	*1,207*																						
Kansas																							
Flint Hills	18,463		9/27/2000	9/14/2009					1														
Flint Hills Legacy CA	4		~~																				
Kirwin	10,778		12/1/2006												1								
Marais Des Cynes	7,365		3/3/1998				1																
Quivira	22,019		Underway																				
FSA Interest KS	*117*																						
Montana																							
Benton Lake	12,459		Underway																				
Benton Lake WMD	85,932		Underway																				
Black Coulee	1,309		8/30/2011																	1			
Blackfoot Valley CA	19,416		~~																				
Bowdoin	15,552		8/30/2011																	1			
Bowdoin WMD	77,123		8/30/2011																	1			
Charles M. Russell	916,107		*7/16/2012*																		1		
Charles M. Russell WMD	3,968		Underway																				
Creedman Coulee	2,728		8/30/2011																	1			
Hailstone	920		Underway																				
Halfbreed Lake	4,318		Underway																				
Hewitt Lake	1,361		8/30/2011																	1			
Lake Mason	16,815		Underway																				
Lake Thibadeau (divestiture)	3,868		8/30/2011																	1			
Lamesteer (divestiture)	800		9/11/2007													1							
Lee Metcalf	2,800		7/18/2012																		1		

State/Unit Name	Acres (as of September 30, 2011)		1st Generation CCP Approved	1st Generation Amendments	2nd Generation	Completion Year 1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Lost Trail	8,905		9/26/2005											1									
NW Montana - Lake WMD	7,562		Underway																				
Medicine Lake	31,534		9/11/2007													1							
NE Montana WMD	31,717		9/11/2007													1							
National Bison Range	18,800		Not Started																				
NW Montana - Flathead WMD	5,218		Not Started																				
Nine-Pipe	4,028		Not Started																				
Pablo	2,474		Not Started																				
Red Rock Lakes	76,365		6/15/2009															1					
Rocky Mountain Front CA	36,668																						
Swan River	1,569		Underway																				
UL Bend	56,090		*7/16/2012*																		1		
War Horse	3,393		Underway																				
Coordination Areas																							
Bull Mountain		*1,599*																					
Dodson		*120*																					
Fox Lake		*160*																					
Freezeout Lake		*435*																					
Judith River		*234*																					
Sun River		*4,145*																					
FSA Interest MT	*2,064*																						
Nebraska																							
Boyer Chute	4,040		n/a																				
Crescent Lake	45,995		8/19/2002								1												
Desoto	4,324		n/a																				
Fort Niobrara	19,133		9/30/1999					1															
John W. & Louise Seier	2,400																						
Karl E. Mundt	19		see SD																				
North Platte	3,473		8/24/2001							1													
Rainwater Basin WMD	25,740		8/22/2007													1							
Valentine	73,098		9/30/1999					1															
FSA Interest NE	*3,070*																						
North Dakota																							
Appert Lake	908		4/14/2006												1								
Ardoch	2,696		4/14/2006												1								
Arrowwood	15,943		8/22/2007													1							
Arrowwood WMD	25,317		9/30/2008														1						
Audubon	14,739		9/30/2008														1						
Audubon WMD	180,461		9/30/2008														1						
Bone Hill (divestiture)	640		4/14/2006												1								

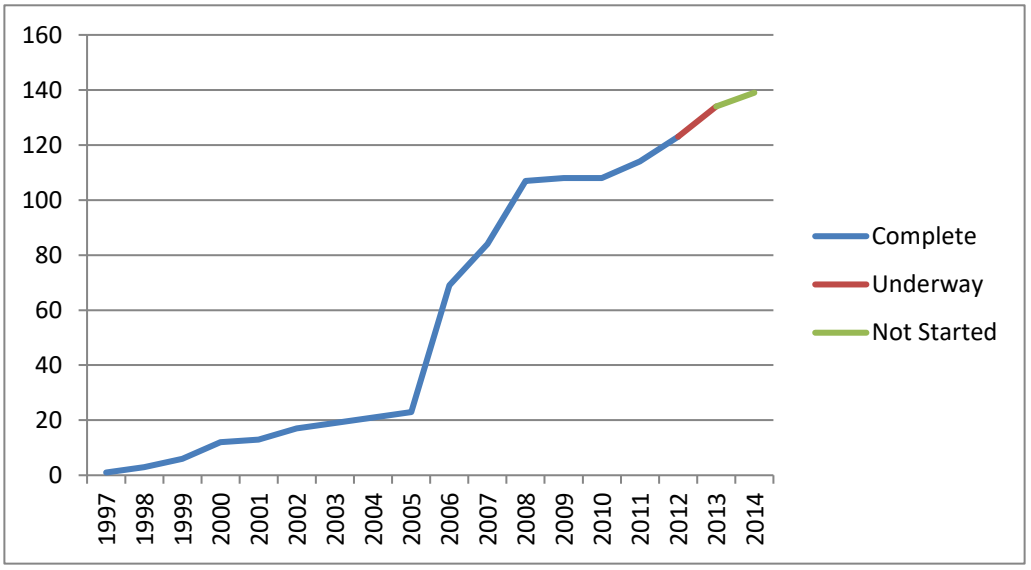
State/Unit Name	Acres (as of September 30, 2011)	1st Generation		2nd Generation	Completion Year																	
		CCP Approved	Amendments		1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Brumba	1,977	4/14/2006												1								
Buffalo Lake	1,564	4/14/2006												1								
Camp Lake (divestiture)	585	4/14/2006												1								
Canfield Lake	313	4/14/2006												1								
Chase Lake	4,449	9/30/2008														1						
Chase Lake WMD	130,976	9/30/2008														1						
Cottonwood Lake (divestiture)	1,013	4/14/2006												1								
Crosby WMD	117,189	9/30/2008														1						
Dakota Grassland CA	1,071																					
Dakota Lake	2,800	4/14/2006												1								
Dakota Tallgrass Prairie WMA	4,745																					
Des Lacs	19,457	8/22/2007													1							
Devil's Lake WMD	217,215	9/30/2008														1						
Florence Lake	1,888	1/13/2006												1								
Half-Way Lake	160	4/14/2006												1								
Hiddenwood	568	4/14/2006												1								
Hobart Lake	2,077	4/14/2006												1								
Hutchinson Lake	479	4/14/2006												1								
J. Clark Salyer	59,376	8/22/2007													1							
J. Clark Salyer WMD	204,868	9/30/2008														1						
Johnson Lake	2,008	4/14/2006												1								
Kellys Slough	1,270	9/30/2008														1						
Kulm WMD	209,502	9/30/2008														1						
Lake Alice	12,096	9/30/2008														1						
Lake George	3,119	4/14/2006												1								
Lake Ilo	4,033	9/30/2008														1						
Lake Nettie	3,055	9/30/2008														1						
Lake Otis	320	4/14/2006												1								
Lake Patricia (divestiture)	800	4/14/2006												1								
Lake Zahl	3,823	9/30/2008														1						
Lambs Lake	1,207	4/14/2006												1								
Little Goose	288	4/14/2006												1								
Long Lake	22,499	1/13/2006												1								
Long Lake WMD	209,808	1/13/2006												1								
Lords Lake	1,915	4/14/2006												1								
Lost Lake	960	4/14/2006												1								
Lostwood	27,589	11/12/1998					1															
Lostwood WMD	79,524	9/30/2008														1						
Maple River	712	4/14/2006												1								
Mclean	760	9/30/2008														1						
North Dakota WMA	48,875																					
Pleasant Lake	898	4/14/2006												1								
Pretty Rock	800	4/14/2006												1								
Rabb Lake	261	4/14/2006												1								

