"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>
03/13/2012 04:34 PM

To "Brenna, Sharon" <Sharon.Brenna@sol.doi.gov>
cc <Dean_Rundle@fws.gov>, <Tomm@cskt.org>
bcc
Subject technical corrections to AFA

Sharon,
Attached is the draft AFA, as agreed upon by FWS and CSKT, with technical corrections (shown in change-tracking format). A proposed technical correction in Section 25 (re: date of performance) is somewhat substantive in that it would acknowledge the possibility of a relevant change in the Tribal Self-Governance Act if HR 2444 were to be enacted into law. Let me know if any questions.

Thanks,

BU FY 13-16 AFA Draft 3-13-12 CLEAN-UP.doc

FISCAL YEARS 2013–2016 ANNUAL 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
March 8, 2012 draft w/3-13-12 technical corrections

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of the NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services,

functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: ~~"~~"Working with Others to conserve, protect, and enhance fish, wildlife, plants and their habitat for the continuing benefit of the American people";

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b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

> "In administering the System, the Secretary shall:
>
> ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

> "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 a significant contribution to the growth and management of the Refuge system."

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and
b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;
e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;
2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C below (Compliance); Section ~~18.C~~ 19.C (Tribal Administrative Procedures); and Section ~~18.D~~ 19.D (Indian Preference) of this AFA.

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a career or ~~non-~~career-conditional Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT -Fish, Wildlife, Recreation & Conservation Division Manager; Service Deputy Refuge Manager; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541)~~-~~;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted by the CSKT.

B. *Refuge Manager*. The Refuge Manager will retain final responsibility and authority for directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

a~~i~~. ~~–~~Supervise all CSKT Employees and direct the day-to-day work of CSKT E~~e~~mployees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section~~s~~ ~~12.E.5.e~~ 13.B.1, 13.F.5.c, and 13.G of this AFA;

~~ii~~b. ~~-~~From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and

~~iii~~c. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
   c. Deputy Refuge Manager; and
   d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section ~~11.D~~ 12.C and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager ~~-~~can invoke the dispute resolution process in Section ~~19.A~~ 20.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

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E. *Work Plan (Plan).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.

1. Work Plan Preparation. The Parties will jointly develop the Work Plan~~-~~.

a. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It ~~-~~will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and

teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. *Responsibility & Intent.* CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

~~1~~B. *Meetings & Coordination.* The Parties agree to hold planning meetings at least~~-~~
~~—~~ twice a year (usually pre- and post-fire season) to coordinate NBRC fire program
~~—~~ operations, assess needs, and schedule projects.

~~2~~C. *Fuels Treatments & Prescribed Fire.* The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

~~a~~1. The Service will recommend fuels projects and plan for them 2-5 years out.
~~b~~2. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
~~c~~3. Planning to include writing of burn plans will be done by the CSKT.
~~d~~4. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
~~e~~5. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
~~f~~6. Smoke management requirements will be the responsibility of the CSKT.
~~g~~7. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
~~h~~8. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

~~3~~D. *Wildfire Suppression & Initial Attack*

~~a~~1. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land.~~,~~ This does not preclude Incident Qualification Certification System (IQCS)-qualified Service firefighters from conducting initial attack activities on Service lands.

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~~b~~2. The CSKT will open a Firecode for all IA fires.
~~c~~3. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.
~~d~~4. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.
~~e~~5. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
~~f~~6. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

~~4~~E. *Preparedness*

~~a~~1. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
~~b~~2. The CSKT will administer Incident Qualification Certification System (IQCS) ~~-~~for Tribal employees (excluding Federal employees assigned to CSKT under an I~~.~~P~~.~~A~~.~~ agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).
~~c~~3. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.
~~d~~4. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.
~~e~~5. The six man fire cache at the NBRC will be maintained by the Service.
~~f~~6. The fire engine at the NBRC will be maintained by the Service.
~~g~~7. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

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Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act~~-~~, 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT -Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request,

and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section ~~17.B~~ 18.B or ~~17.C~~ 18.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within 180 days of the effective date of any retrocession or reassumption under Section ~~17.B~~ 18.B or ~~17.C~~ 18.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a)*. As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As au-

thorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section ~~10~~ 11 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation*. In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment ~~-~~without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager within one week from the date of oral notice.

ii. *Notice of Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section ~~17.C~~18.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing.*

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees*.

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire, and Visitor Service Programs (except for the Outdoor Recreation Planner, unless that position is contracted to CSKT), as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA)*, 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.

4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a

retrocession or reassumption under Sections ~~17.B~~ 18.B or ~~17.C~~ 18.C below, or cancellation for cause in accordance with Section ~~12.E.5.c~~ 13.F.5.c below.

c. *IPA Employee Performance and Conduct.*

i. ~~-~~If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;

bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or

dd. Any other cause as agreed to by FWS.

iii. Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. CSKT may invoke the dispute resolution process (see Sec. ~~19.A.~~ 20.A of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

~~iv.~~

v. Consistent with 5 C.F.R. § 334.107(a), CSKT may terminate an IPA agreement at any time and for any reason, including for cause other than

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as defined in this AFA. However, in the event CSKT terminates an IPA agreement for a reason ~~or~~ other than cause as defined above in this AFA ~~other than as defined in this AFA~~, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election.* At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, ~~-~~or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct*.

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the

matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A~~.~~, below will be used to resolve the issue.

H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

I. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.
d. NBRC Volunteers are considered to be employees for the purposes of ~~-~~the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections ~~15.A~~ 16.A and ~~15.D~~ 16.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. ~~-~~Final disposition may include: no action – return to duty; counseling; training; or termination.

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. *. Base Funding; Non-Recurring Funding.* Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. *Funding.* In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A 25.A below, for FY 2013 the Parties may agree to phase in Activities and their associated funding over the [first quarter] of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding for, and CSKT will be responsible for, hiring seasonal staff in the biological, visitor services and maintenance programs.

3. The Service may either retain or transfer to CSKT Ffunding for acquisition of goods and services necessary for the following operations for which CSKT is responsible: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. The Service will provide CSKT with funding equivalent to 0.25 of a GS-7 Technician position for implementation of the Fire Program responsibilities outlined in Section 8 of this AFA, above.

5. Generally, Attachment B specifies the following types of consideration:

Comment [BU1]: I tried to clarify what I thought was awkward wording here. Let me know if you agree to my proposed revision.

a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsections 14.B.1 and 14.B.3~~13.B.1~~ above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife, Recreation & Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager, for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsections 14.B.1 and 14.B.3 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section ~~12.E.5.c~~ 13.F.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section ~~13.E.2~~ 14.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section ~~21.A~~ 22.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying*. No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data*. Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos*. Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However,

prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property*. Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-

Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section ~~15.D~~ 16.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Section 17. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as

authorizing the Service to reassume an Activity without complying with the provisions of Section ~~17.C~~ 18.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section ~~16.A~~ 17.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections ~~16.A~~17.A and ~~16.C.2~~17.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

   a. relinquish operation and control of the Activity to the Service;

   b. assist the Service in responding to the emergency; and

   c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section ~~16.C.3~~ 17.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section ~~16.A~~17.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the ~~-~~procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Property*. On the effective date of the retrocession, CSKT will return all Federal Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (see also ~~see~~ Section ~~10.C.2.b~~11.C.2 of this AFA~~above~~ regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section ~~17.A~~18.A above and this Section ~~17.C~~18.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations cited in Section ~~17.C.1~~18.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Federal Property which is not needed by the CSKT to perform a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

   e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section ~~10.C.2.b~~11.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 2016~~-~~, with any signed successor AFA to be delivered to Congress prior to July 1, 2016~~-~~. This schedule will allow such successor AFA to be effective on October 1, 2016~~-~~, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Property*. On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B (as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution*.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Fish, Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge

Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Fish, Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). ~~For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.~~

Comment [BU2]: This line would no longer be applicable due to revisions made from the last AFA.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section ~~19.A~~20.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section ~~19.B~~20.B.

Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act are also incorporated into this AFA, as authorized by 25 U.S.C. § 458cc(*l*):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting
12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and 450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section ~~9.B~~10.B (Secretarial waiver of regulations); Section ~~9.E~~10.E (use of CSKT performance standards); and in Section ~~21.B~~22.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f); however, if the Tribal Self-Governance Act is amended to eliminate the ninety-day congressional review period, this AFA may become effective immediately upon signature by all Parties. In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be [phased in, as mutually agreed-upon by the Parties, during FY 2013—. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__].

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section ~~13.H~~14.H above, and other applicable laws and

regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 2016~~—~~. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section ~~21.A~~22.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2013-2016~~2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION,~~ ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW~~.~~ EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____
Joe Durglo Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____ _____
Dan Ashe, Director, U.S. Fish & Wildlife Service Date

_____ _____
_____, Assistant Secretary Date
for Fish, Wildlife and Parks

Mike Black, Director, Bureau of Indian Affairs Date

"Brian Upton"
<brianu@cskt.org>
03/09/2012 11:14 AM

To Brenna, Sharon <Sharon.Brenna@sol.doi.gov>
cc Dean_Rundle@fws.gov
bcc
Subject AFA clean-up

Sharon,
CSKT and FWS have agreed upon the draft AFA. I am now going to review it to identify: minor formatting corrections; internal AFA citations needing updating/correcting (some of the citations are no longer current given our revisions); etc.

Dean asked if I would check in with you on your availability to review these kind of clean-up changes. I understand you're busy so, if it works on your end, I could make the proposed revisions in change-tracking format and send you a document to review. Or, if you prefer, we could go over the document together by phone and work through changes. I don't expect we're going to have a whole lot of clean-up to do, so I don't think this will be nearly as involved as the document clean-up phase we went through with the 2008 AFA.

Let me know your availability and preferences.

thanks,
BU

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

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

History: This message has been replied to.

Dean,
I made a mistake in the p. 4 revision; I meant to say "career-conditional" rather than "non-career". I'll fix that - thanks for catching it.

I'm fine with your suggested tweak to the IPA revision on p. 21. I'll change the phrase you referenced so it reads "for a reason other than 'cause' as defined above in this AFA. . . ."

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.

On page 4 I think we just had a misunderstanding on the "federal" terms. The change attached says "*career or non-career*" federal employees...
That would include everyone, and that is not our intent here. I think we meant to say "*career or career-conditional*" federal employees to inlcude only those employees who have a "permanent" rather than a term or temporary position.

In the change on page 18, the last phrase you inserted says: "*for reason or cause other than as defined in this AFA*" I would suggest "*for a reason, other than defined above as "cause", in this AFA".* I think that would avoid any confusion over "cause".

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 respect to the IPA revision on p. 21, I added a citation to the CFR provision that makes clear that IPA assignments may be terminated at any time. Let me know if these changes are acceptable on your end.

The revisions are on pages 4, 18, 21, and 25 of the draft AFA. Those are the only changes I've made, other than putting today's date on the draft. Let me know if any questions.

Thanks,
BU

"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
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
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

Notice of Intent to Prepare an Environmental Assessment Regarding the Interest of the Confederated Salish and Kootenai Tribes ~~(CSKT)~~ to enter into an Annual Funding Agreement with the Department of the Interior, U. S. Fish and Wildlife Service, for the Operation and Management of Programs at the National Bison Range Complex

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Notice of intent and scoping.
SUMMARY: The U.S. Fish and Wildlife Service (Service) is issuing this notice to advise the public that an Environmental Assessment (EA) will be prepared regarding the interest of the Confederated Salish and Kootenai Tribes (CSKT) to enter into an Annual Funding Agreement (AFA) with the Department of the Interior, U. S. Fish and Wildlife Service, for ~~certain~~ operations and maintenance of certain programs and activities of the National Bison Range Complex (NBRC) ~~and the ancillary properties (NBR)~~ located on the Flathead Indian Reservation. The ~~Tribes~~ CSKT submitted their interest pursuant to ~~the~~ provisions ~~contained in Annual Funding Agreements under~~ of the Tribal Self-Government Act of 1994. ~~amendments to the Indian Self-Determination and Education Act [25 CFR 1000].~~ Under ~~the Act~~ that law, qualified Indian Tribes may request and the Department must negotiate for ~~inclusion an annual funding agreement~~ an AFA for the Tribe to perform activities administered by the Department of the Interior that are of special geographic, historic or cultural significance to the requesting qualified Tribe.[1]

This notice invites the public ~~the opportunity~~ to participate with the development of the EA. We are asking the public to respond with their own concerns about significant issues and suggestions of alternatives regarding the ~~proposed action~~ proposal. Scoping is intended to ensure that problems are identified early and properly addressed. Scoping can reduce the need for changes after the draft is finished, because it reduces the chances of overlooking a significant issue or reasonable alternative. This notice describes the ~~proposed action~~ proposal, ~~the~~ a draft ~~Annual Funding Agreement~~ AFA, negotiated pursuant to the CSKT's request, and one alternative.

Submission of written scoping comments and questions will be accepted from May 15 – June 15, 2012 and can be submitted ~~regarding the AFA~~ to:

~~NOTE: Cathy – where do we say that the scoping period ends on June 15, 2012?? I don't see where we say comments will be accepted until…..~~

1 (a) Geographic generally refers to all lands presently "on or near" an Indian reservation, and all other lands within "Indian country," as defined by 18 U.S.C. 1151. In addition, "geographic" includes:
(1) Lands of former reservations;
(2) Lands on or near those conveyed or to be conveyed under the Alaska Native Claims Settlement Act (ANCSA);
(3) Judicially established aboriginal lands of a Tribe or a Consortium member or as verified by the Secretary; and
(4) Lands and waters pertaining to Indian rights in natural resources, hunting, fishing, gathering, and subsistence activities, provided or protected by treaty or other applicable law.
(b) Historical generally refers to programs or lands having a particular history that is relevant to the Tribe. For example, particular trails, forts, significant sites, or educational activities that relate to the history of a particular Tribe.
(c) Cultural refers to programs, sites, or activities as defined by individual Tribal traditions and may include, for example:
(1) Sacred and medicinal sites;
(2) Gathering of medicines or materials such as grasses for basket weaving; or
(3) Other traditional activities, including, but not limited to, subsistence hunting, fishing, and gathering.

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1. Internet--http://mountain-prairie.Service.gov/cskt-Service-negotiation.
2. Montana--National Bison Range, 58355 Bison Range Road, Moiese, Montana 59824.
3. Denver--U.S. Fish and Wildlife Service Regional Office, National Wildlife Refuge System--Mountain-Prairie Region, P.O. Box 25486, DFC, Denver, Colorado 80225.

Add disclosure statement

SUPPLEMENTARY INFORMATION: Located in northwestern Montana, the ~~National Bison Range Complex (~~NBRC~~) is part~~ consists of the following units of the National Wildlife Refuge System (NWRS): ~~and consists of~~ the National Bison Range, ~~:~~ Pablo National Wildlife Refuge (NWR), ~~: and~~ Ninepipe ~~National Wildlife Refuges,~~ NWR, ~~;~~ Lost Trail NWR and ~~that portion of~~ the Northwest Montana Wetland Management District (WMD). ~~that lies in Lake County.~~

Pablo NWR and Ninepipe NWR are "overlay" refuges, established by Executive Orders on lands that are owned by the CSKT.

Established in 1908 to conserve the American bison, the National Bison Range and ~~ancillary properties~~ other NWRS units of the NBRC provide important habitat for a variety of big game species, ~~such as elk, pronghorn and~~ numerous species of migratory birds, and other wildlife and fish.

The Confederated Salish and Kootenai Tribes (CSKT) is a sovereign Indian Nation participating in self-governance and is ~~are~~ comprised of the Bitterroot Salish, the Pend d'Oreille, and the Kootenai Tribes. CSKT occupy the 1.3 million acre Flathead Reservation in northwestern Montana. The proposal under consideration is for an AFA that includes programs and activities of those units of NBRC. ~~The majority of the NWRS units associated with the Bison Range are~~ that are located within the exterior boundary of the Flathead Indian Reservation. ~~(Some of the associated Waterfowl Production Areas on the NW MT Wetland Management District lie outside the reservation boundary.)~~ There is no proposal to include programs or activities at Lost Trail NWR, or at the NW Montana WMD—Flathead County in an AFA with the CSKT.

The Tribal Self- Governance Act of 1994 (codified at 25 U.S.C. 458aa-458hh) was enacted as an amendment to Public Law 93-638 (codified as the Indian Self- Determination Act, 25 U.S.C. 450-450n) and incorporated as Title IV of that law. The Tribal Self-Governance Act allows qualifying tribes the opportunity to request AFAs with the Bureau of Indian Affairs (BIA) and non-BIA bureaus within the Department of the Interior. When dealing with non-BIA bureaus, including the Service, qualifying tribes may request to negotiate and enter into AFAs that allow them to conduct certain activities ~~of such non-BIA bureaus. Eligible activities include Indian programs (programs created for the benefit of Native Americans because of their status as Native Americans); activities otherwise available to Native American tribes (any activity that a Federal agency~~ that the non-BIA bureau might otherwise contract to outside entities~~);~~ and ~~activities~~ that have a special geographic, historical, or cultural significance to the Indian tribe requesting ~~a compact~~ an AFA.

Under the Tribal Self-Governance Act of 1994, when a qualified Indian Tribes ~~may~~ requests an AFA with a non-BIA bureau, for activities to which the tribe has geographical, historical, or

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cultural connections, that Bureau is required to conduct good-faith negotiations with the requesting tribe. ~~. and the Department must negotiate for inclusion an annual funding agreement to perform activities administered by the Department of the Interior when those units have a historical, cultural and geographic links to the tribes~~

~~.~~

The NBR, and other units of the NBRC ~~has~~ have a very high level of cultural, historic and geographic significance to the CSKT. ~~in that~~ All units of NBRC under consideration for an AFA are located within the Flathead Reservation. Pablo and Ninepipe NWRs are owned by CSKT. There are significant cultural sites located ~~therein~~ on NWRS lands. ~~and the~~ The land comprising the NBR was acquired directly from tribal ~~was formerly owned in~~ trust status in 1908, before the reservation was opened to non-Indian homesteaders. ~~for the CSKT. Also,~~ 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. ~~Additionally, the NBR is located entirely within the exterior boundaries of the Flathead Indian Reservation.~~

The National Wildlife Refuge System Administration Act (NWRSA) requires that NWRS units can be administered only by the Secretary of the Interior, through the Director of the Service. ~~; manage all refuges. A~~ Accordingly, the Service will continue to manage all units of ~~and provide oversight of~~ the NBRC according to applicable laws and policies. The Service will retain all existing real property ownership interests held by the United States in the NBRC. ~~of NBR refuge lands and easements. The NBR~~ All NWRS units will continue to be managed ~~for the~~ to achieve the wildlife purposes for which they were established and the mission of the NWRS, as established by Congress. ~~for public access and activities on the refuges so long as those are consistent with the conservation of the wildlife for which the refuges were established.~~

BACKGROUND: On December 14, 2004, the Service and the CSKT (collectively the Parties) signed an ~~Annual Funding Agreement (~~AFA~~)~~ under the Tribal Self-Governance Act of 1994. https://www.federalregister.gov/articles/2005/02/01/05-1785/fish-and-wildlife-service-and-confederated-salish-and-kootenai-tribal-governments-sign-annual
Under ~~this~~ that AFA, the CSKT were directly involved with ~~the mission~~ performing a variety of activities at the ~~National Bison Range Complex (~~NBRC~~). The CSKT performed a variety of Activities at the Bison Range,~~ including biology, maintenance, visitor services, and fire management.

The Service extended the AFA on September 5, 2006, pending negotiation of a successor Fiscal Year 2007 AFA (2007 AFA). On December 11, 2006, negotiations with the CSKT for 2007 AFA ended and the extended ~~expired~~ AFA was canceled. The AFA for the National Bison Range was one of the first AFAs entered into by the Service. Understandably, there were some concerns from portions of the public about the propriety of the AFA. Nevertheless, an effort was made by Service and the CSKT under the AFA to manage ~~the~~ refuge resources to the standards set by the Service under its management and oversight responsibilities. Allegations were raised regarding unfavorable working conditions, CSKT performance, and management of the NBR The Service made a decision to cancel negotiations. The ~~authorization to~~ Service's termination of the AFA ~~(or portions thereof)~~ did not follow ~~expected~~ previously agreed contractual

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procedures ~~those~~ that required the identification of problems and afforded a reasonable opportunity to correct them. ~~A more thorough discussion of the concerns of both the Tribes and the Service should have occurred before termination of the AFA.~~

On June 19, 2008, the Service and the CSKT signed another ~~Annual Funding Agreement~~ AFA (2008 AFA). The term of the AFA was October 1, 2008, through September 30, 2011. http://www.Service.gov/policy/library/2008/E8-15685.pdf

The 2008 AFA was implemented with satisfactory results and performance, However the Service was sued, with plaintiffs alleging that the AFA violated several statutes. On September 28, 2010 a U.S. District Court decided that the Service had not complied with the National Environmental Policy Act of 1969 (NEPA) and rescinded the 2008 AFA.

~~The 2008 AFA was implemented with satisfactory results and performance, However the Service was sued, with plaintiffs alleging that the AFA violated several statutes. On September 28, 2010 the a U.S. District Court decided for the plaintiffs, rescinded the 2008 AFA, and with the Confederated Salish Kootenai (CSKT) Tribe and returned responsibility for all work at NBRC the management of the National Bison Range to the U.S. Fish and Wildlife Service.~~

On November 10, 2011, the CSKT submitted a request to negotiate with the Service, for a new AFA that would include certain operations and maintenance programs at the National Bison Range and other NBRC units located on the Flathead Reservation. As required by law, the Service entered into government-to-government negotiations, and has developed a draft AFA with the CSKT.

~~On November 10, 2011, the Confederated Salish and Kootenai Tribes (CSKT) submitted a request to enter into an Annual Funding Agreement with the Department of the Interior, U. S. Fish and Wildlife negotiate with the Service, for a new AFA that would include certain operations and maintenance activities of programs at the National Bison Range and the ancillary properties (NBR) other NBRC units located on the Flathead Reservation. As required by law, the Service entered into government-to-government negotiations, and has developed a draft AFA with the CSKT.~~

CURRENT ALTERNATIVES:

A. Continue Current Management. No-Action**,** the Service would continue to administer and manage~~, operate, maintain~~ the NBRC as at present, with no type of formal partnership or contract with CSKT or any other entity. ~~The Service would continue to be responsible for the overall management of the NBR and the day-to-day on-site activities.~~

B. Proposed Action. Formalize a partnership between the Service and the CSKT through ~~an~~ a new self-governance AFA that would ~~allow~~ contract with the CSKT to operate eligible refuge programs and perform specific day-to-day activities of the NBRC consistent with the National Wildlife Refuge System Administration Act ("NWRSAA"). The CSKT would perform the following activities, subject to the Refuge Manager's approval:

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~~(Cathy – weren't you going to provide~~ a link here or somewhere in this section where the public can look at the current draft AFA?)

a. Oversight of Contracted Activities. .
b. Biological Program (including Habitat Management); ~~*do we want to clarify that a senior government biologist oversees this program*~~
c. Fire Program;
d. Maintenance Program; and
e. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities.

The Refuge Manager would retain final responsibility and authority for managing, directing, controlling and administering the operations of the NBRC. A Refuge Leadership Team (Team) comprised of the Refuge Manager, Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department, Deputy Refuge Manager and a CSKT Wildlife Refuge Specialist would collaborate and develop work plans, set work priorities, and prepare a periodic status reports, all subject to the final ~~authority~~ approval of the Refuge Manager.

The CSKT would be responsible operating eligible refuge programs and activities, subject to plans approved by the Refuge Manager, and in accordance with laws and policy guidance applicable to the NWRS. ~~` for training and development of staff with technical assistance from the Service, if requested.~~ The AFA would be established between the CSKT and the Service to clarify the administrative and procedural details necessary to fulfill the partnership agreement.

The NBR would be funded by federal appropriations. The NBR would receive an annual funding appropriation from Congress to manage and operate the refuge.

The benefits of an AFA for the Service include:

a. Promotes the mission to "work with others to conserve, protect, and enhance fish, wildlife, plants and their habitat for the continuing benefit of the American people";
b. Facilitates the mission of the NWRS and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states, "In administering the System, the Secretary shall - ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";
c. Fulfills Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), the Guiding Principles for management of the System, including: "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."
d. Improves the ability of the NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland the NBRC is located;
e. Provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific

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knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. Furthers and supports the Department's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

Federal law applicable to the NWR, including the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service, and federal environmental and historic preservation laws ~~like~~ including the *Endangered Species Act*, the *National Environmental Policy Act* of 1969, and the *National Historic Preservation Act* of 1966, will continue to apply and will apply to the actions of the CSKT in performing Activities of the NBR.

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ISSUE RESOLUTION AND ENVIRONMENTAL REVIEW:

The primary ~~issue~~ need to be addressed during the scoping and planning process for the EA is ~~how to resolve potential conflicts~~ to identify issues that will help the Service assess potential effects of the proposed federal action on various components of the human environment. A tentative list of issues, concerns and opportunities open to address include:

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1. Could the action threaten a violation of Federal, State, Indian tribal, or local law or requirements imposed for protection of the environment (e.g., State air quality standards, EPA's solid waste management guidelines, OSHA noise standards, local historic preservation ordinances)?

2. Could the action alter or affect an area that is being considered or has been identified for protection by Federal, State, regional, or local government agencies or Indian tribes? Examples include, but are not limited to, Wilderness, Wild and Scenic River, Historic Landmark, open space or conservation areas.

3. Could the action result in the use, storage, release and/or disposal of any toxic, hazardous, or radioactive materials?

4. Could the action adversely affect an endangered or threatened species, a species under official Federal, State, or Indian tribal consideration for such status, or the critical habitat of such a species?

5. Could the action cause changes in the ways members of the surrounding community, neighborhood, or rural area live, work, play, relate to one another, organize to meet their needs, or otherwise function as members of society, or in their social, cultural, or religious values and beliefs?

6. Could the action have environmental impacts on a minority or low-income group that are out of proportion with its impacts on other groups?

7. Could the action affect properties included in or eligible for the National Register of Historic Places, or other culturally valued properties such as traditional neighborhoods or communities, cemeteries, culturally significant rural areas, archeological sites, or places of religious importance to Indian tribes, Native Alaskans or Native Hawaiian groups?

8. Could the action generate controversy on environmental grounds? The controversy must be related to potential impacts on some aspect of the environment; mere unpopularity of an action (without an environmental nexus) is not sufficient to trigger this indicator.

9. Does the action have effects on the human environment that are highly uncertain or involve unique or unknown risks? Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment.

10. Is the action related to other actions with individually insignificant but cumulatively significant impacts? For example, is the action part of an ongoing pattern of development that could collectively change the quality of the human environment such as suburbanization, “gentrification,” or urban renewal?

11. May the action establish a precedent or represent a decision in principle that could lead to future actions with significant environmental effects?

12. Could the action affect public health and safety in any other ways not specifically listed above?

13. Could the action have any direct or indirect effects on any other environmental media or resources not specifically listed above?

FOR FURTHER INFORMATION CONTACT:

~~Dean Rundle, Regional Office Supervisor, U.S. Fish and Wildlife Service, 134 Union Blvd, Lakewood, Colorado 80228.~~

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

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"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.

BU FY 13-16 AFA Draft 4-12-12 tech corrections draft.doc

FISCAL YEARS 2013–2016 ANNUAL 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
March 8, 2012 draft reflecting technical corrections through April 12, 2012

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a Federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act ("ISDEAA"), 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994 ("TSGA"), now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall administration and management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of the NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Departmental and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions

under which the Service will fund and the CSKT will perform programs, services, functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA at the NBRC in the list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because it:

a. furthers the mission of the Service which is: "Working with Others to conserve, protect, and enhance fish, wildlife, plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve both the mission of the NWRS and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4)(E):

> "In administering the System, the Secretary shall . . . -
>
> ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

> "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."

d. improves the ability of the NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland the NBRC is located;

e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. §§ 458cc-458hh), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement.");
b. provides CSKT with the ability to more effectively help the Service manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
d. improves CSKT's ability to help protect the cultural resources of the NBRC, through closer collaboration with the Service;
e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority*. This AFA is authorized by:

1. Title IV of the ISDEAA, 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the TSGA, as amended;
2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and
3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. § 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law,

including the NWRSAA, as amended, and each Federal regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the ISDEAA and the Tribal Self-Governance Regulations, and as provided below in this AFA in Sections 3.C (Compliance); Section 19.C (Tribal Administrative Procedures); and Section 19.D (Indian Preference).

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all Departmental and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a career or career-conditional Service employee at the NBRC:

A. Who was employed by the Service to perform an Activity as of the date of the last approving signature on this AFA; and

B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act ("IPA") assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: FWS Refuge Manager; FWS Deputy Refuge Manager; Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the FWS line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the FWS line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service, which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service.

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541);
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

- Lost Trail National Wildlife Refuge (Org. Code 61545); and
- Northwest Montana Wetland Management District in Flathead County (Org. Code 61546)

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management of Contracted Activities. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions, and their associated activities, subject to this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and Volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as set forth in Section 7.E below.

B. *Redesign and Reallocation*. In accordance with 25 U.S.C. § 458cc(b)(3), CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFAs may include some of these retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFAs.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. § 458cc(k), and does not preclude negotiation by the Parties for inclusion of additional non-inherently-Federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted under this AFA.

B. *Refuge Manager*. The Refuge Manager will retain final responsibility and authority for managing, directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and GO/ NO GO checklists;
9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;

10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

   a. Supervise all CSKT Employees and direct the day-to-day work of CSKT Employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions for Service employees assigned to CSKT, including management of performance and conduct, will be handled in accordance with AFA Sections 13.B.1, 13.F.5.c, and 13.G;
   b. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and
   c. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
   c. Deputy Refuge Manager; and
   d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 12.C and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise

agreed to by the parties. At least once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation can invoke the dispute resolution process in Section 20.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. *Work Plan (Plan).*

1. The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.

2. *Work Plan Preparation.* The Parties will jointly develop the Work Plan. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. *Responsibility & Intent.* CSKT responsibility for the contracted Fire Program at NBRC will be managed through the CSKT Fire Program in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, under the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

B. *Meetings & Coordination.* The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

C. *Fuels Treatments & Prescribed Fire.* The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or from other sources.

1. The Service will recommend fuels projects and plan for them 2-5 years out.
2. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
3. CSKT will perform planning, including writing of burn plans.
4. CSKT will perform pre- and post-burn monitoring to its standard, with the exception of monitoring in the grasslands which will be done by the Service.
5. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
6. Smoke management requirements will be the responsibility of the CSKT.
7. CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
8. CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator (Refuge Manager).

D. *Wildfire Suppression & Initial Attack*

1. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land. This does not preclude Incident Qualification Certification System (IQCS)-qualified Service firefighters from conducting IA activities on Service lands.
2. The CSKT will open a Firecode for all IA fires.
3. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.

4. The CSKT, with the Refuge Manager's concurrence, will provide all support for extended attack and large fire operations.
5. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
6. The Parties will coordinate in preparing Severity requests. Generally, CSKT's Severity requests will include coverage of the NBRC. The Service will make the request for any Severity resources to specifically be stationed on the NBRC.

E. *Preparedness*

1. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
2. The CSKT will administer IQCS for CSKT Employees (excluding Federal employees assigned to CSKT under an IPA agreement). The Service will do the same for Federal employees, including those assigned to CSKT under an IPA agreement.
3. The Service will pay for fire training as needed for Service employees and CSKT Employees. Local or in-house training will be complimentary.
4. The Service will status Service employees in the Resource Ordering Supply System (ROSS).
5. The six man fire cache at the NBRC will be maintained by the Service.
6. The fire engine at the NBRC will be maintained by the Service.
7. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT Employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to

have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the facts, including: the allegation(s) raised; the Refuge Leadership Team's assessment of the allegation(s); and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:

a. adequate training or instructions to perform the assigned task(s) safely; or
b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The TSGA authorizes the Secretary to waive regulations in accordance with the procedures in § 403(i)(2) of that Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J. However, CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA),* 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, the budget in Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining

necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager. This includes, but is not limited to, seeking the Refuge Manager's review and tentative approval at approximately the 25% and 75% stages of completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer.* Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The Parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of Service-provided funds under this AFA. The CSKT will provide those financial records to the Service to the extent the Service

requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under AFA Sections 18.B or 18.C.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within 180 days of the effective date of any retrocession or reassumption under Section 18.B or 18.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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, records of the CSKT shall not be considered Federal records for the purpose of the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 11 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation*. In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation orally and follow up with a written notification to that Division Manager within one week from the date of oral notice.

      ii. *Notice of Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 18.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the

performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

3. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT Employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program,

which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently Federal will also be transferred to CSKT, and the budget in Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate, as allowed by CSKT's Ordinance 69C, as amended..

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees.*

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under IPA agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall be supervised by the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire, and Visitor Service Programs (except for the Outdoor Recreation Planner, unless that position is contracted to CSKT), as well as to CSKT Employees, contractors and Volunteers performing work contracted under this AFA.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. The Service may detail Service or CSKT NBRC employees to work

at other units of the Refuge System, including units of the NBRC not covered by this AFA. The Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and refuge managers of the other Service field stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in the Attachment B budget, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA),* 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.

4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under AFA Sections 18.B or 18.C below, or cancellation for cause in accordance with Section 13.F.5.c below.

c. *IPA Employee Performance and Conduct*.

i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;

bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or

dd. Any other cause as agreed to by the Service.

iii. Upon termination of an IPA agreement for cause, the Activities that had been performed by that IPA Employee will remain the CSKT's responsibility under this AFA. The Service will transfer to CSKT the balance of salary and benefits for that position in the current and subsequent fiscal years covered by this AFA.

iv. CSKT may invoke the dispute resolution process (see Sec. 20.A of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

v. Consistent with 5 C.F.R. § 334.107(a), CSKT may terminate an IPA agreement at any time and for any reason, including for cause other than as defined in this AFA. However, in the event CSKT terminates an IPA agreement for a reason other than cause as defined above in this AFA , the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT*.

a. *Employment Election*. At its discretion, the CSKT may directly employ each Affected Federal Employee who elects that option. As agreed by the Affected Federal Employee and the CSKT, either CSKT benefits or Federal benefits will be provided.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed by the CSKT the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of its own employees, as a requirement of successful employee performance, a critical element providing that the employee work cooperatively with the other Party and its employees and work to successfully implement this AFA.

2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the Department and CSKT, respectively.

3. In the event that either Party believes that the performance or conduct of an employee of the other Party is negatively impacting its ability to effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the alternative dispute resolution process described in Section 20.A below will be used to resolve the issue.

H. *Personnel Records.* The Service will maintain the official personnel records and files of its own employees, including employees assigned to work for CSKT under an IPA agreement, in accordance with the personnel regulations and policies of the Department. CSKT will maintain the official personnel records and files of its own employees in accordance with its own personnel regulations and policies. Access to and release of personnel records of one Party, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

I. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPDs) for the duties historically performed by Volunteers at NBRC. The VPDs will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. The VPDs will include lists of any required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in their VPDs, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer

Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 16.A and 16.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. Final disposition may include: no action – return to duty; counseling; training; or termination.

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. *Base Funding; Non-Recurring Funding*. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreements and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. *Funding.* In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in

Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 25.A below, for FY 2013 the Parties may agree to phase in Activities and their associated funding over the [first quarter] of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that can be processed with greater efficiency and cost-effectiveness by CSKT, as jointly determined by the Refuge Manager and the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation. Transfer of funds to CSKT for such costs will be reflected annually in Attachment B.

2. The Service will provide funding for, and CSKT will be responsible for, hiring seasonal staff in the biological, visitor services and maintenance programs.

3. The Service may either retain or transfer to CSKT funding for acquisition of goods and services necessary for the following operations for which CSKT is responsible: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation and will be reflected annually in Attachment B.

4. The Service will provide CSKT with funding equivalent to 0.25 of a GS-7 Technician position for implementation of the Fire Program responsibilities outlined in Section 8 of this AFA.

5. Generally, Attachment B specifies the following types of consideration:

    a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

    b. *Appropriated Funds*.

        i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsections 14.B.1 and 14.B.3 above) including: salary and benefits for organizational chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for

employment of seasonal employees; funds for travel and training of CSKT Employees; funds to compensate CSKT for time worked in support of NBRC by employees of the CSKT Division of Fish, Wildlife, Conservation and Recreation who are not assigned permanently to NBRC (e.g. participation in the Refuge Leadership Team by the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation); funds for acquisition of supplies and services to support programs, as agreed upon by the Refuge Manager and Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation; and other fixed costs jointly identified as being transferred to CSKT in Subsections 14.B.1 and 14.B.3 above; and

ii. *Contract Support Costs*.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this Section by an amount equal to the salary and benefits of that position. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 13.F.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 14.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service full-time equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon by the Parties in advance and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds it provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 22.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget (OMB) guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities.* The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other real property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property*. Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. With the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property in accordance with Federal property procedures.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to 25 U.S.C. § 458ff(c), which incorporates 25 U.S.C. § 450j(f), the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 16.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident involving personal injury, death, or property damage resulting from the performance by the CSKT of an Activity covered by this AFA.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT-directed Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will

ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT contractor or CSKT Employee, other than an IPA Employee, in connection with the performance of any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the FTCA.

Section 17. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at the NBRC, or involving its staff, either Party will orally notify the other Party promptly. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this Section shall be interpreted to limit the ability of either Party to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 18.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Parties will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section 17.A above.

3. *CSKT Response*. Following notice of an emergency under Sections 17.A and 17.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

b. assist the Service in responding to the emergency; and

c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 17.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section 17.A above. At that time, the Refuge Manager will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption or retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Property*. On the effective date of the retrocession, CSKT will return all Federal property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (see also Section 11.C.2 of this AFA regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 18.A above and this Section 18.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations cited in Section 18.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that its performance is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning responsibility for performing the reassumed Activity to the Service;

b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

c. On the effective date of the reassumption, CSKT will return all Federal property which it does not need for performance of a retained Activity;

d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in per-

forming the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 11.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 2016, with any signed successor AFA to be delivered to Congress prior to July 1, 2016. This schedule will allow such successor AFA to be effective on October 1, 2016, thereby accommodating the 90 day period required prior to the effective date of any AFA (*see* 25 U.S.C. § 458cc(f)). A Party opting to cease negotiations for a successor AFA will provide thirty days' written notice to the other Party, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Property*. On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B (as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the FTCA, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution*.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision to provide to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that

decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure).

6. Due to the uniqueness of this AFA, the officials identified in this Section may not delegate their responsibilities under this Section.

7. Nothing in this Section diminishes or replaces the existing rights and responsibilities of the Parties or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the ISDEAA ("Contract disputes and claims"). Nothing in this Section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 20.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 20.B.

Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that this AFA incorporates the following provisions from Title I of ISDEAA, as authorized by 25 U.S.C. § 458cc(*l*):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting

12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and
    450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Modification and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Parties may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 10.B (Secretarial waiver of regulations); Section 10.E (use of CSKT performance standards); and in Section 22.B (correction of minor, non-substantive errors or omissions). Provided, however, that the Parties may execute modifications involving augmentation of funds or resources under Attachment B upon approval by the Refuge Supervisor and the Tribal Chairman. The Parties agree that, in the event the Tribal Self-Governance Act is amended, the provisions contained in this AFA shall remain in effect until the Parties jointly execute any amendments or modifications as a result of changes in the Tribal Self-Governance Act statutes or accompanying regulations.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of an errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will

perform Activities at the NBRC. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f); provided that if, prior to commencement or completion of such ninety-day period, the Tribal Self-Governance Act is amended to eliminate the ninety-day congressional review period, this AFA may become effective immediately upon signature by all Parties. In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be [phased in, as mutually agreed-upon by the Parties, during FY 2013. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__].

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 14.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 2016. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 22.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2013-2016 ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW, EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____ _____

Dan Ashe, Director, U.S. Fish & Wildlife Service — Date

_____ _____

_____, Assistant Secretary for Fish, Wildlife and Parks — Date

_____ _____

Mike Black, Director, Bureau of Indian Affairs — Date

"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.

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

"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. 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

"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. With respect to the IPA revision on p. 21, I added a citation to the CFR provision that makes clear that IPA assignments may be terminated at any time. Let me know if these changes are acceptable on your end.

The revisions are on pages 4, 18, 21, and 25 of the draft AFA. Those are the only changes I've made, other than putting today's date on the draft. Let me know if any questions.

Thanks,

BU FY 13-16 AFA Draft 3-8-12.doc

FISCAL YEARS 2013–2016 ANNUAL 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
March 8~~February 14~~, 2012 draft

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services, functions, and

activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

> "In administering the System, the Secretary shall:
>
> ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

> "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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and
b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;
e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;
2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a career or non-career Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT Fish, Wildlife, Recreation & Conservation Division Manager; Service Deputy Refuge Manager; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted by the CSKT.

B. *Refuge Manager* The Refuge Manager will retain final responsibility and authority for directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

   i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA;
   ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and
   iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
   c. Deputy Refuge Manager; and
   d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager can invoke the dispute resolution process in Section 19.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. *Work Plan (Plan).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.

1. *Work Plan Preparation.* The Parties will jointly develop the Work Plan .

a. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

a. The Service will recommend fuels projects and plan for them 2-5 years out.
b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
c. Planning to include writing of burn plans will be done by the CSKT.
d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
f. Smoke management requirements will be the responsibility of the CSKT.
g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. Wildfire Suppression & Initial Attack

a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land, This does not preclude Incident Qualification Certication System (IQCS)-

qualified Service firefighters from conducting initial attack activities on Service lands.
b. The CSKT will open a Firecode for all IA fires.
c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.
d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.
e. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
f. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).
c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.
d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.
e. The six man fire cache at the NBRC will be maintained by the Service.
f. The fire engine at the NBRC will be maintained by the Service.
g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act , 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer.* Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request,

and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within 180 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As au-

thorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns.*

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation*. In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency.* If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager within one week from the date of oral notice.

ii. *Notice of Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees.*

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire, and Visitor Service Programs (except for the Outdoor Recreation Planner, unless that position is contracted to CSKT), as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA),* 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.

4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a

retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct.*

i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;

bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or

dd. Any other cause as agreed to by FWS.

iii. Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. CSKT may invoke the dispute resolution process (see Sec. 19.A. of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

v. Consistent with 5 C.F.R. § 334.107(a), CSKT may terminate an IPA agreement ~~without cause~~ at any time and for any reason, including for cause other than as defined in this AFA. However, in the event CSKT terminates an IPA agreement for reason or cause other than as defined in this AFA ~~without cause~~, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT*.

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

I. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT,

and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers.* Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. .Final disposition may include: no action – return to duty; counseling; training; or termination.

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually

for the following fiscal year. Consistent with Section 24.A below, for FY 20__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. The Service will provide CSKT with funding equivalent to ~~Funding for~~ 0.25 of a GS-7 Technician position ~~will be transferred to CSKT~~ for implementation of the Fire Program responsibilities outlined in Section 8, above.

5. Generally, Attachment B specifies the following types of consideration:

   a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

   b. *Appropriated Funds*. Appropriated funds, as follows:

      i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife, Recreation &

Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager, for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsection 14.B.1 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure

that all necessary indirect costs to support CSKT administrative functions are included.

3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property*. Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim.*

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that

provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Section 17. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

    b. assist the Service in responding to the emergency; and

c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Property*. On the effective date of the retrocession, CSKT will return all Federal Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

c. On the effective date of the reassumption, CSKT will return all Federal Property which is not needed by the CSKT to perform a retained Activity;

d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201 , with any signed successor AFA to be delivered to Congress prior to July 1, 201 . This schedule will allow such successor AFA to be effective on October 1, 201 , thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Property*. On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B(as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution.*

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish,Wildlife, Recreation & Conservation Division Manager may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Fish,Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Fish,Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act are also incorporated into this AFA, as authorized by 25 U.S.C. § 458cc(*l*):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting

12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and
    450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will

perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during FY 20__. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____	_____
Dan Ashe, Director, U.S. Fish & Wildlife Service	Date
_____	_____
_____, Assistant Secretary for Fish, Wildlife and Parks	Date
_____	_____
Mike Black, Director, Bureau of Indian Affairs	Date

"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.

BU FY 12-16 AFA Draft 1-25-12.doc

FISCAL YEARS 20~~09~~12–20~~11~~16 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
January 25, 2012 draft

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Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance~~management~~ of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services,

Comment [1]: I can't tell from my notes if we had discussed this, or if this proposed revision was from my own earlier internal notes. In any case, I don't think it's controversial.

functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at ~~73~~ 76 F.R. ~~16054-55~~57068 (September 15~~March 26~~, 20~~08~~11).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

"In administering the System, the Secretary shall:

ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

"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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

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e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and

b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;

c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;

d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;

e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and

f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;

2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which ~~concerns additional activities administered by the Secretary~~authorizes tribal

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Comment [2]: I added this to Dean's proposed text, for FWS' consideration.

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Comment [3]: Sharon wanted to review this language once we inserted it here.

contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and~~and~~

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities ~~("Activities")~~ in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C~~B.2~~ below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

Comment [4]: This corrects a typographical error.

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under~~But for this AFA would continue to perform the Activity during the term of~~ this AFA.~~;~~ ~~and~~

~~C. Whose employment the Service would terminate in the absence of continued employment with the Service or the CSKT as provided in this AFA;~~

~~An Affected Federal Employee can also mean a Service employee who formerly worked at the NBRC and whom the Service reassigns to the NBRC under a mutual agreement~~

with CSKT to perform work for CSKT under this AFA. Such employee will have the same employment options available to any other Affected Federal Employee.

Available Property means any equipment, material, or supply the Service makes available for use by the CSKT in performing an Activity, including any horse owned by the United States.

Annual Work Plan or AWP means the jointly developed and mutually agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

DOI Senior Management Team means the team currently consisting of the: Deputy Secretary; Associate Deputy Secretary; Assistant Secretary Fish, Wildlife and Parks; Assistant Secretary Indian Affairs; Director, U.S. Fish & Wildlife Service; Director, Bureau of Indian Affairs; and Associate Solicitor, General Law; or as otherwise constituted by the Department.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

NBRC Baseline Data includes written or other tangible data documenting the existence and/or state of each natural resource of the NBRC (including bison and other wildlife) and each item of real and personal Federal property of the NBRC.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT ~~Deputy~~ Fish, Wildlife, Recreation & Conservation Division Manager~~Refuge Manager~~; Service Deputy Refuge Manager; and the CSKT ~~Lea~~Wildlife Refuge Specialist~~d Biologist~~.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA is the NBRC, which lies entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Comment [5]: I reworded this part of Dean's proposed text; please review

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Section 6~~.~~. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist ~~position~~ position to oversee Activities contracted under this AFA~~and the Administrative Support Assistant position and the associated Activities of those respective positions. As part of the Administrative Support Assistant's Activities, CSKT shall direct the employee in that position to assist the Refuge Manager and the Service's Deputy Refuge Manager in some of their retained administrative duties~~;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities. ~~During the first two years of this AFA (through FY 2010), the Service's Outdoor Recreation Planner shall retain environmental education activities, cooperating association oversight, and volunteer coordination activities (subject to CSKT's selection and direction of volunteers as described in Section 12.G.2.b of this AFA). Environmental education activities shall consist solely of working with outside groups and individuals on educational activities involving the NBRC. Beginning in FY 2011, all the above functions will transfer to the CSKT, and the Outdoor Recreational Planner will become an Affected Federal Employee. Nothing in this Section or this AFA shall preclude the CSKT and Service staffs from working cooperatively on interpretive services or any other Visitor Service Program Activities.~~

The Activities in the above five categories will be more fully described in ~~each~~the ~~Annual~~ Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal ~~the~~ activit~~y~~ies in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform~~manage~~ the Activities ~~performed~~contracted by the CSKT.

B. *Refuge Manager*~~.~~ The Refuge Manager will retain final responsibility and authority for directing, ~~and~~ controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). ~~The Refuge Manager shall provide reasonable written notice to CSKT of any changes in direction or prioritization of duties. Unless otherwise agreed upon, and subject to the emergency provisions in Section 16 below, changes or additions to instructions or protocols shall be communicated in writing to the CSKT no later than two weeks in advance of the date the affected Activities are to be performed. Subject to the dispute resolution procedures in Section 19.A below, T~~the Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions ~~for~~ for the NBRC:

1. Setting work priorities through the NBRC ~~Annual~~ Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and

Comment [6]: Dean, I put a pinpoint citation here instead of your broader citation.

Comment [7]: Dean, please confirm this language is accurate from FWS' position.

refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements; ~~and~~
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns~~.~~; and
11. Any action which is an inherently Federal function.

C. Wildland Fire Specialist ~~*Deputy Refuge Managers*~~.

~~1. Each Party will support the management partnership at NBRC by providing a Deputy Refuge Manager. The CSKT and Service Deputies are co-equal positions. Both Deputies are senior staff advisors to the Refuge Manager and provide substantive input to management decision-making at NBRC.~~

~~2. In the absence or unavailability of the Refuge Manager, the CSKT and Service Deputy Refuge Managers will alternate serving as Acting Refuge Manager. The Acting Refuge Manager will be responsive to the instructions of the Refuge Supervisor and shall exercise all authorities of the Refuge Manager except those listed in Section 7.B above.~~

~~3. The Refuge Leadership Team will determine the allocation of most of the duties between the CSKT and Service Deputy Refuge Managers and specify such in the AWP. A limited number of duties are specifically assigned to either the CSKT or Service Deputy Refuge Manager as follows:~~

~~a~~. The CSKT Wildland Fire Specialist ~~Deputy Refuge Manager~~ will:

i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT ~~Deputy~~ Wildland Fire Specialist ~~Refuge Manager~~, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA; ~~.~~
ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and ~~.~~
iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

~~b. The Service's Deputy Refuge Manager will:~~

Comment [8]: My notes don't reflect whether we had discussed thi s or if this addition was from my earlier internal notes. If we hadn't discussed this, let me know your thoughts.