State/Unit Name	Acres (as of September 30, 2011)		1st Generation: CCP Approved	1st Generation: Amendments	2nd Generation	Completion Year: 1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Rock Lake	5,666		4/14/2006												1								
Rose Lake	836		4/14/2006												1								
School Section Lake (divestiture)	298		4/14/2006												1								
Shell Lake	1,835		9/30/2008														1						
Sheyenne Lake (divestiture)	797		4/14/2006												1								
Sibley Lake	1,077		4/14/2006												1								
Silver Lake	3,348		4/14/2006												1								
Slade	3,000		1/13/2006												1								
Snyder Lake	1,550		4/14/2006												1								
Springwater	640		4/14/2006												1								
Stewart Lake	2,230		9/30/2008														1						
Stoney Slough	880		4/14/2006												1								
Storm Lake	686		9/27/2000						1														
Stump Lake	27		9/30/2008														1						
Sullys Hill	1,675		8/28/2008														1						
Sunburst Lake	328		4/14/2006												1								
Tewaukon	8,364		9/27/2000						1														
Tewaukon WMD	70,477		9/27/2000						1														
Tomahawk (divestiture)	440		4/14/2006												1								
Upper Souris	32,302		8/22/2007													1							
Valley City WMD	62,899		9/30/2008														1						
White Lake	1,050		9/30/2008														1						
Wild Rice Lake	779		9/27/2000						1														
Willow Lake	2,620		4/14/2006												1								
Wintering River	239		4/14/2006												1								
Wood Lake	280		4/14/2006												1								
Coordination Areas																							
Lake Washington		*4*																					
FSA Interest ND	*6,936*																						
South Dakota																							
Bear Butte	374		9/24/2007													1							
Dakota Grassland CA	2,263																						
Dakota Tallgrass Prairie WMA	57,267																						
Huron WMD	263,786		Complete																		1		
Karl E. Mundt	1,044		Underway																		1		
Lacreek	16,855		2/23/2006												1								
Lacreek WMD	3,458		2/23/2006												1								
Lake Andes	5,639		Underway																		1		
Lake Andes WMD	105,227		Underway																		1		
Madison WMD	168,580		Complete																		1		
Sand Lake	21,820		9/26/2005											1									
Sand Lake WMD	640,917		Complete																		1		

State/Unit Name	Acres (as of September 30, 2011)		1st Generation CCP Approved	1st Generation Amendments	2nd Generation	Completion Year 1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Waubay	4,740		8/30/2002								1												
Waubay WMD	283,472		8/30/2002								1												
FSA Interest SD		*151*																					
Utah																							
Bear River	74,692		4/15/1997			1																	
Fish Springs	17,992		9/24/2004										1										
Ouray	11,977		7/17/2000						1														
Coordination Areas																							
Desert Lakes		*2,621*																					
Rock Island		*2*																					
Topaz Lake		*4,142*																					
FSA Interest UT	*443*																						
Wyoming																							
Bamforth	1,166		9/11/2007													1							
Cokeville Meadows	9,259		Underway																				
Hutton Lake	1,968		9/11/2007													1							
Mortenson Lake	1,927		9/11/2007													1							
National Elk	24,778		Underway																				
Pathfinder	16,807		8/18/2008														1						
Seedskadee	27,233		9/24/2002								1												
Coordination Areas																							
East Fork		*3,432*																					
Greys River		*927*																					
Ocean Lake		*10,539*																					
Sheridan		*160*																					
Sybille		*681*																					
Tongue River		*551*																					
FSA Interest WY	*3,288*																						
Totals:	5,491,335					1	2	3	6	1	4	2	2	2	46	15	23	1	0	6	9		
National Wildlife Refuges	122																						
Wetland Management Districts	24																						
Conservation Areas/WMAs	8																						

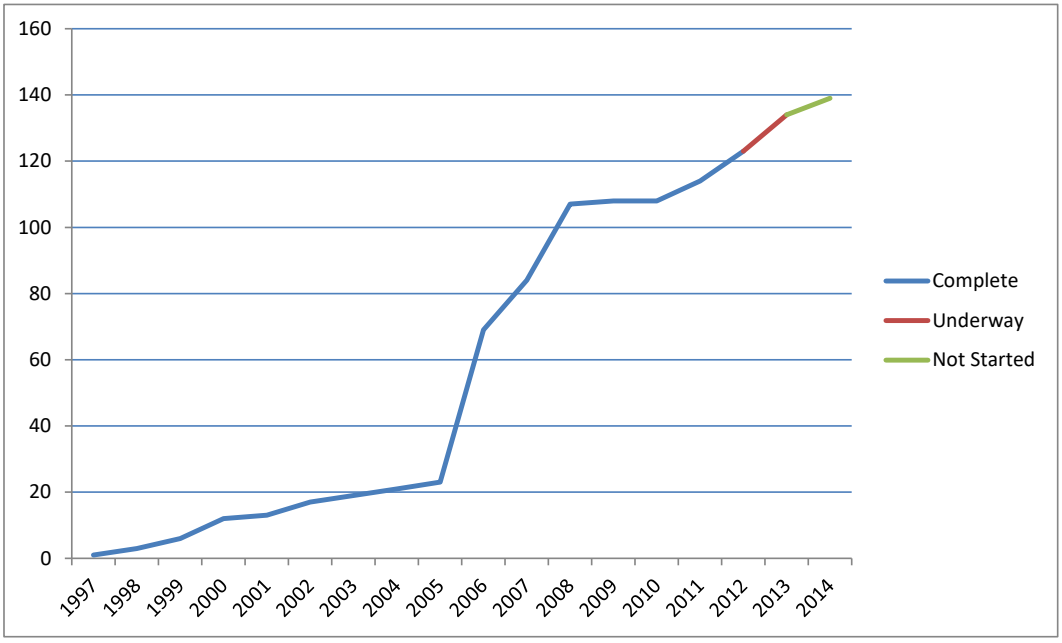
	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Complete	1	2	3	6	1	4	2	2	2	46	15	23	1	0	6	9		
Underway																	12	
Not Started																		4

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Complete	1	3	6	12	13	17	19	21	23	69	84	107	108	108	114	123		
Underway																123	134	
Not Started																	134	139



Region 6 - Status of Comprehensive Conservation Plans (CCPs)

- Region 6 has 138 NWRS units where a draft CCP is due by October 19, 2012; three units were established after the NWRS Improvement Act and are not covered by the deadline (Rocky Flats, Baca & Seier)
- as of July 31, 2012… planning for 120 units is complete (119 for deadline or 86%)
- as of July 31, 2012… 4 additional units are awaiting a final decision (Benton Lake); planning for Quivira, Lake Andes/Karl Mundt, National Elk, CMR district (5) and Cokeville Meadows is underway
- as of October 19, 2012… all but the National Bison Range complex should be well underway (97%)



0.884058

Proposed AFA EA schedule:

Step in Process	Draft Version	Completion Date	Person(s) responsible	Related Chapter
Meet with Team, discuss progress	First	November 29, 2012, 1 p.m.	All	All
Prepare List of Issues	First	December 4, 2012	All	2
Create Law/Policies Section	First	December 4, 2012	Dean	3
Biological and physical resources	First	December 4, 2012	Brendan	3
Visitor Services Program	First	December 4, 2012	Jeff	3
Alternatives Table	First	December 4, 2012	Laura	4
Alternatives Descriptions	First	December 4, 2012	Laura	4
Cultural Resources	First	December 4, 2012	Jeff	3
Team Reviews First Draft	First	1/17--2/27, 2013	All	All
Team revises based on review/comments, re-review	Second	2/28--3/15/2013	All	All
Solicitor reviews EA	Second	3/19--4/15/2013	Laura (provide copy)	All
Team revises EA based on SOL comments	Third	4/16—5/3/2013	All	All
Team meets with solicitor after edit review	Third	5/6/2013	All	All
Brief Regional Director & ARD for Refuges	Third	5/14/2013 & 5/30/2013	All	All
Team addresses requests made by Director and ARD	NA	6/3—8/15/2013	All	All
Contracting issues and government shutdown	NA	August 15—October 18, 2013	NA	NA
Provide contractor with draft (consequences)	Fourth	October 18, 2013	Laura	All
Environmental Consequences workshop	Fourth	December 2013	Laura (set up meeting)	4
Contractor provides consequences section	Fourth	January 2014	Contractor	4
Team reviews environmental consequences	Fourth	January 2014	All	4
Combine team comments, sends back to contractor	NA	February 2014	Laura	4
Contractor provides final version	NA	February 2014	Contractor	4
Solicitor reviews Consequences Analysis	NA	February 2014	Laura (provide copy)	All
Brief Regional Director and ARD on Analysis	NA	March 2014	All	All
Final Revisions, Edit, print Draft EA for Internal Review	Fifth	April 2014	Laura & editor	All
Internal Review (Service and CSKT)	Fifth	April--May 2014	Laura	All
Prepare and submit NOA for public release	NA	June 2014	Laura	NA
Revise and edit EA based on internal review	Sixth	June 2014	All & editor	All
Prepare public draft EA for printer & mailing	Sixth	July 2014	editor	All
Distribute EA to the public (NOA)	Sixth	July 2014	editor	All
30-day public review	Sixth	July—August 2014	Laura	All
Team reviews public comments	NA	August 2014	All	All
Team revises document based on substantive comments	Seventh	September 2014	All	All
Brief RD to request FONSI be signed (if applicable)	Seventh	October 2014	Laura (set up briefing)	All
Team releases decision to public--FONSI or EIS (NOA)	Final	~3 weeks after FONSI signed	Laura	NA

From: Dean Rundle <Dean_Rundle@fws.gov>
To: Jeff_King@fws.gov; Laura_King@fws.gov; Cathey_Willis@fws.gov
Subject: NBR AFA NEPA
Date: Monday, June 18, 2012 4:00:48 PM

Can we get together tomorrow (Tues, 6/19) for a call at 1:00 p..m to discuss status/next steps on the EA? If that's good, use the Ref. Supvs. conf call line:

[redacted]

[redacted]

If 1300 (MT) doesn't work, is there a better time tomorrow.

this afternoon, I got a call from Brian Upton, he wanted about a half-hour of time with me to discuss where we are with the EA. I set that up for 0900 on Wed., but right now probably can't answer all his questions. I would like you all to join that call as well, but we need to talk to each other first. Let me know if you can make 0900 on Wed, 6/20. We'll use the same conf. line as above. Thanks.

Dean

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REPUBLICAN CHIEF OF STAFF

U.S. House of Representatives

Committee on Natural Resources

Washington, DC 20515

May 15, 2007

Honorable Dirk Kempthorne
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Secretary,

As Chairman and Ranking Member of the Committee with jurisdiction over Indian legislation and the National Wildlife Refuge System, we wish to convey our support for the proposal by the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation to manage and operate the National Bison Range Complex (NBRC) via an Annual Funding Agreement (AFA) with the U.S. Fish & Wildlife Service (FWS) under the Tribal Self-Governance Act. We also are concerned that the lack of support of this agreement by some individuals within the FWS may have resulted in a distorted record concerning NBR activities under the AFA.

The Indian Self-Determination Act and the Tribal Self-Governance Act allow qualified tribes to contract to perform the activities of the Federal government for local program management. As part of the Tribal Self-Governance Act (Act), Congress specifically authorized tribes to manage certain types of non-Bureau of Indian Affairs programs within the Department of the Interior (Department). The Committee Report accompanying the Act (H. Rpt. 103-653) makes it clear that the Act applies to FWS programs and, in particular, to circumstances such as those found at the NBRC. We specifically stated in the Committee Report: *"The Committee intends this provision in conjunction with the rest of the Act, to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."* As you know, the entire National Bison Range, along with its ancillary Ninepipe and Pablo Refuges, are located within the exterior boundaries of the Flathead Indian Reservation.

CSKT's connections to the NBRC, and its bison, make for unique circumstances. Also in this instance, CSKT owns the land on which two of the NBRC's ancillary refuges are located. In fact, the Ninepipe and Pablo National Wildlife Refuges are operated by FWS pursuant to easements obtained from CSKT. Another compelling fact is that the bison at the NRBC consist of descendants of a bison herd that was owned by CSKT Tribal members over a century ago. That herd was started and managed by Tribal members at a time when the bison were on the verge of extinction due to non-Indian activities.

Under the Act, the Department is required to publish annually a list of non-BIA Interior programs that are eligible for compacting under Self-Governance. Currently, of the 546 refuges that exist in this country, the FWS list identifies only 18 in the lower 48 states and 16 in Alaska as eligible. Three of the 18 are wholly located within the Flathead Indian Reservation and are part of the NRBC. Since enactment of the Act, 13 years ago, there have been only two AFAs with the FWS: the first involving the Council of Athabascan Tribal Governments exclusively for project work at the Yukon Flats National Wildlife Refuge in Alaska; and the second being the CSKT-FWS AFA for the NBRC. In short, a very small percent of the Refuge System is listed as even being eligible for contracting, and of those 34 refuges, only two have tribal contracts associated with them.