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~~i. Supervise and conduct the Law Enforcement Program, including management of conservation easements of NBRC.~~
~~ii. Supervise any subordinate Service employees not assigned to CSKT.~~
~~iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.~~

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, ~~T~~the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee) ~~Deputy Refuge Manager~~;
   c. ~~Service~~ Deputy Refuge Manager; and
   d. CSKT ~~Lead Biologist~~Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the ~~AWP~~Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the ~~AWP~~Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed ~~weekly to informally discuss progress, identify successes, make changes to work priorities, conduct short-term planning, and identify and resolve any concerns raised by either Party~~..

~~4. Unless the meeting is with respect to an emergency, the Refuge Manager or the CSKT Deputy Refuge Manager shall provide at least two days advance notice of any non-regularly scheduled coordination meeting being requested.~~

~~5~~4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the ~~During each fiscal year, one of these quarterly meetings will be attended by the~~ Regional Director will meet with the Tribal Council.

~~6~~5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager

Comment [9]: This section will also need revisions to reflect subsequent negotiations.

Comment [10]: There is consensus on adding either Tom or Dale's position to the Refuge Leadership Team, if FWS can provide compensation for that time.

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~~Deputy Refuge Manager~~ can invoke the dispute resolution process in Section 19.A i~~n the event of disagreement with the Refuge Manager's decision.~~the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. ~~*Annual*~~ *Work Plan (Plan~~AWP~~)*. The Service and CSKT will work jointly to develop and establish a mutually agreed-upon ~~AW~~Plan, to be amended as necessary to reflect current needs, priorities and available resources ~~for each fiscal year~~. The ~~AWP~~Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in- CSKT duties under the Plan. ~~In the event that insufficient resources are provided to accomplish the work identified in the AWP,~~ Tthe Refuge Manager shall prioritize Plan activities according to available~~Leadership Team shall meet to determine what work is to be accomplished taking into account the~~ resources ~~provided~~. ~~The AWP will include expectations for all Activities to be conducted during the Federal fiscal year to achieve the established purposes and approved goals and objectives of the NBRC, including performance of Activities contracted by CSKT, and performance of activities retained by the Service. CSKT will be responsible for any AWP performance requirements for CSKT programs, and the Service will be responsible for AWP performance requirements for Service programs.~~

~~1.*Expectations*. The Parties understand that this AFA represents a significant change in operation and maintenance of the NBRC, and that many new CSKT employees will be assigned to the NBRC at the time this AFA is implemented. The Parties understand that the first year of this AFA will be a transition year as new employees learn their jobs, and as the Refuge Leadership Team develops the close working relationship necessary for success of its on-the-ground partnership. The senior officials of both Parties, including signatories to this AFA, expect that, during the first year of the partnership, the Refuge Leadership Team and all NBRC employees will work diligently to develop a healthy and cooperative working environment.~~

~~2.*NBRC Baseline Data*. The Parties will agree on a set of NBRC Baseline Data that will establish, from the best data available, the biological conditions, and the conditions of facilities and equipment existing at the NBRC at the time this AFA becomes effective. The NBRC Baseline Data will also set forth any monitoring protocols for Fire, Maintenance, Biological, and Visitor Services Programs. A list of existing documents describing baseline conditions, and a list of identified data gaps needed to establish baseline conditions, will be included in Attachment A prior to implementation of the AFA. Any evaluation of CSKT's performance will be measured against the jointly agreed-upon NBRC Baseline Data and the duties identified in the AWP. The Service will not hold the CSKT to a higher standard of performance for any Activity than that to which it would hold itself, if that Activity were performed by Service employees.~~

Comment [11]: Dean: let me know your thoughts on this as a substitute for your 10/3 proposed text here

Comment [12]: I tried to replace all "AWP" references in the AFA to "Plan" or "Work Plan"

Comment [13]: Is FWS okay with this?

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~~3.*Protocols.* Prior to the effective date of the AWP, the Parties shall review all protocols involved with that AWP.~~

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~~4.~~*1.~~Initial and successor~~Work ~~AW~~P*lan Preparation~~'s~~*. ~~Prior to implementation of this AFA, t~~The Parties will jointly ~~will~~ develop the ~~initial~~ Work Plan~~AWP for FY 2009~~.

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~~a. The initial AWP will be limited in scope, and will include only the basic, fundamental Activities necessary to provide for the biological integrity of the NBRC, ensure maintenance of critical infrastructure and equipment, and provide basic visitor services. The initial and successor AWP's will also include: significant requirements for on-the-job training of new employees; development of any needed NBRC Baseline Data; development of working protocols, including any fire monitoring protocols; relationships within the Refuge Leadership Team; and orientation and training of the combined Service/CSKT staff on the expectations of the partnership, cultural awareness, safety, and team building.~~

~~b~~a.The Refuge Leadership Team will prepare the ~~AW~~Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan~~AWP~~. The Refuge Leadership Team will further develop information from the RAPP Workbook into the ~~AWP~~Plan. In concise narrative format, the ~~AWP~~ Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The ~~AWP~~Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

~~c. The AWP is a living document that can be adjusted during the course of the fiscal year to address changes in environmental conditions, funding and directions from the Regional Supervisor. The AWP will be submitted to the Refuge Supervisor annually by October 1. As appropriate, the Refuge Leadership Team will prepare changes to the AWP for approval by the Refuge Manager and submission to the Refuge Supervisor.~~

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) ~~the Refuge Manager, CSKT Deputy Refuge Manager, or Service Deputy Refuge Manager~~ to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

a. The Service will recommend fuels projects and plan for them 2-5 years out.
b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
c. Planning to include writing of burn plans will be done by the CSKT.
d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
f. Smoke management requirements will be the responsibility of the CSKT.
g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. Wildfire Suppression & Initial Attack

a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land. This does not preclude Incident Qualification Certication System (IQCS)-

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qualified Service firefighters from conducting initial attack activities on Service lands.

b. The CSKT will open a Firecode for all IA fires.

c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.

d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.

e. The CSKT will generate a fire report for all IA and submit it to the Service within 10 days, the Service will enter a fire report into FMIS.

f. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.

b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).

c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.

d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.

e. The six man fire cache at the NBRC will be maintained by the Service.

f. The fire engine at the NBRC will be maintained by the Service.

g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

~~G. *Bison Herd*. The Assistant Secretary for Fish, Wildlife and Parks must approve any plan to reduce the bison herd below 330 bison, which represents 90% of the population average over the three-year period consisting of FY '05, FY '06, and FY '07.~~

Section ~~8~~9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of

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their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~ will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section ~~9~~10~~.~~. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to ~~After~~ consult~~ing~~ with the Refuge Manager prior to~~,~~ making ~~the CSKT may~~any request for~~that~~ the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge ~~Leadership Team~~ Manager will identify ~~in the AWP~~ any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager~~Leadership Team~~ will identify ~~in the AWP~~ any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act [CITE, 16 U.S.C. § 1531 *et seq.*]., including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection.*

1. *Addition of Funding.* Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

23. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 101. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the AWPWork Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

Comment [14]: Dean, please confirm that this revision to your wording here works for FWS.

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B. *Activity Records*. The parties will set forth in the Work Plan~~AWP~~ an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~ will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within ~~90~~180 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service

Comment [15]: Is more detail necessary here?

Comment [16]: There was discussion of including more detail here.

Comment [17]: Dean: I changed "report" to "identify" here since we use the word "report" immediately before this.

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Comment [18]: Dean: please review the revisions I made here to your 10/3 proposed text. I think this revision comports with our last phone discussion.

provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

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E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 1~~1~~2. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. ~~*Joint* Evaluation. The Service and CSKT will jointly evaluate NBRC operations by using: applicable Operational Standards; the terms and conditions of this AFA; and NBRC Baseline Data. Any written evaluation or similar assessment of any NBRC activities (including any report developed under Section 11.B of this AFA), shall address NBRC activities as a whole and shall be jointly drafted and approved by the Parties under the direction of the Refuge Leadership Team. Any evaluation shall clearly identify the specific NBRC Baseline Data, Operational Standard, or AWP provision against which performance is being measured.~~ In the event the Parties do not agree on any portion of any~~the~~ evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager~~Deputy Refuge Manager~~ in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly

Comment [19]: Dean: this is a new proposed addition since our last discussion.

provide to the CSKT a copy of each written comment or documented oral commentthat information to the CSKT without requiring any request from CSKT, on its own initiative, in accordance with disclosure practices under FOIA and the Privacy Act, without the necessity of a FOIA request from the CSKT. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation & Conservation Division Manager.

Comment [20]: This is also a new proposed addition since our last discussion.

b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation & Conservation Division Manager and the Department Head of the CSKT Natural Resources Department no later thanwithin one week from the date of oral notice.

ii. *Notice of Minor Perceived Deficiencies*. The Refuge Manager will notify the CSKT Deputy Refuge Manager and the Department Head of the CSKT Natural Resources Department in writing (e-mail is acceptable) of any performance deficiency that is minor or is an apparent oversight. Such written notices shall specifically describe the performance deficiency and identify a reasonable amount of time for CSKT to either remedy the deficiency or demonstrate that the deficiency does not exist.

iii. *Notice of Other Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any other significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable Bbaseline Ddata; Operational Standard; approved Work PlanAWP provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director -

Refuges~~Assistant Secretary for Fish and Wildlife and Parks~~ and the Regional Director~~Department's Office of the Secretary~~ and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

~~B. *Final Report and Review*. The Refuge Leadership Team will prepare an Annual Narrative Report to cover each fiscal year of this AFA. The report format will follow current Service policy contained in the Refuge Manual and/or Service Manual. The Annual Narrative Report will be a concise narrative description of work, activities and events that occurred during the prior fiscal year, and will include successes, lessons learned, areas for improvement, and recommendations for future AWP's, AFA's, and/or other partnerships between the Parties. The Refuge Leadership Team will submit the Annual Narrative Report to the Refuge Supervisor for review and approval by December 31st of each year, beginning on December 31, 2009.~~

~~C~~B. ~~*Miscellaneous*~~ *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA ~~other than those specified above~~, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

~~D~~C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared ~~monthly~~quarterly~~,~~. The Refuge Manager shall endeavor to submit the status reports to ~~due at~~ the FWS Refuge Supervisor~~Service's Regional Office in Lakewood, CO,~~ and the CSKT Tribal Council by the 15th ~~business~~ day of January, April, July, and October~~, the following month~~. ~~The Regional Office shall transmit the reports to the Department officials identified in Section D.3 below and to the CSKT Tribal Chairman by the 10th of the month.~~ The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and~~,~~ approve~~, and transmit~~ the status reports ~~to the Regional Office~~. ~~The Refuge Leadership Team will determine the contents of the status reports, which may include, but is not limited to, significant accomplishments, lessons learned and identified areas for improvement.~~ At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager ~~and the CSKT Deputy Refuge Manager~~.

Comment [MSOffice21]: I changed the language for quarterly report submission to include actual dates so it would make more sense (previously it referred to the "following month", which was leftover text from the last AFA when the reports were supposed to be monthly). Let us know your thoughts.

Comment [22]: My notes reflect we had approved changes here that would have reflected the RLT transmitting the reports to the FWS Refuge Supervisor and the CSKT Tribal Council. Since the prior section has the Refuge Manager doing that transmittal, I amended this line to reflect that.

~~3. The Service shall be responsible for transmitting periodic status reports to the DOI Senior Management Team, and the Director of the Office of Self-Governance. CSKT shall be responsible for transmitting copies of the status reports to any congressional offices it feels appropriate.~~

Section 1~~2~~3. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees*.

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its

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employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire and Visitor Service Programs, as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees*. The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

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~~B~~C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

~~C~~D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

~~D~~E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which

the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA. ~~The Parties will work on developing a new patch which can be worn on both FWS and CSKT uniforms and which will show the partnership between the Federal and tribal governments.~~

F~~E~~. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty~~forty-five~~ (~~45~~30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

   a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA)*, 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

   b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

   c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

   d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and w~~W~~here practicable, reassignment by the Service to another duty station may be possible.

4. *Reduction in Force ("RIF")*. If all of the above options are unsuccessful, the Service will conduct a reduction in force. DELETE after resolution of employment options issue

5. *Assignment to the CSKT under an IPA Agreement*.

Comment [23]: Revision from 45 to 30 is in recognition of: A) the fact that NBRC staff have already met with FWS and CSKT officials to discuss employment issues and they will continue to have a very lengthy time to consider options over the course of NEPA analysis, etc; and B) CSKT will need time to properly advertise, screen, interview and hire any staff in the event an Affected Federal Employee were to decline continued employment at NBRC.

Comment [24]: Our assumption is that FWS will need to keep this in here in the event an Affected Federal Employee refuses all options, including an IPA assignment. If not, or if FWS wants to handle differently, we can discuss revisions here.

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a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct*.

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~~i. The IPA Employee, CSKT Deputy Refuge Manager, and the Refuge Manager will jointly develop the IPA Employee's Annual Performance Plan and prepare subsequent evaluations, as well as any Performance Improvement Plan(s). If the CSKT perceives a deficiency in the performance or conduct of the IPA Employee, the Refuge Manager and the CSKT Deputy Refuge Manager will confer, and the Service will apply Federal personnel procedures to address any such deficiency. Due to the assignment of the IPA Employee to the CSKT, and the CSKT Deputy Refuge Manager's role in the Refuge Leadership Team, the CSKT Deputy Refuge Manager has the right to: 1) be present during any counseling related to the IPA Employee's performance or conduct; and 2) obtain copies of any personnel or disciplinary records directly related to the IPA employee's performance under this AFA. CSKT officials agree to keep IPA Employee personnel information confidential and secure.~~

~~ii. The CSKT will terminate an IPA agreement only: 1) for cause; and 2) after addressing the issue through the dispute resolution process (*see* Section 19.A of this AFA) up through the Regional Director level. The term "cause" includes conduct or performance problems documented by CSKT.~~

~~iii. If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA agreement. Upon termination of the IPA agreement, the Activities performed by the prior IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service: 1) will not reassign the employee to a position working within, or for, the NBRC; and 2) will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.~~ i. If

CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. ~~The~~ CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;~~.~~

bb. The IPA employee is determined to perform at a ~~the~~ less~~-~~ than~~-~~ fully~~-~~satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;~~.~~

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or ~~.~~

dd. Any other cause as agreed to by FWS.

iii. ~~If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA assignment agreement.~~ Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. ~~iv. The~~ CSKT may invoke the dispute resolution process (see Sec. 19.A. of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

~~iv.~~v. CSKT may terminate an IPA agreement without cause at any time and for any reason. However, in the event CSKT terminates an IPA agreement without cause, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

Comment [25]: Dean: see wording revision here.

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Comment [26]: I revised your 10/3 proposed text here to (I think) better jibe with 370 DM 752. Please review and let's discuss.

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Comment [27]: Dean, please review this proposed new text.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

~~7. *Duties and Responsibilities*. The CSKT will assign each Affected Federal Employee to perform one or more Activities, with duties and responsibilities commensurate with her or his training, experience and salary, and reasonably equivalent to her or his position with the Service.~~

~~8~~7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct*.

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

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2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

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3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

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H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

~~F. *Scheduling of Annual Leave*. Annual leave is part of employee compensation and will not be unreasonably denied. However, by October 31st of each year, all NBRC employees will be~~

~~expected to submit annual leave requests for any period greater than one week during the upcoming fiscal year. All employees should request any leave as far in advance as possible to ensure that it can be granted.~~

I~~G~~. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.

c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. ~~Suspension may be directed by any of the following: Refuge Manager; CSKT Deputy Refuge Manager; Service Deputy Refuge Manager; Lead Biologist; or Outdoor Recreation Planner.~~ Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager~~Leadership Team~~ completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. ~~The Refuge Leadership Team will reach a final disposition through consensus~~. ~~–~~Final disposition may include: no action – return to duty; counseling; training; or termination. ~~In cases where the Refuge Leadership Team cannot reach consensus, the incident will be elevated through the dispute resolution process (Section 19.A).~~

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the ~~calendar years 2009 and 2010~~ annual Round-Up events.

K~~H~~. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 1~~3~~4. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA~~FY 2009~~, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ~~24.A~~ ____ of this AFA] [implementation of this AFA at a mid-point in the fiscal year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A below, for FY 20~~09~~__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

~~1. For FY 2009, the Service will retain funding and responsibility for administering and paying general fixed operational costs including:~~

~~a. utilities;~~
~~b. fuel;~~
~~c. telephone service (cell and landlines);~~
~~d. mandatory software upgrades;~~
~~e. security alarm system;~~
~~f. satellite television;~~
~~g. office trailer rental;~~
~~h. trash removal;~~
~~i. irrigation water;~~
~~j. postage meter; and~~
~~k. other similar fixed costs.~~

~~If the CSKT opts to contract the administration of these general fixed operational costs in FY 2010 and/or FY 2011, the Service will include funding for such Activities in the Attachment B for such fiscal year(s).~~1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. Funding for 0.25 of a GS-7 Technician position will be transferred to CSKT for implementation of the Fire Program responsibilities outlined in Section 8, above.

~~2. The Service will provide funding, and CSKT will be responsible, for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and execution of the Fire and Visitors Services Programs (excluding environmental education activities).~~

~~3. Each Party's operational budget will be used to cover expenses associated with its personnel, including travel, training (see also Section 12.C above), incentive awards, office supplies and miscellaneous expenses.~~

45. Generally, Attachment B specifies the following types of consideration:

a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the ~~Service~~ Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife, Recreation & Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager,

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Comment [28]: I've deleted the provision about each Party's operational budget because it does not appear that any substantial operating budget will be transferred to CSKT (unless the parties agree otherwise per the new proposed terms).

for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsection 14.B.1 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

~~c. *Recreational Fees*. Semiannually, the Service will transfer to the CSKT 50% of the Recreational Fees collected and allocated to the NBRC. For FY 2009, the Service will also transfer to CSKT 50% of the previous fiscal year's carry-over allocated to the NBRC in support of Visitors Services Activities.~~

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

~~CSKT will provide all necessary information, including CSKT's indirect cost rate approved by the Department's Office of Inspector General (OIG rate), in accordance with 25 C.F.R. §1000.138.~~

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Comment [29]: Will delete this given the new arrangement regarding how program funds will be handled. If CSKT later ends up administering a good deal of the program operational funds, we may want to reinstate this provision.

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Comment [30]: Dean, please review the proposed new text here and let me know your thoughts.

Comment [31]: We may want to insert the specific fiscal yea r here once the AFA term is finalized.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

~~2. Indirect cost rates will generally be applied only to direct costs (e.g., salary and benefits) by using CSKT's approved OIG rate as of the date of execution of this AFA. CSKT's indirect costs associated with flexible and project dollars will be negotiated.~~

~~3~~2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

Comment [32]: Dean: I revised this somewhat from our discussion.

~~3~~4. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

b. *Reduction in Force ("RIF")*. Pending the completion of any RIF under Section 12.E.4 above, the Service will continue to perform all Activities associated with each position affected by the RIF. Upon completion of the RIF, the Service will pay the CSKT the balance of the salary and benefits of each position affected by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in Section 13.E.2 below. ← **DELETE or reword once options issues are addressed**

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2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of ~~the~~ each~~FY '09~~ fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities

covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions.* The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration.* Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act.* This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 145. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all ~~Available~~personal ~~Property~~ and ~~R~~real ~~P~~property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal ~~Available~~ Property and Real Property*. Attachment C is the Service's~~an~~ inventory of personal ~~peach item of Available P~~roperty (including condition) ~~(including condition) valued at $500.00 or more,~~ and sensitive or controlled items. Attachment D is an inventory of ~~R~~real ~~P~~property (including condition) ~~valued at $5,000.00 or more~~. The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

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C. *NBRC ~~Baseline~~ Data*. ~~On or before the effective date of this AFA, the Service will provide to the CSKT all NBRC Baseline Data in accordance with Section 7.E.2 above.~~ The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal~~Available~~ ~~P~~property and r~~R~~eal ~~P~~property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. ~~Available Property, including individual items valued at $500.00 or more, and sensitive items such as laptop computers, cameras and binoculars designated for use by the CSKT to perform Activities~~Keys~~,~~ will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of ~~Available~~Federal ~~P~~property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 1~~5~~6. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Comment [MSOffice33]: Has anyone from FWS touched base with BIA about continuing this provision for purchase of liability insurance? Since the woman who had handled this before has left, we should probably try to lay the groundwork for this soon so it isn't a headache later on.

Section 1~~6~~7. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to

emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

   a. relinquish operation and control of the Activity to the Service;

   b. assist the Service in responding to the emergency; and

   c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ or, where such ~~Deputy~~official is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the ~~AWP~~Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 1~~7~~8. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the ~~following~~ procedures below.~~:~~ Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

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1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. ~~*Available* Property~~. On the effective date of the retrocession, CSKT will return all Federal~~Available~~ Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in

accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Federal~~Available~~ Property which is not needed by the CSKT to perform a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

   e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201~~1~~, with any signed successor AFA to be delivered to Congress prior to July 1, 201~~1~~. This schedule will allow such successor AFA to be effective on October 1, 201~~1~~, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written

notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. ~~*Available*~~ *Property*. On the last day of the term of this AFA, the CSKT will return all Federal~~Available~~ ~~P~~property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 1~~8~~9. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B~~,~~(-as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section ~~19~~20. Dispute Resolution and Appeals

A. *Dispute Resolution*.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT

Fish,~~Deputy~~ Wildlife, Recreation & Conservation Division Manager~~Refuge Manager~~ may invoke the dispute resolution process i~~n~~f the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above ~~is unacceptable to the CSKT~~. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT ~~Deputy Refuge Manager~~Fish,Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT ~~Deputy Refuge Manager~~Fish,Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director~~DOI Senior Management Team~~. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director~~DOI Senior Management Team~~ shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall~~may~~ delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 2~~0~~1. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act ~~provisions~~ are also incorporated into this AFA, as authorized by 25 U.S.C. § ~~450cc~~458cc(*l*):

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1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting
12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and 450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

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Section 2~~1~~2. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance

standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 2~~2~~3. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 2~~3~~4. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

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Section 2~~4~~5. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during ~~the first quarter of~~

FY 20__~~09 (October 1 – December 31, 2008)~~. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____~~January 1~~, 20__~~09~~.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__~~11~~. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo ~~James Steele, Jr.~~ Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____ _____

Dan Ashe~~Dale Hall~~, Director, U.S. Fish & Wildlife Service Date

_____ _____

~~Lyle Laverty~~ _____, Assistant Secretary for Fish, Wildlife and Parks Date

_____ _____

Mike Black? ~~George Skibine~~, for Bureau of Indian Affairs Date

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,
I made a mistake in the p. 4 revision; I meant to say "career-conditional" rather than "non-career". I'll fix that - thanks for catching it.

I'm fine with your suggested tweak to the IPA revision on p. 21. I'll change the phrase you referenced so it reads "for a reason other than 'cause' as defined above in this AFA. . . ."

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.

On page 4 I think we just had a misunderstanding on the "federal" terms. The change attached says "***career or non-career***" federal employees...
That would include everyone, and that is not our intent here. I think we meant to say "***career or career-conditional***" federal employees to inlcude only those employees who have a "permanent" rather than a term or temporary position.

In the change on page 18, the last phrase you inserted says: "***for reason or cause other than as defined in this AFA***" I would suggest "***for a reason, other than defined above as "cause", in this AFA".*** I think that would avoid any confusion over "cause".

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 respect to the IPA revision on p. 21, I added a citation to the CFR provision that makes clear that IPA assignments may be terminated at any time. Let me know if these changes are acceptable on your end.

The revisions are on pages 4, 18, 21, and 25 of the draft AFA. Those are the only changes I've made, other than putting today's date on the draft. Let me know if any questions.

Thanks,
BU

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

Electronic copies of AFA EA

2 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

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

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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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
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:
[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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NBR-AFA-DRAFT-EA_04-25-14.pdf

FISCAL YEARS 20~~09~~12–20~~11~~16 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
January 25, 2012 draft

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Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance~~management~~ of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services,

Comment [1]: I can't tell from my notes if we had discussed this, or if this proposed revision was from my own earlier internal notes. In any case, I don't think it's controversial.

functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at ~~73~~ 76 F.R. ~~16054-55~~57068 (September 15~~March 26~~, 20~~08~~11).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

"In administering the System, the Secretary shall:

ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

"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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

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e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and

b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;

c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;

d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;

e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and

f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;

2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which ~~concerns additional activities administered by the Secretary~~authorizes tribal

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Comment [2]: I added this to Dean's proposed text, for FWS' consideration.

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Comment [3]: Sharon wanted to review this language once we inserted it here.

contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and~~and~~

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities ~~("Activities")~~ in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C~~B.2~~ below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

Comment [4]: This corrects a typographical error.

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under~~But for this AFA would continue to perform the Activity during the term of~~ this AFA.~~;~~ ~~and~~

~~C. Whose employment the Service would terminate in the absence of continued employment with the Service or the CSKT as provided in this AFA;~~

~~An Affected Federal Employee can also mean a Service employee who formerly worked at the NBRC and whom the Service reassigns to the NBRC under a mutual agreement~~

with CSKT to perform work for CSKT under this AFA. Such employee will have the same employment options available to any other Affected Federal Employee.

Available Property means any equipment, material, or supply the Service makes available for use by the CSKT in performing an Activity, including any horse owned by the United States.

Annual Work Plan or AWP means the jointly developed and mutually agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

DOI Senior Management Team means the team currently consisting of the: Deputy Secretary; Associate Deputy Secretary; Assistant Secretary Fish, Wildlife and Parks; Assistant Secretary Indian Affairs; Director, U.S. Fish & Wildlife Service; Director, Bureau of Indian Affairs; and Associate Solicitor, General Law; or as otherwise constituted by the Department.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

NBRC Baseline Data includes written or other tangible data documenting the existence and/or state of each natural resource of the NBRC (including bison and other wildlife) and each item of real and personal Federal property of the NBRC.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT ~~Deputy~~ Fish, Wildlife, Recreation & Conservation Division Manager~~Refuge Manager~~; Service Deputy Refuge Manager; and the CSKT ~~Lea~~Wildlife Refuge Specialist~~d Biologist~~.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA is the NBRC, which lies entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Comment [5]: I reworded this part of Dean's proposed text; please review

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Section 6~~.~~. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist ~~position~~ position to oversee Activities contracted under this AFA~~and the Administrative Support Assistant position and the associated Activities of those respective positions. As part of the Administrative Support Assistant's Activities, CSKT shall direct the employee in that position to assist the Refuge Manager and the Service's Deputy Refuge Manager in some of their retained administrative duties~~;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities. ~~During the first two years of this AFA (through FY 2010), the Service's Outdoor Recreation Planner shall retain environmental education activities, cooperating association oversight, and volunteer coordination activities (subject to CSKT's selection and direction of volunteers as described in Section 12.G.2.b of this AFA). Environmental education activities shall consist solely of working with outside groups and individuals on educational activities involving the NBRC. Beginning in FY 2011, all the above functions will transfer to the CSKT, and the Outdoor Recreational Planner will become an Affected Federal Employee. Nothing in this Section or this AFA shall preclude the CSKT and Service staffs from working cooperatively on interpretive services or any other Visitor Service Program Activities.~~

The Activities in the above five categories will be more fully described in ~~each~~the ~~Annual~~ Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal ~~the~~ activit~~y~~ies in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform~~manage~~ the Activities ~~performed~~contracted by the CSKT.

B. *Refuge Manager*~~.~~ The Refuge Manager will retain final responsibility and authority for directing, ~~and~~ controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). ~~The Refuge Manager shall provide reasonable written notice to CSKT of any changes in direction or prioritization of duties. Unless otherwise agreed upon, and subject to the emergency provisions in Section 16 below, changes or additions to instructions or protocols shall be communicated in writing to the CSKT no later than two weeks in advance of the date the affected Activities are to be performed. Subject to the dispute resolution procedures in Section 19.A below, T~~the Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions ~~for~~ for the NBRC:

1. Setting work priorities through the NBRC ~~Annual~~ Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and

Comment [6]: Dean, I put a pinpoint citation here instead of your broader citation.

Comment [7]: Dean, please confirm this language is accurate from FWS' position.

refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements; ~~and~~
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns~~.~~; and
11. Any action which is an inherently Federal function.

C. Wildland Fire Specialist ~~*Deputy Refuge Managers*~~.

~~1. Each Party will support the management partnership at NBRC by providing a Deputy Refuge Manager. The CSKT and Service Deputies are co-equal positions. Both Deputies are senior staff advisors to the Refuge Manager and provide substantive input to management decision-making at NBRC.~~

~~2. In the absence or unavailability of the Refuge Manager, the CSKT and Service Deputy Refuge Managers will alternate serving as Acting Refuge Manager. The Acting Refuge Manager will be responsive to the instructions of the Refuge Supervisor and shall exercise all authorities of the Refuge Manager except those listed in Section 7.B above.~~

~~3. The Refuge Leadership Team will determine the allocation of most of the duties between the CSKT and Service Deputy Refuge Managers and specify such in the AWP. A limited number of duties are specifically assigned to either the CSKT or Service Deputy Refuge Manager as follows:~~

~~a~~. The CSKT Wildland Fire Specialist ~~Deputy Refuge Manager~~ will:

i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT ~~Deputy~~ Wildland Fire Specialist ~~Refuge Manager~~, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA; ~~.~~
ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and ~~.~~
iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

~~b. The Service's Deputy Refuge Manager will:~~

Comment [8]: My notes don't reflect whether we had discussed thi s or if this addition was from my earlier internal notes. If we hadn't discussed this, let me know your thoughts.

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~~i. Supervise and conduct the Law Enforcement Program, including management of conservation easements of NBRC.~~
~~ii. Supervise any subordinate Service employees not assigned to CSKT.~~
~~iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.~~

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, ~~T~~the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee) ~~Deputy Refuge Manager~~;
   c. ~~Service~~ Deputy Refuge Manager; and
   d. CSKT ~~Lead Biologist~~Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the ~~AWP~~Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the ~~AWP~~Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed ~~weekly to informally discuss progress, identify successes, make changes to work priorities, conduct short-term planning, and identify and resolve any concerns raised by either Party~~..

~~4. Unless the meeting is with respect to an emergency, the Refuge Manager or the CSKT Deputy Refuge Manager shall provide at least two days advance notice of any non-regularly scheduled coordination meeting being requested.~~

~~5~~4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the ~~During each fiscal year, one of these quarterly meetings will be attended by the~~ Regional Director will meet with the Tribal Council.

~~6~~5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager

Comment [9]: This section will also need revisions to reflect subsequent negotiations.

Comment [10]: There is consensus on adding either Tom or Dale's position to the Refuge Leadership Team, if FWS can provide compensation for that time.

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~~Deputy Refuge Manager~~ can invoke the dispute resolution process in Section 19.A i~~n the event of disagreement with the Refuge Manager's decision.~~the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. ~~*Annual*~~ *Work Plan (Plan~~AWP~~)*. The Service and CSKT will work jointly to develop and establish a mutually agreed-upon ~~AW~~Plan, to be amended as necessary to reflect current needs, priorities and available resources ~~for each fiscal year~~. The ~~AWP~~Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in- CSKT duties under the Plan. ~~In the event that insufficient resources are provided to accomplish the work identified in the AWP,~~ Tthe Refuge Manager shall prioritize Plan activities according to available~~Leadership Team shall meet to determine what work is to be accomplished taking into account the~~ resources ~~provided~~. ~~The AWP will include expectations for all Activities to be conducted during the Federal fiscal year to achieve the established purposes and approved goals and objectives of the NBRC, including performance of Activities contracted by CSKT, and performance of activities retained by the Service. CSKT will be responsible for any AWP performance requirements for CSKT programs, and the Service will be responsible for AWP performance requirements for Service programs.~~

~~1.*Expectations*. The Parties understand that this AFA represents a significant change in operation and maintenance of the NBRC, and that many new CSKT employees will be assigned to the NBRC at the time this AFA is implemented. The Parties understand that the first year of this AFA will be a transition year as new employees learn their jobs, and as the Refuge Leadership Team develops the close working relationship necessary for success of its on-the-ground partnership. The senior officials of both Parties, including signatories to this AFA, expect that, during the first year of the partnership, the Refuge Leadership Team and all NBRC employees will work diligently to develop a healthy and cooperative working environment.~~

~~2.*NBRC Baseline Data*. The Parties will agree on a set of NBRC Baseline Data that will establish, from the best data available, the biological conditions, and the conditions of facilities and equipment existing at the NBRC at the time this AFA becomes effective. The NBRC Baseline Data will also set forth any monitoring protocols for Fire, Maintenance, Biological, and Visitor Services Programs. A list of existing documents describing baseline conditions, and a list of identified data gaps needed to establish baseline conditions, will be included in Attachment A prior to implementation of the AFA. Any evaluation of CSKT's performance will be measured against the jointly agreed-upon NBRC Baseline Data and the duties identified in the AWP. The Service will not hold the CSKT to a higher standard of performance for any Activity than that to which it would hold itself, if that Activity were performed by Service employees.~~

Comment [11]: Dean: let me know your thoughts on this as a substitute for your 10/3 proposed text here

Comment [12]: I tried to replace all "AWP" references in the AFA to "Plan" or "Work Plan"

Comment [13]: Is FWS okay with this?

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~~3.*Protocols.* Prior to the effective date of the AWP, the Parties shall review all protocols involved with that AWP.~~

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~~4.~~*1.~~Initial and successor~~Work ~~AW~~P*lan Preparation~~'s~~*. ~~Prior to implementation of this AFA, t~~The Parties will jointly ~~will~~ develop the ~~initial~~ Work Plan~~AWP for FY 2009~~.

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~~a. The initial AWP will be limited in scope, and will include only the basic, fundamental Activities necessary to provide for the biological integrity of the NBRC, ensure maintenance of critical infrastructure and equipment, and provide basic visitor services. The initial and successor AWP's will also include: significant requirements for on-the-job training of new employees; development of any needed NBRC Baseline Data; development of working protocols, including any fire monitoring protocols; relationships within the Refuge Leadership Team; and orientation and training of the combined Service/CSKT staff on the expectations of the partnership, cultural awareness, safety, and team building.~~

~~b~~a.The Refuge Leadership Team will prepare the ~~AW~~Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan~~AWP~~. The Refuge Leadership Team will further develop information from the RAPP Workbook into the ~~AWP~~Plan. In concise narrative format, the ~~AWP~~ Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The ~~AWP~~Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

~~c. The AWP is a living document that can be adjusted during the course of the fiscal year to address changes in environmental conditions, funding and directions from the Regional Supervisor. The AWP will be submitted to the Refuge Supervisor annually by October 1. As appropriate, the Refuge Leadership Team will prepare changes to the AWP for approval by the Refuge Manager and submission to the Refuge Supervisor.~~

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) ~~the Refuge Manager, CSKT Deputy Refuge Manager, or Service Deputy Refuge Manager~~ to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

a. The Service will recommend fuels projects and plan for them 2-5 years out.
b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
c. Planning to include writing of burn plans will be done by the CSKT.
d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
f. Smoke management requirements will be the responsibility of the CSKT.
g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. Wildfire Suppression & Initial Attack

a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land. This does not preclude Incident Qualification Certication System (IQCS)-

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qualified Service firefighters from conducting initial attack activities on Service lands.

b. The CSKT will open a Firecode for all IA fires.

c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.

d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.

e. The CSKT will generate a fire report for all IA and submit it to the Service within 10 days, the Service will enter a fire report into FMIS.

f. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.

b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).

c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.

d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.

e. The six man fire cache at the NBRC will be maintained by the Service.

f. The fire engine at the NBRC will be maintained by the Service.

g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

~~G. *Bison Herd*. The Assistant Secretary for Fish, Wildlife and Parks must approve any plan to reduce the bison herd below 330 bison, which represents 90% of the population average over the three-year period consisting of FY '05, FY '06, and FY '07.~~

Section ~~8~~9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of

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their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~ will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section ~~9~~10~~.~~. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to ~~After~~ consult~~ing~~ with the Refuge Manager prior to~~,~~ making ~~the CSKT may~~any request for~~that~~ the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge ~~Leadership Team~~ Manager will identify ~~in the AWP~~ any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager~~Leadership Team~~ will identify ~~in the AWP~~ any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act [CITE, 16 U.S.C. § 1531 *et seq.*]., including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection.*

1. *Addition of Funding.* Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

23. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 101. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the AWPWork Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

Comment [14]: Dean, please confirm that this revision to your wording here works for FWS.

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B. *Activity Records*. The parties will set forth in the Work Plan~~AWP~~ an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~ will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within ~~90~~180 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service

Comment [15]: Is more detail necessary here?

Comment [16]: There was discussion of including more detail here.

Comment [17]: Dean: I changed "report" to "identify" here since we use the word "report" immediately before this.

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Comment [18]: Dean: please review the revisions I made here to your 10/3 proposed text. I think this revision comports with our last phone discussion.

provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

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E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 1~~1~~2. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. ~~*Joint* Evaluation. The Service and CSKT will jointly evaluate NBRC operations by using: applicable Operational Standards; the terms and conditions of this AFA; and NBRC Baseline Data. Any written evaluation or similar assessment of any NBRC activities (including any report developed under Section 11.B of this AFA), shall address NBRC activities as a whole and shall be jointly drafted and approved by the Parties under the direction of the Refuge Leadership Team. Any evaluation shall clearly identify the specific NBRC Baseline Data, Operational Standard, or AWP provision against which performance is being measured.~~ In the event the Parties do not agree on any portion of any~~the~~ evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager~~Deputy Refuge Manager~~ in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly

Comment [19]: Dean: this is a new proposed addition since our last discussion.

provide to the CSKT a copy of each written comment or documented oral commentthat information to the CSKT without requiring any request from CSKT, on its own initiative, in accordance with disclosure practices under FOIA and the Privacy Act, without the necessity of a FOIA request from the CSKT. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation & Conservation Division Manager.

Comment [20]: This is also a new proposed addition since our last discussion.

b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation & Conservation Division Manager and the Department Head of the CSKT Natural Resources Department no later thanwithin one week from the date of oral notice.

ii. *Notice of Minor Perceived Deficiencies*. The Refuge Manager will notify the CSKT Deputy Refuge Manager and the Department Head of the CSKT Natural Resources Department in writing (e-mail is acceptable) of any performance deficiency that is minor or is an apparent oversight. Such written notices shall specifically describe the performance deficiency and identify a reasonable amount of time for CSKT to either remedy the deficiency or demonstrate that the deficiency does not exist.

iii. *Notice of Other Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any other significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable Bbaseline Ddata; Operational Standard; approved Work PlanAWP provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director -

Refuges~~Assistant Secretary for Fish and Wildlife and Parks~~ and the Regional Director~~Department's Office of the Secretary~~ and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

~~B. *Final Report and Review*. The Refuge Leadership Team will prepare an Annual Narrative Report to cover each fiscal year of this AFA. The report format will follow current Service policy contained in the Refuge Manual and/or Service Manual. The Annual Narrative Report will be a concise narrative description of work, activities and events that occurred during the prior fiscal year, and will include successes, lessons learned, areas for improvement, and recommendations for future AWP's, AFA's, and/or other partnerships between the Parties. The Refuge Leadership Team will submit the Annual Narrative Report to the Refuge Supervisor for review and approval by December 31st of each year, beginning on December 31, 2009.~~

~~C~~B. ~~*Miscellaneous*~~ *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA ~~other than those specified above~~, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

~~D~~C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared ~~monthly~~quarterly~~,~~. The Refuge Manager shall endeavor to submit the status reports to ~~due at~~ the FWS Refuge Supervisor~~Service's Regional Office in Lakewood, CO,~~ and the CSKT Tribal Council by the 15th ~~business~~ day of January, April, July, and October~~, the following month~~. ~~The Regional Office shall transmit the reports to the Department officials identified in Section D.3 below and to the CSKT Tribal Chairman by the 10th of the month.~~ The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and~~,~~ approve~~, and transmit~~ the status reports ~~to the Regional Office~~. ~~The Refuge Leadership Team will determine the contents of the status reports, which may include, but is not limited to, significant accomplishments, lessons learned and identified areas for improvement.~~ At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager ~~and the CSKT Deputy Refuge Manager~~.

Comment [MSOffice21]: I changed the language for quarterly report submission to include actual dates so it would make more sense (previously it referred to the "following month", which was leftover text from the last AFA when the reports were supposed to be monthly). Let us know your thoughts.

Comment [22]: My notes reflect we had approved changes here that would have reflected the RLT transmitting the reports to the FWS Refuge Supervisor and the CSKT Tribal Council. Since the prior section has the Refuge Manager doing that transmittal, I amended this line to reflect that.

~~3. The Service shall be responsible for transmitting periodic status reports to the DOI Senior Management Team, and the Director of the Office of Self-Governance. CSKT shall be responsible for transmitting copies of the status reports to any congressional offices it feels appropriate.~~

Section 1~~2~~3. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees*.

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its

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employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire and Visitor Service Programs, as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees*. The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

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~~B~~C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

~~C~~D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

~~D~~E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which

the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA. ~~The Parties will work on developing a new patch which can be worn on both FWS and CSKT uniforms and which will show the partnership between the Federal and tribal governments.~~

F~~E~~. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty~~forty-five~~ (~~45~~30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

   a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA)*, 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

   b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

   c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

   d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and w~~W~~here practicable, reassignment by the Service to another duty station may be possible.

4. *Reduction in Force ("RIF")*. If all of the above options are unsuccessful, the Service will conduct a reduction in force. DELETE after resolution of employment options issue

5. *Assignment to the CSKT under an IPA Agreement*.

Comment [23]: Revision from 45 to 30 is in recognition of: A) the fact that NBRC staff have already met with FWS and CSKT officials to discuss employment issues and they will continue to have a very lengthy time to consider options over the course of NEPA analysis, etc; and B) CSKT will need time to properly advertise, screen, interview and hire any staff in the event an Affected Federal Employee were to decline continued employment at NBRC.

Comment [24]: Our assumption is that FWS will need to keep this in here in the event an Affected Federal Employee refuses all options, including an IPA assignment. If not, or if FWS wants to handle differently, we can discuss revisions here.

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a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct*.

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~~i. The IPA Employee, CSKT Deputy Refuge Manager, and the Refuge Manager will jointly develop the IPA Employee's Annual Performance Plan and prepare subsequent evaluations, as well as any Performance Improvement Plan(s). If the CSKT perceives a deficiency in the performance or conduct of the IPA Employee, the Refuge Manager and the CSKT Deputy Refuge Manager will confer, and the Service will apply Federal personnel procedures to address any such deficiency. Due to the assignment of the IPA Employee to the CSKT, and the CSKT Deputy Refuge Manager's role in the Refuge Leadership Team, the CSKT Deputy Refuge Manager has the right to: 1) be present during any counseling related to the IPA Employee's performance or conduct; and 2) obtain copies of any personnel or disciplinary records directly related to the IPA employee's performance under this AFA. CSKT officials agree to keep IPA Employee personnel information confidential and secure.~~

~~ii. The CSKT will terminate an IPA agreement only: 1) for cause; and 2) after addressing the issue through the dispute resolution process (*see* Section 19.A of this AFA) up through the Regional Director level. The term "cause" includes conduct or performance problems documented by CSKT.~~

~~iii. If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA agreement. Upon termination of the IPA agreement, the Activities performed by the prior IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service: 1) will not reassign the employee to a position working within, or for, the NBRC; and 2) will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.~~ i. If

CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. ~~The~~ CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;~~.~~

bb. The IPA employee is determined to perform at a ~~the~~ less~~-~~ than~~-~~ fully~~-~~satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;~~.~~

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or ~~.~~

dd. Any other cause as agreed to by FWS.

iii. ~~If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA assignment agreement.~~ Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. ~~iv. The~~ CSKT may invoke the dispute resolution process (see Sec. 19.A. of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

~~iv.~~v. CSKT may terminate an IPA agreement without cause at any time and for any reason. However, in the event CSKT terminates an IPA agreement without cause, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

Comment [25]: Dean: see wording revision here.

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Comment [26]: I revised your 10/3 proposed text here to (I think) better jibe with 370 DM 752. Please review and let's discuss.

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Comment [27]: Dean, please review this proposed new text.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

~~7. *Duties and Responsibilities*. The CSKT will assign each Affected Federal Employee to perform one or more Activities, with duties and responsibilities commensurate with her or his training, experience and salary, and reasonably equivalent to her or his position with the Service.~~

~~8~~7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct*.

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

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2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

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3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

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H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

~~F. *Scheduling of Annual Leave*. Annual leave is part of employee compensation and will not be unreasonably denied. However, by October 31st of each year, all NBRC employees will be~~

~~expected to submit annual leave requests for any period greater than one week during the upcoming fiscal year. All employees should request any leave as far in advance as possible to ensure that it can be granted.~~

I~~G~~. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.

c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. ~~Suspension may be directed by any of the following: Refuge Manager; CSKT Deputy Refuge Manager; Service Deputy Refuge Manager; Lead Biologist; or Outdoor Recreation Planner.~~ Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager~~Leadership Team~~ completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. ~~The Refuge Leadership Team will reach a final disposition through consensus~~. ~~–~~Final disposition may include: no action – return to duty; counseling; training; or termination. ~~In cases where the Refuge Leadership Team cannot reach consensus, the incident will be elevated through the dispute resolution process (Section 19.A).~~

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the ~~calendar years 2009 and 2010~~ annual Round-Up events.

K~~H~~. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 1~~3~~4. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA~~FY 2009~~, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ~~24.A~~ ____ of this AFA] [implementation of this AFA at a mid-point in the fiscal year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A below, for FY 20~~09~~__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

~~1. For FY 2009, the Service will retain funding and responsibility for administering and paying general fixed operational costs including:~~

~~a. utilities;~~
~~b. fuel;~~
~~c. telephone service (cell and landlines);~~
~~d. mandatory software upgrades;~~
~~e. security alarm system;~~
~~f. satellite television;~~
~~g. office trailer rental;~~
~~h. trash removal;~~
~~i. irrigation water;~~
~~j. postage meter; and~~
~~k. other similar fixed costs.~~

~~If the CSKT opts to contract the administration of these general fixed operational costs in FY 2010 and/or FY 2011, the Service will include funding for such Activities in the Attachment B for such fiscal year(s).~~1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. Funding for 0.25 of a GS-7 Technician position will be transferred to CSKT for implementation of the Fire Program responsibilities outlined in Section 8, above.

~~2. The Service will provide funding, and CSKT will be responsible, for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and execution of the Fire and Visitors Services Programs (excluding environmental education activities).~~

~~3. Each Party's operational budget will be used to cover expenses associated with its personnel, including travel, training (see also Section 12.C above), incentive awards, office supplies and miscellaneous expenses.~~

45. Generally, Attachment B specifies the following types of consideration:

a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the ~~Service~~ Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife, Recreation & Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager,

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Comment [28]: I've deleted the provision about each Party's operational budget because it does not appear that any substantial operating budget will be transferred to CSKT (unless the parties agree otherwise per the new proposed terms).

for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsection 14.B.1 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

~~c. *Recreational Fees*. Semiannually, the Service will transfer to the CSKT 50% of the Recreational Fees collected and allocated to the NBRC. For FY 2009, the Service will also transfer to CSKT 50% of the previous fiscal year's carry-over allocated to the NBRC in support of Visitors Services Activities.~~

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

~~CSKT will provide all necessary information, including CSKT's indirect cost rate approved by the Department's Office of Inspector General (OIG rate), in accordance with 25 C.F.R. §1000.138.~~

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Comment [29]: Will delete this given the new arrangement regarding how program funds will be handled. If CSKT later ends up administering a good deal of the program operational funds, we may want to reinstate this provision.

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Comment [30]: Dean, please review the proposed new text here and let me know your thoughts.

Comment [31]: We may want to insert the specific fiscal yea r here once the AFA term is finalized.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

~~2. Indirect cost rates will generally be applied only to direct costs (e.g., salary and benefits) by using CSKT's approved OIG rate as of the date of execution of this AFA. CSKT's indirect costs associated with flexible and project dollars will be negotiated.~~

~~3~~2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

Comment [32]: Dean: I revised this somewhat from our discussion.

~~3~~4. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

b. *Reduction in Force ("RIF")*. Pending the completion of any RIF under Section 12.E.4 above, the Service will continue to perform all Activities associated with each position affected by the RIF. Upon completion of the RIF, the Service will pay the CSKT the balance of the salary and benefits of each position affected by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in Section 13.E.2 below. ← **DELETE or reword once options issues are addressed**

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2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of ~~the~~ each~~FY '09~~ fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities

covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions.* The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration.* Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act.* This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 145. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all ~~Available~~personal ~~Property~~ and ~~R~~real ~~P~~property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal ~~Available~~ Property and Real Property*. Attachment C is the Service's~~an~~ inventory of personal ~~peach item of Available P~~roperty (including condition) ~~(including condition) valued at $500.00 or more,~~ and sensitive or controlled items. Attachment D is an inventory of ~~R~~real ~~P~~property (including condition) ~~valued at $5,000.00 or more~~. The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

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C. *NBRC ~~Baseline~~ Data*. ~~On or before the effective date of this AFA, the Service will provide to the CSKT all NBRC Baseline Data in accordance with Section 7.E.2 above.~~ The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal~~Available~~ ~~P~~property and r~~R~~eal ~~P~~property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. ~~Available Property, including individual items valued at $500.00 or more, and sensitive items such as laptop computers, cameras and binoculars designated for use by the CSKT to perform Activities~~Keys~~,~~ will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of ~~Available~~Federal ~~P~~property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 1~~5~~6. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Comment [MSOffice33]: Has anyone from FWS touched base with BIA about continuing this provision for purchase of liability insurance? Since the woman who had handled this before has left, we should probably try to lay the groundwork for this soon so it isn't a headache later on.

Section 1~~6~~7. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to

emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

   a. relinquish operation and control of the Activity to the Service;

   b. assist the Service in responding to the emergency; and

   c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ or, where such ~~Deputy~~official is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the ~~AWP~~Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 1~~7~~8. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the ~~following~~ procedures below.~~:~~ Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

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1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. ~~*Available* Property~~. On the effective date of the retrocession, CSKT will return all Federal~~Available~~ Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in

accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Federal~~Available~~ Property which is not needed by the CSKT to perform a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

   e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201~~1~~, with any signed successor AFA to be delivered to Congress prior to July 1, 201~~1~~. This schedule will allow such successor AFA to be effective on October 1, 201~~1~~, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written

notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. ~~*Available*~~ *Property*. On the last day of the term of this AFA, the CSKT will return all Federal~~Available~~ ~~P~~property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 1~~8~~9. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B~~,~~(-as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section ~~19~~20. Dispute Resolution and Appeals

A. *Dispute Resolution*.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT

Fish,~~Deputy~~ Wildlife, Recreation & Conservation Division Manager~~Refuge Manager~~ may invoke the dispute resolution process i~~n~~f the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above ~~is unacceptable to the CSKT~~. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT ~~Deputy Refuge Manager~~Fish,Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT ~~Deputy Refuge Manager~~Fish,Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director~~DOI Senior Management Team~~. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director~~DOI Senior Management Team~~ shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall~~may~~ delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 2~~0~~1. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act ~~provisions~~ are also incorporated into this AFA, as authorized by 25 U.S.C. § ~~450cc~~458cc(*l*):

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1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting
12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and 450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

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Section 2~~1~~2. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance

standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 2~~2~~3. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 2~~3~~4. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

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Section 2~~4~~5. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during ~~the first quarter of~~

FY 20__~~09 (October 1 – December 31, 2008)~~. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____~~January 1~~, 20__~~09~~.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__~~11~~. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo ~~James Steele, Jr.~~ Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____ _____

Dan Ashe~~Dale Hall~~, Director, U.S. Fish & Wildlife Service Date

_____ _____

~~Lyle Laverty~~ _____, Assistant Secretary for Fish, Wildlife and Parks Date

_____ _____

Mike Black? ~~George Skibine~~, for Bureau of Indian Affairs Date

CCP lawsuit?

2 messages

Will Meeks <Will_Meeks@fws.gov> Mon, Apr 7, 2014 at 1:54 PM
To: Curtis McCasland <curtis_mccasland@fws.gov>, Sarena Selbo <sarena_selbo@fws.gov>

Curt/Sarena,

Didn't we get sued about the lack of a CCP in Region 8? Did I make that up?

If I'm not, what ev was the outcome?

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)

From: Pelz, Mark [mailto:mark_pelz@fws.gov]
Sent: Monday, April 07, 2014 2:21 PM
To: McCasland, Curtis
Cc: Will Meeks; Sarena Selbo; Polly Wheeler
Subject: Re: CCP lawsuit?

The plaintiff agreed to dismiss the case after we let them know that, in accordance with our planning policy, the CCP wasn't due for completion until 2015 (Guadalupe-Nipomo Dunes was established in 2000). Apparently they didn't do their homework . . .

Mark Pelz
Chief, Natural Resources Division
Pacific Southwest Region

U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-1832
Sacramento, CA 95825-1846
916-414-6504 (phone)
916-414-6497 (fax)
916-716-0528 (mobile)
mark_pelz@fws.gov

On Mon, Apr 7, 2014 at 1:08 PM, McCasland, Curtis <curtis_mccasland@fws.gov> wrote:

Will, the case was dismissed, but we were sued by OHV users for not having CCP completed for Guadalupe - Nipomo Dunes NWR. Mark Pelz can provide the justification for the dismissal.

[Quoted text hidden]

BISON CONNECT

Meeks, Will <will_meeks@fws.gov>

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

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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)

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 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

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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>

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:

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> BU
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> <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

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

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> <CSKT S.919 Testimony - Final.docx>
> <CSKT Att#1 - NWF Ltr.pdf>
> <CSKT Att#2 -Rahall-Young Ltr.pdf>
> <CSKT Att#3 -NYTeditorial.pdf>

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:

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[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*

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[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,

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[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

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REPUBLICAN STAFF DIRECTOR

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

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.

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

Will Meeks

Subject:	Call Brian Upton
Start:	Mon 4/7/2014 12:00 PM
End:	Mon 4/7/2014 12:30 PM
Recurrence:	(none)
Meeting Status:	Meeting organizer
Organizer:	Will Meeks

"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

INTERTRIBAL
—BUFFALO—
COUNCIL

InterTribal Buffalo Council
2497 West Chicago Street
Rapid City, SD 57702
Phone: (605) 394-9730
Fax: (605) 394-7742
www.itbcbison.com

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.

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

From: Jeff King <Jeff_King@fws.gov>
To: Dean Rundle/R6/FWS/DOI
Subject: Fw: agreed-upon revisions
Date: Tuesday, May 31, 2011 10:41:23 AM
Attachments: FY--AFA Draft 5-26-11 change tracking.doc

"Brian Upton" <brianu@cskt.org>05/26/2011 12:22 PM

Please respond to<brianu@cskt.org>

To "'Brenna, Sharon'" <Sharon.Brenna@sol.doi.gov>, <Jeff_King@fws.gov>, "'Thomas McDonald \(Thomas McDonald\)'" <tomm@cskt.org>, <daleb@cskt.org>

cc

Subject agreed-upon revisions

FISCAL YEARS 20~~09~~12–20~~11~~xx 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

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day management of programs of the NBRC, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services, functions, and activities, or portions thereof (Activities) at the NBRC. The

Comment [1]: I can't tell from my notes if we had discussed this, or if this proposed revision was from my own earlier internal notes. In any case, I don't think it's controversial.

Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at 73 F.R. 16054-55 (March 26, 2008).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by: Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994; Section 403(c) of the Act, codified at 25 U.S.C. § 458cc(c), which concerns additional activities administered by the Secretary; and Section 403(i)(1) of the Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities ("Activities") in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.B.~~2~~C below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

Comment [2]: This corrects a typographical error.

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity;

B. But for this AFA would continue to perform the Activity during the term of this AFA; and

C. Whose employment the Service would terminate in the absence of continued employment with the Service or the CSKT as provided in this AFA;

An Affected Federal Employee can also mean a Service employee who formerly worked at the NBRC and whom the Service reassigns to the NBRC under a mutual agreement with CSKT to perform work for CSKT under this AFA. Such employee will have the same employment options available to any other Affected Federal Employee.

Available Property means any equipment, material, or supply the Service makes available for use by the CSKT in performing an Activity, including any horse owned by the United States.

~~*Annual Work Plan or AWP* means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.~~

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

DOI Senior Management Team means the team currently consisting of the: Deputy Secretary; Associate Deputy Secretary; Assistant Secretary-Fish, Wildlife and Parks; Assistant Secretary-Indian Affairs; Director, U.S. Fish & Wildlife Service; Director, Bureau of Indian Affairs; and Associate Solicitor, General Law; or as otherwise constituted by the Department.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

~~*NBRC Baseline Data* includes written or other tangible data documenting the existence and/or state of each natural resource of the NBRC (including bison and other wildlife) and each item of real and personal Federal property of the NBRC.~~

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT Deputy Refuge Manager; Service Deputy Refuge Manager; and the CSKT Lead Biologist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA is the NBRC, which lies entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Deputy Refuge Manager position and the Administrative Support Assistant position and the associated Activities of those respective positions. As part of the Administrative Support Assistant's Activities, CSKT shall direct the employee in that position to assist the Refuge Manager and the Service's Deputy Refuge Manager in some of their retained administrative duties;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program. During the first two years of this AFA (through FY 2010), the Service's Outdoor Recreation Planner shall retain environmental education activities, cooperating association oversight, and volunteer coordination activities (subject to CSKT's selection and direction of volunteers as described in Section 12.G.2.b of this AFA). Environmental education activities shall consist solely of working with outside groups and individuals on educational activities involving the NBRC. Beginning in FY 2011, all the above functions will transfer to the CSKT, and the Outdoor Recreational Planner will become an Affected Federal Employee. Nothing in this Section or this AFA shall preclude the CSKT and Service staffs from working cooperatively on interpretive services or any other Visitor Service Program Activities.

The Activities in the above five categories will be more fully described in ~~each~~the ~~Annual~~ Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of the activity in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform~~manage~~ the Activities ~~performed~~contracted by the CSKT.

B. *Refuge Manager*. The Refuge Manager will retain final responsibility and authority for directing and controlling the operation of the NBRC. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). ~~The Refuge Manager shall provide reasonable written notice to CSKT of any changes in direction or prioritization of duties. Unless otherwise agreed upon, and subject to the emergency provisions in Section 16 below, changes or additions to instructions or protocols shall be communicated in writing to the CSKT no later than two weeks in advance of the date the affected Activities are to be performed. Subject to the dispute resolution procedures in Section 19.A below, T~~the Refuge Manager shall retain sole and final authority with respect to the following actions for NBRC:

1. Setting work priorities through the NBRC ~~Annual~~ Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents and refuge management plans, including Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements; ~~and~~
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns~~.~~; and
11. Any action which is an inherently Federal function.

C. *Deputy Refuge Managers.*

1. Each Party will support the management partnership at NBRC by providing a Deputy Refuge Manager. The CSKT and Service Deputies are co-equal positions. Both Deputies are senior staff advisors to the Refuge Manager and provide substantive input to management decision-making at NBRC.

2. In the absence or unavailability of the Refuge Manager, the CSKT and Service Deputy Refuge Managers will alternate serving as Acting Refuge Manager. The Acting Refuge Manager will be responsive to the instructions of the Refuge Supervisor and shall exercise all authorities of the Refuge Manager except those listed in Section 7.B above.

3. The Refuge Leadership Team will determine the allocation of most of the duties between the CSKT and Service Deputy Refuge Managers and specify such in the Work Plan~~AWP~~. A limited number of duties are specifically assigned to either the CSKT or Service Deputy Refuge Manager as follows:

   a. The CSKT Deputy Refuge Manager will:

      i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Deputy Refuge Manager, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA.
      ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible.
      iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

   b. The Service's Deputy Refuge Manager will:

Comment [3]: My notes don't reflect whether we had discussed thi s or if this addition was from my earlier internal notes. If we hadn't discussed this, let me know your thoughts.

Comment [4]: We discussed that this may change pending negotiations; we'll have to revisit this section to reflect our subsequent negotiations.

i. Supervise and conduct the Law Enforcement Program, including management of conservation easements of NBRC.
ii. Supervise any subordinate Service employees not assigned to CSKT.
iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: The Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Deputy Refuge Manager;
   c. Service Deputy Refuge Manager; and
   d. CSKT Lead Biologist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the ~~AWP~~Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the ~~AWP~~Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed ~~weekly to informally discuss progress, identify successes, make changes to work priorities, conduct short-term planning, and identify and resolve any concerns raised by either Party~~..

~~4. Unless the meeting is with respect to an emergency, the Refuge Manager or the CSKT Deputy Refuge Manager shall provide at least two days advance notice of any non-regularly scheduled coordination meeting being requested.~~

~~5~~4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the~~During each fiscal year, one of these quarterly meetings will be attended by the~~ Regional Director will meet with the Tribal Council.

~~6~~5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Deputy Refuge Manager can invoke the dispute resolution process in Section 19.A in the event of disagreement with the Refuge Manager's decision.

Comment [5]: This section will also need revisions to reflect subsequent negotiations.

Comment [6]: There is consensus on adding either Tom or Dale's position to the Refuge Leadership Team, if FWS can provide compensation for that time.

E. ~~*Annual*~~ *Work Plan (Plan~~AWP~~).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon ~~AW~~Plan, to be amended as necessary to reflect current needs, priorities and available resources ~~for each fiscal year~~. The ~~AWP~~Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. ~~In the event that insufficient resources are provided to accomplish the work identified in the AWP,~~ ~~T~~the Refuge Manager shall prioritize Plan activities according to available~~Leadership Team shall meet to determine what work is to be accomplished taking into account the~~ resources ~~provided~~. ~~The AWP will include expectations for all Activities to be conducted during the Federal fiscal year to achieve the established purposes and approved goals and objectives of the NBRC, including performance of Activities contracted by CSKT, and performance of activities retained by the Service. CSKT will be responsible for any AWP performance requirements for CSKT programs, and the Service will be responsible for AWP performance requirements for Service programs.~~

Comment [7]: I tried to replace all "AWP" references in the AFA to "Plan" or "Work Plan"

~~1.*Expectations.* The Parties understand that this AFA represents a significant change in operation and maintenance of the NBRC, and that many new CSKT employees will be assigned to the NBRC at the time this AFA is implemented. The Parties understand that the first year of this AFA will be a transition year as new employees learn their jobs, and as the Refuge Leadership Team develops the close working relationship necessary for success of its on-the-ground partnership. The senior officials of both Parties, including signatories to this AFA, expect that, during the first year of the partnership, the Refuge Leadership Team and all NBRC employees will work diligently to develop a healthy and cooperative working environment.~~

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~~2.*NBRC Baseline Data.* The Parties will agree on a set of NBRC Baseline Data that will establish, from the best data available, the biological conditions, and the conditions of facilities and equipment existing at the NBRC at the time this AFA becomes effective. The NBRC Baseline Data will also set forth any monitoring protocols for Fire, Maintenance, Biological, and Visitor Services Programs. A list of existing documents describing baseline conditions, and a list of identified data gaps needed to establish baseline conditions, will be included in Attachment A prior to implementation of the AFA. Any evaluation of CSKT's performance will be measured against the jointly agreed-upon NBRC Baseline Data and the duties identified in the AWP. The Service will not hold the CSKT to a higher standard of performance for any Activity than that to which it would hold itself, if that Activity were performed by Service employees.~~

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~~3.*Protocols.* Prior to the effective date of the AWP, the Parties shall review all protocols involved with that AWP.~~

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~~4.~~1.*Initial and successor~~Work~~ ~~AW~~P~~lans~~'~~s~~. Prior to implementation of this AFA, the Parties jointly will develop the ~~initial~~ initial Work Plan~~AWP~~ for FY 20~~09~~12.

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~~a. The initial AWP will be limited in scope, and will include only the basic, fundamental Activities necessary to provide for the biological integrity of the NBRC, ensure maintenance of critical infrastructure and equipment, and provide basic visitor services. The initial and successor AWP's will also include: significant requirements for on-the-job training of new employees; development of any needed NBRC Baseline Data; development of working protocols, including any fire monitoring protocols; relationships within the Refuge Leadership Team; and orientation and training of the combined Service/CSKT staff on the expectations of the partnership, cultural awareness, safety, and team building.~~

~~b~~a. The Refuge Leadership Team will prepare the ~~AW~~Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan~~AWP~~. The Refuge Leadership Team will further develop information from the RAPP Workbook into the ~~AWP~~Plan. In concise narrative format, the ~~AWP~~ Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The ~~AWP~~Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

~~c. The AWP is a living document that can be adjusted during the course of the fiscal year to address changes in environmental conditions, funding and directions from the Regional Supervisor. The AWP will be submitted to the Refuge Supervisor annually by October 1. As appropriate, the Refuge Leadership Team will prepare changes to the AWP for approval by the Refuge Manager and submission to the Refuge Supervisor.~~

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) ~~the Refuge Manager, CSKT Deputy Refuge Manager, or Service Deputy Refuge Manager~~ to take immediate steps to address any safety concerns.

~~G. *Bison Herd*. The Assistant Secretary for Fish, Wildlife and Parks must approve any plan to reduce the bison herd below 330 bison, which represents 90% of the population average over the three-year period consisting of FY '05, FY '06, and FY '07.~~

Section 8. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Deputy Refuge Manager will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 9. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4 of this AFA.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to ~~After~~ consult~~ing~~ with the Refuge Manager prior to~~,~~ making ~~the CSKT may~~any request for~~that~~ the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge ~~Leadership Team~~ Manager will identify ~~in the AWP~~ any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager~~Leadership Team~~ will identify ~~in the AWP~~ any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law,

regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act ~~[CITE~~, 16 U.S.C. § 1531 *et seq.*~~]~~. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

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2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

~~2~~3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 10. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the ~~AWP~~Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan~~AWP~~ an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Deputy Refuge Manager will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC.

Comment [8]: There was discussion of including more detail here.

b. *Other Reports*. Within 90 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a)*. 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 11. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. ~~*Joint* *Evaluation*. The Service and CSKT will jointly evaluate NBRC operations by using: applicable Operational Standards; the terms and conditions of this AFA; and NBRC Baseline Data. Any written evaluation or similar assessment of any NBRC activities (including any report developed under Section 11.B of this AFA), shall address NBRC activities as a whole and shall be jointly drafted and approved by the Parties under the direction of the Refuge Leadership Team. Any evaluation shall clearly identify the specific NBRC Baseline Data, Operational Standard, or AWP provision against which performance is being measured.~~ In the event the Parties do not agree on any portion of any~~the~~ evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager~~Deputy Refuge Manager~~ in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will provide that information to the CSKT, without requiring any request from CSKT, ~~on its own initiative,~~ in accordance with disclosure practices under FOIA and the Privacy Act~~, without the necessity of a FOIA request from the CSKT~~. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT ~~Deputy Refuge Manager~~Fish, Wildlife, Recreation and Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT ~~Deputy Refuge Manager~~Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT ~~Deputy Refuge Manager~~Fish, Wildlife, Recreation and Conservation Division Manager ~~and the Department Head of the CSKT Natural Resources Department no later than~~within one week from the date of oral notice.

~~ii. *Notice of Minor Perceived Deficiencies*. The Refuge Manager will notify the CSKT Deputy Refuge Manager and the Department Head of the CSKT Natural Resources Department in writing (e-mail is acceptable) of any performance deficiency that is minor or is an apparent oversight. Such written notices shall specifically describe the performance deficiency and identify a reasonable amount of time for CSKT to either remedy the deficiency or demonstrate that the deficiency does not exist.~~

~~i~~ii. *Notice of ~~Other~~ Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any ~~other~~ significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable ~~B~~baseline ~~D~~data; Operational Standard; approved Work Plan~~AWP~~ provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges~~Assistant Secretary for Fish and Wildlife and Parks~~ and the Regional Director~~Department's Office of the Secretary~~ and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

~~B. *Final Report and Review*. The Refuge Leadership Team will prepare an Annual Narrative Report to cover each fiscal year of this AFA. The report format will follow current Service policy contained in the Refuge Manual and/or Service Manual. The Annual Narrative Report will be a concise narrative description of work, activities and events that occurred during the prior fiscal year, and will include successes, lessons learned, areas for improvement, and~~

~~recommendations for future AWP's, AFA's, and/or other partnerships between the Parties. The Refuge Leadership Team will submit the Annual Narrative Report to the Refuge Supervisor for review and approval by December 31st of each year, beginning on December 31, 2009.~~

~~C~~B. ~~*Miscellaneous*~~ *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA ~~other than those specified above~~, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

~~D~~C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared ~~monthly~~quarterly~~.~~. The Refuge Manager shall submit the status reports to ~~due at~~ the FWS Refuge Supervisor~~Service's Regional Office in Lakewood, CO,~~ and the CSKT Tribal Council by the 15th ~~business~~ day of the following month. ~~The Regional Office shall transmit the reports to the Department officials identified in Section D.3 below and to the CSKT Tribal Chairman by the 10th of the month.~~ The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and~~,~~ approve~~, and transmit~~ the status reports ~~to the Regional Office~~. ~~The Refuge Leadership Team will determine the contents of the status reports, which may include, but is not limited to, significant accomplishments, lessons learned and identified areas for improvement.~~ At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager ~~and the CSKT Deputy Refuge Manager~~.

~~3. The Service shall be responsible for transmitting periodic status reports to the DOI Senior Management Team, and the Director of the Office of Self-Governance. CSKT shall be responsible for transmitting copies of the status reports to any congressional offices it feels appropriate.~~

Comment [9]: My notes reflect we had approved changes here that would have reflected the RLT transmitting the reports to the FWS Refuge Supervisor and the CSKT Tribal Council. Since the prior section has the Refuge Manager doing that transmittal, I amended this line to reflect that.

Section 12. Personnel

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A. *General Staffing*. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

B. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Deputy Refuge Manager. CSKT agrees to fund a dedicated phone line and

computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

C. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

D. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA. The Parties will work on developing a new patch which can be worn on both FWS and CSKT uniforms and which will show the partnership between the Federal and tribal governments.

E. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee must select an employment option no later than forty-five (45) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for employment under this AFA are:

   a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA)*, 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

   b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

   c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C.

§ 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Where practicable, reassignment by the Service to another duty station.

4. *Reduction in Force ("RIF")*. If all of the above options are unsuccessful, the Service will conduct a reduction in force.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *Performance and Conduct*.

i. The IPA Employee, CSKT Deputy Refuge Manager, and the Refuge Manager will jointly develop the IPA Employee's Annual Performance Plan and prepare subsequent evaluations, as well as any Performance Improvement Plan(s). If the CSKT perceives a deficiency in the performance or conduct of the IPA Employee, the Refuge Manager and the CSKT Deputy Refuge Manager will confer, and the Service will apply Federal personnel procedures to address any such deficiency. Due to the assignment of the IPA Employee to the CSKT, and the CSKT Deputy Refuge Manager's role in the Refuge Leadership Team, the CSKT Deputy Refuge Manager has the right to: 1) be present during any counseling related to the IPA Employee's performance or conduct; and 2) obtain copies of any personnel or disciplinary records directly related to the IPA employee's performance under this AFA. CSKT officials agree to keep IPA Employee personnel information confidential and secure.

ii. The CSKT will terminate an IPA agreement only: 1) for cause; and 2) after addressing the issue through the dispute resolution process (*see* Section 19.A

of this AFA) up through the Regional Director level. The term "cause" includes conduct or performance problems documented by CSKT.

iii. If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA agreement. Upon termination of the IPA agreement, the Activities performed by the prior IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service: 1) will not reassign the employee to a position working within, or for, the NBRC; and 2) will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Duties and Responsibilities*. The CSKT will assign each Affected Federal Employee to perform one or more Activities, with duties and responsibilities commensurate with her or his training, experience and salary, and reasonably equivalent to her or his position with the Service.

8. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

F. *Scheduling of Annual Leave*. Annual leave is part of employee compensation and will not be unreasonably denied. However, by October 31st of each year, all NBRC employees will be expected to submit annual leave requests for any period greater than one week during the upcoming fiscal year. All employees should request any leave as far in advance as possible to ensure that it can be granted.

G. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Deputy Refuge Manager (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration.* The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by

the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Suspension may be directed by any of the following: Refuge Manager; CSKT Deputy Refuge Manager; Service Deputy Refuge Manager; Lead Biologist; or Outdoor Recreation Planner. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Leadership Team completes an investigation and makes a determination for final disposition. The Refuge Leadership Team will reach a final disposition through consensus. Final disposition may include: no action – return to duty; counseling; training; or termination. In cases where the Refuge Leadership Team cannot reach consensus, the incident will be elevated through the dispute resolution process (Section 19.A).

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the calendar years 2009 and 2010 annual Round-Up events.

H. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 13. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For FY 2009, Attachment B will reflect that

the Service will transfer funds to CSKT in an amount pro-rated to reflect the phasing-in of performance as mutually-agreed upon per Section 24.A of this AFA.

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A below, for FY 2009 the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

1. For FY 2009, the Service will retain funding and responsibility for administering and paying general fixed operational costs including:
    a. utilities;
    b. fuel;
    c. telephone service (cell and landlines);
    d. mandatory software upgrades;
    e. security alarm system;
    f. satellite television;
    g. office trailer rental;
    h. trash removal;
    i. irrigation water;
    j. postage meter; and
    k. other similar fixed costs.

    If the CSKT opts to contract the administration of these general fixed operational costs in FY 2010 and/or FY 2011, the Service will include funding for such Activities in the Attachment B for such fiscal year(s).

2. The Service will provide funding, and CSKT will be responsible, for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and execution of the Fire and Visitors Services Programs (excluding environmental education activities).

3. Each Party's operational budget will be used to cover expenses associated with its personnel, including travel, training (see also Section 12.C above), incentive awards, office supplies and miscellaneous expenses.

4. Generally, Attachment B specifies the following types of consideration:

    a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

    b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above); and

ii. *Contract Support Costs*.

c. *Recreational Fees*. Semiannually, the Service will transfer to the CSKT 50% of the Recreational Fees collected and allocated to the NBRC. For FY 2009, the Service will also transfer to CSKT 50% of the previous fiscal year's carry-over allocated to the NBRC in support of Visitors Services Activities.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide all necessary information, including CSKT's indirect cost rate approved by the Department's Office of Inspector General (OIG rate), in accordance with 25 C.F.R. §1000.138.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Indirect cost rates will generally be applied only to direct costs (e.g., salary and benefits) by using CSKT's approved OIG rate as of the date of execution of this AFA. CSKT's indirect costs associated with flexible and project dollars will be negotiated.

3. Prior to submission of cost proposals and requests for projects, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

4. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

b. *Reduction in Force ("RIF")*. Pending the completion of any RIF under Section 12.E.4 above, the Service will continue to perform all Activities associated with each position affected by the RIF. Upon completion of the RIF, the Service will pay the CSKT the balance of the salary and benefits of each position affected by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in Section 13.E.2 below.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of the FY '09 fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying*. No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 14. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all Available Property and Real Property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality.

B. *Inventories of Personal ~~Available~~ Property and Real Property*. Attachment C is the Service's ~~an~~ inventory of ~~each item of Available~~ Property ~~(including condition) valued at $500.00 or more,~~ and sensitive or controlled items. Attachment D is an inventory of Real Property (including condition) valued at $5,000.00 or more. The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

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C. *NBRC ~~Baseline~~ Data*. ~~On or before the effective date of this AFA, the Service will provide to the CSKT all NBRC Baseline Data in accordance with Section 7.E.2 above.~~ The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All Personal~~Available~~ Property and Real Property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. ~~Available Property, including individual items valued at $500.00 or more, and sensitive items such as laptop computers, cameras and binoculars designated for use by the CSKT to perform Activities~~Keys~~,~~ will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Available Property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 15. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate

with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Section 16. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Deputy Refuge Manager.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Deputy Refuge Manager or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

b. assist the Service in responding to the emergency; and

c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Deputy Refuge Manager nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Deputy Refuge Manager or, where such Deputy is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the ~~AWP~~Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 17. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the following procedures:

1. *Notice*. CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition*. From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Available Property*. On the effective date of the retrocession, CSKT will return all Available Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Available Property which is not needed by the CSKT to perform a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 2011, with any signed successor AFA to be delivered to Congress prior to July 1, 2011. This schedule will allow such successor AFA to be effective on October 1, 2011, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Goverance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Available Property*. On the last day of the term of this AFA, the CSKT will return all Available Property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 18. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B, as amended, CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 19. Dispute Resolution and Appeals

A. *Dispute Resolution.*

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Deputy Refuge Manager may invoke the dispute resolution process if the Refuge Manager's decision is unacceptable to the CSKT. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Deputy Refuge Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Deputy Refuge Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director~~DOI Senior Management Team~~. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director~~DOI Senior Management Team~~ shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive

Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section may delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 20. Indian Self-Determination and Education Assistance Act's Title I Provisions

In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

The Parties agree that the following Title I provisions are also incorporated into this AFA, as authorized by 25 U.S.C. § 450cc(l):

25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
25 U.S.C. § 450j-1(a): amounts of funds provided
25 U.S.C. § 450j-1(b): reductions and increases
25 U.S.C. § 450j-1(d): treatment of shortfalls
25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
25 U.S.C. § 450j-1(h): indirect costs for construction programs
25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
25 U.S.C. § 450j-1(k): allowable uses of funds
25 U.S.C. § 450j-1(m): use of program income earned
25 U.S.C. § 450j-1(o): re-budgeting
25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations

Section 21. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 22. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

Section 23. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

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Section 24. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during the first quarter of FY 2009 (October 1 – December 31, 2008). This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than January 1, 2009.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the

Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 2011. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

E.T. "Bud" Moran~~James Steele, Jr.~~ Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____ _____
Rowan Gould~~Dale Hall~~, Acting Director, U.S. Fish & Wildlife Date
Service

_____ _____
~~Lyle Laverty~~_____, Assistant Secretary Date
for Fish, Wildlife and Parks

_____ _____
_____ ~~George Skibine~~, for Bureau of Indian Affairs Date

From:	"Brian Upton" <brianu@cskt.org>
To:	Dean_Rundle@fws.gov; Jeff_King@fws.gov; Sharon.Brenna@exchange.sol.doi.gov
Cc:	jamessteelejr@vzw.blackberry.net; "Rich Janssen"; tomm@cskt.org; daleb@cskt.org; tonyh@cskt.org; jksteele@cskt.org; "Ruth Swaney"
Subject:	FW: revised AFA
Date:	Monday, September 19, 2011 9:48:06 AM
Attachments:	FY 12-16 AFA Draft 9-16-11.doc

Sorry for the delay; attached is the revised draft as discussed in my email below last Friday.

From: Brian Upton[mailto:brianu@cskt.org]
Sent: Friday, September 16, 2011 2:44 PM
To: Dean_Rundle@fws.gov; Jeff_King@fws.gov; Sharon.Brenna@sol.doi.gov
Cc: James Steele; Richard Janssen; Tom McDonald; daleb@cskt.org; Tony Harwood; James K. Steele; Ruth Swaney; brianu@cskt.org
Subject: revised AFA

Dean, Jeff, and Sharon,

Attached is a revised draft AFA. This draft should reflect: 1) all mutually agreed-upon changes to date; 2) all of FWS' proposed revisions from August with which CSKT concurs; and 3) CSKT's own proposed revisions to date. Please note that CSKT modified some of FWS' August revisions, so please review carefully all of those revisions that came from Dean's proposed August draft.

I added text identifying benefits to CSKT from the AFA, per Dean's suggestion. We appreciate the time and thought that went into the new subsection identifying the AFA's benefits to FWS.

The attached document is in change tracking format so you can easily identify any changes made from our base document, which is the FY 2009-11 AFA. With the change-tracking and comments, the draft is starting to get cumbersome to read, so hopefully we can go over this draft during our next conference call and come to agreement on most or all of the proposed changes. Then we could start with a clean document for a final round of edits, revisions and final clean-up (including formatting, cross-references, etc.). - FY 12-16 AFA Draft 9-16-11.doc

FISCAL YEARS 20~~09~~12–20~~11~~16 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

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day management of programs of the NBRC, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services, functions, and activities, or portions thereof (Activities) at the NBRC. The

Comment [1]: I can't tell from my notes if we had discussed this, or if this proposed revision was from my own earlier internal notes. In any case, I don't think it's controversial.

Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at ~~73~~ 76 F.R. ~~16054-55~~57068 (September 15~~March 26~~, 20~~08~~11).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

"In administering the System, the Secretary shall:

ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996, Management and General Public Use of the National Wildlife Refuge System, which establishes Guiding Principles for management of the System, including:

"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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the native people in whose homeland NBRC is located;

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e. provides the Service with closer cooperation with our professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation who have extensive scientific knowledge, significant traditional ecological knowledge, and a long successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self Governance Act, and the policy of the United States regarding Tribal Self Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. allows Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*) and House Report No. xx-xxx; and
b. allows CSKT to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or as fee owner;
c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through close collaboration with FWS;
e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994;
2. Section 403(c) of the Act, codified at 25 U.S.C. § 458cc(c), which concerns additional activities administered by the Secretary; ~~and~~
3. Section 403(i)(1) of the Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities ~~("Activities")~~ in an AFA and the implementation of an AFA; and
4. the NWRSAA, as amended.

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B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C~~B.2~~ below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

Comment [3]: This corrects a typographical error.

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity;

B. But for this AFA would continue to perform the Activity during the term of this AFA; and

C. Whose employment the Service would terminate in the absence of continued employment with the Service or the CSKT as provided in this AFA;

An Affected Federal Employee can also mean a Service employee who formerly worked at the NBRC and whom the Service reassigns to the NBRC under a mutual agreement with CSKT to perform work for CSKT under this AFA. Such employee will have the same employment options available to any other Affected Federal Employee.

~~*Available Property* means any equipment, material, or supply the Service makes available for use by the CSKT in performing an Activity, including any horse owned by the United States.~~

~~*Annual Work Plan or AWP* means the jointly developed and mutually agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.~~

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

DOI Senior Management Team means the team currently consisting of the: Deputy Secretary; Associate Deputy Secretary; Assistant Secretary-Fish, Wildlife and Parks; Assistant Secretary-Indian Affairs; Director, U.S. Fish & Wildlife Service; Director, Bureau of Indian Affairs; and Associate Solicitor, General Law; or as otherwise constituted by the Department.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

~~*NBRC Baseline Data* includes written or other tangible data documenting the existence and/or state of each natural resource of the NBRC (including bison and other wildlife) and each item of real and personal Federal property of the NBRC.~~

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT ~~Deputy~~ Refuge Operations Specialist ~~Manager~~; Service Deputy Refuge Manager; and the CSKT Lead Biologist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA is the NBRC, which lies entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not contract any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code

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Section 6. . Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Deputy Refuge ManagerOperations Specialist position and the Administrative Support Assistant position and the associated Activities of those respective positions. As part of the Administrative Support Assistant's Activities, CSKT shall direct the employee in that position to assist the Refuge Manager and the Service's Deputy Refuge Manager in some of their retained administrative duties;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities. During the first two years of this AFA (through FY 2010), the Service's Outdoor Recreation Planner shall retain environmental education activities, cooperating association oversight, and volunteer coordination activities (subject to CSKT's selection and direction of volunteers as described in Section 12.G.2.b of this AFA). Environmental education activities shall consist solely of working with outside groups and individuals on educational activities involving the NBRC. Beginning in FY 2011, all the above functions will transfer to the CSKT, and the Outdoor Recreational Planner will become an Affected Federal Employee. Nothing in this Section or this AFA shall preclude the CSKT and Service staffs from working cooperatively on interpretive services or any other Visitor Service Program Activities.In the event of the incumbent Outdoor Recreation Planner's reassignment, relocation, termination or separation of employment from the NBRC, the Service shall contract these remaining Activities to CSKT under this AFA, and shall, immediately upon such reassignment, relocation, termination or separation, transfer the funds associated with the Outdoor Recreation Planner position to CSKT on a pro rata basis

The Activities in the above five categories will be more fully described in eachthe Annual Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will

negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of the activity in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform~~manage~~ the Activities ~~performed~~contracted by the CSKT.

B. *Refuge Manager*~~.~~ The Refuge Manager will retain final responsibility and authority for directing~~, and~~ controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). ~~The Refuge Manager shall provide reasonable written notice to CSKT of any changes in direction or prioritization of duties. Unless otherwise agreed upon, and subject to the emergency provisions in Section 16 below, changes or additions to instructions or protocols shall be communicated in writing to the CSKT no later than two weeks in advance of the date the affected Activities are to be performed. Subject to the dispute resolution procedures in Section 19.A below, T~~the Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions ~~for~~ for the NBRC:

Comment [5]: Dean, I put a pinpoint citation here instead of your broader citation.

1. Setting work priorities through the NBRC ~~Annual~~ Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements; ~~and~~
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns~~.~~; and
11. Any action which is an inherently Federal function.

C. Refuge Operations Specialist~~*Deputy Refuge Managers*~~.

1~~. Each Party will support the management partnership at NBRC by providing a Deputy Refuge Manager. The CSKT and Service Deputies are co-equal positions. Both Deputies are senior staff advisors to the Refuge Manager and provide substantive input to management decision-making at NBRC.~~

~~2. In the absence or unavailability of the Refuge Manager, the CSKT and Service Deputy Refuge Managers will alternate serving as Acting Refuge Manager. The Acting Refuge Manager will be responsive to the instructions of the Refuge Supervisor and shall exercise all authorities of the Refuge Manager except those listed in Section 7.B above.~~

~~3. The Refuge Leadership Team will determine the allocation of most of the duties between the CSKT and Service Deputy Refuge Managers and specify such in the AWP. A limited number of duties are specifically assigned to either the CSKT or Service Deputy Refuge Manager as follows:~~

~~a~~. The CSKT Refuge Operation Specialist~~Deputy Refuge Manager~~ will:

i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT ~~Deputy~~ Refuge Operations Specialist~~Refuge Manager~~, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA;~~.~~
ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and~~.~~
iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

~~b. The Service's Deputy Refuge Manager will:~~

~~i. Supervise and conduct the Law Enforcement Program, including management of conservation easements of NBRC.~~

Comment [6]: My notes don't reflect whether we had discussed thi s or if this addition was from my earlier internal notes. If we hadn't discussed this, let me know your thoughts.

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~~ii. Supervise any subordinate Service employees not assigned to CSKT.~~
~~iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.~~

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, ~~T~~the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Refuge Operations Specialist ~~Deputy Refuge Manager~~;
   c. Service Deputy Refuge Manager; and
   d. CSKT Lead Biologist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the ~~AWP~~Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the ~~AWP~~Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed ~~weekly to informally discuss progress, identify successes, make changes to work priorities, conduct short-term planning, and identify and resolve any concerns raised by either Party~~..

~~4. Unless the meeting is with respect to an emergency, the Refuge Manager or the CSKT Deputy Refuge Manager shall provide at least two days advance notice of any non-regularly scheduled coordination meeting being requested.~~

~~5~~4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the ~~During each fiscal year, one of these quarterly meetings will be attended by the~~ Regional Director will meet with the Tribal Council.

~~6~~5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Refuge Operations Specialist ~~Deputy Refuge Manager~~ can invoke the dispute resolution process in Section 19.A in the event of disagreement with the Refuge Manager's decision.

Comment [7]: This section will also need revisions to reflect subsequent negotiations.

Comment [8]: There is consensus on adding either Tom or Dale's position to the Refuge Leadership Team, if FWS can provide compensation for that time.

E. ~~*Annual*~~ *Work Plan (Plan~~AWP~~).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon ~~AW~~Plan, to be amended as necessary to reflect current needs, priorities and available resources ~~for each fiscal year~~. The ~~AWP~~Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. ~~In the event that insufficient resources are provided to accomplish the work identified in the AWP~~, T~~t~~he Refuge Manager shall prioritize Plan activities according to available ~~Leadership Team shall meet to determine what work is to be accomplished taking into account the~~ resources ~~provided~~. ~~The AWP will include expectations for all Activities to be conducted during the Federal fiscal year to achieve the established purposes and approved goals and objectives of the NBRC, including performance of Activities contracted by CSKT, and performance of activities retained by the Service. CSKT will be responsible for any AWP performance requirements for CSKT programs, and the Service will be responsible for AWP performance requirements for Service programs.~~

Comment [9]: I tried to replace all "AWP" references in the AFA to "Plan" or "Work Plan"

~~1.*Expectations.* The Parties understand that this AFA represents a significant change in operation and maintenance of the NBRC, and that many new CSKT employees will be assigned to the NBRC at the time this AFA is implemented. The Parties understand that the first year of this AFA will be a transition year as new employees learn their jobs, and as the Refuge Leadership Team develops the close working relationship necessary for success of its on-the-ground partnership. The senior officials of both Parties, including signatories to this AFA, expect that, during the first year of the partnership, the Refuge Leadership Team and all NBRC employees will work diligently to develop a healthy and cooperative working environment.~~

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~~2.*NBRC Baseline Data.* The Parties will agree on a set of NBRC Baseline Data that will establish, from the best data available, the biological conditions, and the conditions of facilities and equipment existing at the NBRC at the time this AFA becomes effective. The NBRC Baseline Data will also set forth any monitoring protocols for Fire, Maintenance, Biological, and Visitor Services Programs. A list of existing documents describing baseline conditions, and a list of identified data gaps needed to establish baseline conditions, will be included in Attachment A prior to implementation of the AFA. Any evaluation of CSKT's performance will be measured against the jointly agreed-upon NBRC Baseline Data and the duties identified in the AWP. The Service will not hold the CSKT to a higher standard of performance for any Activity than that to which it would hold itself, if that Activity were performed by Service employees.~~

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~~3.*Protocols.* Prior to the effective date of the AWP, the Parties shall review all protocols involved with that AWP.~~

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~~4.~~1.~~*Initial and successor*~~*Work* ~~*AW*~~*Plan Preparation*~~'s~~. ~~Prior to implementation of this AFA, t~~The Parties will jointly ~~will~~ develop the ~~initial~~ Work Plan~~AWP~~ ~~for FY 2009~~.

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~~a. The initial AWP will be limited in scope, and will include only the basic, fundamental Activities necessary to provide for the biological integrity of the NBRC, ensure maintenance of critical infrastructure and equipment, and provide basic visitor services. The initial and successor AWP's will also include: significant requirements for on-the-job training of new employees; development of any needed NBRC Baseline Data; development of working protocols, including any fire monitoring protocols; relationships within the Refuge Leadership Team; and orientation and training of the combined Service/CSKT staff on the expectations of the partnership, cultural awareness, safety, and team building.~~

~~b~~a. The Refuge Leadership Team will prepare the ~~AW~~Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan~~AWP~~. The Refuge Leadership Team will further develop information from the RAPP Workbook into the ~~AWP~~Plan. In concise narrative format, the ~~AWP~~ Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The ~~AWP~~Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

~~c. The AWP is a living document that can be adjusted during the course of the fiscal year to address changes in environmental conditions, funding and directions from the Regional Supervisor. The AWP will be submitted to the Refuge Supervisor annually by October 1. As appropriate, the Refuge Leadership Team will prepare changes to the AWP for approval by the Refuge Manager and submission to the Refuge Supervisor.~~

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) ~~the Refuge Manager, CSKT Deputy Refuge Manager, or Service Deputy Refuge Manager~~ to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's

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District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

a. The Service will recommend fuels projects and plan for them 2-5 years out.
b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
c. Planning to include writing of burn plans will be done by the CSKT.
d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
f. Smoke management requirements will be the responsibility of the CSKT.
g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. **Wildfire Suppression & Initial Attack**

a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land, This does not preclude IQCS-qualified Service firefighters from conducting initial attack activities on Service lands.
b. The CSKT will open a Firecode for all IA fires.
c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS), the Service will provide a profile for CSKT to access WFDSS for the NBRC.
d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.
e. The CSKT will generate a fire report for all IA and submit it to the Service within 10 days, the Service will enter a fire report into FMIS.

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f. Severity requests will be done in coordination. Generally, severity requests by the CSKT will include coverage of the NBRC. If severity resources are requested to specifically be stationed on the NBRC the request will be done by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of .25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).
c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.
d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.
e. The six man fire cache at the NBRC will be maintained by the Service.
f. The fire engine at the NBRC will be maintained by the Service.
g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

~~G. *Bison Herd*. The Assistant Secretary for Fish, Wildlife and Parks must approve any plan to reduce the bison herd below 330 bison, which represents 90% of the population average over the three-year period consisting of FY '05, FY '06, and FY '07.~~

Section ~~8~~9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to

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have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT ~~Deputy~~ Refuge Operations Specialist ~~Manager~~ will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:

a. adequate training or instructions to perform the assigned task(s) safely; or
b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section ~~9~~10~~.~~. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4 of this AFA.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to ~~After~~ consult~~ing~~ with the Refuge Manager prior to~~,~~ making ~~the CSKT may~~any request for~~that~~ the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge ~~Leadership Team~~ Manager will identify ~~in the AWP~~ any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager~~Leadership Team~~ will identify ~~in the AWP~~ any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act ~~[CITE~~, 16 U.S.C. § 1531 *et seq.*~~]~~. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding.* Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans,

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specifications, and drawings. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

~~2~~3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 1~~0~~1. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the ~~AWP~~Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan~~AWP~~ an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT ~~Deputy~~ Refuge Operations Specialist ~~Manager~~ will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

Comment [10]: Is more detail necessary here?

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

b. *Other Reports*. Within 90 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a)*. As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 1~~1~~2. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. ~~*Joint* Evaluation. The Service and CSKT will jointly evaluate NBRC operations by using: applicable Operational Standards; the terms and conditions of this AFA; and NBRC Baseline Data. Any written evaluation or similar assessment of any NBRC~~

Comment [11]: There was discussion of including more detail here.

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activities (including any report developed under Section 11.B of this AFA), shall address NBRC activities as a whole and shall be jointly drafted and approved by the Parties under the direction of the Refuge Leadership Team. Any evaluation shall clearly identify the specific NBRC Baseline Data, Operational Standard, or AWP provision against which performance is being measured. In the event the Parties do not agree on any portion of anythe evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division ManagerDeputy Refuge Manager in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will provide that information to the CSKT, without requiring any request from CSKT, on its own initiative, in accordance with disclosure practices under FOIA and the Privacy Act, without the necessity of a FOIA request from the CSKT. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation and Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation and Conservation Division Manager and the Department Head of the CSKT Natural Resources Department no later thanwithin one week from the date of oral notice.

      ii. *Notice of Minor Perceived Deficiencies*. The Refuge Manager will notify the CSKT Deputy Refuge Manager and the Department Head of the CSKT Natural Resources Department in writing (e-mail is acceptable) of any performance deficiency that is minor or is an apparent oversight. Such written notices shall specifically describe the performance deficiency and identify a reasonable amount of time for CSKT to either remedy the deficiency or demonstrate that the deficiency does not exist.

ii. *Notice of Other Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any other significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable Bbaseline Ddata; Operational Standard; approved Work PlanAWP provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - RefugesAssistant Secretary for Fish and Wildlife and Parks and the Regional DirectorDepartment's Office of the Secretary and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Final Report and Review*. The Refuge Leadership Team will prepare an Annual Narrative Report to cover each fiscal year of this AFA. The report format will follow current Service policy contained in the Refuge Manual and/or Service Manual. The Annual Narrative Report will be a concise narrative description of work, activities and events that occurred during the prior fiscal year, and will include successes, lessons learned, areas for improvement, and recommendations for future AWP's, AFA's, and/or other partnerships between the Parties. The Refuge Leadership Team will submit the Annual Narrative Report to the Refuge Supervisor for review and approval by December 31st of each year, beginning on December 31, 2009.

CB. *Miscellaneous Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA other than those specified above, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

DC. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared monthlyquarterly;. The Refuge Manager shall submit the status reports to due at the FWS Refuge SupervisorService's Regional Office in Lakewood, CO, and the CSKT Tribal Council by the 15th business day of January, April, July, and October. the following month. The Regional Office shall transmit the reports to the Department

Comment [MSOffice12]: I changed the language for quarterly report submission to include actual dates so it would make more sense (previously it referred to the "following month", which was leftover text from the last AFA when the reports were supposed to be monthly). Let us know your thoughts.

~~officials identified in Section D.3 below and to the CSKT Tribal Chairman by the 10th of the month.~~ The Parties may agree to submit the status reports on a more or less frequent basis.

2. The Refuge Leadership Team jointly will prepare and~~,~~ approve~~, and transmit~~ the status reports ~~to the Regional Office~~. ~~The Refuge Leadership Team will determine the contents of the status reports, which may include, but is not limited to, significant accomplishments, lessons learned and identified areas for improvement.~~ At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager ~~and the CSKT Deputy Refuge Manager~~.

~~3. The Service shall be responsible for transmitting periodic status reports to the DOI Senior Management Team, and the Director of the Office of Self-Governance. CSKT shall be responsible for transmitting copies of the status reports to any congressional offices it feels appropriate.~~

Section 1~~2~~3. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. In administering programs contracted under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make

Comment [13]: My notes reflect we had approved changes here that would have reflected the RLT transmitting the reports to the FWS Refuge Supervisor and the CSKT Tribal Council. Since the prior section has the Refuge Manager doing that transmittal, I amended this line to reflect that.

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recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees.*

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities.* The Refuge Manager shall provide day-to-day direction to the CSKT Refuge Operations Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation and Conservation Manager. The CSKT Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire and Visitor Service Programs, as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

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~~B~~C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT ~~Deputy~~ Refuge ~~Manager~~Operations Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

~~C~~D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work

performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

~~D~~E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA. ~~The Parties will work on developing a new patch which can be worn on both FWS and CSKT uniforms and which will show the partnership between the Federal and tribal governments.~~

F~~E~~. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect.* Each Affected Federal Employee must select an employment option no later than thirty~~forty-five~~ (~~45~~30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for employment under this AFA are:

   a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA)*, 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

   b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

   c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

   d. *Reassignment*. Where practicable, reassignment by the Service to another duty station.