The National Wildlife Refuge Administration Act (the Administration Act) does not prohibit the delegation of management activities to non-federal entities. To the contrary, the Administration Act makes multiple references to working with State governments on refuge programs: mandates that the Interior Secretary ensure coordination, interaction, and cooperation with adjacent landowners and State fish and wildlife agencies; requires the Interior Secretary to cooperate and collaborate with Federal agencies and State fish and wildlife agencies when managing refuges; and specifically authorizes FWS to "enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." (16 U.S.C. § 668dd (b)(4)) (*emphasis added*). Working with Tribal governments in the same manner under the authorization of the Tribal Self-Governance Act should not be viewed any differently than partnering with State governments especially in this instance where the tribe owns the land on which the ancillary facilities of the NRBC National Bison Range Complex are located.

Some critics of the AFA have said that the principle of the 1976 amendments to the Administration Act was that there should never be any attempt to establish a second National Wildlife Refuge System by delegating FWS authorities to non-federal entities. We do not believe allowing CSKT to help manage the NBRC is creating a second refuge system. To the contrary, we see it as a logical partnership under both the Administration Act and the Tribal Self-Governance Act. Although the Refuge System's organic Act was significantly amended by the 1997 National Wildlife Refuge System Improvement Act, this law did not prohibit Tribal Self-Governance agreements.

This type of partnership is even encouraged by Executive Order 12996, entitled "Management and General Public Use of the National Wildlife Refuge System." Section 2(c) says:

"Partnerships. America's sportsmen and women were the first partners who insisted on protecting valuable wildlife habitat within wildlife refuges. Conservation partnerships with other Federal agencies, State agencies, Tribes, organizations, industry, and the general public can make significant contributions to the growth and management of the Refuge System."

As we are both strong supporters of the Refuge System, we would be concerned if the NBRC AFA could serve as a precursor to privatization of refuges. Yet we are convinced that this is not the

case. Agreements with other governments — be they State or Tribal — are not comparable to privatization schemes where for-profit entities take over federal programs. A Tribal government is not a corporate entity any more than a federal, state or local government is a corporate entity. Under the AFA and the Tribal Self-Governance Act, the NBRC remains a federally-owned Refuge and all applicable federal statutes and regulations that apply to the Refuge System continue to apply under the AFA. In the absence of compliance with this requirement, we would not support the NBRC AFA.

The CKST have demonstrated a high level of performance in contracting a wide variety of other federal programs. Under their AFA, CSKT has stated repeatedly its commitment to operate the NBRC pursuant to the laws and regulations applicable to all refuges. In fact, the Act contains safeguards that protect against any jeopardy to natural resources or other federal assets. We understand that CSKT is the first tribe to designate an official wilderness: the Mission Mountain Tribal Wilderness Area. Their efforts have led to that area being one the few places in Montana where there are grizzly bears. The CSKT also manage a large herd of Bighorn sheep, and they worked with the FWS to reintroduce the Trumpeter Swan to the Flathead Valley. In short, CSKT has excellent credentials to manage wildlife-related programs at the NBRC.

We also understand that, beyond the scope of work required of it through the AFA, the CSKT has devoted extensive tribal resources to the NBRC. At a time when the overall National Wildlife Refuge System budget has suffered, CSKT employees and volunteers literally worked thousands of hours at the NBRC. If a new AFA, with broader tribal management, might result in a continuation of that degree of tribal supplementation at a federal refuge, we would think the Department would do everything in its power to make it happen.

Finally, we are concerned to hear of the recent development wherein the FWS is proposing to radically downsize the number of staff and bison at the NBRC. The proposed reduction from 20 full time staff down to 6 staff is no way for the FWS to treat the refuge it recently referred to as the Refuge System's "Crown Jewel" nor does it make sense to reduce the number of bison from over 300 animals down to 100. Such cuts are not merely the NBRC's proportionate share of agency wide reductions, rather, they have every appearance of being proposals intended to make the CSKT disinterested in future management of the NBRC. We hope you will immediately reverse these proposed reductions.

We hope you agree that promoting a fair implementation of a Tribal Self-Governance AFA at the National Bison Range furthers important congressional and federal objectives as identified in both the Administration Act and the Tribal Self-Governance Act.

Sincerely,

NICK J. RAHALL, II
Chairman

DON YOUNG
Ranking Member

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CHIEF OF STAFF

U.S. House of Representatives
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REPUBLICAN CHIEF OF STAFF

November 2, 2007

Honorable Dirk Kempthorne
Secretary of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

Honorable P. Lynn Scarlett
Deputy Secretary
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Kempthorne and Deputy Secretary Scarlett:

We recently sent Fish and Wildlife Service Director Dale Hall the attached letter in response to a question he answered October 9, 2007, at a hearing before the Subcommittee on Fisheries, Wildlife and Oceans. Our letter focuses on the ongoing efforts of the Confederated Salish and Kootenai Tribes (Tribes) of the Flathead Reservation to secure an annual funding agreement (AFA) under the Indian Self Determination and Education Assistance Act for the management and operation of the National Bison Range in Montana.

We were surprised that Mr. Hall indicated the reason there is not a new Self Governance AFA in place is because the Tribes have not reengaged in negotiations. That is clearly not the case. We are advised that the Tribes have communicated and met extensively with officials in the Fish and Wildlife Service (Service) and at all levels of the Department. We understand that Deputy Secretary Scarlett in her meeting in April with Chairman James Steele apologized that the AFA had not been reinstituted and recommitted the Department to a new AFA. In a memo dated December 29, 2006, to Director Hall, Deputy Secretary Scarlett reiterated her agreement with Director Hall to enter into a new AFA. We understand that in late September the Tribal Chairman met with you, Mr. Secretary, and we are advised that you too indicated your sincere desire to negotiate a new AFA.

The reluctance to enter into a new AFA comes from the Service, not the Tribes. Notwithstanding the Bush Administration's support of the Indian Self Determination and Education Assistance Act, as well as the Service's March 23, 2007, notice in the Federal Register indicating that the Service is interested in negotiating additional AFAs with Self Governance Tribes at appropriate locations, such as the National Bison Range on the Flathead Reservation,

we have seen little action taken by the Department. Most recently, the Department offered to enter into a "cooperative agreement" with the Tribes, something quite different than the AFA authorized in the Indian Self Determination and Education Assistance Act.

As we stated in our May 15, 2007 letter to you, we think it makes sense for the Tribes to manage the local Bison Range programs under an AFA and we strongly encourage you to take appropriate actions to secure such a Self Governance Annual Funding Agreement. We look forward to hearing from you by December 1, 2007, on the positive steps you are taking to address our concerns.

Sincerely,

Nick J. Rahall, II
Chairman

Don Young
Ranking Republican

Rahall and Young Commend Signing of National Bison Range Agreement

| Print |

June 19, 2008

CONTACT: Allyson Groff or Blake Androff, 202-226-9019 (Rahall)
Steve Hansen, 202-225-2761 (Young)

Washington, D.C. - House Natural Resources Committee Chairman Nick J. Rahall (D-WV) and Ranking Member Don Young (R-AK) applauded the signing ceremony that took place Thursday between the U.S. Fish and Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes (CSKT) of Montana.

The agreement will allow for the CSKT to play an important role in the future operations of the National Bison Range, a FWS refuge that is located in the middle of the Flathead Indian Reservation. The Annual Funding Agreement (AFA) was negotiated pursuant to the provisions of the Tribal Self-Governance Act of 1994.

"We are pleased that the FWS and the CSKT were able to reach this agreement, and we commend the leadership of both entities - as well as the leadership of the Interior Department - for this progressive action. This Annual Funding Agreement is entirely consistent with what the Congress had envisioned when we enacted the Tribal Self-Governance Act of 1994, and we are convinced that the FWS and the CSKT will make for a great team in the management and operation of the National Bison Range. In the long run, the public will benefit by this historic agreement as both parties seek to ensure that this site remains an icon of the entire National Wildlife Refuge system, now and in the future," Rahall and Young said in a joint statement.

Certain groups have raised concerns that this AFA might be a precursor to the privatization of the Refuge System and have also argued that the AFA is contrary to the National Wildlife Refuge Administration Act. Rahall and Young, both strong supporters of the Refuge System, responded to these concerns in a May 15, 2007 letter to Interior Secretary Kempthorne, saying that they would not support any action that would privatize the refuges. They pointed out that working with tribal governments in the same manner under the authorization of the Tribal Self Governance Act of 1994 should not be viewed any differently than partnering with State governments.

-30-

Close Window

From:	"Brenna, Sharon" <Sharon.Brenna@sol.doi.gov>
To:	Rundle, Dean; Jacobsen, Dana
Cc:	Rundle, Dean; brianu@cskt.org; Willis, Cathey; King, Jeff; Brenna, Sharon
Subject:	RE: Call with Dana to talk about NEPA
Date:	Tuesday, August 02, 2011 9:08:32 AM

Good morning, Dean. Tyson Powell told me you talked to him and can provide a FWS conference call number.

We will look forward to seeing you and Cathy tomorrow at 1:30 Mountain, with Jeff and Brian on the call.

Sharon

From:Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Tuesday, August 02, 2011 7:41 AM
To: Jacobsen, Dana
Cc: Brenna, Sharon; Rundle, Dean; brianu@cskt.org; Willis, Cathey
Subject: RE: Call with Dana to talk about NEPA

Dana: Jeff King would also like to be on the call. He's on a detail in Washington this week, and I need to provide him with call-in information. Do you have a conference line set up - or were you just going to call Brian from your office? I can give you a conf. line to use if you need one. Let me know what the plans are.

Dean

-----"Jacobsen, Dana" <Dana.Jacobsen@sol.doi.gov> wrote: -----

To: "Brenna, Sharon" <Sharon.Brenna@sol.doi.gov>, "Rundle, Dean" <dean_rundle@fws.gov>, "brianu@cskt.org" <brianu@cskt.org>
From: "Jacobsen, Dana" <Dana.Jacobsen@sol.doi.gov>
Date: 07/21/2011 03:53PM
cc: "Willis, Cathey" <cathey_willis@fws.gov>
Subject: RE: Call with Dana to talk about NEPA

Fantastic.

From: Brenna, Sharon
Sent: Thursday, July 21, 2011 10:47 AM
To: Rundle, Dean; brianu@cskt.org
Cc: Jacobsen, Dana; Willis, Cathey

Subject: RE: Call with Dana to talk about NEPA

Good—then we will talk at 1:30 on Wednesday, August 3. And we'll see Dean and, if we're really lucky, Cathy. Have a good weekend!

Sharon

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Thursday, July 21, 2011 10:06 AM
To: brianu@cskt.org
Cc: Brenna, Sharon
Subject: RE: Call with Dana to talk about NEPA

Me too. We should check and see if Cathy Willis can participate too - I'll do that.

dean

"Brian Upton" <brianu@cskt.org>

07/21/2011 09:49 AM

Please respond to
<brianu@cskt.org>

To

"'Brenna, Sharon'" <Sharon.Brenna@sol.doi.gov>, "'Rundle, Dean'" <dean_rundle@fws.gov>

cc

Subject

RE: Call with Dana to talk about NEPA

1:30 sounds great

From: Brenna, Sharon [mailto:Sharon.Brenna@sol.doi.gov]
Sent: Thursday, July 21, 2011 9:40 AM
To: Rundle, Dean; brianu@cskt.org
Subject: RE: Call with Dana to talk about NEPA

Ok—August 3 is good for everyone. How about 1:30?

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Thursday, July 21, 2011 8:08 AM
To: brianu@cskt.org
Cc: Brenna, Sharon
Subject: RE: Call with Dana to talk about NEPA

Wednesday, August 3 works better for me. Maybe I can come over to the SOL office and participate there.

Dean

"Brian Upton" <brianu@cskt.org>

07/20/2011 03:46 PM

Please respond to
<brianu@cskt.org>

To

"'Brenna, Sharon'" <Sharon.Brenna@sol.doi.gov>, "'Rundle, Dean'"

<dean_rundle@fws.gov>

cc

Subject

RE: Call with Dana to talk about NEPA

Sharon/Dean,
I can do either day/time but, if we have the call on Wednesday (8/3), I would need to leave the call by 4:30. Wednesday would be my first preference, but Friday (8/5) would work also.

Thanks,
BU

From: Brenna, Sharon [mailto:Sharon.Brenna@sol.doi.gov]
Sent: Wednesday, July 20, 2011 3:26 PM
To: Rundle, Dean; 'brianu@cskt.org'
Cc: Brenna, Sharon
Subject: Call with Dana to talk about NEPA

Dean/Brian:

At Brian's request for a call to talk about NEPA, I've found out that Dana is available on August 3 from 12 to 5:00; and August 5 from 8 to 10. Our student intern will be on the call with us if that's okay with you. Would either of these days be good for you and, if so, what time?

Sharon
Sharon L. Brenna
Attorney
DOI Office of the Solicitor
Rocky Mountain Region
755 Parfet St, Suite 151
Lakewood, CO 80215
303-231-5353, x 338

From: Dean Rundle <Dean_Rundle@fws.gov>
To: brianu@cskt.org
Subject: Re: negotiation meeting
Date: Tuesday, March 29, 2011 3:01:59 PM

Brian: That sounds fine. I'm making travel arrangements today. Just FYI - looks like the last direct (cheap) flight out of Missoula to Denver on the 14th leaves at 4:58 p.m. So, I will probably need to wrap up this session by 2:00 p.m. on Thursday the 14th to make if from Polson to the airport. Hopefully that will be ok.

dean

"Brian Upton" <brianu@cskt.org>

03/29/2011 02:03 PM

Please respond to
<brianu@cskt.org>

To
<Dean_Rundle@fws.gov>, <Jeff_King@fws.gov>
cc

Subject
negotiation meeting

Dean and Jeff,
For the AFA negotiation meetings on 4/13-14, we have reserved the conference room in the new Tribal health clinic building in Polson. The clinic is located at 5 Fourth Avenue East (kitty corner to the courthouse). I'm told we should enter through the west side door and that there is an elevator there (I haven't been there yet myself). The conference room is located on the third floor of the building. I've told CSKT staff that the first meeting will start at 9:00am on Wednesday, April 13th. Let me know if any questions.