Comment [14]: Revision from 45 to 30 is in recognition of: A) the fact that NBRC staff have already met with FWS and CSKT officials to discuss employment issues and they will continue to have a very lengthy time to consider options over the course of NEPA analysis, etc; and B) CSKT will need time to properly advertise, screen, interview and hire any staff in the event an Affected Federal Employee were to decline continued employment at NBRC.

4. *Reduction in Force ("RIF").* If all of the above options are unsuccessful, the Service will conduct a reduction in force.

5. *Assignment to the CSKT under an IPA Agreement.*

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct.*

i. ~~The IPA Employee, CSKT Deputy Refuge Manager, and the Refuge Manager will jointly develop the IPA Employee's Annual Performance Plan and prepare subsequent evaluations, as well as any Performance Improvement Plan(s).~~ If the CSKT perceives a deficiency in the performance or conduct of an~~the~~ IPA Employee, the Refuge Manager and the CSKT ~~Deputy~~ Refuge ~~Manager~~Operations Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency. ~~Due to the assignment of the IPA Employee to the CSKT, and the CSKT Deputy Refuge Manager's role in the Refuge Leadership Team, the CSKT Deputy Refuge Manager has the right to: 1) be present during any counseling related to the IPA Employee's performance or conduct; and 2) obtain copies of any personnel or disciplinary records directly related to the IPA employee's performance under this AFA. CSKT officials agree to keep IPA Employee personnel information confidential and secure.~~

ii. The CSKT will terminate an IPA agreement only: 1) for cause; and 2) after addressing the issue through the dispute resolution process (*see* Section 19.A of this AFA) up through the Regional Director level. The term "cause" includes conduct or performance problems documented by CSKT.

iii. If, after engaging in the dispute resolution process, CSKT disagrees with the

Comment [15]: Our assumption is that FWS will need to keep this in here in the event an Affected Federal Employee refuses all options, including an IPA assignment. If not, or if FWS wants to handle differently, we can discuss revisions here.

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Service's disposition or decision on the issue, CSKT may terminate the IPA assignment agreement. Upon termination of the IPA agreement, the Activities that had been performed by ~~the prior~~such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service~~: 1) will not reassign the employee to a position working within, or for, the NBRC; and 2)~~ will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT*.

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Duties and Responsibilities*. The CSKT will assign each Affected Federal Employee to perform one or more Activities, with duties and responsibilities commensurate with her or his training, experience and salary, and reasonably equivalent to her or his position with the Service.

8. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and it's employees and work to successfully implement this AFA, as a requirement of successful employee performance.

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2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

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3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

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H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

~~F~~I. *Scheduling of Annual Leave*. Annual leave is part of employee compensation and will not be unreasonably denied. However, by October 31st of each year, all NBRC employees will be expected to submit annual leave requests for any period greater than one week during the upcoming fiscal year. All employees should request any leave as far in advance as possible to ensure that it can be granted.

~~J~~G. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

   a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
   b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT ~~Deputy~~ Refuge ~~Manager~~Operations Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.

c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

   a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
   b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
   c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.
   d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Suspension may be directed by any of the following: Refuge Manager; CSKT ~~Deputy~~ Refuge ~~Manager~~ Operations Specialist; Service Deputy Refuge Manager; Lead Biologist; or Outdoor Recreation Planner. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager~~Leadership Team~~ completes an investigation and makes a determination for final disposition. The Refuge Manager

shall consult with the Refuge Leadership Team prior to making a determination for final disposition. ~~The Refuge Leadership Team will reach a final disposition through consensus~~. Final disposition may include: no action – return to duty; counseling; training; or termination. ~~In cases where the Refuge Leadership Team cannot reach consensus, the incident will be elevated through the dispute resolution process (Section 19.A).~~

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the ~~calendar years 2009 and 2010~~ annual Round-Up events.

K~~H~~. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 1~~3~~4. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA~~FY 2009~~, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ~~24.A~~ ____ of this AFA] [implementation of this AFA at a mid-point in the Fiscal Year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A below, for FY 20~~09~~__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

~~1. For FY 2009, the Service will retain funding and responsibility for administering and paying general fixed operational costs including:~~
~~a. utilities;~~
~~b. fuel;~~
~~c. telephone service (cell and landlines);~~

~~d. mandatory software upgrades;~~
~~e. security alarm system;~~
~~f. satellite television;~~
~~g. office trailer rental;~~
~~h. trash removal;~~
~~i. irrigation water;~~
~~j. postage meter; and~~
~~k. other similar fixed costs.~~

~~If the CSKT opts to contract the administration of these general fixed operational costs in FY 2010 and/or FY 2011, the Service will include funding for such Activities in the Attachment B for such fiscal year(s).~~1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and Director FWCR jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. Funding for 0.25 of a GS-7 Technician position will be transferred to CSKT for implementation of the Fire Program responsibilities outlined in Section 8, above.

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~~2. The Service will provide funding, and CSKT will be responsible, for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and execution of the Fire and Visitors Services Programs (excluding environmental education activities).~~

~~3. Each Party's operational budget will be used to cover expenses associated with its personnel, including travel, training (see also Section 12.C above), incentive awards, office supplies and miscellaneous expenses.~~

Comment [16]: I've deleted the provision about each Party's operational budget because it does not appear that any substantial operating budget will be transferred to CSKT (unless the parties agree otherwise per the new proposed terms).

~~4~~5. Generally, Attachment B specifies the following types of consideration:

a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the ~~Service~~ Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. FWCR Manager participation in the Refuge Leadership Team); funds as agreed by the Refuge Manager and Director FWCR for acquisition of supplies and services to support programs; and the fixed costs identified in Subsection 14.A.1 above); and

ii. *Contract Support Costs*.

~~c. *Recreational Fees*. Semiannually, the Service will transfer to the CSKT 50% of the Recreational Fees collected and allocated to the NBRC. For FY 2009, the Service will also transfer to CSKT 50% of the previous fiscal year's carry-over allocated to the NBRC in support of Visitors Services Activities.~~

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Comment [17]: Will delete this given the new arrangement regarding how program funds will be handled. If CSKT later ends up administering a good deal of the program operational funds, we may want to reinstate this provision.

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C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide all

necessary information, including CSKT's indirect cost rate approved by the Department's National Business Center~~Office of Inspector General~~ (~~OIG~~NBC rate), in accordance with 25 C.F.R. §1000.138. The Parties agree to apply a modified version of CSKT's rate, equivalent to __% of CSKT's approved indirect cost rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Indirect cost rates will generally be applied only to direct costs (e.g., salary and benefits) by using CSKT's approved NBC~~OIG~~ rate for the subject fiscal year, as modified by the Parties for this NBRC AFA per this subsection D. ~~as of the date of execution of this AFA~~. CSKT's indirect costs associated with flexible and project dollars will be negotiated.

3. Prior to submission of cost proposals and requests for projects, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

4. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration.*

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

b. *Reduction in Force ("RIF")*. Pending the completion of any RIF under Section 12.E.4 above, the Service will continue to perform all Activities associated with each position affected by the RIF. Upon completion of the RIF, the Service will pay the CSKT the balance of the salary and benefits of each position affected by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in Section 13.E.2 below.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of ~~the~~ each ~~FY '09~~ fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration

under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration.* Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 145. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all ~~Available~~personal ~~Property~~ and ~~R~~real ~~P~~property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality.

B. *Inventories of Personal ~~Available~~ Property and Real Property*. Attachment C is the Service's~~an~~ inventory of personal ~~peach item of Available P~~roperty (including condition) ~~(including condition) valued at $500.00 or more,~~ and sensitive or controlled items. Attachment D is an inventory of ~~R~~real ~~P~~property (including condition) ~~valued at $5,000.00 or more~~. The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

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C. *NBRC ~~Baseline~~ Data*. ~~On or before the effective date of this AFA, the Service will provide to the CSKT all NBRC Baseline Data in accordance with Section 7.E.2 above.~~ The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal~~Available~~ ~~P~~property and r~~R~~eal ~~P~~property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. ~~Available Property, including individual items valued at $500.00 or more, and sensitive items such as laptop computers, cameras and binoculars designated for use by the CSKT to perform Activities~~Keys~~,~~ will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of ~~Available~~Federal ~~P~~property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 1~~5~~6. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers.* In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Comment [MSOffice18]: Has anyone from FWS touched base with BIA about continuing this provision for purchase of liability insurance? Since the woman who had handled this before has left, we should probably try to lay the groundwork for this soon so it isn't a headache later on.

Section 1~~6~~7. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or

more persons to receive such notice in the absence of the Refuge Manager or the CSKT ~~Deputy~~ Refuge Operations Specialist ~~Manager~~.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT ~~Deputy~~ Refuge Operations Specialist~~Manager~~ or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

   a. relinquish operation and control of the Activity to the Service;

   b. assist the Service in responding to the emergency; and

   c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT ~~Deputy~~ Refuge Operations Specialist~~Manager~~ nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT ~~Deputy~~ Refuge Operations Specialist~~Manager~~ or, where such ~~Deputy~~ official is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT

operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the ~~AWP~~Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 1~~7~~8. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the ~~following~~ procedures below.~~:~~ Unless the Service has not provided sufficient funding for CSKT to perform under the contract, or unless there are exigent circumstances, CSKT shall provide at least [x] months advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. ~~*Available Property*~~. On the effective date of the retrocession, CSKT will return all Federal~~Available~~ Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Federal~~Available~~ Property which is not needed by the CSKT to perform a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

   e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201~~1~~, with any signed successor AFA to be delivered to Congress prior to July 1, 201~~1~~. This schedule will allow such successor AFA to be effective on October 1, 201~~1~~, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either

Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. ~~*Available*~~ *Property*. On the last day of the term of this AFA, the CSKT will return all Federal~~Available~~ ~~P~~property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 1~~8~~9. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B~~,~~(~~-~~as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section ~~19~~20. Dispute Resolution and Appeals

A. *Dispute Resolution*.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable

to reach consensus, the decision of the Refuge Manager will prevail. The CSKT ~~Deputy~~ Refuge ~~Manager~~ Operations Specialist may invoke the dispute resolution process in~~f~~ the event it disagrees with the Refuge Manager's decision ~~is unacceptable to the CSKT~~. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT ~~Deputy~~ Refuge ~~Manager~~ Operations Specialist and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT ~~Deputy~~ Refuge ~~Manager~~Operations Specialist's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director~~DOI Senior Management Team~~. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director~~DOI Senior Management Team~~ shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall~~may~~ delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 2~~0~~1. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act ~~provisions~~ are also incorporated into this AFA, as authorized by 25 U.S.C. § ~~450cc~~458cc(*l*):

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1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting
12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and 450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

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Section 2~~1~~2. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under

Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 2~~2~~3. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, Public Law xx-xx and other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the responsibilities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 2~~3~~4. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

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Section 2~~4~~5. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during ~~the first quarter of~~ FY 20__ ~~09 (October 1 – December 31, 2008)~~. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____ ~~January 1~~, 20__ ~~09~~.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__ ~~11~~. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

E.T. "Bud" Moran~~James Steele, Jr.~~ Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

Dan Ashe~~Dale Hall~~, Director, U.S. Fish & Wildlife Service Date

~~Lyle Laverty~~_____, Assistant Secretary for Fish, Wildlife and Parks Date

Mike Black?__ ~~George Skibine~~, for Bureau of Indian Affairs Date

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
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,
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.

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

King, Jeff <jeff_king@fws.gov>

Fw: Review of Chapter 1 language

1 message

Jeff_King@fws.gov <Jeff_King@fws.gov> Tue, Nov 13, 2012 at 10:06 AM
To: Laura_King@fws.gov, Brendan_Moynahan@fws.gov

See attached.

jk

AMERICA'S NATIONAL WILDLIFE REFUGES...
where wildlife comes first!
Jeff King, Project Leader
National Bison Range
58355 Bison Range Road
Moiese, Montana 59824
phone: (406) 644-2211, ext. 204
fax: (406) 644-2661

----- Forwarded by Jeff King/R6/FWS/DOI on 11/13/2012 10:06 AM -----

"Brian Upton" <brianu@cskt.org>

11/06/2012 02:24 PM

To<Dean_Rundle@fws.gov>, <tom@cskt.org>

cc<Jeff_King@fws.gov>

SubjectRE: Review of Chapter 1 language

Dean,
Thanks for checking in with CSKT regarding the tribal background portions of your draft text. The attached documents include CSKT's proposed input (one file in change-tracking format and the other with identical clean text). I filled in some of the blanks regarding the Court of Claims opinion you had referenced, and made a few other proposed revisions and comments. I added for your consideration a sentence about the Act of May 25, 1948 regarding Ninepipe/Pablo, and also proposed a couple lines about Big Medicine since he was of great significance to CSKT and he helps illustrate the ongoing importance of the Bison Range to CSKT between the time of the Range's establishment and the Self-Determination era.

Most of the additions you see in the attached document come from Salish Cultural Committee staff, who drafted some proposed text after talking with NRD staff. The first sentence of the second paragraph in the attached files refers to various histories, records and ethnographic sources. I didn't include the examples provided by staff in the proposed revisions since I didn't think it had been your intent to incorporate that sort of secondary material. But, in case you either want to include examples of such sources in a footnote, or would like to have them on file, the materials cited by Cultural Committee staff include:

> (e.g., James Teit's "The Salishan Tribes of the Western Plateaus," ed. Franz Boas (*45th Annual Report of the Bureau of American Ethnology*, 1927-28),

Claude Schaeffer's ethnographic notes at the American Museum of Natural History in New York and Glenbow Institute in Calgary, the papers of Carling Malouf at the University of Montana, and volume XII the *Handbook of North American Indians*).

We understand that the EA is a federal document and that it is subject to your/FWS' decisions in terms of what to include or not include. The proposed text is not an official tribal statement but is offered in the spirit of what I understood you to be requesting: informal tribal staff review/input. Thanks again for the opportunity to share our thoughts and let me know if you have any questions.

BU

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Thursday, October 25, 2012 3:20 PM
To: brianu@cskt.org
Cc: Jeff_King@fws.gov
Subject: Review of Chapter 1 language

Brian: Based on advice from our SOL and per last week's meeting in Pablo, I'm attaching some excerpts from our Draft of Chapter 1 of the EA for the AFA. These paragraphs discuss items related to the culture, and history of the CSKT and some of it's members, your treaties with the United States, and CSKT participation in the Self-Governance Program.

Some of this language was pulled directly from the Tribes' website, and other material was gleaned from publications of the Salish Cultural Committee, and from papers I have that Rob McDonald and Refuge Staff worked on. Some of it is what I believe to be common knowldege from my own understanding of historic events from prior discussions with yourself, other CSKT staff and Council Members.

Please review these excerpts and let me know if you think this language accurately and appropriately reflects:

1. CSKT connection to the Flathead Reservation and NWRS lands on the Reservation;
2. Your treaties with the United States;
3. The roles of tribal members with bison in the 19th and early 20th centuries (do we have Latati's name correct. In one Cultural Committee document, he is referred to as "Latati (Little Peregrine Falcon Robe)", and in another as "Susep Latati")
4. Impacts of the Flathead Allotment Act of 1904
5. US policy towards Tribes, including CSKT participation in Self-Governance.

One excerpt is a short paragraph that addresses the successful CSKT lawsuit against the US in the late 60's or early 70's. I don't think I have an actual copy of that. If you can provide the proper date/citation/ and the amount of the award and tell me if you think we have accurately described the court decision in that case, that would be appreciated.

Thanks!

Dean

(See attached file: Chapter 1 Excerpts for CSKT Review - CSKT comments.doc)(See attached file: Chapter 1 Excerpts for CSKT Review - CSKT comments CLEAN.doc)

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2 attachments

Chapter 1 Excerpts for CSKT Review - CSKT comments.doc
46K

Chapter 1 Excerpts for CSKT Review - CSKT comments CLEAN.doc
41K

The Confederated Salish and Kootenai Tribes (CSKT) are comprised of the Bitterroot Salish, the Pend d'Oreille and Kootenai tribes. The 1.317 million acre Flathead Reservation is now the home of the CSKT, but their ancestors lived in territory now known as northwest Montana, parts of Idaho, British Columbia and Wyoming. In the 19th century the aboriginal territory of the tribes exceeded 20 million acres, most of which they ceded to the United States in the 1855 Hellgate Treaty. In that treaty, negotiated with Washington Territorial Governor Stephens, the CSKT reserved for themselves the Flathead Reservation.

Although their home territory was mostly in the Columbia River drainage, tribes that comprise the CSKT were bison-hunting people, and prior to the near-extinction of bison in the late 19th century the tribes made annual hunting trips through the mountains to the plains of eastern Montana. Indeed they reserved hunting rights to the Sweetgrass Hills of north-central Montana in the 1855 Hellgate and Judith River Treaties. "Going to buffalo" was part of the traditional cycle of life for these tribes.

In the late 1870's as the northern bison herds were being destroyed, and it became obvious to that the annual bison hunts to the eastern plains of Montana could not continue, tribal leaders allowed a Pend d'Oreille man named Latati to bring back some orphaned calves to the Mission Valley. In 1878 Latati returned to the Flathead Reservation with 6 bison calves. Some years later, when the rescued calves had reached maturity and begun to reproduce, Latati's father-in-law, Samwel (often referred to as Samuel Walking Coyote) sold the bison to tribal member/ranchers Michel Pablo and Charles Allard. Latati's calves were founders of what became the famous Pablo-Allard herd that ranged on the Flathead Reservation until the Reservation was opened to non-Indian homesteaders by the Flathead Allotment Act of 1904. Ultimately, the Pablo-Allard herd provided the foundation for many of today's bison conservation herds, including the NBR herd and Canada's Elk Island herd. This herd also made a significant contribution to the Yellowstone National Park bison herd. Nearly 40% of the founders of today's Yellowstone herd were Pablo-Allard bison.

With the impending implementation of the Flathead Allotment Act of 1904, Michelle Pablo could not longer run his bison and cattle on the open range of the reservation. ABS had wanted to purchase bison to stock the NBR from Pablo, but the parties could not agree on price, and Pablo sold his herd to the Canadian Government. However, Pablo-Allard bison were still available. Charles Allard had died in 1896, but his heirs had sold some of his bison to Charles Conrad, of Kalispell, MT, around 1901. In 1909, Conrad's widow, Alicia Conrad, agreed to sell 34 bison to ABS, and also to donate two of her best bulls. Those 36 bison, descended from Latati's calves and the Pablo-Allard herd, along with one cow donated by Charles Goodnight of Texas, and three calves donated by Mr. Corbin of New Hampshire in 1910, formed the original nucleus herd of 40 bison on the NBR.

A federal court, in 19XX, (citation) found that the acquisition of Flathead Reservation land from the CSKT in 1908 - 1909 was an "unconstitutional taking", and ordered the U.S. was ordered to pay CSKT the 1908 fair market value of the NBR, plus interest, a total of $XXXX.

On June 25, 1921, Pablo and Nine-pipe National Wildlife Refuges were established by Executive Order, on lands owned by the CSKT, within the Flathead Reservation. E.O. 3503 established Nine-pipe NWR as: "reserved subject to Reclamation Service uses, as a refuge and breeding ground for native birds. Nine-pipe NWR subsequently was provided purposes, under the Migratory Bird Conservation Act (MBCA) "for use as an inviolate sanctuary or for any other management purposes for migratory birds". Pablo NWR was established by E. O. 3504 "as a refuge and breeding ground for native birds". Significantly, in the cases of Pablo and Nine-pipe NWRs, the underlying land owner, the CSKT, requested that the United States establish these overlay refuges for bird conservation purposes on tribal lands.

The policy of the United States towards various sovereign Indian Nations, from whom most of this country was acquired through treaty, has evolved and changed over the course of history. NBR was established during what is often referred to as the "Allotment Era" of US/Tribal policy. In the late 19th and early 20th centuries the policy of the United States was to attempt to absorb Indian people into the American melting-pot. Instead of tribes holding their reservations in common, each individual Indian was to have their own plot of land where they would learn to be farmers and ranchers, in a similar way that the original Northwest Ordinance and later Homestead Acts opened America, west of the Allegheny Mountains to settlement. The United States hoped and wrongly assumed that Indian farmers would assimilate into the predominant European agricultural economy and society. During this phase of relations between the federal government and tribes, the tribes lost much of the land that they had reserved for themselves in earlier treaties.

Since the Nixon Administration, the policy of the United States toward tribes has been a policy of self-determination and self-governance. Congress first codified the policy of self-determination and self-governance in the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) (ISDEAA). That law established the Self-Governance Demonstration Project, outlined how tribes could achieve Self-Governance status and allowed successful tribes to administer, for their own people, programs that previously had been provided to them by the Bureau of Indian Affairs. The CSKT was the first tribe to achieve Self-Governance status under provisions of the ISDEAA, and is acknowledged as among the most successful tribes participating in the Self-Governance Program.

CSKT proposed edits, for FWS consideration:

The Confederated Salish and Kootenai Tribes (CSKT) are comprised primarily of the Salish (sometimes known as the Bitterroot Salish or Flathead), the Pend d'Oreille (also known as Kalispel), and Kootenai tribes. The 1.317 million acre Flathead Reservation is now the home of the CSKT, but their ancestors' aboriginal territory encompassed virtually all of what is now known as western and central Montana, parts of Idaho, eastern Washington, British Columbia and Wyoming. In the 19th century the aboriginal territory of the tribes west of the Continental Divide exceeded 20 million acres, most of which they ceded to the United States in the 1855 Hellgate Treaty. In that treaty, negotiated with Washington Territorial Governor Stevens, the CSKT reserved for themselves certain areas, including the Flathead Reservation, as well as the continued right to hunt and fish in aboriginal territory.

Although their home territory was mostly in the Columbia River drainage, the aboriginal territories of the tribes that comprise the CSKT encompassed vast areas on both sides of the Continental Divide, as documented in recorded oral histories, historical records, and many ethnographic and anthropological sources. Bison stood at the heart of the CSKT traditional way of life. Countless accounts of elders tell of the tribes' profound spiritual and physical relationship with the bison. Tribal members were bison-hunting people, and prior to the near-extinction of bison in the late 19th century the tribes made hunting trips at least bi-annually through the mountains to the plains of eastern Montana. Indeed they reserved hunting rights to buffalo country on the east side of the Continental Divide in the 1855 Hellgate and Judith River Treaties (12 Stat. 975 and 11 Stat. 657, respectively). "Going to buffalo" was part of the traditional cycle of life for these tribes.

Comment [BU1]: The CSKT attorneys I spoke with generally refer to this as the Treaty of the Upper Missouri, or the "Buffalo Commons" Treaty.

By the mid-nineteenth century, it was already clear to CSKT people that bison populations were in decline. As the decline accelerated, a Pend d'Oreille man named Atatice? (Peregrine Falcon Robe) proposed bringing bison back to the Flathead Reservation. At first, tribal leaders could not agree to such a fundamental change in the tribes' spiritual and cultural life. But in the late 1870's, as the extermination of bison unfolded and it became obvious that the annual bison hunts to the eastern plains of Montana could not continue, tribal leaders allowed the son of Atatice?, Łatatí (Little Peregrine Falcon Robe), to bring back some orphaned calves. Łatatí returned to the Flathead Reservation with some bison calves. Some years later, when the rescued calves had reached maturity and begun to reproduce, Łatatí's father-in-law, Samwél (often referred to as Samuel Walking Coyote) sold the bison to tribal member/ranchers Michel Pablo and Charles Allard, who grew the herd into hundreds of bison. Łatatí's calves were the nucleus of what became the famous Pablo-Allard herd that ranged on the Flathead Reservation until the Reservation was opened to non-Indian homesteaders by the Flathead Allotment Act of 1904. Ultimately, the Pablo-Allard herd provided the foundation for many of today's bison conservation herds, including the NBR herd and Canada's Elk Island herd. This herd also made a significant contribution to the Yellowstone National Park bison herd. Nearly 40% of the founders of today's Yellowstone herd were Pablo-Allard bison.

With the impending implementation of the Flathead Allotment Act of 1904, and the opening of tribal lands to non-Indian settlement, U.S. officials told Michel Pablo that he could no longer run his bison and cattle on the open range of the reservation. The American Bison Society (ABS), meanwhile, had been recently established by wealthy conservationists in New York, with the aim of saving bison from extinction. In 1908, Congress passed a law directing the President to set aside land on the Flathead Reservation for a national bison range, for which the ABS would provide bison. Pend d'Oreille elder Mose Čx̣awté (Chouteh) told of a meeting in the Reservation town of St. Ignatius in which a federal Indian agent informed tribal members of the National Bison Range's establishment. Mose Čx̣awté said that tribal leaders told the federal agent that they did not want to give up that land because it was some of their good hunting grounds, but the agent told them they had no choice in the matter.

ABS had wanted to purchase bison to stock the NBR from Pablo, but the parties could not agree on price, and Pablo sold his herd to the Canadian Government. However, Pablo-Allard bison were still available. Charles Allard had died in 1896, but his heirs had sold some of his bison to Charles Conrad, of Kalispell, MT, around 1901. In 1909, Conrad's widow, Alicia Conrad, agreed to sell 34 bison to ABS, and also to donate two of her best bulls. Those 36 bison, descended from Łatatí's calves and the Pablo-Allard herd, along with one cow donated by Charles Goodnight of Texas, and three calves donated by Mr. Corbin of New Hampshire in 1910, formed the original nucleus herd of 40 bison on the NBR.

In 1933, a white bison was born on the National Bison Range. Not a true albino, the bison had blue eyes and a white coat, but with a brown top-knot of hair between its horns. The bison was called Big Medicine and was of great significance to CSKT tribal members. Big Medicine died at the age of 26.

A federal court, in 1971, (*Confederated Salish and Kootenai Tribes v. United States*, 437 F.2d 458) found that the federal acquisition of Flathead Reservation land from the CSKT in 1908 -1909, including for the National Bison Range, was an "unconstitutional taking", and ordered the U.S. to pay CSKT, as just compensation for the lands (including the NBR property), the 1908 fair market value of the lands plus interest, a total of $XXXX.

On June 25, 1921, Pablo and Nine-pipe National Wildlife Refuges were established by Executive Order, on trust lands for which CSKT is the beneficial owner, within the Flathead Reservation. E.O. 3503 established Nine-pipe NWR as: "reserved subject to Reclamation Service uses, as a refuge and breeding ground for native birds." Nine-pipe NWR subsequently was provided purposes, under the Migratory Bird Conservation Act (MBCA) "for use as an inviolate sanctuary or for any other management purposes for migratory birds". Pablo NWR was established by E. O. 3504 "as a refuge and breeding ground for native birds". Significantly, in the cases of Pablo and Nine-pipe NWRs, the underlying land owner, the CSKT, requested that the United

Comment [BU2]: It appears that 1912 was the date of valuation for all of the lands in the Court of Claims case (see, *e.g.*, ¶ 34(b) in the finding of facts and ¶ 35 in the "Ultimate Conclusions of Fact and Law").

Comment [BU3]: Because I've often heard/read some incorrect references to what CSKT was paid under this Court of Claims case, I want to point out that the court paid interest "not as interest but as a part of just compensation" (see last paragraph of the opinion). I point this out because I think when some people see "with interest" they tend to think of it as a windfall or otherwise unearned profit from litigation. The court stressed that the tribes weren't getting interest on damages, but were having interest incorporated into what would be a fair calculation of "just compensation" for the taking of the lands.

Comment [BU4]: The Court of Claims decision did not itself break down the portion of the total award that compensated for the taking of lands for the NBR.

Comment [BU5]: Chronologically, it may make sense to move this paragraph (as well as the proposed Big Medicine paragraph) so that it follows the next paragraph discussing the Ninepipe and Pablo Refuges.

States establish these overlay refuges for bird conservation purposes on tribal lands. In § 5(b) of the Act of May 25, 1948 (62 Stat. 269), as part of its authorization of funds to be paid to CSKT as payment 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."

The policy of the United States towards various sovereign Indian Nations, from whom most of this country was acquired through treaty, has evolved and changed over the course of history. NBR was established during what is often referred to as the "Allotment Era" of US/Tribal policy. In the late 19th and early 20th centuries the policy of the United States was to attempt to absorb Indian people into the American melting-pot. Instead of tribes holding their reservations in common, each individual Indian was to have their own plot of land where they would learn to be farmers and ranchers, in a similar way that the original Northwest Ordinance and later Homestead Acts opened America, west of the Allegheny Mountains to settlement. The United States hoped and wrongly assumed that Indian farmers would assimilate into the predominant European agricultural economy and society. During this phase of relations between the federal government and tribes, the tribes lost much of the land that they had reserved for themselves in earlier treaties.

The Allotment Act was ended in 1934 by passage of the Indian Reorganization Act (IRA). The IRA represented the beginning of a new direction in federal policy that would support and encourage tribal self-government. Other than the federal government's brief turn to policies of termination and relocation in the 1950's, the federal government has continued to advance the IRA's objectives of increased tribal autonomy. Since the Nixon Administration, the official policy of the United States toward tribes has been a policy of self-determination and self-governance. Congress first codified the policy of self-determination and self-governance in the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) (ISDEAA). Later amendments to that Act established the Tribal Self-Governance program, which outlines how tribes can achieve Self-Governance status and allows successful tribes to administer programs that previously had been administered by the Bureau of Indian Affairs, Indian Health Service, or other federal agencies. The CSKT was one of the first tribes to achieve Self-Governance status under provisions of the ISDEAA, and is acknowledged as among the most successful tribes participating in the Self-Governance program.

From: "Brian Upton" <brianu@cskt.org>
To: Jeff_King@fws.gov
Cc: Dean_Rundle@fws.gov; tomm@cskt.org
Subject: RE: revised AFA
Date: Wednesday, September 28, 2011 1:47:12 PM
Attachments: image002.gif

Hi Jeff,

I had mentioned during one of our prior conference calls that I would make CSKT's most recent round of revisions to the draft AFA that I had previously amended in change-tracking format. That document reflected our agreed-upon changes from May and June, so I consider that to be the master document. I'd mentioned earlier that I would insert all of the changes with which CSKT agreed from Dean's August draft into our master draft version of the AFA (which is in change-tracking format), so that's why you may see the differences you describe in your email below. The 9/27/11 draft shows all of the changes from the last (FY 2009-11) AFA, so we can easily see all of the proposed revisions, as well as the baseline document as it originally read prior to revisions. The 9/27/11 draft also shows CSKT's proposed tweaks of, and concurrences with, Dean's draft from August. As I'd mentioned in my 9/16 email: "This draft should reflect: 1) all mutually agreed-upon changes to date; 2) all of FWS' proposed revisions from August with which CSKT concurs; and 3) CSKT's own proposed revisions to date. Please note that CSKT modified some of FWS' August revisions, so please review carefully all of those revisions that came from Dean's proposed August draft."

I think the confusion underscores the need to have one master document. Give me a call if you still have any questions, they may be easier to address verbally rather than email.

Thanks,
BU

From: Jeff_King@fws.gov [mailto:Jeff_King@fws.gov]
Sent: Wednesday, September 28, 2011 12:18 PM
To: brianu@cskt.org
Cc: Dean_Rundle@fws.gov; tomm@cskt.org
Subject: Re: revised AFA

Brian,

It looks like you worked off an entirely different draft than what Dean sent you on 8-12-11. In reviewing your track changes, there are places where the

documents are different but it doesn't show that you made an edit. I decided to do a 'compare documents' in Word and attached below is all the differences (in red) between these two documents. The crossed out portions is your version and the underlined is Dean's. It looks like you were working off of the 2008 AFA rather then Dean's revised copy. If you need me to resend the version Dean sent, I'd be happy to.

Thanks,

jk

(See attached file: comparison of FY 12-16 AFA Draft 9-27-11 and Draft AFA 8.12.11.docx)
[IMAGE]
Inactive hide details for "Brian Upton" <brianu@cskt.org>"Brian Upton" <brianu@cskt.org>

"Brian Upton" <brianu@cskt.org>

09/27/2011 11:20 AM

Please respond to
<brianu@cskt.org>

[IMAGE]

To

[IMAGE]
<Dean_Rundle@fws.gov>, <Jeff_King@fws.gov>

[IMAGE]

cc

[IMAGE]
<tomm@cskt.org>

[IMAGE]

Subject

[IMAGE]
revised AFA

[IMAGE]

[IMAGE]

Attached is the most recent draft of the AFA, revised to address the agreed-upon changes in Section 7.D.1.(See attached file: FY 12-16 AFA Draft 9-27-11.doc) - image002.gif - image001.gif - image005.gif - image006.gif

FISCAL YEARS 2012– - 2016 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

Section 1. -Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. -Purpose and Benefits

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day management operations and maintenance of programs of the NBRC, under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services,

Comment [1]: I can't tell from my notes if we had discussed this, or if this proposed revision was from my own earlier internal notes. In any case, I don't think it's controversial.

functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at ~~76 F.R. 57068 (September 15, 2011).~~ F.R ???? (. (Does this citation remain correct/appropriate?)

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

~~1.~~ The Service benefits from this AFA ~~because~~in the ~~agreement~~following ways:

~~a. furthers~~ 1. Furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";~~-~~

~~b. helps~~ 2.Helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

"In administering the System, the Secretary shall:

"ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located~~";~~; (note CSKT is an adjoining landowner to NBRC, and owner of Pablo and Ninepipe NWRs);

~~c. helps~~ 3.Helps the Service comply with Executive Order 12996, Management and ~~—~~General Public Use of the National Wildlife Refuge System, which establishes ~~—~~ Guiding Principles for management of the System, including:

"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 a significant contribution to the growth and management of the Refuge system"

~~d.~~4.~~improves~~Improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of ~~the~~ NBRC, through close collaboration with the native people in whose homeland NBRC is located~~;~~.

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e.5. ~~provides~~Provides the Service with ~~closer~~closure cooperation with our professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation who have extensive scientific knowledge, and significant traditional ecological knowledge of, and a long successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation~~; and~~.

f.6. ~~furthers~~Furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self Governance Act, and the policy of the United States regarding Tribal Self Governance. ~~This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).~~

~~2. The CSKT~~ This AFA benefits ~~from this AFA because~~ the ~~agreement:~~

~~a. allows Tribal participation~~CSKT – Help us fill in ~~Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self Governance Act (25 U.S.C. § 458cc *et seq.*) and House Report No. xx-xxx; and~~these blanks.

~~b. allows CSKT to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or as fee owner;~~

~~c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;~~

~~d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through close collaboration with FWS;~~

~~e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and~~

~~f. furthers Tribal capacity building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self Governance program.~~

Section 3. ~~-~~Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:~~-~~

~~1.~~ Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994;

~~2.~~ Section 403(c) of the Act, codified at 25 U.S.C. § 458cc(c), which concerns additional activities administered by the Secretary;

~~3.~~and Section 403(i)(1) of the Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities ("Activities") in an AFA and the implementation of an AFA~~; and~~.

~~4. the NWRSAA, as amended.~~

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B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.B.C below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. -Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

~~Affected Federal Employee~~Available Property means ~~a~~ any equipment, material, or supply the Service ~~employee who:~~

~~A. As of the date of the last approving signature on this AFA, was employed by the Service to perform~~makes available for use by the CSKT in performing an Activity~~;~~

~~B. But for this AFA would continue to perform the Activity during the term of this AFA; and~~

~~C. Whose employment the Service would terminate in the absence of continued employment with the Service or the CSKT as provided in this AFA;~~

~~An Affected Federal Employee can also mean a Service employee who formerly worked at the NBRC and whom the Service reassigns to the NBRC under a mutual agreement with CSKT to perform work for CSKT under this AFA. Such employee will have the same employment options available to any other Affected Federal Employee~~, including any horse owned by the United States.

Chairman means the Chairman of the CSKT Tribal Council.

Comment [3]: This corrects a typographical error.

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CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

DOI Senior Management Team means the team currently consisting of the: Deputy Secretary; Associate Deputy Secretary; Assistant Secretary-Fish, Wildlife and Parks; Assistant Secretary-Indian Affairs; Director, U.S. Fish & Wildlife Service; Director, Bureau of Indian Affairs; and Associate Solicitor, General Law; or as otherwise constituted by the Department.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

~~*Plan*: see *"Work Plan"*~~
RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; ~~CSKT Refuge Operations Specialist ; Service~~ Deputy Refuge Manager; the CSKT Director of the Division of Fish, Wildlife, Conservation and Recreation (FWRC),: and the CSKT ~~Lead Biologist~~Refuge Specialist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. ~~-~~Physical Area Covered

The physical area covered by this AFA is ~~the~~ those portions of NBRC, ~~which lies~~that are entirely within the boundaries of the Flathead Indian Reservation~~. Specifically, the NBRC consists of .~~, and includes the following units of the NWRS;

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the ~~NBRC~~ Refuge Mangaer/Deptuty Refuge Manager NBRC will also administer the following units of ~~the~~ NWRS as part of ~~the~~ NBRC. ~~This AFA does not contract any programs located on these~~These units~~:~~ are not covered by this AFA:

A. ~~E.~~ Lost Trail National Wildlife Refuge (Org. Code 61545~~); and~~)
~~F.~~ Northwest Montana Wetland Management District in Flathead County (Org. Code~~-~~
B. ~~—~~ 61546~~).~~)

Section 6. ~~-~~Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. ~~1.~~ Management. The Service shall retain the Refuge Manager and Deputy Refuge

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__ Manager positions and their associated Activities, subject to this AFA.
__ CSKT ~~shall contract~~will provide a ~~new~~ Refuge ~~Operations~~ Specialist ~~position and the Administrative Support Assistant position and the associated Activities~~to operate under guidance of ~~those respective positions. As part of the Administrative Support Assistant's Activities, CSKT shall direct the employee in that position to assist the~~the Service's Refuge Manager and ~~the Service's~~ Deputy Refuge Manager to direct the day to day activities of employees in the biological, maintenance and visitor services programs included in ~~some of their retained administrative duties;~~this AFA.

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2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. ~~Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities. In the event of the incumbent Outdoor Recreation Planner's reassignment, relocation, termination or separation of employment from the NBRC, the Service shall contract these remaining Activities to CSKT under this AFA, and shall, immediately upon such reassignment, relocation, termination or separation, transfer the funds associated with the Outdoor Recreation Planner position to CSKT on a pro rata basis.~~ Visitor Services Program (excluding activities related to Environmental Education, Cooperating Association oversight, and volunteer coordination activities).

The Activities in the above five categories will be more fully described in the Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities~~. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.~~, which are not defined as an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), or subsequently determined by Service policy to be inherently federal..

~~D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of the activity in a subsequent AFA.~~

Section 7.~~-~~ Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted by the CSKT.

B. ~~B.~~ *Refuge Manager*. The Refuge Manager will retain final responsibility and authority for directing~~,~~ and controlling ~~and administering~~ the operation of the NBRC. ~~–~~The Deputy Refuge Manager~~,~~ is an alter-ego position to the Refuge Manager, and in accordance with Service policy (030 FW 1~~.9.D~~),) exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. ~~-~~This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). ~~The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:~~The Refuge Mangaer/Deputy will provide formal supervision to all Service employees of NBRC, including those who may be assigned to CSKT under provisions of the Intergrovernmental Personal Act (IPA), as indicated on the approved Organizational Chart for NBRC (App. ???)

Only the Refuge Manager or Deputy Refuge Manager have authority to perform the following actions for NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents ~~(including Endangered Species Act)~~ and refuge management plans, including~~:~~ Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;
9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. . Refuge ~~Operations Specialist.~~

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Comment [5]: Dean, I put a pinpoint citation here instead of your broader citation.

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Comment [6]: My notes don't reflect whether we had discussed thi s or if this addition was from my earlier internal notes. If we hadn't discussed this, let me know your thoughts.

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~~1. The CSKT Refuge Operation~~ Specialist will:

~~i.~~ 1. Assist the Refuge Manager in developing and implementing the Annual Work Plan, and various project-oriented work plans, and all aspects of day-to-day operations and maintenance of NBRC.

2.Supervise all CSKT Employees and in accordance with the approved annual work plan, and decisions of the Refuge Manager, direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, ~~and Fire Programs~~ and those Activities of the Visitor Services Program that are the responsibility of the CSKT~~. In the absence of the CSKT Refuge Operations Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA;~~

~~ii.~~

3. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible~~; and~~.

~~iii.~~

4. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*~~: Subject to the final authority of the Refuge Manager, the~~: The Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b.~~ CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);~~ CSKT Director FWCR;
   c. ~~-~~Deputy Refuge Manager; and
   d. CSKT Refuge ~~Operations~~ Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed~~.~~, but no less than quarterly.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise

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Comment [7]: This section will also need revisions to reflect subsequent negotiations.

Comment [8]: There is consensus on adding either Tom or Dale's position to the Refuge Leadership Team, if FWS can provide compensation for that time.

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agreed to by the parties. Once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT ~~Refuge Operations Specialist~~Director FWRC can invoke the dispute resolution process in Section 19.A in the event of ~~disagreement~~ ????(Brian – we need some help here, working with you to define what Ref. Mgr. decisions are "appealable". Simple disagreement was an issue raised by plaintiffs, and Jeff and I haven't yet been able to articulate language to deal with this issue – thanks).with the Refuge Manager's decision.

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E. *Work Plan (Plan~~)~~ ~~,~~).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. ~~,~~The Refuge Manager shall prioritize Plan activities according to available resources.

Comment [9]: I tried to replace all "AWP" references in the AFA to "Plan" or "Work Plan"

1. *Initial and successor* Work ~~*Plan Preparation.* The~~ *Plans.* Prior to implementation of this AFA, the Parties ~~will~~ jointly will develop the initial Work Plan for FY 2012.

   a. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

~~A.~~ CSKT Responsibility ~~**& Intent.** CSKT responsibility~~ for the ~~contracted~~ fire management program at NBRC will be managed through the CSKT Division of Forestry Fire Program, administered in the CSKT Department of Natural Resources, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager~~, and the approved Fire Management Plan for the NBRC. It is the Parties'~~. The intent of this Section is to integrate fire management on Refuge System lands ~~within the Flathead Indian Reservation~~ into ~~CSKT's~~the highly skilled professional wildland fire management program that CSKT operates throughout the Flathead Reservation.

~~1. **Meetings & Coordination.**~~ 1. The Parties agree to hold planning meetings at least twice a year (usually pre- and post- fire season) to coordinate ~~NBRC~~ the fire ~~program~~ program's operations, assess needs, and schedule projects.

~~2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.~~

~~a~~
2. Fuels treatments / Prescribed fire

A. The Service will recommend fuels projects and plan for them 2-5 years out.
~~b. CSKT will develop and submit project requests and data~~B. Project request/Data entry ~~to~~into the National Fire Plan Operating and Reporting System (NFPORS) to compete for~~, and receive, National Fire Plan~~ funding will be done by the CSKT.
~~c~~C. Planning to include writing of burn plans will be done by the CSKT.
~~d.~~D. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
~~e~~E. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
~~f~~F. Smoke management requirements will be the responsibility of the CSKT.
~~g~~G. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
~~h~~H. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. ~~**Wildfire Suppression & Initial Attack**~~Wildfires/ IA

~~a~~A. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land, This does not preclude IQCS-qualified Service firefighters from conducting initial attack activities on Service lands.
~~b~~B. The CSKT will open a Firecode for all IA fires.
~~c.~~C. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS), the Service will provide a profile for ~~CSKT~~them to access WFDSS for the NBRC.
~~d~~D. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.

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~~e.~~E. The CSKT will generate a fire report for all IA and ~~submit~~get it to the Service within 10 days, the Service will enter a fire report into FMIS.
~~f.~~F. Severity requests will ~~be~~ done in coordination~~. Generally,~~ generally severity requests by the CSKT will include coverage of the NBRC. If severity resources are requested to specifically be stationed on the NBRC the request will be done by the Service.

4. ~~P~~Preparedness

~~a.~~A. The Service will provide the equivalent dollar amount of .25 FTE of a GS-7 salary to be used by the CSKT to support the ~~Service's~~Service fire ~~preparedness~~ program.
~~b.~~B. The CSKT will administer ~~Incident Qualification Certification System (~~IQCS~~)~~ for Tribal employees ~~(excluding Federal employees assigned to CSKT under an I.P.A. agreement), and~~ the Service will do the same for Federal employees ~~(including Federal employees assigned to CSKT under an I.P.A. agreement).~~
~~c.~~C. Service employees ~~and CSKT Employees~~ that need fire training will be paid for by the Service~~. Local~~, local or in~~-~~ house training will be complimentary.
~~d.~~D. Service employees will be statused in ~~the Resource Ordering Supply System (~~ROSS~~)~~ by the Service.
~~e~~E. The six man fire cache at the NBRC will be maintained by the Service.
~~f~~F. The fire engine at the NBRC will be maintained by the Service.
~~g~~G. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, religion, genetic information, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

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4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Deputy Refuge ~~Operations Specialist~~Manager will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or

b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. ~~-~~Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4 of this AFA.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act , 16 U.S.C. § 1531 *et seq*. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager is responsible to comply with Service policy regarding review/approval of such plans/specifications and drawings by the Regional Engineer. To the extent the CSKT is responsible for preparing or

providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. ~~-~~Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT ~~-~~Refuge ~~Operations~~ Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

Comment [10]: Is more detail necessary here?

2. *Financial Status Reports*.

a. *Annual Report ~~and Carry Over.~~*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will report CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services)

This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC ~~(*see also* Section 21.B.2 of this AFA).~~. The Parties recognize that funds must be available to CSKT on October 1, annually, in order to cover payroll of CSKT employees at NBRC. It is generally not possible for the Service to provide funds on the first day of a new fiscal year. The Parties acknowledge that it is both appropriate and necessary for the CSKT to carry-over funds sufficient to cover payroll in October each year of the AFA, because of federal Finance Office year-end shutdowns and the simple mechanics of requesting and disbursing AFA funding to CSKT.

b. *Other Reports*. Within 90 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a)*. As authorized by ~~25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), and~~ 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Comment [11]: There was discussion of including more detail here.

Section 12. ~~-~~Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation*. In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will provide that information to the CSKT, without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Fish, Wildlife, Recreation and Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Fish, Wildlife, Recreation and Conservation Division Manager within one week from the date of oral notice.

      ii. *Notice of Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard;

approved Work Plan provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council ~~bythe~~by the 15th ~~-~~day of January, April, July, and October~~.~~ each year. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. ~~-~~Personnel

A. ~~A.~~ *General Staffing.*

1. Consistent with the funding level provided in this AFA, the CSKT will perform the ~~—~~
~~—~~Activities covered by this AFA using the services of CSKT Employees, contractors ~~—~~ and/or Volunteers.

Comment [MSOffice12]: I changed the language for quarterly report submission to include actual dates so it would make more sense (previously it referred to the "following month", which was leftover text from the last AFA when the reports were supposed to be monthly). Let us know your thoughts.

Comment [13]: My notes reflect we had approved changes here that would have reflected the RLT transmitting the reports to the FWS Refuge Supervisor and the CSKT Tribal Council. Since the prior section has the Refuge Manager doing that transmittal, I amended this line to reflect that.

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~~2.In administering programs contracted under this AFA,~~ 2. CSKT will fill vacant positions on the Org. Chart, not encumbered by career Service employees with well- qualified CSKT employees. ~~The Service will provide funds for, and~~ CSKT will also hire~~,~~ employees to fill seasonal positions in the biological and visitor services program, which ~~may~~are not ~~be~~ included on the ~~Service's NBRC organizational chart~~Org Chart, but which are necessary to accomplish the annual Work Plan.

~~3.~~ 3. Career employees of the Service who occupy positions on the Organizational Chart will retain their employment as federal employees of the Service until such time as they transfer, retire, or are separated from the Service. If encumbering positions in programs that CSKT will operate under this AFA, those employees will be assigned to the CSKT under provisions of the Inter-governmental Personnel Act.

4. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the ~~Service's NBRC organizational chart~~Organizational Chart in are vacated by Service-employed incumbents, those positions ~~will~~ may be filled by CSKT with well-qualified CSKT ~~Employees~~employees.

~~4. Each Party agrees~~ 5. The Parties agree to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at ~~the~~ NBRC, to the extent that ~~such~~ participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate ~~to the extent allowed by Tribal polices and procedures~~.

B. ~~B.~~ Supervision, Direction and Off-Station Duty Assignments of NBRC employees.

~~1.~~ Supervision~~.~~: Each ~~Party~~party will ~~administer, for their respective NBRC employees,~~ provide formal supervision, including individual performance planning and evaluation, administration of standards of conduct ~~enforcement~~ and disciplinary actions, and other personnel actions such as promotions, awards, and training. ~~The~~ Service supervisors will ~~administer the above categories of actions for~~supervise Service employees, including any ~~of its~~

1. Service employees assigned to ~~CSKT under Intergovernmental Personnel Act agreements~~the CSKT under IPA Agreements, and CSKT Supervisors will supervise CSKT employees.

~~2.~~

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Direction of Day-*to-Day Work Activities*. The: Day-to-day direction of work will be accomplished within the combined Service/CSKT staff of NBRC as displayed on the Organizational Chart (App. ?) Solid lines on the Org Chart indicate lines of day to day direction. The CSKT Refuge Specialist will receive day-to-day direction from the Refuge Manager shall provide day-to-day direction to the CSKT Refuge Operations Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation and Conservation Manager. The CSKT Refuge Specialist/Deputy, and will provide day-to-day direction to the program leads in the

2. Biology, Maintenance, Fire and Visitor Service Programs, as well as to CSKT. Employees, contractors and Volunteers.

3. Off-Station Duty Assignments of NBRC employees: The Parties agree that NBRC will to function as a normal part of the NWRS, as stated in Section 1, above, and to provide NBRC employees. The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to as other Federal employees employed with on Region 6 Refuges. The Parties further agree that NBRC Hence, employees, whether Federal or Tribal, of NBRC will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees of NBRC may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager, NBRC and Refuge ManagersManager/Project Leaders of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Refuge Operations Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

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E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. ~~*Affected Federal Employees.*~~ *Assignment to CSKT under an IPA Agreement*

1. ~~*Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.~~

~~2. *Opportunity to Elect.* Each Affected Federal Employee must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.~~

~~3. *Available Options.* The options available to each Affected Federal Employee for employment under this AFA are:~~

~~a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA),* 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;~~

~~b. *Employment by CSKT with CSKT Benefits.* Direct employment by the CSKT as a CSKT employee with CSKT benefits;~~

~~c. *Employment by CSKT with Federal Benefits.* Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or~~

~~d. *Reassignment.* Where practicable, reassignment by the Service to another duty station.~~

~~4. *Reduction in Force ("RIF").* If all of the above options are unsuccessful, the Service will conduct a reduction in force.~~

~~5. *Assignment to the CSKT under an IPA Agreement.*~~

~~a.~~ *Execute IPA Agreement*. ~~After any Affected Federal Employee has chosen to work under an IPA assignment~~Following the signing of this AFA, and prior to its implementation, the Service and the CSKT will promptly execute an IPA agreement for ~~that employee~~incumbent Service

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Comment [14]: Revision from 45 to 30 is in recognition of: A) the fact that NBRC staff have already met with FWS and CSKT officials to discuss employment issues and they will continue to have a very lengthy time to consider options over the course of NEPA analysis, etc; and B) CSKT will need time to properly advertise, screen, interview and hire any staff in the event an Affected Federal Employee were to decline continued employment at NBRC.

Comment [15]: Our assumption is that FWS will need to keep this in here in the event an Affected Federal Employee refuses all options, including an IPA assignment. If not, or if FWS wants to handle differently, we can discuss revisions here.

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employees of NBRC who will be assigned to CSKT. When implementing any IPA agreements, the provisions of the IPA Mobility Program (6 CFR part 334) will be followed.

~~b~~2. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each ~~Affected~~assigned Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

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~~c. *IPA Employee Performance and Conduct.*~~

~~i. If the CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Refuge Operations Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.~~

~~ii. The CSKT will terminate an IPA agreement only: 1) for cause; and 2) after addressing the issue through the dispute resolution process (*see* Section 19.A of this AFA) up through the Regional Director level. The term "cause" includes conduct or performance problems documented by CSKT.~~

~~iii. If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA assignment agreement. Upon termination of the IPA agreement, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.~~

~~d. *Holidays.* On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.~~

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~~6. *Direct Employment by the CSKT.*~~

~~a. *Employment Election.* At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The~~

~~CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.~~

~~b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.~~

~~7. *Duties and Responsibilities*. The CSKT will assign each Affected Federal Employee to perform one or more Activities, with duties and responsibilities commensurate with her or his training, experience and salary, and reasonably equivalent to her or his position with the Service.~~

~~8. *Nondiscrimination.* The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.~~

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G. *Performance and Conduct*.

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and it's employees and work to successfully implement this AFA, as a requirement of successful employee performance.

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2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

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3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

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H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party, or to any other person/entity~~,~~ will be governed by the ~~statutes,~~ policies and regulations ~~and policies~~ of the Party maintaining those records.

I. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

J. *Nondiscrimination.* The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

~~I.~~K. *Scheduling of Annual Leave*. Annual leave is part of employee compensation and will not be unreasonably denied. ~~However, by October 31st of each year, all NBRC employees will be expected to submit annual leave requests for any period greater than one week during the upcoming fiscal year.~~ All employees should request any leave as far in advance as possible to ensure that it can be granted.

~~J.~~L. *Volunteers*. The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

   a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
   b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Refuge ~~Operations~~ Specialist ~~(or designee),~~ and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
   c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

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2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

   a. All NBRC Volunteers must sign the standard Service Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.

   ~~b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.~~

   ~~c.~~b. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to ~~CSKT~~SCKT for any Volunteer directed by the CSKT, except that ~~personal information~~Protected Personal Information, protected by the Privacy Act will not be released to CSKT without permission ~~from~~of the Volunteer~~. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP~~.

   ~~d.~~c. NBRC Volunteers are considered to be employees for the purposes of~~-~~ the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

~~3.~~ *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Suspension may be directed by ~~any of~~ the ~~following~~: Refuge Manager~~; CSKT Refuge Operations Specialist; Service~~, Deputy Refuge Manager~~; Lead Biologist; or ~~, Refuge Specialist, Outdoor Recreation Planner~~., or Lead Biologist responsible for directing the day-to-day activities of the volunteer. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. ~~The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. .~~ Final disposition may include: no action – return to duty; counseling; training; or termination.

~~4. *Volunteers for Round Up*. The Parties jointly will select Volunteers to participate in the annual Round Up events.~~

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~~K~~M. *Background Checks*. The Parties understand that background checks may be required for NBRC employees~~.~~ and volunteers. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14~~. .~~.. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance~~, vehicle replacement, Challenge Grant Cost Share Agreement~~ refuge biological inventory and monitoring and other flexible funding. For ~~the first year of this AFA~~FY 2012, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the ~~[phasing in of performance as mutually agreed upon per Section ____ of this AFA] [~~implementation of this AFA at a mid-point in the Fiscal Year~~].~~.

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B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year~~. Consistent with Section 24.A below, for FY 20__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.~~

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and Director FWCR jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

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2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. ~~–~~ Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations CSKT is responsible for. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and Director FWCR, and reflected annually in Schedule B.
~~and equipment (including care and feeding of animals); execution of the Biological~~

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~~Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.~~

4. Funding for 0.25 of a GS-7 Technician position will be transferred to CSKT for implementation of ~~the~~CSKT Fire Program responsibilities outlined in Section 8, above.

~~5.~~5. Each Party's operational budget will be used to cover expenses associated with its personnel, including travel, training (see also Section 12.C above), incentive awards, office supplies and miscellaneous expenses.

6. Generally, Attachment B specifies the following types of consideration:

a. *IPA Employees*. Assignment by the Service to the CSKT of those ~~Affected~~ Federal Employees who ~~elect to continue Federal employment~~work in programs at NBRC that are performed by CSKT under this AFA, pursuant to an IPA Agreement; and

b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. ~~-~~The Program funds that the Service would allocate to performance of the Activities if performed by the Service ~~(less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above),~~ including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. FWCR Manager participation in the Refuge Leadership Team); funds as agreed by the Refuge Manager and Director FWCR for acquisition of supplies and services to support programs~~:~~, and the fixed costs identified in Subsection 14.A.1 above); and

ii. *Contract Support Costs*.

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Comment [16]: I've deleted the provision about each Party's operational budget because it does not appear that any substantial operating budget will be transferred to CSKT (unless the parties agree otherwise per the new proposed terms).

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c. *Recreational Fees.* Semiannually, the Service will transfer to the CSKT 50% of the Recreational Fees collected and allocated to the NBRC. For FY 2009, the Service will also transfer to CSKT 50% of the previous fiscal year's carry-over allocated to the NBRC in support of Visitors Services Activities.

Comment [17]: Will delete this given the new arrangement regarding how program funds will be handled. If CSKT later ends up administering a good deal of the program operational funds, we may want to reinstate this provision.

C. Cost of IPA Employees. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. C. *Contract Support Costs.* During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide all necessary information, including CSKT's indirect cost rate approved by the Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138. The Parties agree to apply a modified version of CSKT's rate, equivalent to __% of CSKT's approved indirect cost rate), and OMB Circular A-87.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Indirect cost rates will generally be applied only to direct costs (e.g., salary and benefits) by using CSKT's approved NBC rate for the subject fiscal year, as modified by the Parties for this NBRC AFA per this subsection D. . CSKT's indirect costs associated with flexible and project dollars will be negotiated.

3. Prior to submission of cost proposals and requests for projects, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

4. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

The Service recognizes that Self-Governance policy and regulation require payment of indirect (contract support) costs to participating Tribes, and that the CSKT will incur unavoidable administrative overhead costs necessary to employ the staff required for them to fulfill their work responsibilities at NBRC under this AFA. It is also important that the overall costs for operating

and maintaining the NBRC are not excessive compared to other refuges managed by the Service and that this AFA should be as cost neutral as possible.

During the tenure of this AFA, the Service will pay indirect costs to CSKT of $5,000 per 1.0 FTE of permanent positions filled by the CSKT on the NBRC organizational chart, not to exceed $40,000.00 in any Federal Fiscal Year.

E. *Transfer of Consideration.*

1. ~~*Affected Federal Employees.*~~

~~a.~~ *IPA Employees*. ~~The~~Following the provisions of the IPA Mobility Program (6 CFR part 334), the Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

~~b. *Reduction in Force ("RIF").* Pending the completion of any RIF under Section 12.E.4 above, the Service will continue to perform all Activities associated with each position affected by the RIF. Upon completion of the RIF, the Service will pay the CSKT the balance of the salary and benefits of each position affected by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in Section 13.E.2 below.~~

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, completion of the required 90 day review of this AFA by Congress, and within 10 calendar days of the beginning of ~~each fiscal year~~the the 3rd Quarter of Fiscal Year 2012, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. ~~-~~The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may ~~effect~~affect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

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c. *Application of Congressional Rescissions.* The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration.* Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act.* This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act. –

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K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. ~~-~~Property

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A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all ~~personal~~Available Property and ~~real property~~Real Property currently on hand or subsequently acquired by the Service. The

Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the refuge manager, and Service-wide Operational Standards apply to the use of some specialized personal property, such as computers and firearms apply to employees of both Parties.

B. *Inventories of Personal Property and Real Property*. Attachment C is the Service's inventory of ~~personal property (including condition)~~ Property and sensitive or controlled items. ~~-~~ Attachment D is an inventory of ~~real property~~Real Property (including condition~~).~~) valued at $5,000.00 or more. The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All ~~personal property~~Personal Property and ~~real property~~Real Property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of ~~Federal property~~Available Property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section ~~16.~~ 15. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Comment [MSOffice18]: Has anyone from FWS touched base with BIA about continuing this provision for purchase of liability insurance? Since the woman who had handled this before has left, we should probably try to lay the groundwork for this soon so it isn't a headache later on.

Section ~~16.~~ 17.~~-~~ Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT ~~-~~Refuge ~~Operations~~ Specialist.~~-~~

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Director FWCR, CSKT Refuge ~~Operations~~ Specialist, or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

   a. relinquish operation and control of the Activity to the Service;

   b. assist the Service in responding to the emergency; and

   c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Director FWCR, Refuge ~~Operations~~ Specialist, nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Director FWCR, Refuge ~~Operations~~ Specialist, or~~, where such official is not~~ when neither are available, the employee designated in Section ~~16~~17.A, above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

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B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the ~~procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the contract, or unless there are exigent circumstances, CSKT shall provide at least [x] months advance notice prior to a retrocession taking effect.~~following procedures:

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Available Property*. On the effective date of the retrocession, CSKT will return all ~~Federal~~Available Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

c. On the effective date of the reassumption, CSKT will return all ~~Federal~~Available Property which is not needed by the CSKT to perform a retained Activity;

d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, ~~201~~ 2016, with any signed successor AFA to be delivered to Congress prior to July 1, ~~201~~ .2016. This schedule will allow such successor AFA to be effective on October 1, ~~201~~ 2016, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Available Property*. On the last day of the term of this AFA, the CSKT will return all ~~Federal property~~Available Property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B, as amended, CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution*.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Director FWCR may invoke the dispute resolution process if??? (Brian – once again this is an area we need help/discussion to have better language on when dispute resolution can/should be implemented/exercised). If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Director FWCR and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Director FWCR's statement explaining why the decision is unacceptable to

the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue~~, including one involving an IPA Employee~~, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). ~~For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.~~

6. Due to the uniqueness of this AFA, none of the officials identified in this section ~~shall~~may delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section ~~19~~20.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section ~~19~~20.B.

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Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

~~A.~~ In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

~~B.~~ The Parties agree that the following Title I provisions ~~from Title I of the Indian Self-Determination and Education Assistance Act~~ are also incorporated into this AFA, as authorized by 25 U.S.C. § ~~458cc~~450cc(l):

~~1.~~ 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
~~2.~~ 25 U.S.C. § 450j-1(a): amounts of funds provided~~; carry-over~~
~~3.~~ 25 U.S.C. § 450j-1(b): reductions and increases
~~4.~~ 25 U.S.C. § 450j-1(d): treatment of shortfalls
~~5.~~ 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
~~6.~~ 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
~~7.~~ 25 U.S.C. § 450j-1(h): indirect costs for construction programs
~~8.~~ 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
~~9.~~ 25 U.S.C. § 450j-1(k): allowable uses of funds
~~10.~~ 25 U.S.C. § 450j-1(m): use of program income earned
~~11.~~ 25 U.S.C. § 450j-1(o): re-budgeting
~~12.~~ 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
~~13. 25 U.S.C. §§ 450*l*(b) and 450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.~~

Section 22. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section ~~9.~~B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section ~~21~~22.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

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Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

~~The Parties have reviewed relevant legal authorities on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, Public Law xx-xx and other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the responsibilities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.~~

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during ~~FY 20__.~~ the third quarter of FY 2012 (April 1 - June 30, 2012). This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than ~~_____, 20__.~~ June 30, 2012.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section ~~13~~14.H above, and other applicable laws and

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regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, ~~20__~~2016. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY ~~2009-2011,~~2012 – 2016 INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

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

UNITED STATES DEPARTMENT OF THE INTERIOR, ~~BY:~~FISH AND WILDLIFE SERVICE BY:

_____ _____

Dan Ashe, Director, U.S. Fish & Wildlife Service Date

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~~_____, Assistant Secretary Date~~
~~for Fish, Wildlife and Parks~~

~~Mike Black?__,~~ _____, for Bureau of Indian Affairs Date

From:	"Brian Upton" <brianu@cskt.org>
To:	"Brenna, Sharon"; Jeff_King@fws.gov; "Thomas McDonald \(Thomas McDonald\)"; daleb@cskt.org
Subject:	agreed-upon revisions
Date:	Thursday, May 26, 2011 12:22:31 PM
Attachments:	FY--AFA Draft 5-26-11 change tracking.doc

Sharon, Jeff and Tom,

Sorry for the delay, but attached is a revised version of the FY 2009-11 AFA that reflects the changes we had agreed upon during our meetings in Denver. Please review to make sure the revisions jibe with your own notes and to make sure I did not miss anything. There are some areas of the AFA we had discussed, during either our 5/10 meeting or our subsequent negotiations, but for which we did not agree upon any actual changes in the text. I flagged a couple of those areas, but not all since we will have to revisit them later anyway to agree on revisions.

Some of the items that we had agreed to take out of the AFA we had also agreed to insert or otherwise address in the Work Plan.

Let me know if any questions.

Thanks,
BU - FY--AFA Draft 5-26-11 change tracking.doc

FISCAL YEARS 20~~09~~12–20~~11~~xx 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

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day management of programs of the NBRC, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services, functions, and activities, or portions thereof (Activities) at the NBRC. The

Comment [1]: I can't tell from my notes if we had discussed this, or if this proposed revision was from my own earlier internal notes. In any case, I don't think it's controversial.

Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at 73 F.R. 16054-55 (March 26, 2008).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by: Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994; Section 403(c) of the Act, codified at 25 U.S.C. § 458cc(c), which concerns additional activities administered by the Secretary; and Section 403(i)(1) of the Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities ("Activities") in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.B.~~2~~C below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

Comment [2]: This corrects a typographical error.

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity;

B. But for this AFA would continue to perform the Activity during the term of this AFA; and

C. Whose employment the Service would terminate in the absence of continued employment with the Service or the CSKT as provided in this AFA;

An Affected Federal Employee can also mean a Service employee who formerly worked at the NBRC and whom the Service reassigns to the NBRC under a mutual agreement with CSKT to perform work for CSKT under this AFA. Such employee will have the same employment options available to any other Affected Federal Employee.

Available Property means any equipment, material, or supply the Service makes available for use by the CSKT in performing an Activity, including any horse owned by the United States.

~~*Annual Work Plan or AWP* means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.~~

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

DOI Senior Management Team means the team currently consisting of the: Deputy Secretary; Associate Deputy Secretary; Assistant Secretary-Fish, Wildlife and Parks; Assistant Secretary-Indian Affairs; Director, U.S. Fish & Wildlife Service; Director, Bureau of Indian Affairs; and Associate Solicitor, General Law; or as otherwise constituted by the Department.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

~~*NBRC Baseline Data* includes written or other tangible data documenting the existence and/or state of each natural resource of the NBRC (including bison and other wildlife) and each item of real and personal Federal property of the NBRC.~~

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT Deputy Refuge Manager; Service Deputy Refuge Manager; and the CSKT Lead Biologist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA is the NBRC, which lies entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Deputy Refuge Manager position and the Administrative Support Assistant position and the associated Activities of those respective positions. As part of the Administrative Support Assistant's Activities, CSKT shall direct the employee in that position to assist the Refuge Manager and the Service's Deputy Refuge Manager in some of their retained administrative duties;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program. During the first two years of this AFA (through FY 2010), the Service's Outdoor Recreation Planner shall retain environmental education activities, cooperating association oversight, and volunteer coordination activities (subject to CSKT's selection and direction of volunteers as described in Section 12.G.2.b of this AFA). Environmental education activities shall consist solely of working with outside groups and individuals on educational activities involving the NBRC. Beginning in FY 2011, all the above functions will transfer to the CSKT, and the Outdoor Recreational Planner will become an Affected Federal Employee. Nothing in this Section or this AFA shall preclude the CSKT and Service staffs from working cooperatively on interpretive services or any other Visitor Service Program Activities.

The Activities in the above five categories will be more fully described in ~~each~~the ~~Annual~~ Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of the activity in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform~~manage~~ the Activities ~~performed~~contracted by the CSKT.

B. *Refuge Manager*. The Refuge Manager will retain final responsibility and authority for directing and controlling the operation of the NBRC. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). ~~The Refuge Manager shall provide reasonable written notice to CSKT of any changes in direction or prioritization of duties. Unless otherwise agreed upon, and subject to the emergency provisions in Section 16 below, changes or additions to instructions or protocols shall be communicated in writing to the CSKT no later than two weeks in advance of the date the affected Activities are to be performed. Subject to the dispute resolution procedures in Section 19.A below, T~~the Refuge Manager shall retain sole and final authority with respect to the following actions for NBRC:

1. Setting work priorities through the NBRC ~~Annual~~ Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents and refuge management plans, including Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements; ~~and~~
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns~~.~~; and
11. Any action which is an inherently Federal function.

C. *Deputy Refuge Managers.*

1. Each Party will support the management partnership at NBRC by providing a Deputy Refuge Manager. The CSKT and Service Deputies are co-equal positions. Both Deputies are senior staff advisors to the Refuge Manager and provide substantive input to management decision-making at NBRC.

2. In the absence or unavailability of the Refuge Manager, the CSKT and Service Deputy Refuge Managers will alternate serving as Acting Refuge Manager. The Acting Refuge Manager will be responsive to the instructions of the Refuge Supervisor and shall exercise all authorities of the Refuge Manager except those listed in Section 7.B above.

3. The Refuge Leadership Team will determine the allocation of most of the duties between the CSKT and Service Deputy Refuge Managers and specify such in the Work Plan~~AWP~~. A limited number of duties are specifically assigned to either the CSKT or Service Deputy Refuge Manager as follows:

   a. The CSKT Deputy Refuge Manager will:

      i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Deputy Refuge Manager, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA.
      ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible.
      iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

   b. The Service's Deputy Refuge Manager will:

Comment [3]: My notes don't reflect whether we had discussed thi s or if this addition was from my earlier internal notes. If we hadn't discussed this, let me know your thoughts.

Comment [4]: We discussed that this may change pending negotiations; we'll have to revisit this section to reflect our subsequent negotiations.

i. Supervise and conduct the Law Enforcement Program, including management of conservation easements of NBRC.
ii. Supervise any subordinate Service employees not assigned to CSKT.
iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: The Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Deputy Refuge Manager;
   c. Service Deputy Refuge Manager; and
   d. CSKT Lead Biologist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the ~~AWP~~Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the ~~AWP~~Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed ~~weekly to informally discuss progress, identify successes, make changes to work priorities, conduct short-term planning, and identify and resolve any concerns raised by either Party~~..

~~4. Unless the meeting is with respect to an emergency, the Refuge Manager or the CSKT Deputy Refuge Manager shall provide at least two days advance notice of any non-regularly scheduled coordination meeting being requested.~~

~~5~~4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the~~During each fiscal year, one of these quarterly meetings will be attended by the~~ Regional Director will meet with the Tribal Council.

~~6~~5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Deputy Refuge Manager can invoke the dispute resolution process in Section 19.A in the event of disagreement with the Refuge Manager's decision.

Comment [5]: This section will also need revisions to reflect subsequent negotiations.

Comment [6]: There is consensus on adding either Tom or Dale's position to the Refuge Leadership Team, if FWS can provide compensation for that time.

E. ~~*Annual*~~ *Work Plan (Plan~~AWP~~).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon ~~AW~~Plan, to be amended as necessary to reflect current needs, priorities and available resources ~~for each fiscal year~~. The ~~AWP~~Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. ~~In the event that insufficient resources are provided to accomplish the work identified in the AWP,~~ ~~T~~the Refuge Manager shall prioritize Plan activities according to available~~Leadership Team shall meet to determine what work is to be accomplished taking into account the~~ resources ~~provided~~. ~~The AWP will include expectations for all Activities to be conducted during the Federal fiscal year to achieve the established purposes and approved goals and objectives of the NBRC, including performance of Activities contracted by CSKT, and performance of activities retained by the Service. CSKT will be responsible for any AWP performance requirements for CSKT programs, and the Service will be responsible for AWP performance requirements for Service programs.~~

Comment [7]: I tried to replace all "AWP" references in the AFA to "Plan" or "Work Plan"

~~1.*Expectations.* The Parties understand that this AFA represents a significant change in operation and maintenance of the NBRC, and that many new CSKT employees will be assigned to the NBRC at the time this AFA is implemented. The Parties understand that the first year of this AFA will be a transition year as new employees learn their jobs, and as the Refuge Leadership Team develops the close working relationship necessary for success of its on-the-ground partnership. The senior officials of both Parties, including signatories to this AFA, expect that, during the first year of the partnership, the Refuge Leadership Team and all NBRC employees will work diligently to develop a healthy and cooperative working environment.~~

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~~2.*NBRC Baseline Data.* The Parties will agree on a set of NBRC Baseline Data that will establish, from the best data available, the biological conditions, and the conditions of facilities and equipment existing at the NBRC at the time this AFA becomes effective. The NBRC Baseline Data will also set forth any monitoring protocols for Fire, Maintenance, Biological, and Visitor Services Programs. A list of existing documents describing baseline conditions, and a list of identified data gaps needed to establish baseline conditions, will be included in Attachment A prior to implementation of the AFA. Any evaluation of CSKT's performance will be measured against the jointly agreed-upon NBRC Baseline Data and the duties identified in the AWP. The Service will not hold the CSKT to a higher standard of performance for any Activity than that to which it would hold itself, if that Activity were performed by Service employees.~~

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~~3.*Protocols.* Prior to the effective date of the AWP, the Parties shall review all protocols involved with that AWP.~~

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~~4.~~1.*Initial and successor~~Work~~ ~~AW~~P~~lans~~'~~s~~. Prior to implementation of this AFA, the Parties jointly will develop the ~~initial~~ initial Work Plan~~AWP~~ for FY 20~~09~~12.

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~~a. The initial AWP will be limited in scope, and will include only the basic, fundamental Activities necessary to provide for the biological integrity of the NBRC, ensure maintenance of critical infrastructure and equipment, and provide basic visitor services. The initial and successor AWP's will also include: significant requirements for on-the-job training of new employees; development of any needed NBRC Baseline Data; development of working protocols, including any fire monitoring protocols; relationships within the Refuge Leadership Team; and orientation and training of the combined Service/CSKT staff on the expectations of the partnership, cultural awareness, safety, and team building.~~

~~b~~a. The Refuge Leadership Team will prepare the ~~AW~~Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan~~AWP~~. The Refuge Leadership Team will further develop information from the RAPP Workbook into the ~~AWP~~Plan. In concise narrative format, the ~~AWP~~ Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The ~~AWP~~Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

~~c. The AWP is a living document that can be adjusted during the course of the fiscal year to address changes in environmental conditions, funding and directions from the Regional Supervisor. The AWP will be submitted to the Refuge Supervisor annually by October 1. As appropriate, the Refuge Leadership Team will prepare changes to the AWP for approval by the Refuge Manager and submission to the Refuge Supervisor.~~

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) ~~the Refuge Manager, CSKT Deputy Refuge Manager, or Service Deputy Refuge Manager~~ to take immediate steps to address any safety concerns.

~~G. *Bison Herd*. The Assistant Secretary for Fish, Wildlife and Parks must approve any plan to reduce the bison herd below 330 bison, which represents 90% of the population average over the three-year period consisting of FY '05, FY '06, and FY '07.~~

Section 8. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Deputy Refuge Manager will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 9. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4 of this AFA.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to ~~After~~ consult~~ing~~ with the Refuge Manager prior to~~,~~ making ~~the CSKT may~~any request for~~that~~ the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge ~~Leadership Team~~ Manager will identify ~~in the AWP~~ any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager~~Leadership Team~~ will identify ~~in the AWP~~ any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law,

regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act ~~[CITE~~, 16 U.S.C. § 1531 *et seq.*~~]~~. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

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2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

~~2~~3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 10. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the ~~AWP~~Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan~~AWP~~ an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Deputy Refuge Manager will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC.

Comment [8]: There was discussion of including more detail here.

b. *Other Reports*. Within 90 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a)*. 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 11. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. ~~*Joint* *Evaluation*. The Service and CSKT will jointly evaluate NBRC operations by using: applicable Operational Standards; the terms and conditions of this AFA; and NBRC Baseline Data. Any written evaluation or similar assessment of any NBRC activities (including any report developed under Section 11.B of this AFA), shall address NBRC activities as a whole and shall be jointly drafted and approved by the Parties under the direction of the Refuge Leadership Team. Any evaluation shall clearly identify the specific NBRC Baseline Data, Operational Standard, or AWP provision against which performance is being measured.~~ In the event the Parties do not agree on any portion of any~~the~~ evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager~~Deputy Refuge Manager~~ in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will provide that information to the CSKT, without requiring any request from CSKT, ~~on its own initiative,~~ in accordance with disclosure practices under FOIA and the Privacy Act~~, without the necessity of a FOIA request from the CSKT~~. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT ~~Deputy Refuge Manager~~Fish, Wildlife, Recreation and Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT ~~Deputy Refuge Manager~~Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT ~~Deputy Refuge Manager~~Fish, Wildlife, Recreation and Conservation Division Manager ~~and the Department Head of the CSKT Natural Resources Department no later than~~within one week from the date of oral notice.

~~ii. *Notice of Minor Perceived Deficiencies*. The Refuge Manager will notify the CSKT Deputy Refuge Manager and the Department Head of the CSKT Natural Resources Department in writing (e-mail is acceptable) of any performance deficiency that is minor or is an apparent oversight. Such written notices shall specifically describe the performance deficiency and identify a reasonable amount of time for CSKT to either remedy the deficiency or demonstrate that the deficiency does not exist.~~

~~i~~ii. *Notice of ~~Other~~ Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any ~~other~~ significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable ~~B~~baseline ~~D~~data; Operational Standard; approved Work Plan~~AWP~~ provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges~~Assistant Secretary for Fish and Wildlife and Parks~~ and the Regional Director~~Department's Office of the Secretary~~ and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

~~B. *Final Report and Review*. The Refuge Leadership Team will prepare an Annual Narrative Report to cover each fiscal year of this AFA. The report format will follow current Service policy contained in the Refuge Manual and/or Service Manual. The Annual Narrative Report will be a concise narrative description of work, activities and events that occurred during the prior fiscal year, and will include successes, lessons learned, areas for improvement, and~~

~~recommendations for future AWP's, AFA's, and/or other partnerships between the Parties. The Refuge Leadership Team will submit the Annual Narrative Report to the Refuge Supervisor for review and approval by December 31st of each year, beginning on December 31, 2009.~~

~~C~~B. ~~*Miscellaneous*~~ *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA ~~other than those specified above~~, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

~~D~~C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared ~~monthly~~quarterly~~.~~. The Refuge Manager shall submit the status reports to ~~due at~~ the FWS Refuge Supervisor~~Service's Regional Office in Lakewood, CO,~~ and the CSKT Tribal Council by the 15th ~~business~~ day of the following month. ~~The Regional Office shall transmit the reports to the Department officials identified in Section D.3 below and to the CSKT Tribal Chairman by the 10th of the month.~~ The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and~~,~~ approve~~, and transmit~~ the status reports ~~to the Regional Office~~. ~~The Refuge Leadership Team will determine the contents of the status reports, which may include, but is not limited to, significant accomplishments, lessons learned and identified areas for improvement.~~ At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager ~~and the CSKT Deputy Refuge Manager~~.

~~3. The Service shall be responsible for transmitting periodic status reports to the DOI Senior Management Team, and the Director of the Office of Self-Governance. CSKT shall be responsible for transmitting copies of the status reports to any congressional offices it feels appropriate.~~

Comment [9]: My notes reflect we had approved changes here that would have reflected the RLT transmitting the reports to the FWS Refuge Supervisor and the CSKT Tribal Council. Since the prior section has the Refuge Manager doing that transmittal, I amended this line to reflect that.

Section 12. Personnel

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A. *General Staffing*. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

B. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Deputy Refuge Manager. CSKT agrees to fund a dedicated phone line and

computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

C. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

D. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA. The Parties will work on developing a new patch which can be worn on both FWS and CSKT uniforms and which will show the partnership between the Federal and tribal governments.

E. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee must select an employment option no later than forty-five (45) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for employment under this AFA are:

   a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA)*, 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

   b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

   c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C.

§ 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Where practicable, reassignment by the Service to another duty station.

4. *Reduction in Force ("RIF")*. If all of the above options are unsuccessful, the Service will conduct a reduction in force.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *Performance and Conduct*.

i. The IPA Employee, CSKT Deputy Refuge Manager, and the Refuge Manager will jointly develop the IPA Employee's Annual Performance Plan and prepare subsequent evaluations, as well as any Performance Improvement Plan(s). If the CSKT perceives a deficiency in the performance or conduct of the IPA Employee, the Refuge Manager and the CSKT Deputy Refuge Manager will confer, and the Service will apply Federal personnel procedures to address any such deficiency. Due to the assignment of the IPA Employee to the CSKT, and the CSKT Deputy Refuge Manager's role in the Refuge Leadership Team, the CSKT Deputy Refuge Manager has the right to: 1) be present during any counseling related to the IPA Employee's performance or conduct; and 2) obtain copies of any personnel or disciplinary records directly related to the IPA employee's performance under this AFA. CSKT officials agree to keep IPA Employee personnel information confidential and secure.

ii. The CSKT will terminate an IPA agreement only: 1) for cause; and 2) after addressing the issue through the dispute resolution process (*see* Section 19.A

of this AFA) up through the Regional Director level. The term "cause" includes conduct or performance problems documented by CSKT.

iii. If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA agreement. Upon termination of the IPA agreement, the Activities performed by the prior IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service: 1) will not reassign the employee to a position working within, or for, the NBRC; and 2) will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Duties and Responsibilities*. The CSKT will assign each Affected Federal Employee to perform one or more Activities, with duties and responsibilities commensurate with her or his training, experience and salary, and reasonably equivalent to her or his position with the Service.

8. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

F. *Scheduling of Annual Leave*. Annual leave is part of employee compensation and will not be unreasonably denied. However, by October 31st of each year, all NBRC employees will be expected to submit annual leave requests for any period greater than one week during the upcoming fiscal year. All employees should request any leave as far in advance as possible to ensure that it can be granted.

G. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Deputy Refuge Manager (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration.* The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by

the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Suspension may be directed by any of the following: Refuge Manager; CSKT Deputy Refuge Manager; Service Deputy Refuge Manager; Lead Biologist; or Outdoor Recreation Planner. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Leadership Team completes an investigation and makes a determination for final disposition. The Refuge Leadership Team will reach a final disposition through consensus. Final disposition may include: no action – return to duty; counseling; training; or termination. In cases where the Refuge Leadership Team cannot reach consensus, the incident will be elevated through the dispute resolution process (Section 19.A).

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the calendar years 2009 and 2010 annual Round-Up events.

H. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 13. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For FY 2009, Attachment B will reflect that

the Service will transfer funds to CSKT in an amount pro-rated to reflect the phasing-in of performance as mutually-agreed upon per Section 24.A of this AFA.

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A below, for FY 2009 the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

1. For FY 2009, the Service will retain funding and responsibility for administering and paying general fixed operational costs including:
    a. utilities;
    b. fuel;
    c. telephone service (cell and landlines);
    d. mandatory software upgrades;
    e. security alarm system;
    f. satellite television;
    g. office trailer rental;
    h. trash removal;
    i. irrigation water;
    j. postage meter; and
    k. other similar fixed costs.

    If the CSKT opts to contract the administration of these general fixed operational costs in FY 2010 and/or FY 2011, the Service will include funding for such Activities in the Attachment B for such fiscal year(s).

2. The Service will provide funding, and CSKT will be responsible, for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and execution of the Fire and Visitors Services Programs (excluding environmental education activities).

3. Each Party's operational budget will be used to cover expenses associated with its personnel, including travel, training (see also Section 12.C above), incentive awards, office supplies and miscellaneous expenses.

4. Generally, Attachment B specifies the following types of consideration:

    a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

    b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above); and

ii. *Contract Support Costs*.

c. *Recreational Fees*. Semiannually, the Service will transfer to the CSKT 50% of the Recreational Fees collected and allocated to the NBRC. For FY 2009, the Service will also transfer to CSKT 50% of the previous fiscal year's carry-over allocated to the NBRC in support of Visitors Services Activities.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide all necessary information, including CSKT's indirect cost rate approved by the Department's Office of Inspector General (OIG rate), in accordance with 25 C.F.R. §1000.138.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Indirect cost rates will generally be applied only to direct costs (e.g., salary and benefits) by using CSKT's approved OIG rate as of the date of execution of this AFA. CSKT's indirect costs associated with flexible and project dollars will be negotiated.

3. Prior to submission of cost proposals and requests for projects, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

4. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

b. *Reduction in Force ("RIF")*. Pending the completion of any RIF under Section 12.E.4 above, the Service will continue to perform all Activities associated with each position affected by the RIF. Upon completion of the RIF, the Service will pay the CSKT the balance of the salary and benefits of each position affected by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in Section 13.E.2 below.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of the FY '09 fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying*. No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 14. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all Available Property and Real Property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality.

B. *Inventories of Personal ~~Available~~ Property and Real Property*. Attachment C is the Service's ~~an~~ inventory of ~~each item of Available~~ Property ~~(including condition) valued at $500.00 or more,~~ and sensitive or controlled items. Attachment D is an inventory of Real Property (including condition) valued at $5,000.00 or more. The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

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C. *NBRC ~~Baseline~~ Data*. ~~On or before the effective date of this AFA, the Service will provide to the CSKT all NBRC Baseline Data in accordance with Section 7.E.2 above.~~ The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All Personal~~Available~~ Property and Real Property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. ~~Available Property, including individual items valued at $500.00 or more, and sensitive items such as laptop computers, cameras and binoculars designated for use by the CSKT to perform Activities~~Keys~~,~~ will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Available Property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 15. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate

with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Section 16. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Deputy Refuge Manager.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Deputy Refuge Manager or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

b. assist the Service in responding to the emergency; and

c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Deputy Refuge Manager nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Deputy Refuge Manager or, where such Deputy is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the ~~AWP~~Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 17. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the following procedures:

1. *Notice*. CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition*. From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Available Property*. On the effective date of the retrocession, CSKT will return all Available Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Available Property which is not needed by the CSKT to perform a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 2011, with any signed successor AFA to be delivered to Congress prior to July 1, 2011. This schedule will allow such successor AFA to be effective on October 1, 2011, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Goverance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Available Property*. On the last day of the term of this AFA, the CSKT will return all Available Property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 18. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B, as amended, CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 19. Dispute Resolution and Appeals

A. *Dispute Resolution.*

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Deputy Refuge Manager may invoke the dispute resolution process if the Refuge Manager's decision is unacceptable to the CSKT. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Deputy Refuge Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Deputy Refuge Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director~~DOI Senior Management Team~~. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director~~DOI Senior Management Team~~ shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive

Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section may delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 20. Indian Self-Determination and Education Assistance Act's Title I Provisions

In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

The Parties agree that the following Title I provisions are also incorporated into this AFA, as authorized by 25 U.S.C. § 450cc(l):

25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
25 U.S.C. § 450j-1(a): amounts of funds provided
25 U.S.C. § 450j-1(b): reductions and increases
25 U.S.C. § 450j-1(d): treatment of shortfalls
25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
25 U.S.C. § 450j-1(h): indirect costs for construction programs
25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
25 U.S.C. § 450j-1(k): allowable uses of funds
25 U.S.C. § 450j-1(m): use of program income earned
25 U.S.C. § 450j-1(o): re-budgeting
25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations

Section 21. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 22. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

Section 23. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

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Section 24. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during the first quarter of FY 2009 (October 1 – December 31, 2008). This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than January 1, 2009.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the

Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 2011. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

E.T. "Bud" Moran~~James Steele, Jr.~~ Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____ _____
Rowan Gould~~Dale Hall~~, Acting Director, U.S. Fish & Wildlife Date
Service

_____ _____
~~Lyle Laverty~~_____, Assistant Secretary Date
for Fish, Wildlife and Parks

_____ _____
_____ ~~George Skibine~~, for Bureau of Indian Affairs Date

From:	"Brian Upton" <brianu@cskt.org>
To:	Dean_Rundle@fws.gov; Jeff_King@fws.gov
Cc:	jamessteelejr@vzw.blackberry.net; "Rich Janssen"; tomm@cskt.org
Subject:	CSKT IDC proposal
Date:	Wednesday, September 07, 2011 6:39:54 PM

Following up on your request about CSKT's proposal for a tailored IDC rate, in June we had offered to include in the proposed NBRC AFA only the following categories of CSKT's approved IDC rate:

1) OC & G – 2.74%;

2) Personnel – 3.4%;

3) Disaster & Emergency Services – 0.3%;

4) IT – 8.85%;

5) Records Mgmt – 2.28%;

6) Office of Financial Management – 12.94%;

7) Office of Administrative Services – 3.61%;

8) Office of Tribal Services – 1.45%;

9) Central Mail – 2.29%;

10) General Operations – 14.81%;

11) Tribal Council – 5.26%; and

12) Legal Dept – 6.41%

This totals 64.34% of CSKT's approved IDC rate.

For the proposed NBRC AFA, the categories we had excluded from CSKT's approved rate are as follows:

1) Facilities O & M – 24.48%;

2) Tribal Council Support – 2.24%;

3) Property & Supply – 2.98%;

4) Char-Koosta (Tribal newspaper) – 0.78%;

5) Building Use – 4.73%; and

6) Equipment Use – 0.45%

While we do use some of the above categories for NBRC programs (e.g., advertising job vacancies in Char-Koosta, etc.), we felt these six categories could reasonably be excluded from our IDC rate in a compromise for the NBRC AFA. We recognize that CSKT does not incur the same kind of property/facility costs in administering the NBRC AFA as we do in many other programs. But please remember that CSKT has to pay the balance of our approved IDC rate when applied to the NBRC AFA. That means that, in the above proposal, CSKT would have to pay, out of tribal dollars, 35% of our approved rate amount as applied to the NBRC AFA. If you have any questions about that, please let me know.

From: Dean Rundle <Dean_Rundle@fws.gov>
To: Brian Upton
Subject: Re: AFA revisions
Date: Friday, March 09, 2012 10:32:02 AM
Attachments: FY 13-16 AFA Draft 3-8-12.doc

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.

On page 4 I think we just had a misunderstanding on the "federal" terms. The change attached says "career or non-career

" federal employees...

That would include everyone, and that is not our intent here. I think we meant to say "career or career-conditional

" federal employees to inlcude only those employees who have a "permanent" rather than a term or temporary position.

In the change on page 18, the last phrase you inserted says: "for reason or cause other than as defined in this AFA"

I would suggest "for a reason, other than defined above as "cause" , in this AFA".

I think that would avoid any confusion over "cause".

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

FY 13-16 AFA Draft 3-8-12.doc <>

FISCAL YEARS 2013–2016 ANNUAL 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
March 8~~February 14~~, 2012 draft

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services, functions, and

activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

> "In administering the System, the Secretary shall:
>
> ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

> "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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and
b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;
e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;
2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a career or non-career Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT Fish, Wildlife, Recreation & Conservation Division Manager; Service Deputy Refuge Manager; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted by the CSKT.

B. *Refuge Manager* The Refuge Manager will retain final responsibility and authority for directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

   i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA;
   ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and
   iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
   c. Deputy Refuge Manager; and
   d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager can invoke the dispute resolution process in Section 19.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. *Work Plan (Plan).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.

1. *Work Plan Preparation.* The Parties will jointly develop the Work Plan .

a. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

a. The Service will recommend fuels projects and plan for them 2-5 years out.
b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
c. Planning to include writing of burn plans will be done by the CSKT.
d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
f. Smoke management requirements will be the responsibility of the CSKT.
g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. Wildfire Suppression & Initial Attack

a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land, This does not preclude Incident Qualification Certication System (IQCS)-

qualified Service firefighters from conducting initial attack activities on Service lands.
b. The CSKT will open a Firecode for all IA fires.
c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.
d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.
e. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
f. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).
c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.
d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.
e. The six man fire cache at the NBRC will be maintained by the Service.
f. The fire engine at the NBRC will be maintained by the Service.
g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act , 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer.* Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request,

and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within 180 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As au-

thorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns.*

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation*. In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency.* If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager within one week from the date of oral notice.

ii. *Notice of Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees.*

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire, and Visitor Service Programs (except for the Outdoor Recreation Planner, unless that position is contracted to CSKT), as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA),* 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.

4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a

retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct.*

i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;

bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or

dd. Any other cause as agreed to by FWS.

iii. Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. CSKT may invoke the dispute resolution process (see Sec. 19.A. of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

v. Consistent with 5 C.F.R. § 334.107(a), CSKT may terminate an IPA agreement ~~without cause~~ at any time and for any reason, including for cause other than as defined in this AFA. However, in the event CSKT terminates an IPA agreement for reason or cause other than as defined in this AFA ~~without cause~~, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT*.

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

I. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT,

and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers.* Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. .Final disposition may include: no action – return to duty; counseling; training; or termination.

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually

for the following fiscal year. Consistent with Section 24.A below, for FY 20__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. The Service will provide CSKT with funding equivalent to ~~Funding for~~ 0.25 of a GS-7 Technician position ~~will be transferred to CSKT~~ for implementation of the Fire Program responsibilities outlined in Section 8, above.

5. Generally, Attachment B specifies the following types of consideration:

   a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

   b. *Appropriated Funds*. Appropriated funds, as follows:

      i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife, Recreation &

Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager, for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsection 14.B.1 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure

that all necessary indirect costs to support CSKT administrative functions are included.

3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property*. Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim.*

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that

provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Section 17. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

    b. assist the Service in responding to the emergency; and

c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Property*. On the effective date of the retrocession, CSKT will return all Federal Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

c. On the effective date of the reassumption, CSKT will return all Federal Property which is not needed by the CSKT to perform a retained Activity;

d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201 , with any signed successor AFA to be delivered to Congress prior to July 1, 201 . This schedule will allow such successor AFA to be effective on October 1, 201 , thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Property*. On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B(as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution.*

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish,Wildlife, Recreation & Conservation Division Manager may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Fish,Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Fish,Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act are also incorporated into this AFA, as authorized by 25 U.S.C. § 458cc(*l*):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting

12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and
    450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will

perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during FY 20__. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____	_____
Dan Ashe, Director, U.S. Fish & Wildlife Service	Date
_____	_____
_____, Assistant Secretary for Fish, Wildlife and Parks	Date
_____	_____
Mike Black, Director, Bureau of Indian Affairs	Date

King, Jeff <jeff_king@fws.gov>

AFA national policy

King, Jeff <jeff_king@fws.gov> Wed, Jan 15, 2014 at 4:23 PM
To: Will Meeks <Will_Meeks@fws.gov>

Will,

You mentioned on the all employee call today that the chiefs meeting was held last week. Did Mitch Ellis from R7 bring up AFA policy during the meeting? I heard that it was going to be discussed and I wanted to get your take on how that went.

Thanks,

jk

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

King, Jeff <jeff_king@fws.gov>

My phone call with Brian Upton

2 messages

Rundle, Dean <dean_rundle@fws.gov> Tue, Aug 20, 2013 at 12:44 PM
To: Will Meeks <will_meeks@fws.gov>, Paul Santavy <paul_santavy@fws.gov>, Jeff King <Jeff_King@fws.gov>

I returned Brian's phone call this morning and he called me back about an hour ago. It was not fun, but as anticipated. I informed Brian that:

1. I am retiring soon. The RD is considering who to designate as the Service lead for further AFA discussions with the Tribe.
2. The draft EA is complete, however it has not gone to the contractor yet for analysis of environmental effects. I told Brian I thought it had gone out a couple weeks ago, but just learned last week about the problem with the Planning Branch IDIQ contract and that we were working with CGS to "fix" it, but until we get a resolution, the draft cannot go to the Contractor.
3. I told him that we were having some internal struggles with how the negotiated AFA deals with IPAs. He said that we'd mentioned that sometime last spring - which I don't recall - but that we're still struggling with that.
4. I told him that Will Meeks had received their letter of invitation and that the ARD would be engaging very soon, and would probably call Brian next week.

He asked several direct questions about the draft EA.

1. Has there been any change in the way the EA portrays/deals with allegations of CSKT performance and conduct issues in the first AFA? I told him that I was confident that section of the EA, which I drafted last spring was intact and that it was the best I could do to provide an accurate and objective analysis of the roles of the CSKT, FWS, and DOI in the failure of the first AFA.

2. He asked if the alternatives in the draft EA were the same or similar to alternatives discussed back in 2012 when we were meeting with Brian, Dana Jacobsen, etc. at the SOL's office. I told him there were 4 well developed alternatives, but we had stricken the notion of a "bigger" alternative - one that would give the Tribe even more than the negotiated AFA. He wasn't happy about that. I didn't see any reason not to be truthful with him. They are going to find out sooner or later and the longer we remain silent the more suspicious they get.

Brian said that when he last briefed Council after talking to Jeff in July about the new time frame, that Council was getting very concerned that we were projecting an additional 7 months before an EA could be complete. They feel that its nearly 3 years since the last AFA was cancelled and that the Service may be taking advantage of their patience. Our relative silence in communication with the tribe - as we anticipated is causing suspicion. Our trust account is being drawn down.

Brian said he did not know if he could get on Council agenda for their next meeting, which is on Thursday, but he'd probably be bringing this news to Council next week. He expects they will request a meeting with RO leaders (did not specify what level) either in Lakewood or Pablo soon.

Brian also informed that Sen. Tester would be visiting CSKT on September 2. The Senator usually asks how things are going with the AFA, and Brian anticipates that the Council will tell him they are not happy with our progress.

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

King, Jeff <jeff_king@fws.gov> Wed, Sep 11, 2013 at 2:30 PM
To: Laura King <Laura_King@fws.gov>, Brendan Moynahan <Brendan_Moynahan@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]

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

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	Dean and Laura	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 comments	Second	2/28--3/8/2013	All	All
Team Reviews revised chapters	Second	3/11--15, 2013	All	All
Solicitor reviews EA	Third	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 & new ARD for Refuges	Third	5/14/2013 & 5/30/2013	All	All
Team addresses requests made by Director and ARD	Fourth	6/3—7/15/2013	All	All
Provide contractor with draft	Fourth	July 22, 2013	Laura	All
Environmental Consequences workshop	Fourth	August 6-8, 2013	Laura (set up meeting)	4
Contractor provides consequences section	Fourth	August 30, 2013	Contractor	4
Team reviews environmental consequences	First	9/2—9/6, 2013	All	4
Combine team comments, sends back to contractor	First	9/11—9/20, 2013	Laura	4
Contractor provides final version	Second	September 27, 2013	Contractor	4
Solicitor reviews Consequences Analysis	Second	9/30--10/7/2013	Laura (provide copy)	All
Edit and print Draft EA for Internal Review	Fifth	9/30—10/21/2013	Laura	All
Internal Review (Service, State, CSKT)	Fifth	10/28—11/15/2013	Laura	All
Prepare and submit NOA for public release	Final	November 1, 2013	Laura	NA
Revise and edit EA based on internal review	Sixth	11/18—12/9/2013	All & editor	All
Prepare public draft EA for printer	Sixth	12/9--18, 2013	editor	All
Distribute EA to the public (NOA)	Sixth	December 20, 2013	editor	All
30-day public review	Sixth	12/23--1/24, 2014	Laura	All
Team reviews public comments	NA	January 30, 2014	All	All
Team revises document based on substantive comments	Seventh	1/31--2/19/2014	All	All
Brief RD to request FONSI be signed (if applicable)	Seventh	~February 24, 2014	Laura (set up briefing)	All
Team releases decision to public--FONSI or EIS (NOA)	Final	~3 weeks after FONSI signed	Laura	NA

FW: additional afa material

1 message

Jeff King <jeff_king@fws.gov> Tue, Jul 15, 2014 at 8:56 AM
To: Laura King <Laura_King@fws.gov>

Thanks,

jk

Jeff King, Project Leader

National Bison Range Complex

58355 Bison Range Road

Moiese, Montana 59824

(406) 644-2211 ext. 204

From: Paul Steblein <Paul_Steblein@fws.gov>
Sent: Thursday, August 04, 2011 11:49 AM
To: Jeff_King@fws.gov
Subject: additional afa material

Hi Jeff,

Just found there is a DOI Handbook on ISDEAA

http://www.bia.gov/WhoWeAre/BIA/OIS/Self-Determination/index.htm

Interagency Handbook on Indian Self Determination Act

http://www.bia.gov/idc/groups/xois/documents/collection/idc013271.pdf

Have not read it, but will look at while policy under review.