BU

From: Dean Rundle <Dean_Rundle@fws.gov>
To: brianu@cskt.org
Cc: Jeff_King@fws.gov
Subject: Re: tomorrow
Date: Monday, April 25, 2011 4:46:09 PM

Brian: I talked to Jeff in the last hour and he will be at Council Chambers tomorrow at 3:00 p.m. I'l be at my office phone and you can call me here as you indicated. Jeff is also dialed in for the plans for May 10 - 13 and will be making travel plans to be in Lakewood that week. He will probably meet with us on Friday when we visit SOL re. NEPA.

Dean

"Brian Upton" <brianu@cskt.org> 04/25/2011 04:19 PM

Please respond to <brianu@cskt.org>

To <Dean_Rundle@fws.gov>
cc
Subject tomorrow

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR

JOHN BOHLINGER
LT. GOVERNOR

RECEIVED
NOV 07 2011
InterTribal Bison Cooperative

November 2, 2011

Ervin Carlson
President, InterTribal Buffalo Council
2497 West Chicago Street
Rapid City, SD 57702

Dear Ervin,

I write to bring to your attention a cooperative opportunity to further the mission of the InterTribal Buffalo Council as it works to restore, preserve, and protect bison in Indian Country. I share your commitment to the restoration of bison on Indian lands, where spiritual and cultural traditions with these great beasts can be rekindled.

I know you are aware of the interagency quarantine program for Yellowstone bison, whereby disease-free bison are being made available for such restoration efforts. Also, I know you are aware that Yellowstone bison are a precious national resource, representing the largest herd of the handful of remaining herds of genetically-pure bison.

I have initiated discussions with Department of Interior Secretary Ken Salazar regarding the idea of the National Bison Range at Moiese serving as one repository for bison coming out of quarantine, and potentially becoming a staging center for the restoration of genetically-pure, disease-free bison on suitable reservations and public lands across the West.

Recent tests confirm that the herd at Moiese, like most across the country, contains cattle genes. I have proposed that any Yellowstone bison sent to Moiese be segregated from the existing herd to maintain genetic integrity. Moiese could choose to maintain this segregation through appropriate management measures, or they could choose to draw down their existing herd as the new herd grows. Other key points and details of the proposal include, but are not necessarily limited to, these elements:

- Moiese seems an ideal site for such a repository, given its status as the National Bison Range, its historical relationship with the Confederated Salish and Kootenai Tribes and within the Department of Interior, its long-established public acceptance, its management expertise, and its ability to provide proper acreage, facilities, and care.
- Approximately 75 to 125 bison would be relocated initially.
- Twenty-five percent of the offspring would be available to the State of Montana for potential future bison conservation efforts.
- Given the long history and tradition of bison on the National Bison Range, very limited environmental analysis would be necessary for such a relocation.

STATE CAPITOL • P.O. BOX 200801 • HELENA, MONTANA 59620-0801
TELEPHONE: 406-444-3111 • FAX: 406-444-5529 • WEBSITE: WWW.MT.GOV

- This new herd at the National Bison Range, along with any derivative herds, could serve as the repository for reintroduction to, or augmentation of, the Yellowstone herd, should that scenario ever become necessary.
- No element of this proposal would preclude the direct relocation of quarantine program Yellowstone bison, now or in the future, to other reservations or public lands.

Finer points and details need to be worked out, and I welcome your ideas to that effect. Presently, however, I am interested to know the level of support of this concept from the ITBC. If the idea meets your approval, I would very much appreciate a letter in response that communicates your support.

I believe this is a wonderful opportunity for cooperation and meaningful progress on a matter that is long past due for good solutions. Thank you for your consideration of my request.

Sincerely,



BRIAN SCHWEITZER
Governor

Laura King
08/30/2012 02:14 PM

To: Brendan Moynahan/R6/FWS/DOI@FWS
cc:
Subject: task order--HGM

See email below.

I think I caught this before it got sent to you. I didn't realize the attached file was so huge. I'm going to put this HGM task order on the K: drive instead (HGM/contract).

"Wildlife encounters enrich our personal lives and form the basis of our personal environmental ethics"

Laura King, Refuge Program Specialist
U.S. Fish and Wildlife Service
Region 6, Division of Planning
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 210
laura_king@fws.gov

----- Forwarded by Laura King/R6/FWS/DOI on 08/30/2012 02:10 PM -----

Laura King/R6/FWS/DOI
08/30/2012 02:08 PM

To Brendan Moynahan/R6/FWS/DOI
cc
Subject task order--HGM

Hi Brendan,

Here is the task order for the HGM (hydrogeomorphic analysis) report Adonia Henry and Mickey Heitmeyer are working on for the CCP. They began working on this project last fall. Not sure where they are in the process, but Amy was providing Adonia some refuge data and historical information. I sent Adonia a separate email requesting any information she's compiled to date. It might be useful for your sections of the EA. I'll let you take it from here.

Laura

"Wildlife encounters enrich our personal lives and form the basis of our personal environmental ethics"

Laura King, Refuge Program Specialist
U.S. Fish and Wildlife Service
Region 6, Division of Planning
58355 Bison Range Road
Moiese, MT 59824
(406) 644-2211, ext. 210
laura_king@fws.gov

JON TESTER
MONTANA

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GOVERNMENTAL AFFAIRS

United States Senate

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WASHINGTON, DC 20510
202-224-2644

MONTANA TOLL FREE NUMBER
1-866-554-4403

INTERNET:
http://tester.senate.gov/contact

April 23, 2009

Honorable Ken Salazar
Secretary
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Mr. Thomas Strickland
Nominee for Assistant Secretary for
Fish, Wildlife and Parks
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Dear Secretary Salazar and Mr. Strickland,

I write to express my strong and continued support for the Annual Funding Agreement between the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation and the U.S. Fish and Wildlife Service (FWS) for programs at the National Bison Range Complex (NBRC). As you may know, the National Bison Range (NBR), a National Wildlife Refuge, is located in the middle of the Flathead Indian Reservation in Montana. CSKT is the beneficial landowner of two of the NBRC's ancillary refuges, the Ninepipe and Pablo National Wildlife Refuges, which are located on federally-held trust land within the Reservation.