Paul

Paul Steblein

Critical Issues & Policy

USFWS - National Wildlife Refuge System

4401 N. Fairfax Drive, Room 653B

Arlington, VA 22203

P: 703-358-2678

C: 571-232-6043

F: 703-358-1929

E: Paul_Steblein@fws.gov

www.fws.gov/refuges/

FW: OFPP to issue final guidance on 'inherently governmental'

1 message

Jeff King <jeff_king@fws.gov> Tue, Jul 15, 2014 at 8:49 AM
To: Laura King <Laura_King@fws.gov>

Thanks,

jk

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

-----Original Message-----
From: Paul Steblein <Paul_Steblein@fws.gov>
Sent: Friday, September 09, 2011 10:44 AM
To: Jeff_King@fws.gov; Dean_Rundle@fws.gov; Rick_Coleman@fws.gov; Pat_Durham@fws.gov
Subject: OFPP to issue final guidance on 'inherently governmental'

Hi guys,
Pat just forwarded me the notice of the OMB letter that updates the definition and application of term inherently governmental. We used the draft document (found by Jeff) as a foundation to defining inherently Federal as it relates to AFAs. While AFAs are a bit different from contracts, the letter does a good job explaining the inherently governmental concept and is relevant to developing good, sustainable AFAs. I have also heard that the use of inherently Federal in the Act was intended to be inherently governmental.
Nonetheless, this final guidance provides a definitive and reasonable basis for our draft policy.

Last night I finished editing the draft policy with the WO comments, and am pushing it back out for official regional review. I discussed with Jeff & Deb getting solicitor input on 2 key elements of the draft policy (indirect cost & staff mgmt under IPA), and will be pursuing that as quick as I can. I appreciate the challenge of your negotiations, and will keep you posted.
Thanks,
Paul

Paul Steblein
Critical Issues & Policy
USFWS - National Wildlife Refuge System
4401 N. Fairfax Drive, Room 653B
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C: 571-232-6043
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www.fws.gov/refuges/

----- Forwarded by Paul Steblein/NWRS/R9/FWS/DOI on 09/09/2011 12:23 PM -----

Pat Durham/ARL/R9/FWS/DOI
09/09/2011 11:47 AM

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

Subject
Fw: WFED Breaking News - OFPP to issue final guidance on 'inherently governmental'

Interesting and pertinent. See below.

On Facebook: http://www.facebook.com/USFWSTribalPrograms
WEB SITE: http://www.fws.gov/nativeamerican/

Patrick Durham
U.S. Fish and Wildlife Service
Native American Liaison
4401 N. Fairfax Drive, MS 330
Arlington, VA 22203

(703) 358-1728
Pat_Durham@FWS.gov

The Mission of the U.S. Fish & Wildlife Service is; working with others to conserve, protect and enhance fish, wildlife, and plants and their habitats for the continuing benefit of the American people.

----- Forwarded by Pat Durham/ARL/R9/FWS/DOI on 09/09/2011 11:41 AM -----

"Marks, Adrienne M" <AMARKS@usbr.gov>
09/09/2011 11:20 AM

To
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Subject: WFED Breaking News - OFPP to issue final guidance on 'inherently governmental'

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Federal News Radio Breaking News

OFPP to issue final guidance on 'inherently governmental'
After more than a year, the Office of Federal Procurement Policy is giving agencies final guidance for what jobs must be done by government employees and how to treat work that is considered closely associated to inherently government and critical functions.
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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Publication of the Office of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, Performance of Inherently Governmental and Critical Functions

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy

ACTION: Notice of Final Policy Letter

SUMMARY: The Office of Federal Procurement Policy (OFPP) in the Office of Management and Budget (OMB) is issuing a policy letter to provide to Executive Departments and agencies guidance on managing the performance of inherently governmental and critical functions. The guidance addresses direction to OMB in the Presidential Memorandum on Government Contracting, issued on March 4, 2009, to clarify when governmental outsourcing of services is, and is not, appropriate, consistent with section 321 of the Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Public Law 110-417). Section 321 requires OMB to: (i) create a single definition for the term "inherently governmental function" that addresses any deficiencies in the existing definitions and reasonably applies to all agencies; (ii) establish criteria to be used by agencies to identify "critical" functions and positions that should only be performed by Federal employees; and (iii) provide guidance to improve internal agency management of functions that are inherently governmental or critical. The Presidential Memorandum is available at http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-Subject-Government/. Section 321 may be found at http://www.dod.gov/dodgc/olc/docs/2009NDAA_PL110-417.pdf.

DATES: The effective date of OFPP Policy 11-01 is October 12, 2011.

FOR FURTHER INFORMATION CONTACT: Mathew Blum, OFPP, (202) 395-4953 or mblum@omb.eop.gov, or Jennifer Swartz, OFPP, (202) 395-6811 or jswartz@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

A. Overview

OFPP is issuing a policy letter to provide guidance on managing the performance of inherently governmental and critical functions. The policy letter is intended to implement direction in the President's March 4, 2009, Memorandum on Government Contracting that requires OMB to "clarify when governmental outsourcing for services is and is not appropriate, consistent with section 321 of Public Law 110-417 (31 U.S.C. 501 note)." The policy letter:

- Clarifies what functions are inherently governmental and must always be performed by Federal employees**.** The policy letter provides a single definition of "inherently governmental function" built around the well-established statutory definition in the Federal Activities Inventory Reform Act (FAIR Act), Public Law 105-270. The FAIR Act defines an activity as inherently governmental when it is so intimately

related to the public interest as to mandate performance by Federal employees. The definition provided by this policy letter will replace existing definitions in regulation and policy, including the Federal Acquisition Regulation (FAR). The policy letter provides examples and tests to help agencies identify inherently governmental functions.

- Explains what agencies must do when work is "closely associated" with inherently governmental functions. Specifically, when functions that generally are not considered to be inherently governmental approach being in that category because of the nature of the function and the risk that performance may impinge on Federal officials' performance of an inherently governmental function, agencies must give special consideration to using Federal employees to perform these functions. If contractors are used to perform such work, agencies must give special management attention to contractors' activities to guard against their expansion into inherently governmental functions. The policy letter includes examples to help agencies identify closely associated functions and a checklist of responsibilities that must be carried out when agencies rely on contractors to perform these functions.

- Requires agencies to identify their "critical functions" in order to ensure they have sufficient internal capability to maintain control over functions that are core to the agency's mission and operations. The policy letter holds an agency responsible for making sure it has an adequate number of positions filled by Federal employees with appropriate training, experience, and expertise to understand the agency's

requirements, formulate alternatives, manage work product, and monitor any contractors used to support the Federal workforce. Federal officials must evaluate, on a case-by-case basis, whether they have sufficient internal capability, taking into account factors such as the agency's mission, the complexity of the function, the need for specialized staff, and the potential impact on mission performance if contractors were to default on their obligations.

- Outlines a series of agency management responsibilities to strengthen accountability for the effective implementation of these policies. Agencies must take specific actions, before and after contract award, to prevent contractor performance of inherently governmental functions and overreliance on contractors in "closely associated" and critical functions. Agencies are also required to develop agency-level procedures, provide training, and designate senior officials to be responsible for implementation of these policies.

OFPP will work with the Federal Acquisition Regulatory Council, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council to develop and implement appropriate changes to the FAR to implement this policy letter. In addition, OFPP will review other relevant policy documents, such as guidance in OMB Circular A-76 implementing the FAIR Act, and take appropriate action to ensure they conform to the policies in this letter. Finally, OFPP will work with the Federal Acquisition Institute and the Defense Acquisition University on appropriate training materials for the acquisition workforce and other affected stakeholders.

B. Summary of proposed and final policy letters

The Presidential Memorandum on Government Contracting required the Director of OMB to develop guidance addressing when governmental outsourcing of services is, and is not, appropriate. The Memorandum states that the line between inherently governmental activities that should not be outsourced and commercial activities that may be subject to private-sector performance has become blurred, which may have led to the performance of inherently governmental functions by contractors and, more generally, an overreliance on contractors by the government. It directs OMB to clarify when outsourcing is, and is not, appropriate, consistent with section 321 of the NDAA for Fiscal Year (FY) 2009.

Section 321 directs OMB to: (1) create a single, consistent definition for the term "inherently governmental function" that addresses any deficiencies in the existing definitions and reasonably applies to all agencies; (2) develop criteria for identifying critical functions with respect to the agency's mission and operations; (3) develop criteria for determining positions dedicated to critical functions which should be reserved for Federal employees to ensure the department or agency maintains control of its mission and operations; (4) provide criteria for identifying agency personnel with responsibility for (a) maintaining sufficient expertise and technical capability within the agency, and (b) issuing guidance for internal activities associated with determining when work is to be

reserved for performance by Federal employees; and (5) solicit the views of the public regarding these matters.

1. Proposed policy letter

OMB's OFPP issued a proposed policy letter on March 31, 2010, entitled "Work Reserved for Performance by Federal Government Employees," to implement the requirements of the President's Memorandum and section 321 (75 Fed. Reg. 16188-97). The proposed policy letter, which was issued after OFPP reviewed current laws, regulations, policies, and reports addressing the definition of inherently governmental functions, as well as feedback from a public meeting held in the summer of 2009, proposed to consolidate in one document a number of policies, definitions, and procedures associated with identifying when work must be performed by Federal employees that are currently addressed in multiple guidance documents, including the Federal Acquisition Regulation (FAR), OMB Circular A-76, and various OMB memoranda. The document proposed the following policy actions to address inherently governmental functions, functions closely associated with inherently governmental functions, and functions that are critical to the agencies' mission and operations.

a. Proposed steps to address inherently governmental functions:

- Create a single definition for the term "inherently governmental function" by directing agencies to adhere to the statutory definition for this term set forth in the

FAIR Act and eliminate variations of this definition found in other documents, such as the FAR and OMB Circular A-76.

- Preserve a long-standing list of examples set out in the FAR of the most common inherently governmental functions, such as the determination of agency policy, hiring of Federal employees, and awarding of Federal contracts.

- Refine existing criteria (e.g., addressing the exercise of discretion) and provide new ones (e.g., focused on the nature of the function), to help an agency decide if a particular function that is not identified on the list of examples is, nonetheless, inherently governmental.

b. Proposed steps to address functions closely associated with inherently governmental functions:

- Reiterate requirements in the Omnibus Appropriations Act, 2009 (Public Law 111-8) to give special consideration to Federal employee performance of functions closely associated with inherently governmental ones.

- Reinforce and refine guidance in the FAR and Attachment A of OMB Circular A-76 requiring special management attention when contractors perform functions closely associated with inherently governmental functions to guard against their expansion into inherently governmental functions. Steps might entail providing clearer

prescriptions in the statement of work of what the contractor may and may not do, and ensuring adequate and adequately trained personnel to oversee the contractor's work.

- Preserve a long-standing list of examples set out in the FAR of the most common functions closely associated with inherently governmental functions, such as support for policy development or support for the selection of contractors.

c. Proposed steps to address critical functions:

- Recognize a new category of work, "critical functions," which must be evaluated to determine the extent to which performance by Federal employees is required. Define the term as a function that is "necessary to the agency being able to effectively perform and maintain control of its mission and operations."

- Hold an agency responsible for making sure that, for critical functions, it has an adequate number of positions filled by Federal employees with appropriate training, experience, and expertise to understand the agency's requirements, formulate alternatives, manage work product, and monitor any contractors used to support the Federal workforce. To meet this responsibility, require Federal officials to evaluate, on a case-by-case basis, whether they have sufficient internal capability, taking into account factors such as the agency's mission, the complexity of the function, the need

for specialized staff, and the potential impact on mission performance if contractors were to default on their obligations.

- Make clear that, so long as agencies have the internal capacity needed to maintain control over their operations, they are permitted to allow contractor performance of positions within critical functions (subject to any other applicable legal or regulatory requirements).

Finally, the proposed policy letter would require agencies to take specific actions, before and after contract award, to prevent contractor performance of inherently governmental functions and overreliance on contractors in the performance of "closely associated" and critical functions. Agencies would also be required to develop agency-level procedures, provide training, and designate senior officials to be responsible for implementation of these policies. The proposed policy letter emphasized the need for a shared responsibility between the acquisition, program and human capital offices within the agency to effectively implement its provisions.

The proposed policy letter was published in the Federal Register on March 31, 2010 (75 Fed. Reg. 16188-97) for public comment. OFPP encouraged respondents to offer their views on a series of questions to elicit feedback on some of the more difficult or pressing policy challenges, such as whether and how best to use the "discretion" test to identify inherently governmental functions, how best to explain the difference between critical functions and functions that are closely associated with the performance of inherently

governmental functions, and how to properly classify certain functions related to acquisition support and security.

For additional background on the proposed policy letter, see discussion in the preamble at 75 Fed. Reg.16188-94.

2. Final policy letter

Based on public comments received in response to the proposed policy letter (which are discussed in greater detail below), and additional deliberations within the Executive Branch, OFPP has refined the proposed policy letter to:

- Rename the policy letter "Performance and Management of Inherently Governmental and Critical Functions" to more accurately capture its scope and purpose;

- Add to the illustrative list of inherently governmental functions the following: (i) all combat, (ii) security operations in certain situations connected with combat or potential combat, (iii) determination of an offer's price reasonableness, (iv) final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and (v) selection of grant and cooperative agreement recipients;

- Clarify the illustrative list of functions closely associated with the performance of inherently governmental functions to expressly recognize a variety of work to support Federal acquisitions that includes conducting market research, developing inputs for independent government cost estimates, drafting the price negotiations memorandum and collecting information, performing an analysis or making a recommendation for a proposed performance rating to assist the agency in determining its evaluation of a contractor's performance;

- Establish a comprehensive responsibilities checklist for functions closely associated with inherently governmental functions;

- Caution that, in many cases, functions include multiple activities that may be of a different nature – some activities within a function may be inherently governmental, some may be closely associated, and some may be neither – and by evaluating work at the activity level, an agency may be able to more easily differentiate tasks within a function that may be performed only by Federal employees from those tasks that can be performed by either Federal employees or contractors;

- Clarify that determining the criticality of a function depends on the mission and operations, which will differ between agencies and within agencies over time;

- Establish that if an agency makes a decision to insource some portion of a function that is currently being performed for the agency by a combination of small and large

businesses, the "rule of two" should be applied to determine who will perform the work that remains in the private sector (the "rule of two" requires that acquisitions be reserved for award to small businesses, or certain subsets of small businesses, if there are two or more responsible small businesses capable of performing the work at fair market prices); and

- Reorganize and consolidate the discussion of management associated with inherently governmental, closely associated, and critical functions to more clearly recognize that oversight responsibilities for these functions are interrelated and should not be stove-piped.

C. Public comments

OFPP received public comments from more than 30,350 respondents on the proposed policy letter. All but approximately 110 comments were submitted in the format of a form letter. Respondents were divided in their reaction to the proposed guidance. One form letter, submitted by approximately 30,000 respondents, expressed concern about excessive outsourcing and recommended expanding the definition of an inherently governmental function to encompass critical functions and functions closely associated with inherently governmental functions. The letter also proposed augmenting the list of inherently governmental functions to include all security functions and intelligence activities, training for interrogation, military and police, and maintenance and repair of weapons systems. A second form letter, submitted by approximately 240 respondents,

raised significantly different concerns, cautioning that the policy letter and the increased attention on having non-inherently governmental functions performed by Federal employees will inappropriately discourage Federal managers and agencies from taking full and effective advantage of the private sector and the benefits of contracting. The roughly 110 responses that were not form letters were generally supportive of OFPP's efforts to clarify policies and management responsibilities, though respondents were divided over whether too much or not enough work would be reserved for Federal employees if policies were implemented as proposed.

Copies of the public comments received are available for review at http://www.regulations.gov (Docket ID OFPP-2010-0001). A short summary description of the comments and OFPP's responses and changes adopted in the final policy letter are set forth below.

1. Scope of the policy letter

A number of respondents offered views on the general focus of the policy letter. Several respondents stated that the policy letter was too narrowly focused and cautioned that the overall tone of the policy letter, as set by the title and purpose section, could be construed as being concerned only about ensuring that work is properly reserved for Federal employees – as opposed to also needing to strike the right balance between work that may be contracted out and work that must be reserved. Some respondents recommended

that the scope of the policy letter be broadened to more expressly address the performance of commercial activities and advisory and assistance services.

Response: OFPP concurs that the overall purpose of the policy letter should be clarified. While a key goal of the policy letter is to ensure that inherently governmental work is reserved for Federal employees, agencies have an equally important responsibility, in cases where work is not inherently governmental, to evaluate how to strike the best balance in the mix of work performed by Federal employees and contractors to both protect the public's interest and serve the American people in a cost-effective manner. The policy letter's title and purpose statement have been revised accordingly. In particular, rather than focusing the title on work reserved for Federal employees, it now focuses on performance of inherently governmental and critical functions, which expressly acknowledges that functions closely associated with inherently governmental functions and critical functions are often performed by both Federal employees and contractors, and states that reliance on contractors is not, by itself, a cause for concern, provided that the work that they perform is not work that should be reserved for Federal employees and that Federal officials are appropriately managing contractor performance.

OFPP does not believe the scope of the policy letter should be broadened to include an extended discussion of contractor performance of commercial activities and instead prefers to keep the main focus on inherently governmental functions, functions closely associated with them, and critical functions. Recent studies of the role of employees and contractors, and the overall increase in reliance on contractors over the past decade, do

not suggest a general difficulty or hesitation in taking advantage of contractors to provide expertise, innovation, and cost-effective support to Federal agencies. By contrast, these studies and general contracting trends, as well as the President's Memorandum on Government Contracting in March 2009, point to a need for guidance to clarify when work must be performed by Federal employees and the steps agencies need to take to ensure they maintain control of their mission and operations, when extensive work is performed by contractors. OFPP believes any questions regarding the intended use of contractors will largely be addressed by clarifying the overall scope of the policy letter, as described above, and reinforcing that an agency may frequently be able to address overreliance on contractors by allocating additional resources to contract management while continuing to use contractors for support.

OFPP carefully considered the merits of adding discussion on advisory and assistance services and other professional and technical services. These functions are likely to be commonly found among those considered to be either critical or closely associated with inherently governmental functions and spending in this area has grown disproportionately over the past few years. In November 2010, OFPP identified these functions for special management consideration based on concern of increased risk of losing control of mission and operations as identified through a review of reports issued in recent years, such as by the Government Accountability Office, the Commission on Wartime Contracting, agency Inspectors General, Congressional Committees, and the Acquisition Advisory Panel. Agencies were instructed to consider if contractor support for these "special interest functions" is being used in an appropriate and effective manner and if

the mix of Federal employees and contractors in the agency is appropriately balanced. See OFPP Memorandum, *Service Contract Inventories*, Memorandum to Chief Acquisition Officers and Senior Procurement Executives (November 5, 2010), available at http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf. OFPP will work with agencies as they review their use of support contractors in these areas and consider the need for additional guidance in conjunction with these efforts.

2. Inherently governmental functions

Respondents offered a number of comments regarding the scope of the definition of "inherently governmental function," the tests proposed to determine whether or not a function is inherently governmental, and the illustrative list of examples.

a. *Definition*. Many respondents stated that use of the FAIR Act definition of an inherently governmental function is reasonable. Some respondents, including those offered through one of the two form letters, urged that the definition be expanded to include functions closely associated with inherently governmental functions and critical functions, in order to effectively prevent the inappropriate outsourcing of work that should be reserved for performance by Federal employees. A number of respondents inquired as to OMB's plans for ensuring that, going forward, the definition set forth in the policy letter is recognized as the single authorized definition for the term.

Response: Based on its review of public comments, prior feedback (including that provided at a public meeting held in the summer of 2009, in connection with the President's Memorandum on Government Contracting) and its review of relevant reports (such as the report of the Congressionally-chartered Acquisition Advisory Panel), OFPP believes the FAIR Act definition is reasonable. OFPP does not believe it is appropriate to expand the definition to encompass closely associated or critical functions. Agencies must give special attention to functions falling into those categories to ensure that the government does not lose control of either inherently governmental functions (in the case of closely associated functions) or activities that are core to the agency's mission or operations (in the case of critical functions), but such functions can, in appropriate circumstances, be performed by contractors.

To ensure that the definition in the FAIR Act is recognized as the single authorized definition for the term, OFPP intends to work with the Federal Acquisition Regulatory Council, the Defense Acquisition Regulations Council and the Civilian Agency Acquisition Council to develop and implement appropriate changes to the FAR to implement this policy letter. In addition, OFPP will review other relevant policy documents, such as OMB Circular A-76, and take appropriate action to ensure they conform to the policies in this letter.

b. *Tests*. Respondents generally did not raise concerns regarding the continued use of tests to help agencies determine if functions are inherently governmental, but a number

cautioned of potential pitfalls, and others offered suggestions for how application of the tests could be improved. A number of recommendations, mostly clarifications, were offered to help improve the "discretion" test, which asks agencies to evaluate if the discretion associated with the function, when exercised by a contractor, would have the effect of committing the government to a course of action. Recommendations included: (i) emphasizing that the evaluation should generally focus on how much discretion is left to government employees as opposed to how much discretion has been given to contractors, and (ii) distinguishing between fact-finding and making decisions based on the fact-finding. A number of comments questioned the likely effectiveness of the proposed "nature of the function test," which would ask agencies to consider if the direct exercise of sovereign power is involved. Some respondents suggested that the term "sovereign" be explained while others concluded that the manner in which sovereign authority is exercised is so varied that it is better explained by example than further definition. A few respondents recommended that the final policy letter adopt a new "principal-agent" test that would require agencies to identify functions as inherently governmental where serious risks could be created by the performance of these functions by those outside government, because of the difficulty of ensuring sufficient control over such performance.

Response: OFPP has made refinements to the "discretion" test. First, it has more fully distinguished the type of discretion that may be appropriately exercised by a contractor from that which would not be appropriately exercised by a contractor. Second, it has clarified that inappropriate delegations of discretion can be avoided by: (i) carefully

delineating in the statement of work contractor responsibilities and types of decisions expected to be made in carrying out these responsibilities and effectively overseeing them and (ii) subjecting the contractor's discretionary decisions and conduct to meaningful oversight and, whenever necessary, to final approval by an agency official. OFPP agrees that it is appropriate to consider how much discretion is left to government employees but, at the same time, also believes there is merit in considering the nature of the discretion given to contractors, as well as whether circumstances, such as time constraints, may limit the ability to effectively manage the contractor's actions or inappropriately restrict government employees' final approval authority. It also concluded that the proposed language was sufficiently clear to help agency officials differentiate between fact-finding that could appropriately be performed by contractors from binding decision-making based on fact-finding that needed to be performed by Federal employees.

Only minimal changes were made to the "nature of the function test." OFPP appreciates that the value of this test may be limited, but believes it still can contribute to an agency's overall understanding and analysis in differentiating between functions that are inherently governmental and those that are not. OFPP considered, but did not adopt, the "principal-agent" test. While recognizing that risk is an underlying factor in reserving work for Federal employees and the definition of inherently governmental function, OFPP concluded that the test would not likely lead to identification of significantly different functions as inherently governmental and was concerned that application of the test could

lead to greater confusion about what may be performed by contractors and what must be performed by Federal employees.

c. *Examples*. While most respondents did not object to retaining a list with illustrative examples, they offered mixed reactions to the specific examples given. A number of respondents felt the proposed list is too narrow and should be modified to add additional functions while at least one respondent thought the list was too broad. Many of those who believed the list was too narrow suggested the addition of functions involving private security contractors, especially when performed in hostile environments or involving intelligence. Some acquisition functions were also recommended for the list, such as developing independent government cost estimates, and preparing documentation in support of a price negotiation memorandum and price reasonableness determination. One respondent who thought the list was too broad recommended refinements to more precisely identify the inherently governmental characteristic of the action, such as "a judge exercising the authority of the Federal government" rather than "the performance of adjudicatory functions." The respondent explained that deciding a dispute is not, *per se*, inherently governmental since arbitration and alternative dispute resolution processes can be performed by non-Federal employees, even when one of the parties is a Federal agency.

Response: Based on public comment and additional deliberations, OFPP has added to the list of inherently governmental functions: (i) all combat and (ii) security operations in certain situations connected with combat or potential combat. OFPP concluded these

were clear examples of functions so intimately related to public interest as to require performance by Federal Government employees; hence, the addition of these activities to the list of inherently governmental functions would contribute to clarifying the line between what work must be reserved for Federal employees and what work may be performed by contractors. OFPP also clarified that making final determinations about a contractor's performance (including approving award fee determinations or past performance evaluations) and taking action based on these assessments are also inherently governmental because such actions involve the exercise of substantial discretion. In addition, OFPP added selection of grant and cooperative agreement recipients to the list of examples of inherently governmental functions because such actions bind the government.

With respect to contract pricing, the list identifies price reasonableness determinations as inherently governmental. This includes approval of any evaluation relied upon to support a price reasonableness determination, such as a price negotiation memorandum or approval of documentation cited as the government's independent cost estimate, which, by definition, must be the government's own final analysis. That said, an agency is not precluded from using the services of a contractor to develop inputs for government cost estimates or to draft a price negotiation memorandum as long as whatever the government relies upon to determine price reasonableness has been reviewed and approved by a government employee. As in other situations where a Federal official must review and approve documents prepared by a contractor, the Federal official's review and approval must be meaningful; that is to say, it cannot be a "rubber stamp"

where the government is completely dependent on the contractor's superior knowledge and is unable to independently evaluate the merits of the contractor's draft or to consider alternatives to that draft. For that reason, while an agency may appropriately choose to have Federal employees prepare documentation in support of a price negotiation memorandum and price reasonableness determination, OFPP does not view this work as inherently governmental, but rather closely associated with an inherently governmental function – and has added this work to the list of closely associated functions. If this work is performed by contractors, the agency must apply special management attention to ensure the work does not expand to include decision-making (which is inherently governmental) or otherwise interfere with the government's ability to exercise independent judgment, in this case, to determine that offered prices are fair and reasonable.

Regarding the performance of adjudicatory functions, OFPP retained the language on the proposed list, without change, and notes that the language currently in the FAR and the proposed policy letter already provides a carve-out for certain types of adjudicatory functions that are not inherently governmental, such as those relating to arbitration or other methods of alternative dispute resolution.

Similar to the list appearing in the FAR today, the list in the final policy letter is illustrative and not exhaustive. In addressing security operations, for example, the list identifies where security operations would be inherently governmental in connection with combat. This should not be read as a determination that all security performed in any

hostile situation other than actual combat may be performed by contractors. Rather it means that those situations should be evaluated on a case-by-case basis to determine what security functions and activities are inherently governmental and what can be performed by contractors with appropriate management and oversight.

Finally, OFPP has added a caveat to recognize that many functions include multiple activities, some of which may not be inherently governmental. These other activities performed in conjunction with the function may be closely associated or neither inherently governmental nor closely associated. This caveat helps to clarify that the identification of a function on the list does not mean every action associated with the function is inherently governmental. For additional discussion, see response to comment no. 5, below.

3. Functions closely associated with inherently governmental functions

Respondents offered a range of comments. Some call into question the purpose of this category; others raise concerns about the extent to which contractors should perform these functions; still others offer refinements to the proposed list of examples.

a. *Purpose*. A number of respondents recommended that the guidance on closely associated functions be clarified. Many of them pointed out that discussion of this concept appears to overlap with the new concept of critical function in that both appear to address the same risk, namely of the government losing control of its operations. Some

thought this confusion might be avoided by defining the term "closely associated" so that its scope as a functional category can be more clearly understood. Others favored adding an explanation of the different purposes served by the two concepts. Some proposed doing away with the category, pointing out that the "closely associated" concept is more appropriately viewed as a management practice rather than as a separate functional category.

Response: OFPP does not agree that the concept of "closely associated" should be eliminated, as it serves an important management purpose in helping agencies guard against losing control of inherently governmental functions. However, OFPP agrees that the concept is more relevant to management practices, or internal control mechanisms, as opposed to serving as a stand-alone functional category. For this reason, the discussion of this concept in the policy letter has been reorganized so that it is now addressed as part of the discussion on identifying inherently governmental functions. This reorganization should also help to clarify the different reasons for tracking contractors who are performing closely associated functions and those who are performing critical functions. In the case of closely associated functions, the agency is trying to prevent contractor performance from interfering with Federal employees' ability to perform inherently governmental functions. In the case of critical functions, the agency is looking to determine if the agency is at risk of losing control of its ability to perform its mission and operations. OFPP does not believe a definition will necessarily provide greater clarity, but has created a new checklist to summarize in one place the various actions that must

be taken if the agency determines that contractor performance of a function closely associated with an inherently governmental function is appropriate.

b. *Performance.* A number of respondents (including those using one of the two form letters) stated that *only* Federal employees should be allowed to perform functions closely associated with inherently governmental functions (with contractor performance allowed only in limited or exceptional circumstances). These respondents generally recommended that the concept of "closely associated" be incorporated into the definition of inherently governmental function to effectively protect the government against improper reliance on contractors.

Response: Agencies must carefully guard against contractor performance of inherently governmental functions, but managing this risk does not require that performance of closely associated functions be reserved exclusively for Federal employees. Such a bar would inappropriately limit an agency's ability to take advantage of a contractor's expertise and skills to support the agency in carrying out its mission. For example, limiting performance of functions closely associated with inherently governmental functions could inappropriately limit an agency's ability to take advantage of a Federally Funded Research Development Center (FFRDC) or University Affiliated Research Center that provides essential engineering, research, development, and analysis capabilities to support agencies in the performance of their responsibilities and mission. As explained in FAR 35.017: "An FFRDC meets some special long-term research or development need which cannot be met as effectively by existing in-house or contractor

resources. FFRDCs enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operation of the sponsoring agency."

Effective risk management can be achieved if agencies are mindful of their responsibility to give special consideration to Federal employee performance and effectively apply special management attention when contractor performance is determined to be appropriate. With respect to special consideration, the policy letter reminds agencies of their responsibilities under the law and OMB's management guidance on this issue. (These responsibilities are also reiterated in guidance OFPP issued last fall to help agencies in evaluating the activities of their service contractors in accordance with section 743 of Division C of the Consolidated Appropriations Act, 2010 (Public Law 111-117). See OFPP Memorandum *Service Contract Inventories* (refer to response to comment no. 1, above, for cite).

With respect to contractor performance of closely associated functions, the final policy letter includes a new checklist that summarizes the various contract management actions that agencies must take to ensure contractors are not performing, interfering with, or undermining the agency's decision-making responsibilities. The checklist, which is largely taken from existing guidance in the FAR and other documents, identifies steps such as: (i) establishing specified ranges of acceptable decisions and/or conduct in the contract, (ii) assigning a sufficient number of qualified government employees to perform contract management, (iii) ensuring reasonable identification of contractors and contractor work products if there is a risk that the public will confuse contractor

personnel or work products with government officials or work products, and (iv) avoiding or mitigating conflicts of interest.

In the case of an FFRDC, the FAR has long required that such organizations conduct their business in a manner befitting their special relationship with the government – which includes access, beyond that which is common to the normal contractual relationship, to government and supplier data, including sensitive and proprietary data, and to employees and installations equipment and real property. As stated in FAR 35.017, FFRDCs must operate in the public interest with objectivity and independence, be free from organizational conflicts of interest, and have full disclosure of their affairs to the sponsoring agency.

c. *Examples.* Respondents offered varied reactions to maintaining a list of examples of "closely associated" functions. Several felt a list should not be included in the final policy letter because it introduces unnecessary ambiguity and allows for unnecessarily broad interpretation that could include either an inappropriate presumption in favor of insourcing or an inappropriate presumption that the work is appropriately performed by a contractor. Of those who favored (or did not oppose) the continued use of a list, some felt the list was too broad, either because it included functions where the potential for encroaching on inherently governmental responsibilities should not be viewed as a significant concern in need of heightened scrutiny or because the function as described was indistinguishable from those identified as inherently governmental.

Response: OFPP believes the list, which is currently set forth in the FAR, continues to serve as a useful tool to assist agencies in identifying functions where they must give special consideration to performance by Federal employees or special contract management attention if performed by contractors. The reorganized discussion of this issue (as described above) in combination with the checklist should help to avoid inappropriate presumptions regarding the performance of these functions.

With respect to the substance of the list, OFPP has made three types of modifications. First, as was done with the list of inherently governmental functions, OFPP has added a caveat that many functions include multiple activities, only some of which are closely associated with inherently governmental. Other activities performed in conjunction may be inherently governmental or not closely associated. This caveat helps to clarify that the identification of a function on the list does not mean every action associated with the function is closely associated with an inherently governmental function. (See comment no. 5, below for additional discussion.) Second, the list more carefully delineates activities that are performed in direct support of inherently governmental functions (e.g., analyses and feasibility studies to support the development of policy), which are closely associated activities, from those that involve making binding decisions (e.g., the final shape of a policy), which are inherently governmental. Third, OFPP has added additional examples to further describe the types of acquisition support that are closely associated functions. These added functions include: conducting market research, developing inputs for independent government cost estimates, assisting in the development of a price negotiation memorandum, and supporting agency personnel in evaluating a contractor's

performance, such as by collecting information or conducting an analysis that can be used by a Federal employee to make a determination about the quality of the contractor's performance.

4. Critical functions

A number of respondents recognized that the creation of "critical function" as a new category helps to fill a void in current policy, but sought clarification and recommended refinements to ensure agencies properly identify and address functions that are at the core of an agency's mission and operations. Some confusion was voiced, as noted above, regarding the difference between critical functions and closely associated with inherently governmental functions. Some respondents suggested that a list providing examples of critical functions be developed, similar to that developed for inherently governmental and closely associated functions, but others advised against developing a list, noting that the criticality of a function depends on an agency's mission and current capabilities. A number of respondents addressed how an agency might go about differentiating between a critical and a non-critical function. Some suggested that agencies be authorized, if not encouraged, to identify categories of service contracts that may be presumed to be non-critical in order to avoid unnecessary analyses. Others expressed concern that a list will lead to inappropriate generalizations that will hinder, rather than facilitate, meaningful rebalancing.

Response: OFPP intends to work with FAI and DAU to develop appropriate training to support the successful implementation of the policy letter. However, OFPP does not support the creation of a list of critical functions. A function's criticality is dependent on an agency's mission and operations. The policy letter has been clarified to emphasize that the criticality of a function depends on mission and operations, which will differ between agencies and potentially within agencies over time. Whether an agency is over reliant on a contractor to perform a critical function also will vary from agency to agency depending on its current internal capabilities compared to those needed to maintain control of its mission and operations. Similarly, OFPP does not support the creation of a government-wide list of non-critical functions, as this may also differ between agencies based on their mission and operations.

5. Terminology

Several respondents raised concerns regarding how the policy letter uses the terms "function," "activity," and "position." These respondents state that the terms are used interchangeably to cover different concepts, namely: 1) a process, 2) tasks undertaken in conjunction with the process, and 3) billets filled by individuals to perform tasks. They recommend that clarification be provided, perhaps with the addition of definitions.

Response: OFPP recognizes that the terms have different meanings and agrees that more careful use of these terms may help to avoid inappropriately broad generalizations regarding the characterization of work. A function, for example, often includes multiple

activities, or tasks, some of which may be inherently governmental, some of which may be closely associated with inherently governmental work, and some may be neither. By identifying work at the activity level, an agency can more easily differentiate tasks within a function that may be performed only by Federal employees from those tasks that can be performed by either Federal employees or contractors without blurring the line between the role of Federal employees and contractors. The chart below provides several examples. For instance, within the function of source selection, the tasks of determining price reasonableness and awarding a contract are inherently governmental, the task of preparing a technical evaluation and price negotiation memorandum are closely associated (provided the government has sufficient time and knowledge to independently evaluate alternative recommendations and decide which is in the government's best interest) and (although not shown on the table), the task of ensuring the documents are in the contract file is neither inherently governmental nor closely associated.

Function	**Work that is inherently governmental and therefore must be performed by Federal employees**	**Work that is closely associated with inherently governmental functions and that may be performed by either Federal employees or contractors**
Budget development	The determination of budget policy, guidance, and strategy, and the determination of Federal program priorities or budget requests.	Support for budget preparation, such as workforce modeling, fact finding, efficiency studies, and should-cost analyses.
Policy and regulatory development	The determination of the content and application of policies and regulations.	Support for policy development, such as drafting policy documents and regulations, performing analyses, feasibility studies, and strategy options.
Human resources management	The selection of individuals for Federal Government employment, including the interviewing of individuals for employment, and the direction and control of Federal employees.	Support for human resources management, such as screening resumes in accordance with agency guidelines.

Acquisition planning, execution, and management	During acquisition planning: 1) determination of requirements 2) approval of a contract strategy, statement of work, incentive plans, and evaluation criteria, 3) independent determination of estimated cost based on input from either in-house or contractor sources or both. During source selection: 1) determination of price reasonableness of offers, 2) participation as a voting member on a source selection board, and 3) awarding of contracts. During contract management: 1) ordering of any changes required in contract performance or contract qualities, 2) determination of whether costs are reasonable, allocable, and allowable, 3) participation as a voting member on performance evaluation boards, 4) approval of award fee determinations or past performance evaluations, and 5) termination of contracts.	Support acquisition planning by: 1) conducting market research, 2) developing inputs for government cost estimates, and 3) drafting statements of work and other pre-award documents. Support source selection by: 1) preparing a technical evaluation and associated documentation; 2) participating as a technical advisor to a source selection board or as a nonvoting member of a source evaluation board; and 3) drafting the price negotiation memorandum. Support contract management by: 1) assisting in the evaluation of a contractor's performance (e.g., by collecting information, performing an analysis, or making a recommendation for a proposed performance rating); and 2) providing support for assessing contract claims and preparing termination settlement documents.

Further analyzing work from the perspective of the number of positions required to perform an activity enables an agency to differentiate those tasks that may require rebalancing from those that do not. The fact that contractors are performing some portion of a particular activity is not an automatic signal that rebalancing is required, except where work is inherently governmental. In other cases, the number of positions, or slots, that should be held by government employees versus contractor personnel to perform a particular activity will depend on a number of considerations, such as whether the work is critical or closely associated with inherently governmental functions, the particular mission of the agency, the current capability of government employees to understand the

mission and manage contractors, and how the function will be delivered to the agency by the contractor.

A number of clarifications have been made throughout the document to capture these differences, such as in connection with the lists of inherently governmental and closely associated functions in Appendix A and Appendix B. OFPP does not believe definitions need to be added to the policy letter at this time, but will review with the FAR Council if further clarification is required as regulatory changes are develop to implement the policy letter.

6. Small business contracting

Many respondents expressed concern that the rebalancing called for in the policy letter could harm small businesses. These respondents offered a number of recommendations to mitigate this impact, such as excluding all contracts that were awarded under set-asides from insourcing without a formal justification and approval, and having the Small Business Administration review proposed insourcing actions.

Response: OFPP does not anticipate a widespread shift away from contractors as a result of the requirements in the policy letter. As the policy letter explains, insourcing is intended to be a management tool – not an end in itself – to address certain types of overreliance on contractors. In many cases, overreliance may be corrected by allocating additional resources to contract management – i.e., an agency does not necessarily need

to take work away from contractors and have it performed by Federal employees. However, some insourcing is taking place and will be undertaken in the future in some situations, such as where an agency determines that outsourced work is inherently governmental or where the agency is at risk of losing control of its operations regarding work of a critical nature. To minimize the negative impact of these actions on small businesses, the final policy letter requires agencies to take two actions. First, when prioritizing what contracted work should be reviewed for potential insourcing, agencies are instructed to generally place a lower priority on reviewing work performed by small businesses where the work is not inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission and operations. Second, agencies are instructed to apply the "rule of two" to work that will continue to be performed by contractors following the insourcing of part of the work (the rule of two calls for a contract to be set aside for small businesses when at least two small businesses can do the work for a fair market price). Application of this rule should increase the amount of residual work remaining in the hands of small businesses that can perform the work cost effectively.

7. Human capital planning.

A number of respondents acknowledged the connection that exists between human capital planning, clear guidance on the performance of inherently governmental, closely associated, and critical functions, and the ability to effectively evaluate the need for rebalancing. However, reactions were mixed regarding the value of addressing hiring

ceilings and funding constraints. Some thought these were appropriate considerations for assessing the current and desired mix of Federal employees and contractors in an organization. Others felt that the assessment should remain focused exclusively on the nature of the function.

Response: Striking the right balance of work performed by Federal employees and contractors is a shared responsibility between human capital, acquisition, program, and financial management offices. Issues such as hiring ceilings and funding constraints were referenced in the guidance document because these issues are part of the challenges that agency officials must address in executing their responsibilities and determining the best mix of labor resources. OFPP and other organizations within OMB are working with the Chief Human Capital Officers (CHCO) Council to ensure agency human capital officers understand their role and responsibilities. OMB will work with the CHCO Council to determine the appropriate type of supplementary materials that might be needed when the policy letter is finalized.

8. Other issues

a. *The role of cost in rebalancing decisions*. Several respondents raised concern that the policy letter provides insufficient guidance on the parameters for insourcing when based on a determination that public sector performance is more cost effective than private sector performance. They suggested that the policy letter lay out the steps for

performing a cost comparison and define key terms such as “cost effective,” “fully loaded cost” and “indirect cost.”

Response: The proposed policy letter’s discussion of insourcing focuses primarily on situations where an agency identifies improper reliance on contractors, namely, where the outsourced work is inherently governmental, or where the agency is at risk of losing control of its mission and operations. These circumstances, in particular, were highlighted in section 321 of the FY 2009 NDAA and the President’s Memorandum on Government Contracting and have been the subject of reports issued in recent years addressing the use of contractors. The policy letter acknowledges that cost may also be a basis for insourcing, and requires in such situations that agency officials ensure that the agency’s analysis fairly takes into account the full cost of performance by both sectors to support a determination that insourcing will save money. OFPP agrees that additional guidance in this area may be beneficial, and is reviewing the need for such guidance, but believes that additional coverage of the type described by the respondents, if appropriate, is better addressed as a supplement to existing guidance on insourcing, such as that in Appendix 3 of OMB Memorandum M-09-26, *Managing the Multi-Sector Workforce* (July 29, 2009), which implements section 736 of Division D of the Omnibus Appropriations Act, 2009 (Public Law 111-8), or Circular A-76, which addresses the use of public-private competition to outsource or insource work that may appropriately be performed by either sector.

b. *Management responsibilities*. Some respondents recommended that the contents of the policy letter be reorganized, such as by consolidating the discussion of management responsibilities, rather than addressing these responsibilities separately for inherently governmental, closely associated and critical functions. A few respondents also recommended listing, either in the text or an additional appendix, all laws that require work to be performed by Federal employees.

Response: OFPP has reorganized the policy letter to create a comprehensive and consolidated discussion of management responsibilities that agencies must undertake before and after awarding a contract to ensure proper and effective implementation of policies associated with the performance of inherently governmental, closely associated, and critical functions. This consolidated discussion of pre-award and post-award responsibilities more clearly recognizes that oversight responsibilities for each of these functional categories are interrelated. The policy letter includes citations to relevant laws with government-wide or broad applicability but does not include a list of all laws requiring reservation, a number of which are agency-specific and best addressed individually by affected agencies.

c. Tribal organizations. Representatives of Tribal organizations requested that language be added to the policy letter exempting federal government agreements with tribal government organizations under the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended, 25 U.S.C. § 450 *et seq*. They provided a number of statutory and policy reasons for differentiating these agreements, which address a

government-to-government relationship, from government procurement contracts, the principal purpose of which is to acquire products and services for the direct benefit or use of the United States Government. They stated that the ISDEAA, at 25 U.S.C. 458aaa-9, expressly exempts the former agreements from the application of federal acquisition regulations.

Response: The policy letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy Act, which charges the Administrator for Federal Procurement Policy with providing overall policy direction for agencies' acquisition of products and services. In accordance with the OFPP Act, the policy letter focuses on the relationship between the federal government and its contractors - that is, entities who are providing a product or service for the direct benefit of an agency under a federal procurement contract. The policy letter is not intended to modify or otherwise affect any rights or limitations set forth under the Act, including either the right of Tribal governments to assume and carry out functions under the ISDEAA or limitations imposed by the ISDEAA on a Tribal government's ability to assume responsibility for an inherently federal function as that term is used under the Act.

d. *Foreign indirect hire employees working with U.S. Forces*. During the disposition of comments, a question was raised regarding the applicability of this guidance to foreign indirect hire employees, as that term is defined in Defense Department (DoD) guidance.

Response: DoD guidance defines indirect hire employees as "local national personnel assigned by the host government to work with U.S. Forces." This guidance goes on to state that such personnel are not employees of the United States and cannot perform inherently governmental functions." See DOD Financial Management Regulation, Volume 5, Chapter 33, ¶ 330204 (August 2010). Nothing in this policy letter is intended to modify the Department's guidance. Thus, restrictions on the use of contractors to perform inherently governmental functions would also apply to foreign indirect hire employees working with U.S. Forces.

Daniel I. Gordon

Administrator

POLICY LETTER 11-01

TO THE HEADS OF CIVILIAN EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Performance of Inherently Governmental and Critical Functions

1. Purpose. This guidance establishes Executive Branch policy addressing the performance of inherently governmental functions and critical functions. The policy is intended to assist agency officers 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.

Nothing in this guidance is intended to discourage the appropriate use of contractors. Contractors can provide expertise, innovation, and cost-effective support to Federal agencies for a wide range of services. Reliance on contractors is not, by itself, a cause for concern, provided that the work that they perform is not work that should be reserved for Federal employees and that Federal officials are appropriately managing and overseeing contractor performance.

2. Authority. This policy letter is issued pursuant to section 6(a) of the Office of Federal Procurement Policy Act, 41 U.S.C. 405(a), the President's March 4, 2009, *Memorandum on Government Contracting,* and section 321 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Public Law 110-417.

3. Definitions.

"*Inherently governmental function,*" as defined in section 5 of the Federal Activities Inventory Reform Act, Public Law 105-270, means a function that is so intimately related to the public interest as to require performance by Federal Government employees.

(a) The term includes functions that require either the exercise of discretion in applying Federal Government authority or the making of value judgments in making decisions for the Federal Government, including judgments relating to monetary transactions and entitlements. An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as --

(1) to bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(2) to determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(3) to significantly affect the life, liberty, or property of private persons;

(4) to commission, appoint, direct, or control officers or employees of the United States; or

(5) to exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of appropriations and other Federal funds.

(b) The term does not normally include –

(1) gathering information for or providing advice, opinions, recommendations, or ideas to Federal Government officials; or

(2) any function that is primarily ministerial and internal in nature (such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services).

"*Critical function*" means a function that is necessary to the agency being able to effectively perform and maintain control of its mission and operations. Typically, critical functions are recurring and long-term in duration.

4. Policy. It is the policy of the Executive Branch to ensure that government action is taken as a result of informed, independent judgments made by government officials. Adherence to this policy will ensure that the act of governance is performed, and decisions of significant public interest are made, by officials who are ultimately

accountable to the President and bound by laws controlling the conduct and performance of Federal employees that are intended to protect or benefit the public and ensure the proper use of funds appropriated by Congress. To implement this policy, agencies must reserve certain work for performance by Federal employees and take special care to retain sufficient management oversight over how contractors are used to support government operations and ensure that Federal employees have the technical skills and expertise needed to maintain control of the agency mission and operations.

(a) Performance of work by Federal employees. To ensure that work that should be performed by Federal employees is properly reserved for government performance, agencies shall:

(1) ensure that contractors do not perform inherently governmental functions (see section 5-1);

(2) give special consideration to Federal employee performance of functions closely associated with inherently governmental functions and, when such work is performed by contractors, provide greater attention and an enhanced degree of management oversight of the contractors' activities to ensure that contractors' duties do not expand to include performance of inherently governmental functions (see sections 5-1(a) and 5-2(a) and Appendices B and C); and

(3) ensure that Federal employees perform and/or manage critical functions to the extent necessary for the agency to operate effectively and maintain control of its mission and operations (see sections 5-1(b) and 5-2b).

(b) Management and oversight of Federal contractors. When work need not be reserved for Federal performance and contractor performance is appropriate, agencies shall take steps to employ and train an adequate number of government personnel to administer contracts and protect the public interest through the active and informed management and oversight of contractor performance, especially where contracts have been awarded for the performance of critical functions, functions closely associated with the performance of inherently governmental functions, or where, due to the nature of the contract services provided, there is a potential for confusion as to whether work is being performed by government employees or contractors. Contract management should be appropriate to the nature of the contract, ensure that government officials are performing oversight at all times, and make clear to other government organizations or to the public when citizens are receiving service from contractors.