On June 19, 2008, I had the honor of attending and speaking at the signing ceremony in the penthouse of the Interior Department Building when the Annual Funding Agreement (AFA) was signed by the CSKT Tribal Council Chairman, FWS Director, Assistant Secretary for the Fish, Wildlife and Parks, and Acting Assistant Secretary for Indian Affairs. Additional speakers included Secretary Kempthorne, Deputy Secretary Scarlett and Tribal Chairman James Steele, Jr. This ceremony had been a long time coming, following various meetings between stakeholders and Interior officials. I supported the agreement they crafted, as did the other members of the Montana congressional delegation, Senator Max Baucus and Representative Denny Rehberg.

The Tribal Self-Governance Act of 1994 (TSGA) authorizes the Interior Secretary to contract with qualified tribes who demonstrate a significant cultural, geographic or historical connection to programs managed by the Department of the Interior, including National Wildlife Refuges. CSKT satisfies all three criteria in their highly unique relationship and history with the NBRC and its bison. In a report accompanying TSGA legislation, the House Natural Resources Committee stated that it intends for the TSGA "to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in [a] Self-Governance funding agreement." (House Report #103-653). Consistent with that presumption, FWS has always identified NBRC programs as being eligible for Self-Governance contracting in annual notices published in the Federal Register. I am pleased that, with the current FY 2009-2011 AFA, FWS has been able to meet its stated goal of entering into more Self-Governance agreements.

While the CSKT is assuming a substantive role in NBRC operations under the AFA, the National Bison Range remains a federally-owned Refuge administered by FWS. The NBRC Refuge Manager remains a FWS employee and has final decision-making authority on management direction, approval of plans, refuge uses and priorities. While some critics of the AFA have contended that FWS has contracted inherently federal functions to CSKT, I do not believe such claims withstand scrutiny. An examination of the programs and activities contracted under the AFA shows nothing that can reasonably be deemed to be inherently federal in nature.

This emerging partnership is a progressive example of government-to-government relations authorized under the TSGA and the National Wildlife Refuge System Administration Act (NWRSAA). I am attaching copies of a May 15, 2007 letter from Chairman Nick Rahall and former Ranking Republican Member Don Young of the House Natural Resources Committee, as well as a later press release from them, strongly supporting this AFA. Their Committee has jurisdiction over both the TSGA and the NWRSAA and no one is better situated than they to know what Congress intended by each Act, how the Acts inter-relate, and how the current AFA fulfills both Acts' federal objectives.

On September 15, 2006, Mitch King, the former Regional Director of the Fish and Wildlife Service wrote, "I have worked directly with the CSKT's Wildlife Program and I rank them among the best in Tribal Programs and as good as many State Fish and Wildlife agencies. I have no doubt that the CSKT Wildlife Program can do a good job in managing the National Bison Range." The CSKT and the FWS have long partnered on many different projects, both on and off the NBRC. This Annual Funding Agreement is a natural extension and successor to that cooperative relationship. As the New York Times stated in a September 3, 2003 editorial on CSKT's efforts to manage the NBRC, "[i]f the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it."

Gentlemen, your strong and active support for this AFA is crucial. To that end, please let me know if I can provide you with any additional information or assistance regarding this federal-tribal partnership.

Thank you.

Sincerely,

Jon Tester
United States Senator

Enclosures

cc: Rowan Gould, Acting FWS Director

[illegible]
DALE E. KILDEE, MI
[illegible]
NICK J. RAHALL, II, WV
Chairman
DALE E. KILDEE, MI
[illegible]
NEIL ABERCROMBIE, HI
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LOUIE GOHMERT, TX
TOM COLE, OK
ROB BISHOP, UT
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DEAN HEALEY, NY
GUS BILIRAKIS, FL
DOUG LAMBORN, CO

LLOYD JONES
REPUBLICAN CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

May 15, 2007

Honorable Dirk Kempthorne
Secretary
Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Mr. Secretary,

As Chairman and Ranking Member of the Committee with jurisdiction over Indian legislation and the National Wildlife Refuge System, we wish to convey our support for the proposal by the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation to manage and operate the National Bison Range Complex (NBRC) via an Annual Funding Agreement (AFA) with the U.S. Fish & Wildlife Service (FWS) under the Tribal Self-Governance Act. We also are concerned that the lack of support of this agreement by some individuals within the FWS may have resulted in a distorted record concerning NBR activities under the AFA.

The Indian Self-Determination Act and the Tribal Self-Governance Act allow qualified tribes to contract to perform the activities of the Federal government for local program management. As part of the Tribal Self-Governance Act (Act), Congress specifically authorized tribes to manage certain types of non-Bureau of Indian Affairs programs within the Department of the Interior (Department). The Committee Report accompanying the Act (H. Rpt. 103-653) makes it clear that the Act applies to FWS programs and, in particular, to circumstances such as those found at the NBRC. We specifically stated in the Committee Report: *"The Committee intends this provision in conjunction with the rest of the Act, to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."* As you know, the entire National Bison Range, along with its ancillary Ninepipe and Pablo Refuges, are located within the exterior boundaries of the Flathead Indian Reservation.

CSKT's connections to the NBRC, and its bison, make for unique circumstances. Also in this instance, CSKT owns the land on which two of the NBRC's ancillary refuges are located. In fact, the Ninepipe and Pablo National Wildlife Refuges are operated by FWS pursuant to easements obtained from CSKT. Another compelling fact is that the bison at the NRBC consist of descendants of a bison herd that was owned by CSKT Tribal members over a century ago. That herd was started and managed by Tribal members at a time when the bison were on the verge of extinction due to non-Indian activities.

Under the Act, the Department is required to publish annually a list of non-BIA Interior programs that are eligible for compacting under Self-Governance. Currently, of the 546 refuges that exist in this country, the FWS list identifies only 18 in the lower 48 states and 16 in Alaska as eligible. Three of the 18 are wholly located within the Flathead Indian Reservation and are part of the NRBC. Since enactment of the Act, 13 years ago, there have been only two AFAs with the FWS: the first involving the Council of Athabascan Tribal Governments exclusively for project work at the Yukon Flats National Wildlife Refuge in Alaska; and the second being the CSKT-FWS AFA for the NBRC. In short, a very small percent of the Refuge System is listed as even being eligible for contracting, and of those 34 refuges, only two have tribal contracts associated with them.

The National Wildlife Refuge Administration Act (the Administration Act) does not prohibit the delegation of management activities to non-federal entities. To the contrary, the Administration Act makes multiple references to working with State governments on refuge programs: mandates that the Interior Secretary ensure coordination, interaction, and cooperation with adjacent landowners and State fish and wildlife agencies; requires the Interior Secretary to cooperate and collaborate with Federal agencies and State fish and wildlife agencies when managing refuges; and specifically authorizes FWS to "enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." (16 U.S.C. § 668dd (b)(4)) (*emphasis added*). Working with Tribal governments in the same manner under the authorization of the Tribal Self-Governance Act should not be viewed any differently than partnering with State governments especially in this instance where the tribe owns the land on which the ancillary facilities of the NRBC National Bison Range Complex are located.