(c) Strategic human capital planning.

(1) As part of strategic human capital planning, agencies shall –

(i) dedicate a sufficient amount of work to performance by Federal employees in order to build competencies (both knowledge and skills), provide for continuity of operations, and retain institutional knowledge of operations;

(ii) ensure that sufficient personnel with appropriate training, experience, and expertise are available, and will remain available for the duration of the contract, to manage and oversee every contractor's performance and evaluate

and approve or disapprove the contractor's work products and services, recruiting and retaining the necessary Federal talent where it is lacking; and

(iii) consider the impact of decisions to establish a specified level of government employee authorizations (or military end strength) or available funding on the ability to use Federal employees to perform work that should be reserved for performance by such employees and take appropriate action if there is a shortfall.

(2) Agencies' annual Human Capital Plan for Acquisition shall identify specific strategies and goals for addressing both the size and capability of the acquisition workforce, including program managers and contracting officer's representatives. The number of personnel required to administer a particular contract is a management decision to be made after analysis of a number of factors. These include, among others:

(i) scope of the activity in question;

(ii) technical complexity of the project or its components;

(iii) technical capability, numbers, and workload of Federal management officials;

(iv) inspection techniques available;

(v) proven adequacy and reliability of contractor project management;

(vi) sophistication and track record of contract administration organizations within the agency;

(vii) importance and criticality of the function; and

(viii) the level of risk associated with performance of the function and its performance by a contractor.

5. Implementation guidelines and responsibilities. Agencies shall use the guidelines below to determine: (1) whether their requirements involve the performance of inherently governmental functions, functions closely associated with inherently governmental functions, or critical functions; and (2) the type and level of management attention necessary to ensure that functions that should be reserved for Federal performance are not materially limited by or effectively transferred to contractors and that functions that are suitable for contractor performance are properly managed. Determining the type and level of management required typically requires agencies to consider the totality of circumstances surrounding how, where, and when work is to be performed. Special exceptions to these guidelines may exist, such as for statutorily authorized personal services contracting.

5-1. Guidelines for identifying inherently governmental functions and critical functions. Agencies must ensure that inherently governmental functions are reserved exclusively for performance by Federal employees. Agencies must further ensure that a sufficient number of Federal employees are dedicated to the performance and/or management of critical functions so that Federal employees can provide for the accomplishment of, and maintain control over, their mission and operations. Proper identification of inherently governmental and critical functions is the first step for meeting these requirements.

(a) Determining whether a function is inherently governmental. Every Federal Government organization performs some work that is so intimately related to the public interest as to require performance by Federal Government employees. Agencies should review the definition of inherently governmental functions in section 3, any other statutory provisions that identify a function as inherently governmental, and the illustrative list of inherently governmental functions in Appendix A. In no case should any function described in the definition, identified in statute as inherently governmental, or appearing on the list be considered for contract performance. If a function is not listed in Appendix A or identified in a statutory provision as inherently governmental, agencies should determine whether the function otherwise falls within the definition in section 3 by evaluating, on a case-by-case basis, the nature of the work and the level of discretion associated with performance of the work using the tests below.

(1) *Tests for identifying inherently governmental functions*. A function meeting either of the following tests should be considered inherently governmental.

(i) *The nature of the function*. Functions which involve the exercise of sovereign powers of the United States are governmental by their very nature. Examples of functions that, by their nature, are inherently governmental are officially representing the United States in an inter-governmental forum or body, arresting a person, and sentencing a person convicted of a crime to prison. A function may be classified as inherently governmental based strictly on its uniquely governmental nature and without regard to the type or level of discretion associated with the function.

(ii) *The exercise of discretion*.

(A) A function requiring the exercise of discretion shall be deemed inherently governmental if the exercise of that discretion commits the government to a course of action where two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders, and other guidance that:

(I) identify specified ranges of acceptable decisions or conduct concerning the overall policy or direction of the action; and

(II) subject the discretionary decisions or conduct to meaningful oversight and, whenever necessary, final approval by agency officials.

(B) A function may be appropriately performed by a contractor consistent with the restrictions in this section – including those involving the exercise of discretion that has the potential for influencing the authority, accountability, and responsibilities of government officials – where the contractor does not have the authority to decide on the overall course of action, but is tasked to develop options or implement a course of action, and the agency official has the ability to override the contractor's action. The fact that decisions are made, and discretion exercised, by a contractor in performing its duties under the contract is not, by itself, determinative of whether the contractor is performing an inherently governmental function. For instance, contractors routinely, and properly, exercise discretion in performing functions for the Federal Government when, providing advice, opinions, or recommended actions, emphasizing certain conclusions, and, unless specified in the contract, deciding what techniques and procedures to employ, whether and whom to consult, what research alternatives to explore given the scope of the contract, or how frequently to test.

(C) 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. For example, providing security in a volatile, high-risk environment may be inherently governmental if the responsible Federal official cannot anticipate the circumstances and challenges that may arise, and cannot specify the range of acceptable conduct (as required by paragraph 5-1(a)(1)(ii)). 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.

(2) *Functions closely associated with inherently governmental functions*. As agencies identify inherently governmental functions, they should bear in mind that certain services and actions that generally are not considered to be inherently governmental functions may approach being in that category because of the nature of the function and the risk that performance may impinge on Federal officials' performance of an inherently governmental function. See Appendix B for list of examples. Although closely associated functions are not reserved exclusively for performance by Federal employees, section 736 of Division D of the Omnibus Appropriations Act, 2009, Public Law 111-8, requires civilian agencies subject to the FAIR Act to give special consideration to using Federal employees to perform these functions. Similarly, the Department of Defense is required to ensure special consideration is given to Federal employee performance consistent with the requirements of 10 U.S.C. 2463. The Department is further required, to the maximum extent practicable, to minimize reliance on contractors performing functions closely associated with inherently governmental functions consistent with 10 U.S.C. 2330a. Civilian agencies shall refer to OMB Memorandum M-09-26, *Managing the Multi-Sector Workforce* (July 29, 2009), Attachment 3 for criteria addressing the in-sourcing of work under Public Law 111-8. The OMB Memorandum is available at

http://www.whitehouse.gov/sites/default/files/omb/assets/memoranda_fy2009/m-09-26.pdf.

(b) Determining whether a function is critical. Determining the criticality of a function requires the exercise of informed judgment by agency officials. The criticality of the function depends on the mission and operations, which will differ between agencies and within agencies over time. In making that determination, the officials shall consider the importance that a function holds for the agency and its mission and operations. The more important the function, the more important that the agency have internal capability to maintain control of its mission and operations. Examples of critical functions might include: analyzing areas of tax law that impose significant compliance burdens on taxpayers for the Internal Revenue Service's Office of the Taxpayer Advocate and performing mediation services for the Federal Mediation and Conciliation Service. Where a critical function is not inherently governmental, the agency may appropriately consider filling positions dedicated to the function with both Federal employees and contractors. However, to meet its fiduciary responsibility to the taxpayers, the agency must have sufficient internal capability to control its mission and operations and must ensure it is cost effective to contract for the services.

(1) Sufficient internal capability --

(i) generally requires that an agency have an adequate number of positions filled by Federal employees with appropriate training, experience, and expertise to understand the agency's requirements, formulate alternatives, take other appropriate actions to properly manage and be accountable for the work product, and continue critical operations with in-house resources, another contractor, or a combination of the two, in the event of contractor default; and

(ii) further requires that an agency have the ability and internal expertise to oversee and manage any contractors used to support the Federal workforce.

(2) Determinations concerning what constitutes sufficient internal capability must be made on a case-by-case basis taking into account, among other things the:

(i) agency's mission;

(ii) complexity of the function and the need for specialized skill;

(iii) current strength of the agency's in-house expertise;

(iv) current size and capability of the agency's acquisition workforce; and

(v) effect of contractor default on mission performance.

(c) Handling of work performed by Federally Funded Research and Development Centers (FFRDCs) and University Affiliated Research Centers (UARCs). In some circumstances, work that is closely associated with the performance of inherently governmental functions, or work that is critical to maintaining control of an agency's mission and operations, may be performed by FFRDCs or UARCs (with appropriate oversight by Federal officials and pursuant to properly executed contracts). These contractors provide essential engineering, research, development, and analysis capabilities to support agencies in the performance of their responsibilities and mission. FFRDCs and UARCs and their employees are not allowed to perform inherently governmental functions. Agencies shall also refer to the requirements in FAR Part 37 regarding requirements pertaining to the conduct of FFRDCs.

5-2. Management responsibilities in connection with the planning and awarding of contracts.

(a) Pre-award. As part of acquisition planning, agencies shall confirm that the services to be procured do not include work that must be reserved for performance by Federal employees and that the agency will be able to manage the contractor consistent with its responsibility to perform all inherently governmental functions and maintain control of its mission and operations. For the procurement of services above the simplified acquisition threshold, the contract file shall include documentation of this confirmation from the agency head or designated requirements official to the contracting officer. The contract file should include analysis that establishes, at a minimum, that:

(1) the function to be contracted does not appear on the list of inherently governmental functions in Appendix A and does not otherwise qualify as an inherently governmental function, taking into consideration, as necessary, the tests in subsection 5-1(a);

(2) a statute, such as an annual appropriations act, does not identify the function as inherently governmental or otherwise require it to be performed by Federal employees;

(3) the proposed role for the contractor is not so extensive that the ability of senior agency management to develop and consider options or take an alternative course of action is or would be preempted or inappropriately restricted;

(4) if the function is closely associated with an inherently governmental one –

(i) special consideration has been given to using Federal employees to perform the function in accordance with applicable law and implementing guidance;

(ii) the agency has sufficient capacity and capability to give special management attention to contractor performance, limit or guide the contractor's exercise of discretion, ensure reasonable identification of contractors and contractor work

products, avoid or mitigate conflicts of interest, and preclude unauthorized personal services;

(iii) the agency will comply with the checklist of responsibilities in Appendix C; and

(5) if the function is a critical function, the agency has sufficient internal capability to control its mission and operations as provided at subsection 5-1(b).

(b) Post-award. Agencies should review, on an ongoing basis, the functions being performed by their contractors, paying particular attention to the way in which contractors are performing, and agency personnel are managing, contracts involving functions that are closely associated with inherently governmental functions (see subsection 5-1(a) and Appendix B) and contracts involving critical functions (see subsection 5-1(b)). These reviews should be conducted in connection with the development and analysis of inventories of service contracts. Through the use of an inventory, an agency manager can gain insight into where, and the extent to which, contractors are being used to perform activities by analyzing how contracted resources are distributed by function and location across the agency and within its components. Civilian agencies should refer to section 743 of Division C of the Consolidated Appropriations Act, 2010 (Public Law 111-117) and OFPP Memorandum to Chief Acquisition Officers and Senior Procurement Executives,

Service Contract Inventories, November 5, 2010. Department of Defense services and agencies should refer to section 2330a of Title 10 of the United States Code.

(1) Contractor performance of inherently governmental functions. If a determination is made that a contractor is performing work that is inherently governmental (or involves unauthorized personal services), but the contract, properly defined, does not entail performance of inherently governmental functions or unauthorized personal services, the agency shall take prompt corrective actions. In some cases, government control over, and performance of, inherently governmental responsibilities can be reestablished by strengthening contract oversight using government employees with appropriate subject matter expertise and following the protocols identified in FAR 37.114 (see also Appendix C). However, agencies must ensure that increasing the level of government oversight and control does not result in unauthorized personal services as provided by FAR 37.104 If government control of inherently governmental functions cannot be reestablished, agencies will need to in-source work on an accelerated basis through the timely development and execution of a hiring plan timed, if possible, to permit the non-exercise of an option or the termination of that portion of the contract being used to fulfill inherently governmental responsibilities.

(2) Overreliance on contractors to perform critical functions. While contractor performance of critical functions is common, if the agency determines that internal control of its mission and operations is at risk due to overreliance on

contractors to perform critical functions, requiring activities should work with their human capital office to develop and execute a hiring and/or development plan. Requiring activities should also work with the acquisition office to address the handling of ongoing contracts and the budget and finance offices to secure the necessary funding to support the needed in-house capacity. Agencies should also consider application of the responsibilities outlined in Appendix C, as appropriate.

If an agency has sufficient internal capability to control its mission and operations, the extent to which additional work is performed by Federal employees should be based on cost considerations. Supporting cost analysis should address the full costs of government and private sector performance and provide like comparisons of costs that are of a sufficient magnitude to influence the final decision on the most cost effective source of support for the organization.

(c) Analyzing functions. A function often includes multiple activities, or tasks, some of which may be inherently governmental, some of which may be closely associated with inherently governmental work, and some may be neither. By evaluating work at the activity level, an agency may be able to more easily differentiate tasks within a function that may be performed only by Federal employees from those tasks that can be performed by either Federal employees or contractors without blurring the line between the role of Federal employees and contractors.

5-3. Management responsibilities in connection with small business contracting.

(a) Lower prioritization for review. When prioritizing what outsourced work should be reviewed for potential insourcing, agencies generally should place a lower priority on reviewing work performed by small businesses when the work is not inherently governmental and where continued contractor performance does not put the agency at risk of losing control of its mission or operations, especially if the agency has not recently met, or currently is having difficulty meeting, its small business goals, including any of its socioeconomic goals. The agency should involve its small business advocate if considering the insourcing of work currently being performed by small businesses.

(b) Considerations when contracted work is identified for insourcing. If part of a contracted function to be insourced is currently being performed by both small and large businesses, the "rule of two" should be applied in deciding between small and large businesses that will perform the contracted work that remains in the private sector. The "rule of two" set out in FAR subpart 19.5 requires that acquisitions be reserved for award to small businesses, or certain subsets of small businesses, if there are two or more responsible small businesses capable of performing the work at fair market prices. The agency should involve its small business representative in the same manner as it would in working with the acquisition and program office in evaluating opportunities for small businesses for new work. In addition, if contracted work not currently being performed by small businesses is reduced as part of an

insourcing, the agency should carefully consider during recompetition whether it can be totally or partially set-aside for small businesses.

5-4. Additional agency management responsibilities.

(a) Duty of Federal employees. Every Federal manager and their employees have an obligation to help avoid performance by contractors of responsibilities that should be reserved for Federal employees. Although contractors provide important support to the agency, they may not be motivated solely by the public interest, and may be beyond the reach of management controls applicable to Federal employees. As part of this obligation, Federal managers and employees who rely on contractors or their work product must take appropriate steps, in accordance with agency procedures, to ensure that any final agency action complies with the laws and policies of the United States and reflects the independent conclusions of agency officials and not those of contractors. These steps shall include increased attention and examination where contractor work product involves advice, opinions, recommendations, reports, analyses, and similar deliverables that are to be considered in the course of a Federal employee's official duties and may have the potential to influence the authority, accountability, and responsibilities of the employee.

(b) Development of agency procedures. Agencies shall develop and maintain internal procedures to address the requirements of this guidance. Those procedures shall be reviewed by agency management no less than every two years.

(c) Training. Agencies shall take appropriate steps to help their employees understand and meet their responsibilities under this guidance. Steps should include training, no less than every two years, to improve employee awareness of their responsibilities.

(d) Review of internal management controls. Agencies should periodically evaluate the effectiveness of their internal management controls for reserving work for Federal employees and identify any material weaknesses in accordance with OMB Circular A-123, *Management's Responsibility for Internal Control*, and OFPP's *Guidelines for Assessing the Acquisition Function*, available at http://www.whitehouse.gov/omb/circulars_a123/.

(e) Designation of responsible management official(s). Each Federal agency with 100 or more full-time employees in the prior fiscal year shall identify one or more senior officials to be accountable for the development and implementation of agency policies, procedures, and training to ensure the appropriate reservation of work for Federal employees in accordance with this guidance. Each such agency shall submit the names and titles of the designated officials, along with contact information, by June 30 annually to OMB on the following MAX website: https://max.omb.gov/community/x/VwkQIg.

6. Judicial review. This policy letter is not intended to provide a constitutional or statutory interpretation of any kind and it is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person. It is intended only to provide policy guidance to agencies in the exercise of their discretion concerning Federal

contracting. Thus, this policy letter is not intended, and should not be construed, to create any substantive or procedural basis on which to challenge any agency action or inaction on the ground that such action or inaction was not in accordance with this policy letter.

7. **Effective date.** This policy letter is effective October 12, 2011.

Daniel I. Gordon

Administrator

Appendix A. Examples of inherently governmental functions

The following is an illustrative list of functions considered to be inherently governmental. This list should be reviewed in conjunction with the list of functions closely associated with inherently governmental functions found in Appendix B to better understand the differences between the actions identified on each list.

Note: For most functions, the list also identifies activities performed in connection with the stated function. In many cases, a function will include multiple activities, some of which may not be inherently governmental.

1. The direct conduct of criminal investigation.

2. The control of prosecutions and performance of adjudicatory functions (other than those relating to arbitration or other methods of alternative dispute resolution).

3. The command of military forces, especially the leadership of military personnel who are performing a combat, combat support or combat service support role.

4. Combat.

5. Security provided under any of the circumstances set out below. This provision should not be interpreted to preclude contractors taking action in self-defense or defense of others against the imminent threat of death or serious injury.

   (a) Security operations performed in direct support of combat as part of a larger integrated armed force.

   (b) Security operations performed in environments where, in the judgment of the responsible Federal official, there is significant potential for the security operations to evolve into combat. Where the U.S. military is present, the judgment of the military commander should be sought regarding the potential for the operations to evolve into combat.

   (c) Security that entails augmenting or reinforcing others (whether private security contractors, civilians, or military units) that have become engaged in combat.

6. The conduct of foreign relations and the determination of foreign policy.

7. The determination of agency policy, such as determining the content and application of regulations.

8. The determination of budget policy, guidance, and strategy.

9. The determination of Federal program priorities or budget requests.

10. The selection or non-selection of individuals for Federal Government employment, including the interviewing of individuals for employment.

11. The direction and control of Federal employees.

12. The direction and control of intelligence and counter-intelligence operations.

13. The approval of position descriptions and performance standards for Federal employees.

14. The determination of what government property is to be disposed of and on what terms (although an agency may give contractors authority to dispose of property at prices with specified ranges and subject to other reasonable conditions deemed appropriate by the agency).

15. In Federal procurement activities with respect to prime contracts:

(a) determining what supplies or services are to be acquired by the government (although an agency may give contractors authority to acquire supplies at prices within specified ranges and subject to other reasonable conditions deemed appropriate by the agency);

(b) participating as a voting member on any source selection boards;

(c) approving of any contractual documents, including documents defining requirements, incentive plans, and evaluation criteria;

(d) determining that prices are fair and reasonable;

(e) awarding contracts;

(f) administering contracts (including ordering changes in contract performance or contract quantities, making final determinations about a contractor's performance, including approving award fee determinations or past performance evaluations and taking action based on those evaluations, and accepting or rejecting contractor products or services);

(g) terminating contracts;

(h) determining whether contract costs are reasonable, allocable, and allowable; and

(i) participating as a voting member on performance evaluation boards.

16. The selection of grant and cooperative agreement recipients including: (a) approval of agreement activities, (b) negotiating the scope of work to be conducted under grants

/cooperative agreements, (c) approval of modifications to grant/cooperative agreement budgets and activities, and (d) performance monitoring.

17. The approval of agency responses to Freedom of Information Act requests (other than routine responses that, because of statute, regulation, or agency policy, do not require the exercise of judgment in determining whether documents are to be released or withheld), and the approval of agency responses to the administrative appeals of denials of Freedom of Information Act requests.

18. The conduct of administrative hearings to determine the eligibility of any person for a security clearance, or involving actions that affect matters of personal reputation or eligibility to participate in government programs.

19. The approval of Federal licensing actions and inspections.

20. The collection, control, and disbursement of fees, royalties, duties, fines, taxes and other public funds, unless authorized by statute, such as title 31 U.S.C. 952 (relating to private collection contractors) and title 31 U.S.C. 3718 (relating to private attorney collection services), but not including:

    (a) collection of fees, fines, penalties, costs or other charges from visitors to or patrons of mess halls, post or base exchange concessions, national parks, and similar entities or activities, or from other persons, where the amount to be

collected is predetermined or can be readily calculated and the funds collected can be readily controlled using standard cash management techniques, and

(b) routine voucher and invoice examination.

21. The control of the Treasury accounts.

22. The administration of public trusts.

23. The drafting of official agency proposals for legislation, Congressional testimony, responses to Congressional correspondence, or responses to audit reports from an inspector general, the Government Accountability Office, or other Federal audit entity.

24. Representation of the government before administrative and judicial tribunals, unless a statute expressly authorizes the use of attorneys whose services are procured through contract.

Appendix B. Examples of functions closely associated with the performance of inherently governmental functions

The following is an illustrative list of functions that are generally not considered to be inherently governmental but are closely associated with the performance of inherently governmental functions. This list should be reviewed in conjunction with the list of inherently governmental functions in Appendix A to better understand the differences between the actions identified on each list.

Note: For most functions, the list also identifies activities performed in connection with the stated function. In many cases, a function will include multiple activities, some of which may not be closely associated with performance of inherently governmental functions.

1. Services in support of inherently governmental functions, including, but not limited to the following:

   (a) performing budget preparation activities, such as workload modeling, fact finding, efficiency studies, and should-cost analyses.

   (b) undertaking activities to support agency planning and reorganization.

(c) providing support for developing policies, including drafting documents, and conducting analyses, feasibility studies, and strategy options.

(d) providing services to support the development of regulations and legislative proposals pursuant to specific policy direction.

(e) supporting acquisition, including in the areas of:

i) acquisition planning, such as by –

I) conducting market research,

II) developing inputs for government cost estimates, and

III) drafting statements of work and other pre-award documents;

ii) source selection, such as by –

I) preparing a technical evaluation and associated documentation;

II) participating as a technical advisor to a source selection board or as a nonvoting member of a source selection evaluation board; and

III) drafting the price negotiations memorandum; and

iii) contract management, such as by –

I) assisting in the evaluation of a contractor's performance (e.g., by collecting information performing an analysis, or making a recommendation for a proposed performance rating), and

II) providing support for assessing contract claims and preparing termination settlement documents.

(f) Preparation of responses to Freedom of Information Act requests.

2. Work in a situation that permits or might permit access to confidential business information or other sensitive information (other than situations covered by the National Industrial Security Program described in FAR 4.402(b)).

3. Dissemination of information regarding agency policies or regulations, such as conducting community relations campaigns, or conducting agency training courses.

4. Participation in a situation where it might be assumed that participants are agency employees or representatives, such as attending conferences on behalf of an agency.

5. Service as arbitrators or provision of alternative dispute resolution (ADR) services.

6. Construction of buildings or structures intended to be secure from electronic eavesdropping or other penetration by foreign governments.

7. Provision of inspection services.

8. Provision of legal advice and interpretations of regulations and statutes to government officials.

9. Provision of non-law-enforcement security activities that do not directly involve criminal investigations, such as prisoner detention or transport and non-military national security details.

Appendix C. Responsibilities checklist for functions closely associated with inherently governmental functions

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 (see subsection 5-2(b)(2) for guidance on steps to take where a determination is made that the contract is being used to fulfill responsibilities that are inherently governmental);

(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;

(4) ensure that a reasonable identification of contractors and contractor work products is made whenever there is a risk that Congress, the public, or other persons outside of the government might confuse contractor personnel or work products with government officials or work products, respectively; and

(5) take appropriate steps to avoid or mitigate conflicts of interest, such as by conducting pre-award conflict of interest reviews, to ensure contract performance is in accordance with objective standards and contract specifications, and developing a conflict of interest mitigation plan, if needed, that identifies the conflict and specific actions that will be taken to lessen the potential for conflict of interest or reduce the risk involved with a potential conflict of interest.

[FR Doc. 2011-23165 Filed 09/09/2011 at 8:45 am; Publication Date: 09/12/2011]

FW: cskt response letter

1 message

Jeff King <jeff_king@fws.gov> Tue, Jul 15, 2014 at 8:48 AM
To: Laura King <Laura_King@fws.gov>

Thanks,

jk

Jeff King, Project Leader

National Bison Range Complex

58355 Bison Range Road

Moiese, Montana 59824

(406) 644-2211 ext. 204

From: Paul Steblein <Paul_Steblein@fws.gov>
Sent: Wednesday, August 10, 2011 1:45 PM
To: Jeff_King@fws.gov; Rick_Coleman@fws.gov
Subject: Fw: cskt response letter

Don't know if you got the cc:, but here is the response letter. Discussing with Dean today.

Paul Steblein

Critical Issues & Policy

USFWS - National Wildlife Refuge System

4401 N. Fairfax Drive, Room 653B

Arlington, VA 22203

P: 703-358-2678

C: 571-232-6043

F: 703-358-1929

E: Paul_Steblein@fws.gov

www.fws.gov/refuges/

---------- Forwarded by Paul Steblein/NWRS/R9/FWS/DOI on 08/10/2011 03:43 PM -----

Paul Steblein/NWRS/R9/FWS/DOI08/10/2011 03:41 PM

To Dean Rundle/R6/FWS/DOI

cc

Subject cskt response letter

Paul Steblein

Critical Issues & Policy

USFWS - National Wildlife Refuge System

4401 N. Fairfax Drive, Room 653B

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www.fws.gov/refuges/

048405 SIGNED[1].pdf
283K

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

From:	"Brian Upton" <brianu@cskt.org>
To:	Dean_Rundle@fws.gov; jamess@cskt.org; tomm@cskt.org; richj@cskt.org; jksteele@cskt.org
Cc:	Jeff_King@fws.gov; Sharon.Brenna@exchange.sol.doi.gov
Subject:	RE: Draft AFA
Date:	Thursday, August 18, 2011 3:18:27 PM

Dean,

Hope you enjoyed your vacation. We received your email and revised draft AFA on Monday and are in the process of going over your proposed changes. We're hoping to get Council direction next week so we can get back with you on setting up next steps. Unfortunately, short of your using track-changing format, I do not have the ability to compare your changes in the document to prior drafts so we should probably talk on Monday to make sure we didn't miss any of your proposed revisions. The last revised draft AFA I have is dated June 8, 2011 so I'd propose that, once we agree on changes, we add the revisions to that document.

BU

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Friday, August 12, 2011 7:19 PM
To: brianu@cskt.org; jamess@cskt.org; tomm@cskt.org; richj@cskt.org
Cc: Jeff_King@fws.gov; Sharon.Brenna@exchange.sol.doi.gov
Subject: Draft AFA

Brian/Councilman Steele: As I promised Brian last week, I've worked a lot on the AFA this past week, starting with the "track/change" doc. of May 26, 2011, that reflected the changes the Brian, Jeff, and Tom McDonald had worked on.

I must apologize to you for my lack of skill using microsoft word. As I worked on it, it became quite a mess with some portions using the track/change function, and somehow I turned that off, and used "blue-line/strikeout". Also, I have an older version of word, and even Jeff and I had a lot of issues working edits back and forth between us. It became quite a mess.

Attached is a draft that is pretty much straight proposed text. It does not contain tracked changes/deletions/strikeouts/insertions, etc. I also realize the paragraph numbers/letters/indentations are a mess, and I don't know how to make the "yellow high-lighted" stuff "go away". I suspect that Brian has a program that will automatically compare this with his last version of May 26. It is possible that I deleted some things unintentionally, but I've read through it several times and I believe it accurately reflects the Service's current position and interests.

When we left the last negotiating session, the two outstanding issues I felt were significant were the issues of indirect costs and IPAs.

On the Indirect (contract support) costs, the Service really needs to keep this agreement as cost-neutral as possible. We also acknowledge that there are

unavoidable costs to CSKT associated with employing staff to conduct work at NBRC and the regulations concerning contract support costs. We propose the following for the new AFA, for your consideration:

The Service will pay a flat rate of $5,000.00 per year for each permanent staff position on the Org. Chart that is encumbered by a CSKT employee. If the AFA were implemented today, based on the org. chart we've been negotiating from I believe there are 3 PFT 1.0 FTE positions, and two career seasonal positions, one at 0.8 FTE and one at 0.5 FTE. Under this scenario if this AFA was implemented now, we would pay for 4.3 FTE at $5K per = $21,500.00. Payments would increase as Service employee positions are vacated and assumed by CSKT at the rate of $5,000/FTE, and would have a hard cap of a maximum of $40,000.00 during the life of this AFA.

We would propose to provide funds to CSKT for the work of non-NBR staff of the CSKT Division of FWCR, in direct support of NBRC (e.g. Tom and his staff) as "Program Funds", not part of indirect cost. Our proposal for that amount, is $10,000.00 per year.

Regarding the IPAs, we want to make that as straight-forward and simple as possible. We propose deleting most of the prior AFA language specifically regarding IPA conduct and performance and replace that with simpler language (see draft Section 13.G) that applies equally to all employees of both parties at NBRC. This puts us on equal footing regarding concerns of either party that an employee of the other party is affecting our ability to perform. The draft also calls for each Party to allow the other to participate in staffing decisions - as allowed by the personnel regs/policies of the employing party, and similarly treats access to employee personnel records. If asked, we will give you whatever our HR department and SOL say we can provide, and you would reciprocate, based on what is allowed under CSKT rules/regulations. Again that puts us on equal footing.

I added a separate section to cover Fire Management, so that adds one section (9), and following sections all "go up" one digit.

Rick Coleman suggested that we include a section early in the document that more specifically calls out the "Benefits" of the AFA for each party. IPA guidelines also call for that statement. We propose to rename Section 2 from "Purpose" to "Purpose and Benefits". I've drafted a statement of benefits for the Service and ask you to consider drafting that same for CSKT.

I have misplaced my copy of Tom McDonald's business card, and apologize if I've referred to an incorrect title for Tom. I'm not sure if he is the "Director" or the "Manager" of his Division. We'll correct that but I apologize for not knowing it.

I will be on leave/vacatoin next week, returning to work afternoon of August 22. I suggest we schedule a conf. call, either afternoon of 8/23, 8/24, 8/25 to discuss next steps in negotiation.

Your consideration of this proposed language is much appreciated.

Dean

From:	Dean Rundle <Dean_Rundle@fws.gov>
To:	brianu@cskt.org; tomm@cskt.org
Cc:	Jeff_King@fws.gov
Subject:	Follow ups from this morning"s AFA call
Date:	Wednesday, June 08, 2011 3:40:55 PM

Brian/Tom: I was able to make a little progress on some of the action items from this morning's call:

1. In terms of CSKT involvement in selection of a new lead biologist - CSKT representatives can (please) assist with recruiting and referring qualified applicants to the vacancy announcement. When a certificate of eligibles is provided to Jeff, CSKT can fully participate in the interview process - whether in-person, or on the phone, and can actively ask questions of the applicants and make a recommendation of who to select to Jeff, as selecting official, If you participate in one interview, you will have to participate in all interviews, asking the same questions of each applicant.

2. Regarding indirect costs, ABA (Asst. Regional Director - Budget and Administration) provided the following:

Hi Bud,

Per your request:

Below is the breakout for 1662 funding. Estimate of 1104.52 FTE's.

If you need anything else, please let me know.

Thanks!

The per FTE costs for us to provide ABA functions are $4,220 per employee. The support functions provided include: Human Resoures/Personnel; EEO/Diversity/Civil Rights; Regional Safety Office; Water Resources; Regional Engineer; Budget and Finance; Contracting; General Services (fleet/qtrs management/mail services, etc). We pay additional funds to Water Resources and Engineering on a project by project basis.

The chart above shows subactivity 1662 funding to Region 6. Some of that goes to the Regional Director's Office and some to External Affairs. The remainder goes to ABA. That $4.2M is ABA base funding and is not sufficient to provide all the services that the programs (including refuges) receives. Hence ABA then assesses the programs an additional $466K, on a per FTE basis.

We would propose to pay indirect costs to CSKT equivalent to the amount of money that we would provide if positions on the org. chart were filled with all FWS employees - so we would propose to pay you $4,220 per CSKT employee filling an org chart position. We would not pay that for IPAs, since they are still federal employees and we already have that $4220 assessed for them by our ABA. This proposal would not be cost neutral to us, because the bulk of the ABA funding is base, and in the case of indirect costs, that mone would come from the Regional Refuge budget, but we feel is a reasonable amount of money to off-set the expenses that CSKT Administrative support (outside of Tom's shop) provides for

employees that you employ as a result of the AFA.

We are willing and able to adjust this amount annually and would propose that Indirect Costs be paid to CSKT each year of an AFA based on the most recent per Employee costs figures available from Region 6.

Dean

From: Jeff King
To: Steblein, Paul
Subject: Fw: IDC
Date: Thursday, September 08, 2011 8:24:37 AM
Attachments: IDC - statute and regulations.pdf

Paul. I'll follow this with a call. Talk soon.
Jk
Sent from Jeff's BlackBerry

From: "Brian Upton" [brianu@cskt.org]
Sent: 09/07/2011 06:25 PM CST
To: Dean Rundle; Jeff King
Cc: "'Rich Janssen'" <richj@cskt.org>; <tomm@cskt.org>
Subject: IDC

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

FISCAL YEARS 2013–2016 ANNUAL 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
February 14, 2012 draft

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services, functions, and

activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

> "In administering the System, the Secretary shall:
>
> ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

> "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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

   a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and
   b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
   c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
   d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;
   e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
   f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;

2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT Fish, Wildlife, Recreation & Conservation Division Manager; Service Deputy Refuge Manager; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted by the CSKT.

B. *Refuge Manager* The Refuge Manager will retain final responsibility and authority for directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

   i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA;
   ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and
   iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
   c. Deputy Refuge Manager; and
   d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager can invoke the dispute resolution process in Section 19.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. *Work Plan (Plan).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.

1. Work Plan Preparation. The Parties will jointly develop the Work Plan .

a. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

a. The Service will recommend fuels projects and plan for them 2-5 years out.
b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
c. Planning to include writing of burn plans will be done by the CSKT.
d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
f. Smoke management requirements will be the responsibility of the CSKT.
g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. Wildfire Suppression & Initial Attack

a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land, This does not preclude Incident Qualification Certication System (IQCS)-

qualified Service firefighters from conducting initial attack activities on Service lands.
b. The CSKT will open a Firecode for all IA fires.
c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.
d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.
e. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
f. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).
c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.
d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.
e. The six man fire cache at the NBRC will be maintained by the Service.
f. The fire engine at the NBRC will be maintained by the Service.
g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act , 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer.* Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request,

and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within 180 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As au-

thorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns.*

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation*. In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency.* If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager within one week from the date of oral notice.

ii. *Notice of Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees.*

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire and Visitor Service Programs, as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of

signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

   a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA),* 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

   b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

   c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

   d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.

4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

5. *Assignment to the CSKT under an IPA Agreement*.

   a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

   b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct.*

i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;

bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or

dd. Any other cause as agreed to by FWS.

iii. Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. CSKT may invoke the dispute resolution process (see Sec. 19.A. of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

v. CSKT may terminate an IPA agreement without cause at any time and for any reason. However, in the event CSKT terminates an IPA agreement without cause, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

d. *Holidays.* On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election.* At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

I. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.
    d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by

liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. .Final disposition may include: no action – return to duty; counseling; training; or termination.

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A below, for FY 20__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and

CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. Funding for 0.25 of a GS-7 Technician position will be transferred to CSKT for implementation of the Fire Program responsibilities outlined in Section 8, above.

5. Generally, Attachment B specifies the following types of consideration:

   a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

   b. *Appropriated Funds*. Appropriated funds, as follows:

      i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife, Recreation & Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager, for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsection 14.B.1 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or

the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities.* The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property*. Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105,

Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim.*

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Section 17. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

    b. assist the Service in responding to the emergency; and

    c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Property*. On the effective date of the retrocession, CSKT will return all Federal Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing

the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

c. On the effective date of the reassumption, CSKT will return all Federal Property which is not needed by the CSKT to perform a retained Activity;

d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity

from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201 , with any signed successor AFA to be delivered to Congress prior to July 1, 201 . This schedule will allow such successor AFA to be effective on October 1, 201 , thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Property*. On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B(as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution.*

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish,Wildlife, Recreation & Conservation Division Manager may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Fish,Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Fish,Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act are also incorporated into this AFA, as authorized by 25 U.S.C. § 458cc(*l*):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting
12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations

13. 25 U.S.C. §§ 450*l*(b) and
450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous,

express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during FY 20__. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____	_____
Dan Ashe, Director, U.S. Fish & Wildlife Service	Date
_____	_____
_____, Assistant Secretary for Fish, Wildlife and Parks	Date
_____	_____
Mike Black, Director, Bureau of Indian Affairs	Date

FISCAL YEARS 20~~09~~13–20~~11~~16 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
February 14, 2012 draft

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Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance~~management~~ of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services,

Comment [1]: I can't tell from my notes if we had discussed this, or if this proposed revision was from my own earlier internal notes. In any case, I don't think it's controversial.

functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at ~~73~~ 76 F.R. ~~16054-55~~57068 (September 15~~March 26~~, 20~~08~~11).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

"In administering the System, the Secretary shall:

ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

"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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

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e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and

b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;

c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;

d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;

e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and

f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;

2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which ~~concerns additional activities administered by the Secretary~~authorizes tribal

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Comment [2]: I added this to Dean's proposed text, for FWS' consideration.

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Comment [3]: Sharon wanted to review this language once we inserted it here.

contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and~~and~~

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities ~~("Activities")~~ in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C~~B.2~~ below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

Comment [4]: This corrects a typographical error.

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under~~But for this AFA would continue to perform the Activity during the term of~~ this AFA.~~;~~ ~~and~~

~~C. Whose employment the Service would terminate in the absence of continued employment with the Service or the CSKT as provided in this AFA;~~

~~An Affected Federal Employee can also mean a Service employee who formerly worked at the NBRC and whom the Service reassigns to the NBRC under a mutual agreement~~

~~with CSKT to perform work for CSKT under this AFA. Such employee will have the same employment options available to any other Affected Federal Employee.~~

~~*Available Property* means any equipment, material, or supply the Service makes available for use by the CSKT in performing an Activity, including any horse owned by the United States.~~

~~*Annual Work Plan or AWP* means the jointly developed and mutually agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.~~

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

~~*DOI Senior Management Team* means the team currently consisting of the: Deputy Secretary; Associate Deputy Secretary; Assistant Secretary Fish, Wildlife and Parks; Assistant Secretary Indian Affairs; Director, U.S. Fish & Wildlife Service; Director, Bureau of Indian Affairs; and Associate Solicitor, General Law; or as otherwise constituted by the Department.~~

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

~~*NBRC Baseline Data* includes written or other tangible data documenting the existence and/or state of each natural resource of the NBRC (including bison and other wildlife) and each item of real and personal Federal property of the NBRC.~~

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT ~~Deputy~~ Fish, Wildlife, Recreation & Conservation Division Manager~~Refuge Manager~~; Service Deputy Refuge Manager; and the CSKT ~~Lea~~Wildlife Refuge Specialist~~d Biologist~~.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA ~~is~~consists of those parts of the NBRC~~, which~~ that lie~~s~~ entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Comment [5]: I reworded this part of Dean's proposed text; please review

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Section 6~~.~~. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist ~~position~~ position to oversee Activities contracted under this AFA~~and the Administrative Support Assistant position and the associated Activities of those respective positions. As part of the Administrative Support Assistant's Activities, CSKT shall direct the employee in that position to assist the Refuge Manager and the Service's Deputy Refuge Manager in some of their retained administrative duties~~;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities. ~~During the first two years of this AFA (through FY 2010), the Service's Outdoor Recreation Planner shall retain environmental education activities, cooperating association oversight, and volunteer coordination activities (subject to CSKT's selection and direction of volunteers as described in Section 12.G.2.b of this AFA). Environmental education activities shall consist solely of working with outside groups and individuals on educational activities involving the NBRC. Beginning in FY 2011, all the above functions will transfer to the CSKT, and the Outdoor Recreational Planner will become an Affected Federal Employee. Nothing in this Section or this AFA shall preclude the CSKT and Service staffs from working cooperatively on interpretive services or any other Visitor Service Program Activities.~~

The Activities in the above five categories will be more fully described in ~~each~~the ~~Annual~~ Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal ~~the~~ activit~~y~~ies in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform~~manage~~ the Activities ~~performed~~contracted by the CSKT.

B. *Refuge Manager*~~.~~ The Refuge Manager will retain final responsibility and authority for directing, ~~and~~ controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). ~~The Refuge Manager shall provide reasonable written notice to CSKT of any changes in direction or prioritization of duties. Unless otherwise agreed upon, and subject to the emergency provisions in Section 16 below, changes or additions to instructions or protocols shall be communicated in writing to the CSKT no later than two weeks in advance of the date the affected Activities are to be performed. Subject to the dispute resolution procedures in Section 19.A below, T~~the Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions ~~for~~ for the NBRC:

1. Setting work priorities through the NBRC ~~Annual~~ Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and

Comment [6]: Dean, I put a pinpoint citation here instead of your broader citation.

Comment [7]: Dean, please confirm this language is accurate from FWS' position.

refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements; ~~and~~
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns~~.~~; and
11. Any action which is an inherently Federal function.

C. Wildland Fire Specialist~~Deputy Refuge Managers~~.

~~1. Each Party will support the management partnership at NBRC by providing a Deputy Refuge Manager. The CSKT and Service Deputies are co-equal positions. Both Deputies are senior staff advisors to the Refuge Manager and provide substantive input to management decision-making at NBRC.~~

~~2. In the absence or unavailability of the Refuge Manager, the CSKT and Service Deputy Refuge Managers will alternate serving as Acting Refuge Manager. The Acting Refuge Manager will be responsive to the instructions of the Refuge Supervisor and shall exercise all authorities of the Refuge Manager except those listed in Section 7.B above.~~

~~3. The Refuge Leadership Team will determine the allocation of most of the duties between the CSKT and Service Deputy Refuge Managers and specify such in the AWP. A limited number of duties are specifically assigned to either the CSKT or Service Deputy Refuge Manager as follows:~~

~~a~~. The CSKT Wildland Fire Specialist~~Deputy Refuge Manager~~ will:

i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT ~~Deputy~~ Wildland Fire Specialist~~Refuge Manager~~, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA; ~~.~~
ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and ~~.~~
iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

~~b. The Service's Deputy Refuge Manager will:~~

Comment [8]: My notes don't reflect whether we had discussed thi s or if this addition was from my earlier internal notes. If we hadn't discussed this, let me know your thoughts.

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~~i. Supervise and conduct the Law Enforcement Program, including management of conservation easements of NBRC.~~
~~ii. Supervise any subordinate Service employees not assigned to CSKT.~~
~~iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.~~

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, ~~T~~the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee) ~~Deputy Refuge Manager~~;
   c. ~~Service~~ Deputy Refuge Manager; and
   d. CSKT ~~Lead Biologist~~Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the ~~AWP~~Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the ~~AWP~~Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed ~~weekly to informally discuss progress, identify successes, make changes to work priorities, conduct short-term planning, and identify and resolve any concerns raised by either Party.~~.

~~4. Unless the meeting is with respect to an emergency, the Refuge Manager or the CSKT Deputy Refuge Manager shall provide at least two days advance notice of any non-regularly scheduled coordination meeting being requested.~~

~~5~~4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the ~~During each fiscal year, one of these quarterly meetings will be attended by the~~ Regional Director will meet with the Tribal Council.

~~6~~5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager

Comment [9]: This section will also need revisions to reflect subsequent negotiations.

Comment [10]: There is consensus on adding either Tom or Dale's position to the Refuge Leadership Team, if FWS can provide compensation for that time.

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~~Deputy Refuge Manager~~ can invoke the dispute resolution process in Section 19.A i~~n the event of disagreement with the Refuge Manager's decision.~~the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. ~~*Annual*~~ *Work Plan (Plan~~AWP~~)*. The Service and CSKT will work jointly to develop and establish a mutually agreed-upon ~~AW~~Plan, to be amended as necessary to reflect current needs, priorities and available resources ~~for each fiscal year~~. The ~~AWP~~Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in- CSKT duties under the Plan. ~~In the event that insufficient resources are provided to accomplish the work identified in the AWP,~~ Tthe Refuge Manager shall prioritize Plan activities according to available~~Leadership Team shall meet to determine what work is to be accomplished taking into account the~~ resources ~~provided~~. ~~The AWP will include expectations for all Activities to be conducted during the Federal fiscal year to achieve the established purposes and approved goals and objectives of the NBRC, including performance of Activities contracted by CSKT, and performance of activities retained by the Service. CSKT will be responsible for any AWP performance requirements for CSKT programs, and the Service will be responsible for AWP performance requirements for Service programs.~~

~~1.*Expectations*. The Parties understand that this AFA represents a significant change in operation and maintenance of the NBRC, and that many new CSKT employees will be assigned to the NBRC at the time this AFA is implemented. The Parties understand that the first year of this AFA will be a transition year as new employees learn their jobs, and as the Refuge Leadership Team develops the close working relationship necessary for success of its on-the-ground partnership. The senior officials of both Parties, including signatories to this AFA, expect that, during the first year of the partnership, the Refuge Leadership Team and all NBRC employees will work diligently to develop a healthy and cooperative working environment.~~

~~2.*NBRC Baseline Data*. The Parties will agree on a set of NBRC Baseline Data that will establish, from the best data available, the biological conditions, and the conditions of facilities and equipment existing at the NBRC at the time this AFA becomes effective. The NBRC Baseline Data will also set forth any monitoring protocols for Fire, Maintenance, Biological, and Visitor Services Programs. A list of existing documents describing baseline conditions, and a list of identified data gaps needed to establish baseline conditions, will be included in Attachment A prior to implementation of the AFA. Any evaluation of CSKT's performance will be measured against the jointly agreed upon NBRC Baseline Data and the duties identified in the AWP. The Service will not hold the CSKT to a higher standard of performance for any Activity than that to which it would hold itself, if that Activity were performed by Service employees.~~

Comment [11]: Dean: let me know your thoughts on this as a substitute for your 10/3 proposed text here

Comment [12]: I tried to replace all "AWP" references in the AFA to "Plan" or "Work Plan"

Comment [13]: Is FWS okay with this?

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~~3.*Protocols.* Prior to the effective date of the AWP, the Parties shall review all protocols involved with that AWP.~~

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~~4.~~1.~~*Initial and successor*~~*Work* ~~*AW*~~*Plan Preparation*~~'s*~~.* ~~Prior to implementation of this AFA, t~~The Parties will jointly ~~will~~ develop the ~~initial~~ Work Plan~~AWP for FY 2009~~.

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~~a. The initial AWP will be limited in scope, and will include only the basic, fundamental Activities necessary to provide for the biological integrity of the NBRC, ensure maintenance of critical infrastructure and equipment, and provide basic visitor services. The initial and successor AWP's will also include: significant requirements for on-the-job training of new employees; development of any needed NBRC Baseline Data; development of working protocols, including any fire monitoring protocols; relationships within the Refuge Leadership Team; and orientation and training of the combined Service/CSKT staff on the expectations of the partnership, cultural awareness, safety, and team building.~~

~~b~~a.The Refuge Leadership Team will prepare the ~~AW~~Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan~~AWP~~. The Refuge Leadership Team will further develop information from the RAPP Workbook into the ~~AWP~~Plan. In concise narrative format, the ~~AWP~~ Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The ~~AWP~~Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

~~c. The AWP is a living document that can be adjusted during the course of the fiscal year to address changes in environmental conditions, funding and directions from the Regional Supervisor. The AWP will be submitted to the Refuge Supervisor annually by October 1. As appropriate, the Refuge Leadership Team will prepare changes to the AWP for approval by the Refuge Manager and submission to the Refuge Supervisor.~~

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) ~~the Refuge Manager, CSKT Deputy Refuge Manager, or Service Deputy Refuge Manager~~ to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

   a. The Service will recommend fuels projects and plan for them 2-5 years out.
   b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
   c. Planning to include writing of burn plans will be done by the CSKT.
   d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
   e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
   f. Smoke management requirements will be the responsibility of the CSKT.
   g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
   h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. **Wildfire Suppression & Initial Attack**

   a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land. This does not preclude Incident Qualification Certication System (IQCS)-

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qualified Service firefighters from conducting initial attack activities on Service lands.

b. The CSKT will open a Firecode for all IA fires.

c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.

d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.

e. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.

f. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.

b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).

c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.

d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.

e. The six man fire cache at the NBRC will be maintained by the Service.

f. The fire engine at the NBRC will be maintained by the Service.

g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

~~C. *Bison Herd*. The Assistant Secretary for Fish, Wildlife and Parks must approve any plan to reduce the bison herd below 330 bison, which represents 90% of the population average over the three-year period consisting of FY '05, FY '06, and FY '07.~~

Section ~~8~~9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of

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the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~ will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section ~~9~~10~~.~~. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to ~~After~~ consult~~ing~~ with the Refuge Manager prior to~~,~~ making ~~the CSKT may~~any request for~~that~~ the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge ~~Leadership Team~~ Manager will identify ~~in the AWP~~ any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager~~Leadership Team~~ will identify ~~in the AWP~~ any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act [CITE, 16 U.S.C. § 1531 *et seq.*]., including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection.*

1. *Addition of Funding.* Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

23. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 101. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the AWPWork Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

Comment [14]: Dean, please confirm that this revision to your wording here works for FWS.

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B. *Activity Records*. The parties will set forth in the Work Plan~~AWP~~ an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~ will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within ~~90~~180 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service

Comment [15]: Is more detail necessary here?