Some critics of the AFA have said that the principle of the 1976 amendments to the Administration Act was that there should never be any attempt to establish a second National Wildlife Refuge System by delegating FWS authorities to non-federal entities. We do not believe allowing CSKT to help manage the NBRC is creating a second refuge system. To the contrary, we see it as a logical partnership under both the Administration Act and the Tribal Self-Governance Act. Although the Refuge System's organic Act was significantly amended by the 1997 National Wildlife Refuge System Improvement Act, this law did not prohibit Tribal Self-Governance agreements.

This type of partnership is even encouraged by Executive Order 12996, entitled "Management and General Public Use of the National Wildlife Refuge System." Section 2(c) says:

"Partnerships. America's sportsmen and women were the first partners who insisted on protecting valuable wildlife habitat within wildlife refuges. Conservation partnerships with other Federal agencies, State agencies, Tribes, organizations, industry, and the general public can make significant contributions to the growth and management of the Refuge System."

As we are both strong supporters of the Refuge System, we would be concerned if the NBRC AFA could serve as a precursor to privatization of refuges. Yet we are convinced that this is not the

case. Agreements with other governments — be they State or Tribal — are not comparable to privatization schemes where for-profit entities take over federal programs. A Tribal government is not a corporate entity any more than a federal, state or local government is a corporate entity. Under the AFA and the Tribal Self-Governance Act, the NBRC remains a federally-owned Refuge and all applicable federal statutes and regulations that apply to the Refuge System continue to apply under the AFA. In the absence of compliance with this requirement, we would not support the NBRC AFA.

The CKST have demonstrated a high level of performance in contracting a wide variety of other federal programs. Under their AFA, CSKT has stated repeatedly its commitment to operate the NBRC pursuant to the laws and regulations applicable to all refuges. In fact, the Act contains safeguards that protect against any jeopardy to natural resources or other federal assets. We understand that CSKT is the first tribe to designate an official wilderness: the Mission Mountain Tribal Wilderness Area. Their efforts have led to that area being one the few places in Montana where there are grizzly bears. The CSKT also manage a large herd of Bighorn sheep, and they worked with the FWS to reintroduce the Trumpeter Swan to the Flathead Valley. In short. CSKT has excellent credentials to manage wildlife-related programs at the NBRC.

We also understand that, beyond the scope of work required of it through the AFA, the CSKT has devoted extensive tribal resources to the NBRC. At a time when the overall National Wildlife Refuge System budget has suffered, CSKT employees and volunteers literally worked thousands of hours at the NBRC. If a new AFA, with broader tribal management, might result in a continuation of that degree of tribal supplementation at a federal refuge, we would think the Department would do everything in its power to make it happen.

Finally, we are concerned to hear of the recent development wherein the FWS is proposing to radically downsize the number of staff and bison at the NBRC. The proposed reduction from 20 full time staff down to 6 staff is no way for the FWS to treat the refuge it recently referred to as the Refuge System's "Crown Jewel" nor does it make sense to reduce the number of bison from over 300 animals down to 100. Such cuts are not merely the NBRC's proportionate share of agency wide reductions, rather, they have every appearance of being proposals intended to make the CSKT disinterested in future management of the NBRC. We hope you will immediately reverse these proposed reductions.

We hope you agree that promoting a fair implementation of a Tribal Self-Governance AFA at the National Bison Range furthers important congressional and federal objectives as identified in both the Administration Act and the Tribal Self-Governance Act.

Sincerely,

NICK J. RAHALL, II
Chairman

DON YOUNG
Ranking Member

News from the
Committee on Natural Resources
Rep. Nick J. Rahall, II - Chairman
1324 Longworth House Office Building - Washington DC, 20515 - http://resourcescommittee.house.gov

FOR IMMEDIATE RELEASE
June 19, 2008

CONTACT:
Allyson Groff or Blake Androff, 202-226-9019 (Rahall)
Steve Hansen, 202-225-2761 (Young)

Rahall and Young Commend Signing of National Bison Range Agreement

Washington, D.C. – House Natural Resources Committee Chairman Nick J. Rahall (D-WV) and Ranking Member Don Young (R-AK) applauded the signing ceremony that took place Thursday between the U.S. Fish and Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes (CSKT) of Montana.

The agreement will allow for the CSKT to play an important role in the future operations of the National Bison Range, a FWS refuge that is located in the middle of the Flathead Indian Reservation. The Annual Funding Agreement (AFA) was negotiated pursuant to the provisions of the Tribal Self-Governance Act of 1994.

"We are pleased that the FWS and the CSKT were able to reach this agreement, and we commend the leadership of both entities – as well as the leadership of the Interior Department – for this progressive action. This Annual Funding Agreement is entirely consistent with what the Congress had envisioned when we enacted the Tribal Self-Governance Act of 1994, and we are convinced that the FWS and the CSKT will make for a great team in the management and operation of the National Bison Range. In the long run, the public will benefit by this historic agreement as both parties seek to ensure that this site remains an icon of the entire National Wildlife Refuge system, now and in the future," Rahall and Young said in a joint statement.

Certain groups have raised concerns that this AFA might be a precursor to the privatization of the Refuge System and have also argued that the AFA is contrary to the National Wildlife Refuge Administration Act. Rahall and Young, both strong supporters of the Refuge System, responded to these concerns in a May 15, 2007 letter to Interior Secretary Kempthorne, saying that they would not support any action that would privatize the refuges. They pointed out that working with tribal governments in the same manner under the authorization of the Tribal Self Governance Act of 1994 should not be viewed any differently than partnering with State governments.

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Allyson L. Groff
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CHIEF BLACK COAL

August 29, 2012

Interior Secretary Ken Salazar
1849 C Street, N.W.
Washington, D.C. 20240

USFWS SEP 11 '12 AM8:18

RE: Interior Secretarial Directive on the Placement of Yellowstone Bison

Dear Secretary Salazar:

On behalf of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation, We are writing in regard to the Directive you issued on May 11, 2012 regarding the placement of Yellowstone bison. Several years ago, the Wind River Tribes expressed our interest in receiving some bison from Yellowstone. While that plan did not come to fruition, with the bison going to Ted Turner's Green Ranch instead, the Eastern Shoshone and Northern Arapaho Tribes remain deeply interested in relocating wild Yellowstone bison to the Wind River Reservation.

To that end, we were pleased to see that the Directive you issued on May 11, 2012 identified the option of relocating Yellowstone bison to Wind River. In addition, we note your directive for consultation with tribes on opportunities for the relocation of bison to tribal lands in accordance with the Department of Interior Consultation Policy. We would like to formally request government-to-government consultation between the Department of Interior and the Eastern Shoshone Tribe regarding these matters_

Thank you for the opportunity to discuss this very important effort. We look forward to working with your agencies, and your staff.
Sincerely,

Mike Lajeunesse, Chairman
Eastern Shoshone Business Council

Jim Shakespeare, Chairman
Northern Arapaho Business Council

Cc: Donald "Del" Laverdure, Acting Assistant Secretary, Indian Affairs