Comment [16]: There was discussion of including more detail here.

Comment [17]: Dean: I changed "report" to "identify" here since we use the word "report" immediately before this.

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Comment [18]: Dean: please review the revisions I made here to your 10/3 proposed text. I think this revision comports with our last phone discussion.

provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

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E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 1~~1~~2. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns*.

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. ~~*Joint* Evaluation. The Service and CSKT will jointly evaluate NBRC operations by using: applicable Operational Standards; the terms and conditions of this AFA; and NBRC Baseline Data. Any written evaluation or similar assessment of any NBRC activities (including any report developed under Section 11.B of this AFA), shall address NBRC activities as a whole and shall be jointly drafted and approved by the Parties under the direction of the Refuge Leadership Team. Any evaluation shall clearly identify the specific NBRC Baseline Data, Operational Standard, or AWP provision against which performance is being measured.~~ In the event the Parties do not agree on any portion of any~~the~~ evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager~~Deputy Refuge Manager~~ in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly

Comment [19]: Dean: this is a new proposed addition since our last discussion.

provide to the CSKT a copy of each written comment or documented oral commentthat information to the CSKT without requiring any request from CSKT, on its own initiative, in accordance with disclosure practices under FOIA and the Privacy Act, without the necessity of a FOIA request from the CSKT. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation & Conservation Division Manager.

Comment [20]: This is also a new proposed addition since our last discussion.

b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

i. *Emergency*. If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Deputy Refuge ManagerFish, Wildlife, Recreation & Conservation Division Manager and the Department Head of the CSKT Natural Resources Department no later thanwithin one week from the date of oral notice.

ii. *Notice of Minor Perceived Deficiencies*. The Refuge Manager will notify the CSKT Deputy Refuge Manager and the Department Head of the CSKT Natural Resources Department in writing (e-mail is acceptable) of any performance deficiency that is minor or is an apparent oversight. Such written notices shall specifically describe the performance deficiency and identify a reasonable amount of time for CSKT to either remedy the deficiency or demonstrate that the deficiency does not exist.

iii. *Notice of Other Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any other significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable Bbaseline Ddata; Operational Standard; approved Work PlanAWP provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director -

Refuges~~Assistant Secretary for Fish and Wildlife and Parks~~ and the Regional Director~~Department's Office of the Secretary~~ and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

~~B. *Final Report and Review*. The Refuge Leadership Team will prepare an Annual Narrative Report to cover each fiscal year of this AFA. The report format will follow current Service policy contained in the Refuge Manual and/or Service Manual. The Annual Narrative Report will be a concise narrative description of work, activities and events that occurred during the prior fiscal year, and will include successes, lessons learned, areas for improvement, and recommendations for future AWP's, AFA's, and/or other partnerships between the Parties. The Refuge Leadership Team will submit the Annual Narrative Report to the Refuge Supervisor for review and approval by December 31st of each year, beginning on December 31, 2009.~~

~~C~~B. ~~*Miscellaneous*~~ *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA ~~other than those specified above~~, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

~~D~~C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared ~~monthly~~quarterly~~,~~. The Refuge Manager shall endeavor to submit the status reports to ~~due at~~ the FWS Refuge Supervisor~~Service's Regional Office in Lakewood, CO,~~ and the CSKT Tribal Council by the 15th ~~business~~ day of January, April, July, and October~~, the following month~~. ~~The Regional Office shall transmit the reports to the Department officials identified in Section D.3 below and to the CSKT Tribal Chairman by the 10th of the month.~~ The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and~~,~~ approve~~, and transmit~~ the status reports ~~to the Regional Office~~. ~~The Refuge Leadership Team will determine the contents of the status reports, which may include, but is not limited to, significant accomplishments, lessons learned and identified areas for improvement.~~ At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager ~~and the CSKT Deputy Refuge Manager~~.

Comment [MSOffice21]: I changed the language for quarterly report submission to include actual dates so it would make more sense (previously it referred to the "following month", which was leftover text from the last AFA when the reports were supposed to be monthly). Let us know your thoughts.

Comment [22]: My notes reflect we had approved changes here that would have reflected the RLT transmitting the reports to the FWS Refuge Supervisor and the CSKT Tribal Council. Since the prior section has the Refuge Manager doing that transmittal, I amended this line to reflect that.

~~3. The Service shall be responsible for transmitting periodic status reports to the DOI Senior Management Team, and the Director of the Office of Self-Governance. CSKT shall be responsible for transmitting copies of the status reports to any congressional offices it feels appropriate.~~

Section 1~~2~~3. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees*.

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its

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employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire and Visitor Service Programs, as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees*. The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

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~~B~~C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

~~C~~D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

~~D~~E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which

the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA. ~~The Parties will work on developing a new patch which can be worn on both FWS and CSKT uniforms and which will show the partnership between the Federal and tribal governments.~~

F~~E~~. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty~~forty five~~ (~~45~~30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

   a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA)*, 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

   b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

   c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

   d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and w~~W~~here practicable, reassignment by the Service to another duty station may be possible.

4. ~~*Reduction in Force ("RIF").*~~ If all of the above options are unsuccessful, the ~~Service~~work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position. ~~will conduct a reduction in force.~~

5. *Assignment to the CSKT under an IPA Agreement*.

Comment [23]: Revision from 45 to 30 is in recognition of: A) the fact that NBRC staff have already met with FWS and CSKT officials to discuss employment issues and they will continue to have a very lengthy time to consider options over the course of NEPA analysis, etc; and B) CSKT will need time to properly advertise, screen, interview and hire any staff in the event an Affected Federal Employee were to decline continued employment at NBRC.

Comment [24]: Our assumption is that FWS will need to keep this in here in the event an Affected Federal Employee refuses all options, including an IPA assignment. If not, or if FWS wants to handle differently, we can discuss revisions here.

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a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct*.

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~~i. The IPA Employee, CSKT Deputy Refuge Manager, and the Refuge Manager will jointly develop the IPA Employee's Annual Performance Plan and prepare subsequent evaluations, as well as any Performance Improvement Plan(s). If the CSKT perceives a deficiency in the performance or conduct of the IPA Employee, the Refuge Manager and the CSKT Deputy Refuge Manager will confer, and the Service will apply Federal personnel procedures to address any such deficiency. Due to the assignment of the IPA Employee to the CSKT, and the CSKT Deputy Refuge Manager's role in the Refuge Leadership Team, the CSKT Deputy Refuge Manager has the right to: 1) be present during any counseling related to the IPA Employee's performance or conduct; and 2) obtain copies of any personnel or disciplinary records directly related to the IPA employee's performance under this AFA. CSKT officials agree to keep IPA Employee personnel information confidential and secure.~~

~~ii. The CSKT will terminate an IPA agreement only: 1) for cause; and 2) after addressing the issue through the dispute resolution process (*see* Section 19.A of this AFA) up through the Regional Director level. The term "cause" includes conduct or performance problems documented by CSKT.~~

~~iii. If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA agreement. Upon termination of the IPA agreement, the Activities performed by the prior IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service: 1) will not reassign the employee to a position working within, or for, the NBRC; and 2) will transfer to CSKT the balance of salary and benefits for such~~

~~position in the current and subsequent fiscal years covered by this AFA.~~ i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. ~~The~~ CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;~~.~~

bb. The IPA employee is determined to perform at a ~~the~~ less~~-~~than~~-~~fully~~-~~satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;~~.~~

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or ~~.~~

dd. Any other cause as agreed to by FWS.

iii. ~~If, after engaging in the dispute resolution process, CSKT disagrees with the Service's disposition or decision on the issue, CSKT may terminate the IPA assignment agreement.~~ Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. ~~iv. The~~ CSKT may invoke the dispute resolution process (see Sec. 19.A. of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

~~iv.~~v. CSKT may terminate an IPA agreement without cause at any time and for any reason. However, in the event CSKT terminates an IPA agreement without cause, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

Comment [25]: Dean: see wording revision here.

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Comment [26]: I revised your 10/3 proposed text here to (I think) better jibe with 370 DM 752. Please review and let's discuss.

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Comment [27]: Dean, please review this proposed new text.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

~~7. *Duties and Responsibilities*. The CSKT will assign each Affected Federal Employee to perform one or more Activities, with duties and responsibilities commensurate with her or his training, experience and salary, and reasonably equivalent to her or his position with the Service.~~

~~8~~7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

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2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

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3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

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H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

~~F. *Scheduling of Annual Leave*. Annual leave is part of employee compensation and will not be unreasonably denied. However, by October 31st of each year, all NBRC employees will be expected to submit annual leave requests for any period greater than one week during the upcoming fiscal year. All employees should request any leave as far in advance as possible to ensure that it can be granted.~~

I~~G~~. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife ~~Deputy~~ Refuge ~~Manager~~Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration.* The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has

contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.

c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers*. Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. ~~Suspension may be directed by any of the following: Refuge Manager; CSKT Deputy Refuge Manager; Service Deputy Refuge Manager; Lead Biologist; or Outdoor Recreation Planner.~~ Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager~~Leadership Team~~ completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. ~~The Refuge Leadership Team will reach a final disposition through consensus.~~ Final disposition may include: no action – return to duty; counseling; training; or termination. ~~In cases where the Refuge Leadership Team cannot reach consensus, the incident will be elevated through the dispute resolution process (Section 19.A).~~

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the ~~calendar years 2009 and 2010~~ annual Round-Up events.

K~~H~~. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be

addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 1~~3~~4. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA~~FY 2009~~, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ~~24.A~~ ____ of this AFA] [implementation of this AFA at a mid-point in the fiscal year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 24.A below, for FY 20~~09~~__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

~~1. For FY 2009, the Service will retain funding and responsibility for administering and paying general fixed operational costs including:~~
~~a. utilities;~~
~~b. fuel;~~
~~c. telephone service (cell and landlines);~~
~~d. mandatory software upgrades;~~
~~e. security alarm system;~~
~~f. satellite television;~~
~~g. office trailer rental;~~
~~h. trash removal;~~
~~i. irrigation water;~~
~~j. postage meter; and~~
~~k. other similar fixed costs.~~

~~If the CSKT opts to contract the administration of these general fixed operational costs in FY 2010 and/or FY 2011, the Service will include funding for such Activities in the Attachment B for such fiscal year(s).~~1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. Funding for 0.25 of a GS-7 Technician position will be transferred to CSKT for implementation of the Fire Program responsibilities outlined in Section 8, above.

~~2. The Service will provide funding, and CSKT will be responsible, for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and execution of the Fire and Visitors Services Programs (excluding environmental education activities).~~

~~3. Each Party's operational budget will be used to cover expenses associated with its personnel, including travel, training (see also Section 12.C above), incentive awards, office supplies and miscellaneous expenses.~~

~~4~~5. Generally, Attachment B specifies the following types of consideration:

a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

b. *Appropriated Funds*. Appropriated funds, as follows:

i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the ~~Service~~ Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife,

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Comment [28]: I've deleted the provision about each Party's operational budget because it does not appear that any substantial operating budget will be transferred to CSKT (unless the parties agree otherwise per the new proposed terms).

Recreation & Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager, for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsection 14.B.1 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

~~c. *Recreational Fees*. Semiannually, the Service will transfer to the CSKT 50% of the Recreational Fees collected and allocated to the NBRC. For FY 2009, the Service will also transfer to CSKT 50% of the previous fiscal year's carry-over allocated to the NBRC in support of Visitors Services Activities.~~

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

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Comment [29]: Will delete this given the new arrangement regarding how program funds will be handled. If CSKT later ends up administering a good deal of the program operational funds, we may want to reinstate this provision.

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Comment [30]: Dean, please review the proposed new text here and let me know your thoughts.

Comment [31]: We may want to insert the specific fiscal yea r here once the AFA term is finalized.

~~CSKT will provide all necessary information, including CSKT's indirect cost rate approved by the Department's Office of Inspector General (OIG rate), in accordance with 25 C.F.R. §1000.138.~~

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

~~2. Indirect cost rates will generally be applied only to direct costs (e.g., salary and benefits) by using CSKT's approved OIG rate as of the date of execution of this AFA. CSKT's indirect costs associated with flexible and project dollars will be negotiated.~~

~~3~~2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

Comment [32]: Dean: I revised this somewhat from our discussion.

~~3~~4. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

~~b. *Reduction in Force ("RIF")*. Pending the completion of any RIF under Section 12.E.4 above, the Service will continue to perform all Activities associated with each position affected by the RIF. Upon completion of the RIF, the Service will pay the CSKT the balance of the salary and benefits of each position affected by the RIF, from the effective date of the RIF through the remainder of the term of this AFA, using the payment procedures in Section 13.E.2 below.~~

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of ~~the~~ each~~FY '09~~ fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying*. No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data*. Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos*. Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However,

prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 14~~4~~5. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all ~~Available~~personal ~~Property~~ and ~~R~~real ~~P~~property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal ~~Available~~ Property and Real Property*. Attachment C is the Service's~~an~~ inventory of personal ~~peach item of Available P~~roperty (including condition) ~~(including condition) valued at $500.00 or more,~~ and sensitive or controlled items. Attachment D is an inventory of ~~R~~real ~~P~~property (including condition) ~~valued at $5,000.00 or more~~. The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

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C. *NBRC ~~Baseline~~ Data*. ~~On or before the effective date of this AFA, the Service will provide to the CSKT all NBRC Baseline Data in accordance with Section 7.E.2 above.~~ The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal~~Available~~ ~~P~~property and r~~R~~eal ~~P~~property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. ~~Available Property, including individual items valued at $500.00 or more, and sensitive items such as laptop computers, cameras and binoculars designated for use by the CSKT to perform Activities~~Keys~~,~~ will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of ~~Available~~Federal ~~P~~property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 1~~5~~6. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim*.

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Comment [MSOffice33]: Has anyone from FWS touched base with BIA about continuing this provision for purchase of liability insurance? Since the woman who had handled this before has left, we should probably try to lay the groundwork for this soon so it isn't a headache later on.

Section 1~~6~~7. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or

more persons to receive such notice in the absence of the Refuge Manager or the CSKT ~~Deputy Refuge~~Wildlife Refuge Specialist ~~Manager~~.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

   a. relinquish operation and control of the Activity to the Service;

   b. assist the Service in responding to the emergency; and

   c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT ~~Deputy Refuge~~ Wildlife Refuge Specialist~~Manager~~ or, where such ~~Deputy~~official is not available, the employee designated in Section 16.A above, and will relinquish to the

CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the ~~AWP~~Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 1~~7~~8. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the ~~following~~ procedures below.~~:~~ Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

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1. *Notice*. CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition*. From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. ~~*Available*~~ *Property*. On the effective date of the retrocession, CSKT will return all Federal~~Available~~ Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption.* In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption.* Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Federal~~Available~~ Property which is not needed by the CSKT to perform a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

   e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration.* Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201~~1~~, with any signed successor AFA to be delivered to Congress prior to July 1, 201~~1~~. This schedule will allow such successor AFA to be effective on October 1, 201~~1~~, thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either

Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. ~~*Available*~~ *Property*. On the last day of the term of this AFA, the CSKT will return all Federal~~Available~~ ~~P~~property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 1~~8~~9. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B~~,~~(~~-~~as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section ~~19~~20. Dispute Resolution and Appeals

A. *Dispute Resolution*.

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable

to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish,~~Deputy~~ Wildlife, Recreation & Conservation Division Manager~~Refuge Manager~~ may invoke the dispute resolution process in~~f~~ the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above ~~is unacceptable to the CSKT~~. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT ~~Deputy Refuge Manager~~Fish,Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT ~~Deputy Refuge Manager~~Fish,Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director~~DOI Senior Management Team~~. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director~~DOI Senior Management Team~~ shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall~~may~~ delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 2~~0~~1. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act ~~provisions~~ are also incorporated into this AFA, as authorized by 25 U.S.C. § ~~450cc~~458cc(*l*):

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1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting
12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and 450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

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Section 2~~1~~2. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance

standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 2~~2~~3. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 2~~3~~4. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

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Section 2~~4~~5. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during ~~the first quarter of~~

FY 20__~~09 (October 1 – December 31, 2008)~~. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____~~January 1~~, 20__~~09~~.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__~~11~~. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo ~~James Steele, Jr.~~ Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____ _____

Dan Ashe~~Dale Hall~~, Director, U.S. Fish & Wildlife Service Date

_____ _____

~~Lyle Laverty~~ _____, Assistant Secretary for Fish, Wildlife and Parks Date

_____ _____

Mike Black, Director~~George Skibine~~, ~~for~~ Bureau of Indian Affairs Date

FISCAL YEARS 2013–2016 ANNUAL 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
March 8~~February 14~~, 2012 draft

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994, now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities*. The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Department and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions under which the Service will collectively fund and the CSKT will perform programs, services, functions, and

activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA by list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because the agreement:

a. furthers the Mission of the Service which is: "**Working with Others** to conserve, protect, and enhance fish, wildlife plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve the Mission of the National Wildlife Refuge System, and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4):

> "In administering the System, the Secretary shall:
>
> ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

> "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 a significant contribution to the growth and management of the Refuge system"

d. improves the ability of NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland NBRC is located;

e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department of the Interior's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. § 458cc *et seq.*), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."); and
b. provides CSKT with the ability to more effectively help manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
d. improves the ability of CSKT to help protect the cultural resources of the NBRC, through closer collaboration with FWS;
e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the Indian Self-Determination and Education Assistance Act ("Act"), 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the Tribal Self-Governance Act of 1994, in conjunction with the NWRSAA, as amended;
2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and

3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. Section 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law and regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. *Interpretation*. This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the Act and the Tribal Self-Governance Regulations, and as provided in Section 3.C below (Compliance); Section 18.C (Tribal Administrative Procedures); and Section 18.D (Indian Preference).

C. *Compliance*. In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all DOI and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform at the NBRC under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a career or non-career Service employee who:

A. As of the date of the last approving signature on this AFA, was employed by the Service to perform an Activity; and

B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act (IPA) assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC*, includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: Refuge Manager; CSKT Fish, Wildlife, Recreation & Conservation Division Manager; Service Deputy Refuge Manager; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the Service line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the Service line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service ("Service"), which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service ("Service").

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541) ;
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

E. Lost Trail National Wildlife Refuge (Org. Code 61545); and
F. Northwest Montana Wetland Management District in Flathead County (Org. Code 61546).

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions and their associated Activities, subject to this AFA. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as described in Section 7.E below.

B. *Redesign and Reallocation*. The CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFA's may include some of those retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFA's.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. Section 458cc(k), and does not preclude subsequent negotiation by the Parties for inclusion of additional non-inherently-federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted by the CSKT.

B. *Refuge Manager* The Refuge Manager will retain final responsibility and authority for directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and go-no-go checklists;

9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;
10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

   i. Supervise all CSKT Employees and direct the day-to-day work of employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions, including management of performance and conduct, for Service employees assigned to CSKT will be handled in accordance with Section 12.E.5.c of this AFA;
   ii. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and
   iii. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. CSKT Manager, Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
   c. Deputy Refuge Manager; and
   d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 11.D and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise agreed to by the parties. Once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish, Wildlife, Recreation & Conservation Division Manager can invoke the dispute resolution process in Section 19.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. *Work Plan (Plan).* The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.

1. *Work Plan Preparation.* The Parties will jointly develop the Work Plan .

a. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety*. Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. **Responsibility & Intent.** CSKT responsibility for the contracted fire management program at NBRC will be managed through the CSKT Fire Program, in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, and the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

1. **Meetings & Coordination.** The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

2. **Fuels Treatments & Prescribed Fire.** The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or other sources.

a. The Service will recommend fuels projects and plan for them 2-5 years out.
b. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
c. Planning to include writing of burn plans will be done by the CSKT.
d. Pre- and Post- burn monitoring will be done by the CSKT to their standard, with the exception of monitoring in the grasslands which will be done by the Service.
e. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
f. Smoke management requirements will be the responsibility of the CSKT.
g. The CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
h. The CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator.

3. Wildfire Suppression & Initial Attack

a. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land, This does not preclude Incident Qualification Certication System (IQCS)-

qualified Service firefighters from conducting initial attack activities on Service lands.
b. The CSKT will open a Firecode for all IA fires.
c. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.
d. The CSKT will provide all support for extended attack and large fire operations with concurrence from the Service Manager.
e. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
f. The Parties will coordinate in preparing Severity requests. Generally, Severity requests by the CSKT will include coverage of the NBRC. If Severity resources are requested to specifically be stationed on the NBRC, the request will be made by the Service.

4. **Preparedness**

a. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
b. The CSKT will administer Incident Qualification Certification System (IQCS) for Tribal employees (excluding Federal employees assigned to CSKT under an I.P.A. agreement), and the Service will do the same for Federal employees (including Federal employees assigned to CSKT under an I.P.A. agreement).
c. Service employees and CSKT Employees that need fire training will be paid for by the Service. Local or in-house training will be complimentary.
d. Service employees will be statused in the Resource Ordering Supply System (ROSS) by the Service.
e. The six man fire cache at the NBRC will be maintained by the Service.
f. The fire engine at the NBRC will be maintained by the Service.
g. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the allegation(s) raised, the Refuge Leadership Team's assessment of the allegation(s) and facts, and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:
    a. adequate training or instructions to perform the assigned task(s) safely; or
    b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards*. The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers*. The Tribal Self-Governance Act authorizes the Secretary to waive regulations, however CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J.

C. *Environmental Compliance*. In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA)*, 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation*. The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act , 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection*.

1. *Addition of Funding*. Upon agreement of the Parties, Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings*. The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager, including seeking review and tentative approval by the Refuge Manager at approximately the 25% and 75% stages of their completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer.* Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or Service policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request,

and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of funds the Service provides to the CSKT under this AFA. The CSKT will provide those financial records to the Service to the extent the Service requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under Section 17.B or 17.C of this AFA.

2. *Financial Status Reports*.

a. *Annual Report and Carry-Over*. The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports*. Within 180 days of the effective date of any retrocession or reassumption under Section 17.B or 17.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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 the FOIA. The FOIA does not apply to records maintained solely by CSKT. As au-

thorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement*. The CSKT must not take any action under this Section 10 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns.*

1. *Joint Monitoring*. The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation*. In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT*. The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments*. The Service promptly will notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager.

   b. *Performance Deficiency Concerns*. If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency.* If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the CSKT Fish, Wildlife, Recreation and Conservation Division Manager orally and follow up with a written notification provided to the CSKT Fish, Wildlife, Recreation & Conservation Division Manager within one week from the date of oral notice.

ii. *Notice of Significant Perceived Deficiencies*. With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 17.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice*. If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included in any such report.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing*.

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

2. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program, which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently federal will also be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate to the extent allowed by Tribal polices and procedures.

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees.*

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under Intergovernmental Personnel Act agreements.

2. *Direction of Day-to-Day Work Activities*. The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall also be supervised by CSKT's Division of Fish, Wildlife, Recreation & Conservation Manager. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire, and Visitor Service Programs (except for the Outdoor Recreation Planner, unless that position is contracted to CSKT), as well as to CSKT Employees, contractors and Volunteers.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 Refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. Service or CSKT NBRC employees may be detailed to work at other units of the Refuge System, including units of the NBRC not covered by this AFA, and the Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and Refuge Managers of the other Service Field Stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space*. At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill*. CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. *Uniform*. While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in Attachment B to this AFA, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. *Affected Federal Employees*.

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect*. Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to voluntarily choose a different employment option during the term of this AFA.

3. *Available Options*. The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA),* 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.

4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a

retrocession or reassumption under Sections 17.B or 17.C below, or cancellation for cause in accordance with Section 12.E.5.c below.

c. *IPA Employee Performance and Conduct.*

i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;

bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or

dd. Any other cause as agreed to by FWS.

iii. Upon termination of the IPA agreement for cause, the Activities that had been performed by such IPA Employee will remain the CSKT's responsibility under this AFA. Upon termination of the IPA agreement for cause, the Service will transfer to CSKT the balance of salary and benefits for such position in the current and subsequent fiscal years covered by this AFA.

iv. CSKT may invoke the dispute resolution process (see Sec. 19.A. of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

v. Consistent with 5 C.F.R. § 334.107(a), CSKT may terminate an IPA agreement ~~without cause~~ at any time and for any reason, including for cause other than as defined in this AFA. However, in the event CSKT terminates an IPA agreement for reason or cause other than as defined in this AFA ~~without cause~~, the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

d. *Holidays*. On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT*.

a. *Employment Election*. At its discretion, the CSKT may employ directly as a CSKT employee each Affected Federal Employee who elects that option. The CSKT will provide either CSKT benefits or Federal benefits, as elected by the Affected Federal Employee and the CSKT.

b. *Continuation of Employment*. The CSKT will give each Affected Federal Employee directly employed as a CSKT employee the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination*. The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of their own employees a critical element that requires the employee to work cooperatively with the other Party and its employees and work to successfully implement this AFA, as a requirement of successful employee performance.

2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the United States Department of the Interior and CSKT, respectively.

3. In the event that either Party feels that the performance or conduct of an employee of the other Party is negatively impacting its ability effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the Alternative Dispute Resolution Process described in Section 20.A., below will be used to resolve the issue.

H. *Personnel Records.* Each Party will maintain the official personnel records and files of its own employees in accordance with the personnel regulations and policies of the U. S. Department of the Interior and CSKT, respectively. Access to and release of personnel records of one Party's employees, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

I. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPD's) for the duties historically performed by Volunteers at NBRC. The VPD will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. VPD's will include lists of required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in the VPD, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration*. The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer Coordinator with data on the number of Volunteers employed by the CSKT,

and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 15.A and 15.D below.

3. *Suspension and Termination of Volunteers.* Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. .Final disposition may include: no action – return to duty; counseling; training; or termination.

4. *Volunteers for Round-Up*. The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks*. The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreement and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually

for the following fiscal year. Consistent with Section 24.A below, for FY 20__ the Parties may agree to phase in Activities and their associated funding over the first quarter of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that the Refuge Manager and CSKT's Fish, Wildlife, Recreation & Conservation Division Manager jointly determine can be delivered with greater efficiency and cost-effectiveness by CSKT. Transfer of funds to CSKT for such costs will be reflected annually in Schedule B.

2. The Service will provide funding, and CSKT will be responsible for hiring seasonal staff in the biological, visitor services and maintenance programs.

3. Funding for acquisition of goods and services necessary for: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs may be retained by the Service or transferred to CSKT, for the operations for which CSKT is responsible. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and CSKT and will be reflected annually in Attachment B.

4. The Service will provide CSKT with funding equivalent to ~~Funding for~~ 0.25 of a GS-7 Technician position ~~will be transferred to CSKT~~ for implementation of the Fire Program responsibilities outlined in Section 8, above.

5. Generally, Attachment B specifies the following types of consideration:

   a. *IPA Employees*. Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

   b. *Appropriated Funds*. Appropriated funds, as follows:

      i. *Program Funds*. The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsection 13.B.1 above) including: salary and benefits for Org. Chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for employment of seasonal employees; funds for travel and training of CSKT employees; funds to compensate CSKT for time worked in support of NBRC by Division of Fish, Wildlife, Conservation and Recreation employees who are not assigned permanently to NBRC (e.g. Fish, Wildlife, Recreation &

Conservation Division Manager participation in the Refuge Leadership Team); funds, as agreed by the Refuge Manager and CSKT Fish, Wildlife, Recreation & Conservation Division Manager, for acquisition of supplies and services to support programs; and other fixed costs jointly identified in Subsection 14.B.1 above as being transferred to CSKT; and

ii. *Contract Support Costs*.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this section by an amount equal to those salary and benefits. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 12.E.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 13.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Interior Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service Full-Time Equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B to this AFA, the Refuge Leadership Team will ensure

that all necessary indirect costs to support CSKT administrative functions are included.

3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration*.

1. *Affected Federal Employees*.

a. *IPA Employees*. The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. *Payment of Funds*.

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments*. The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon beforehand and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions*. The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds the Service provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration*. Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions*. In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 21.A below.

H. *Antideficiency Act*. This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities*. The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other Real Property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property*. Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data*. The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection*. All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal*. In accordance with Federal property procedures, and with the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property.

F. *Excess Property*. At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to Title IV of the Act, the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act*. In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 15.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim.*

1. *Notice of Incident*. The CSKT promptly will notify the Refuge Manager in writing of any incident resulting from the performance by the CSKT of an Activity covered by this AFA and involving personal injury, death, or property damage.

2. *Notice of Claim*. The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance*. The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that

provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT Employee, other than an IPA Employee, or CSKT contractor in connection with performing any Activity.

D. *Liability Insurance for Volunteers*. In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the Federal Tort Claims Act.

Section 17. Emergencies and Unusual Events

A. *Notice*. Where practicable, after learning of any emergency or other unusual event at, or involving, the NBRC or its staff, either Party promptly and orally will notify the other Party. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. *Temporary Operation and Control*. In accordance with Section 7.F above, nothing in this section shall be interpreted to limit the ability of either the Service or the CSKT to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 17.C below and Federal regulations governing reassumption.

C. *Emergency Procedures*. In an emergency, the Service and the CSKT will use the following procedures:

1. *Determination by Refuge Manager*. The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees*. The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section 16.A above.

3. *Response of the CSKT*. Following notice of an emergency under Sections 16.A and 16.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

    b. assist the Service in responding to the emergency; and

c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 16.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section 16.A above, and will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption of an Activity or, upon CSKT's request, to avoid retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice.* CSKT will provide to the Refuge Manager 30 days advance written notice of the CSKT's intent to retrocede (Notice of Retrocession);

2. *Orderly Transition.* From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Property*. On the effective date of the retrocession, CSKT will return all Federal Property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (also see Section 10.C.2.b above regarding a financial status report).

C. *Reassumption by the Service*.

1. *Tribal Self-Governance Regulations.* Subject to Section 17.A above and this Section 17.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption*. In accordance with the regulations in Section 17.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that the performance of the CSKT is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption*. Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the reassumed Activity;

b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

c. On the effective date of the reassumption, CSKT will return all Federal Property which is not needed by the CSKT to perform a retained Activity;

d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in performing the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 10.C.2.b above concerning a financial status report).

D. *Expiration*. Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 201 , with any signed successor AFA to be delivered to Congress prior to July 1, 201 . This schedule will allow such successor AFA to be effective on October 1, 201 , thereby accommodating the 90 day period required prior to the effective date of any Tribal Self-Governance agreement (*see* 25 U.S.C. § 458cc(f)). In the event either Party opts to cease negotiations for a successor AFA, such Party will provide thirty days written notice, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition*. In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Property*. On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility*. Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity*. Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures*. In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B(as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the Federal Tort Claims Act, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference*. In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution.*

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision that will be provided to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The CSKT Fish,Wildlife, Recreation & Conservation Division Manager may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the CSKT Fish,Wildlife, Recreation & Conservation Division Manager and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the CSKT Fish,Wildlife, Recreation & Conservation Division Manager's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure). For disputes over personnel issues involving an IPA Employee, and in accordance with Section 12.E.5.c above, CSKT has the option to terminate the IPA agreement after the Regional Director has made a decision.

6. Due to the uniqueness of this AFA, none of the officials identified in this section shall delegate his or her responsibilities under this section to anyone else.

7. Nothing in this section diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the Indian Self-Determination and Education Assistance Act ("Contract disputes and claims"). Nothing in this section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 19.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 19.B.

Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that the following provisions from Title I of the Indian Self-Determination and Education Assistance Act are also incorporated into this AFA, as authorized by 25 U.S.C. § 458cc(*l*):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting

12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and
    450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Amendment and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Service and the CSKT may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 9.B (Secretarial waiver of regulations); Section 9.E (use of CSKT performance standards); and in Section 21.B (correction of minor, non-substantive errors or omissions). Provided, however, that any modifications involving augmentation of funds or resources under Attachment B may be executed by the Parties upon approval by their respective project officers (the Refuge Supervisor and the Tribal Chairman), without requiring execution in the same manner as this AFA.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of a written errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will

perform Activities at the NBRC under this AFA. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f). In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be phased in, as mutually agreed-upon by the Parties, during FY 20__. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__.

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 13.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 20__. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 21.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2009-2011, INSOFAR AS ALLOWED BY TITLE IV OF THE INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT, OTHER LAWS OF THE UNITED STATES, AND THE CODE AND LAWS OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD RESERVATION, ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW. EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

_____	_____
Dan Ashe, Director, U.S. Fish & Wildlife Service	Date
_____	_____
_____, Assistant Secretary for Fish, Wildlife and Parks	Date
_____	_____
Mike Black, Director, Bureau of Indian Affairs	Date

From:	"Brian Upton" <brianu@cskt.org>
To:	Dean_Rundle@fws.gov
Cc:	Jeff_King@fws.gov; jamessteelejr@vzw.blackberry.net; tomm@cskt.org
Subject:	IDC
Date:	Thursday, September 29, 2011 2:18:58 PM

Dean,

Following up on our conference call, I did some additional review of relevant OMB Circulars/regulations and also spoke at length with CSKT's Director of Financial Management. I also reviewed the federal case to which I had referred, but it didn't contain the clarifying discussion I thought it did with respect to tribes being liable to pay the difference between recovered indirect costs and the amount that should be recovered using an approved federal IDC rate. As I understand it, the Tribes' liability stems from how NBC calculates the rate and, as I mentioned during our call, the federal interest in having a uniform rate for all programs, as opposed to federal agencies paying an inflated rate. You may be best off talking to someone at the National Business Center (NBC), or I could try to arrange a conference call with our Director of Financial Management, who has been very helpful to me.

The NBC contact person I was given by staff here is:

Norma Q. Mullins

Indirect Cost Services Program Analyst

Acquisition Services Directorate

An ISO 9001 Certified Organization

U.S.Department of the Interior

NationalBusinessCenter

2180 Harvard Street, Suite 430

Sacramento, California 95815

916-566-7108 (ofc)

916-566-7110 (fax)

Norma_Mullins@nbc.gov

Website: http://www.aqd.nbc.gov/Services/ICS.aspx

Hope this helps.

Do you know if you will be coming to the Reservation next week for the round-up? If you do come, we'd be interested in setting up a meeting with Council.

Thanks,
BU

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

JAN 9 2008

Mr. Don E. Redfearn, President
Blue Goose Alliance
907 Parkview Drive
Tallahassee, FL 32311

Dear Mr. Redfearn:

Thank you for your letter of December 17, 2007, and the Blue Goose Alliance's continuing support of the U.S. Fish and Wildlife Service (Service) National Wildlife Refuge System (NWRS).

My November 26, 2007, memorandum to the Service's Region 6 Regional Director concerning the National Bison Range Complex (NBRC) in no way undermines the Department of the Interior's (DOI) commitment to the National Wildlife System Administration Act (NWRSAA), as amended. I firmly agree that the NWRS is one of "our premier Federal conservation land systems", and I am resolute in protecting and enhancing that system.

I was clear that the NBRC is a unit of NWRS and it shall remain so; policy and management direction for the NBR will be provided by the Service; the NBRC will be managed in compliance with Federal laws, regulations, and policies; guidance will be provided by the Service Director; and, that on-site management decisions for the NBRC will continue to be made by the Service.

The Congress has also provided DOI with various requirements and responsibilities under both the NWRSAA and the Tribal Self-Governance provisions of the Indian Self-Determination and Education Assistance Act (ISDEAA). These obligations are not mutually exclusive. The legislative history of the Tribal Self-Governance provisions leaves no doubt that it was the intention of Congress that programs and activities administered by the Service and the National Park Service were to be eligible for inclusion in Annual Funding Agreements (AFAs) with qualified tribal governments. Congress, in the ISDEAA, clearly did not exempt the NWRS, or the National Parks System from consideration for negotiating Annual Funding Agreements (AFA) with qualifying Indian tribes.

The lack of resolution concerning the AFA at NBRC is distracting us from fulfilling our mission at the NBRC and its satellite refuges, including the completion of Comprehensive Conservation Plan (CCP) for the NBR, Pablo and Ninepipes NWRs. That is why I believe we need to bring this issue to closure and move on to achieve our conservation mission.

As I outlined in my memorandum, the DOI objective is to establish a positive working relationship between the Service and the Confederated Salish and Kootenai Tribes (CSKT) that includes material involvement of Tribal members in the day-to-day operations at the NER. Service Director Hall and I concur that to meet existing expectations and foster positive negotiations, the form of the agreement shall be an AFA. If properly negotiated, the AFA can appropriately serve as a framework for that relationship at the NBRC. There is no reason why an agreement in the form of an AFA can not work here. The Service and the Council of Athabascan Tribal Governments in Alaska have successfully worked together under the terms of an AFA for the past several years and the National Park Service has also successfully operated several programs or activities with self-governance tribes under various AFAs.

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 enter negotiations with the CSKT. There are certain refuge functions that are "inherently federal," including making Appropriate Use and Compatibility Determinations; decisions on the content 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 environment, but it remains clearly the responsibility of the Refuge Manager.

However, it is incorrect to assert that the 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, 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.

I trust that this letter clarifies the DOI position on these issues and I look forward to working with you and the Blue Goose Alliance in the future to support our National Wildlife Refuge System. I would be honored to meet with you in March and discuss other opportunities we have in this fiscal year's funding support for the Refuge System.

Sincerely,

Lyle Laverty

Lyle Laverty
Assistant Secretary for Fish and Wildlife and Parks

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

In Response Reply to:
FWS/ANRS/R6/035941

JUN 2 6 2008

Mr. Don E. Redfearn, President
Blue Goose Alliance
907 Parkview Drive
Tallahassee, Florida 32311

Dear Mr. Redfearn:

Thank you for your letter of March 17, 2008, expressing your concerns about management of the National Bison Range Complex (NBRC). I appreciate the strong interest of the Blue Goose Alliance (BGA) on this and other important issues regarding the National Wildlife Refuge System (NWRS). In your letter you raised a number of key issues related to NBRC and implementation of a Self-Governance Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT).

Regarding the issue of contracting routine jobs or work historically performed by permanent U.S. Fish and Wildlife Service (Service) staff at NWRS facilities, we feel that, where appropriate, it is a legal and legitimate way to accomplish refuge work. Under current law, it is legal to work with the CSKT under a Self-Governance AFA at NBRC. We note that the Congress established the policy of the United States for self-governance of federally recognized Indian Tribes. The National Wildlife Refuge System Administration Act (NWRSAA) is the principle law governing the administration and management of the NWRS. In our current negotiations with the CSKT, we rely on the NWRSAA, its amendments, and legislative history in guiding our negotiations.

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 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

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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 Comprehensive Conservation Plan (CCP) process for the NBRC will be initiated in FY 2010, with a goal of completing the CCP by the end of FY 2012. 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.

In closing, let me assure you that I share your passion for the National Wildlife Refuge System, and I am convinced that proceeding on our current path is the best way to preserve and protect it. The NBRC will continue to be managed as a unit of NWRS, under the laws, policies and management direction provided by the Service, with a Service refuge manager and a combined team of Service and CSKT employees. In addition, all current employees of the NBRC will have an opportunity to remain employees of the Service at the NBRC.

Please do not hesitate to contact me or H. Dale Hall, Director, U.S. Fish and Wildlife Service, at (202) 208-4717 if you would like to discuss this matter further.

Sincerely,

Lyle Laverty
Assistant Secretary for Fish
and Wildlife and Parks

Summary of CSKT Recommendations

Below is a summary of CSKT's core recommendations for the Service's consideration in preparing an environmental assessment regarding the draft AFA. Each of the items below are identified and explained in the relevant portions of the accompanying document, which contains further discussion and recommendation.

1) Allegations. Address the issue of the allegations that had been made against CSKT staff under the first (FY 2005-06) AFA, including: the Service's actions regarding those allegations; CSKT's subsequent responses and IBIA appeal; the Service's decision, and rationale, to enter into a second AFA; and the experience under the second (FY 2009-11) AFA, including the OIG evaluation and report.
2) EIS. With respect to comments requesting preparation of an EIS rather than an EA, the Service should explain its determinations that:
    a. 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;
    b. the physical, ecological and social aspects of NBRC management would not substantially change due to the draft AFA;
    c. ownership and overall management and administration of the NBRC would remain with the Service under the draft AFA;
    d. 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;
    e. the draft AFA would not permit CSKT to unilaterally create significant impacts to the NBRC, such as constructing buildings, altering the size of the bison herd, building new roads, or similar profound changes to the landscape or ecology; and
    f. the visiting public would experience the NBRC in largely the same manner as it does in the absence of an AFA.

3) Range of Alternatives. The EA should: include additional alternatives for evaluation, such as an alternative that would involve an AFA contracting less activities than the draft AFA, as well as one that would involve more activities; address, in the evaluation of alternatives, retention of federal control of Refuge administration (and distinguish the draft AFA from the situation before the court in *Trustees for Alaska*); and identify all suggested or considered, alternatives and, for those that would not fulfill the purpose/need, explain why they do not warrant further analysis as an alternative.

4) Significance Factors. Address all of the significance factors identified in 40 C.F.R. § 1508.27(b), explaining the Service's consideration of each. For those significance factors identified in the scoping comments, CSKT believes that the EA should:
   a. With respect to 40 C.F.R. § 1508.27(b)(2) [public health or safety], address the degree to which the proposed action would affect public health or safety;
   b. With respect to § 1508.27(b)(3)[unique characteristics of the geographic area],
      i. identify in the EA the unique characteristics of the NBRC and explains how those characteristics would not be altered under the draft AFA;
      ii. explain how the Service has taken the NBRC's unique characteristics into account when evaluating the draft AFA and its alternatives; and
      iii. explain why approval of the draft AFA would not result in any significant impacts to these unique characteristics;
   c. With respect to § 1508.27(b)(4[highly controversial effects]),
      i. address the allegations under the first AFA, and explain the Service's decision to enter the subsequent AFA
      ii. acknowledge the opposition to the draft AFA, as well as past AFA's, and fully explain why this opposition does not involve "highly controversial" effects on the quality of the human environment;
      iii. 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
      iv. 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. With respect to § 1508.27(b)(5)[highly uncertain or unknown effects], address the claims of unknown or uncertain effects, and include the draft AFA's attachments as part of the draft EA, as well as past AFA's and their attachments;
   e. With respect to § 1508.27(b)(6)[establishment of precedent], the EA 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 Service should further ensure that the EA addresses how:
      i. 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;
      ii. 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;

iii. the draft AFA has been tailored to the specific situation and needs of the NBRC; and

iv. 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;

v. 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 (*i.e.*, approval of one AFA is not dependent upon disposition of another AFA);

vi. AFA's are for limited terms, with FWS retaining the discretion for continuing the agreements in future years;

vii. AFA's are always subject to reassumption by the Service, consistent with Self-Governance statutes and regulations; and

viii. the Service would have to comply with the requirements of NEPA for any future decisions to approve an AFA.

The EA should also identify these distinctive characteristics of the NBRC situation:

i. 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;

ii. CSKT is the beneficial landowner of two of the NBRC Refuges (Ninepipe and Pablo Refuges) and retains rights at both locations;

iii. 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

iv. FWS and CSKT have a decades-long history of successfully working together on projects of mutual interest.

It would also be useful for the EA to describe other Service contracts or relationships, past or present, with non-federal entities for the types of work CSKT would perform under the draft AFA;

f. With respect to § 1508.27(b)(7)[cumulative impacts], address how cumulative impacts would not be involved in the proposed action or, if the Service believes that cumulative impacts may result, identify them and explain why they would or would not result in significant impacts;

g. With respect to § 1508.27(b)(9)[endangered or threatened species],

i. identify any listed species relevant to its analyses;

ii. explain why the draft AFA would involve no significant impacts to such listed species; and

iii. describe in detail how the Service would fulfill its responsibilities under the Endangered Species Act and NEPA if it approved the draft AFA;

h. With respect to § 1508.27(b)(10)[violation of laws], discuss the Service's determination as to why the alternatives would or would not threaten a violation of federal, state or local laws imposed for the protection of the environment. The EA should make clear that the Self-Governance Act requires the 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.[1] It would be useful for the EA to address other types of contracting that the Service engages in with non-federal parties at other facilities, whether they are Refuges or not. It would also be helpful for the EA to specifically address the OFPP's Policy Letter 11-01;

i. With respect to the Interior Department's recognition of the issue of noxious weeds or non-native invasive species, 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;

5) Other Issues. Address the following issues identified in scoping comments and discussed in Section IV of CSKT's Input for the Draft Environmental Assessment: A) CCP and AFA policy; B) evaluations, program redesign and reallocation of funds; C) dispute resolution and collaboration; D) budget-related issues; E) compatibility; and F) social/cultural impacts and impacts on federal employees.

[1] The EA could also recognize 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." House Report No. 103-653, at p. 10.

Draft Environmental Assessment for a Draft Annual Funding Agreement

National Bison Range Complex
Moiese, Montana

INTERNAL REVIEW
April 2014

Prepared by
U.S. Fish and Wildlife Service
Region 6, Mountain-Prairie Region
National Wildlife Refuge System
134 Union Boulevard, Suite 300
Lakewood, CO 80228

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Summary

We, the U.S. Fish and Wildlife Service, want to forge long-term partnerships with the Confederated Salish and Kootenai Tribes at the National Bison Range Complex in Montana. We have conducted this environmental analysis to evaluate options for entering into an annual funding agreement with the Tribes for managing or assisting with the operations of the refuge complex.

Located in northwestern Montana, most of the refuge complex is located within the boundaries of the Flathead Indian Reservation, a 1.3 million-acre area established in 1855 through the Treaty of Hellgate with the Confederated Salish and Kootenai Tribes.

Under the authority of the Indian Self-Determination and Education Assistance Act, as amended, the Confederated Salish and Kootenai Tribes were one of the first to achieve self-governance. The 1994 amendment to that law, known as the Tribal Self-Governance Act, gave self-governing tribes the opportunity to exercise their inherent self-governing powers through greater control over tribal affairs and enhanced tribal governmental responsibilities. This amendment also allowed tribes to request negotiations for annual funding agreements with Department of the Interior agencies for "other programs, services, functions, and activities, or portions thereof … which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact."

On November 10, 2011, the Confederated Salish and Kootenai Tribes requested negotiations with the Service for a 5-year annual funding agreement allowing them to manage programs on the National Bison Range Complex. This annual funding agreement would cover the activities occurring in the parts of the National Bison Range Complex within the boundaries of the reservation:

- National Bison Range
- Ninepipe National Wildlife Refuge
- Pablo National Wildlife Refuge
- Nine waterfowl production areas in the Lake County portion of the Northwest Montana Wetland Management District

The National Bison Range Complex is best known for the bison herd that roams the National Bison Range. More than 205 bird species have been recorded in the area—many nesting on or migrating through the National Bison Range Complex. Its units are generally surrounded by private land that is mostly used as livestock pasture and for hay or other crop production. These lands also border some State and tribal lands that are managed for conservation purposes.

We prepared this environmental assessment to document our analysis of alternatives for an annual funding agreement with the Confederated Salish and Kootenai Tribes. Implementation of any of the alternatives would involve changes to the staff and administration of the National Bison Range Complex, so we developed a range of alternatives with different levels of program management by the Confederated Salish and Kootenai Tribes and various staff configurations. In this environmental assessment, we describe in detail the following alternatives and their expected consequences:

- Alternative A—No Action
- Alternative B—Draft Annual Funding Agreement (Proposed Action)
- Alternative C—Annual Funding Agreement for Fire and Visitor Programs
- Alternative D—Annual Funding Agreement Same as Alternative C plus Addition of More Confederated Salish and Kootenai Tribes Staff in All Programs
- Alternative E—Annual Funding Agreement Same as Alternative D plus District Programs with Combined Service and Confederated Salish and Kootenai Tribes Staff in All Programs

Abbreviations

Administration Act	National Wildlife Refuge System Administration Act of 1966
AFA	Annual funding agreement
APA	Administrative Procedure Act
BIA	Bureau of Indian Affairs
Bison Range	National Bison Range
CFR	Code of Federal Regulation
cfs	Cubic feet per second
CSKT	Confederated Salish and Kootenai Tribes
D.D.C.	United States District Court, District of Columbia
district	Northwest Wetland Management District
DNRC	Montana Department of Natural Resources and Conservation
DOI	Department of the Interior
EA	Environmental assessment
EVS	Education and visitor services
°F	degrees Fahrenheit
FWRC	Confederated Salish and Kootenai Tribes' Division of Fish, Wildlife, Recreation, and Conservation
FWS	U.S. Fish and Wildlife Service
FY	Fiscal year
GS	General Schedule
H.R.	House of Representatives bill
IHS	Indian Health Service
ISDEAA	Indian Self-Determination and Education Assistance Act of 1975
IPA	Inter-Governmental Personnel Act of 1970
NBR	National Bison Range
NBRC	National Bison Range Complex
NEPA	National Environmental Policy Act
Ninepipe Refuge	Ninepipe National Wildlife Refuge
NRCS	Natural Resources Conservation Service
OPM	United States Office of Personnel Management
Pablo Refuge	Pablo National Wildlife Refuge
range	National Bison Range
refuge complex	National Bison Range Complex
Refuge System	National Wildlife Refuge System
reservation	Flathead Indian Reservation
Self-Determination Act	Indian Self-Determination and Education Assistance Act of 1975
Self-Governance Act	Tribal Self-Governance Act of 1994
Service	U.S. Fish and Wildlife Service

Tribes	Confederated Salish and Kootenai Tribes
U.S.	United States
U.S.C.	United States Code
USHR	United States House of Representatives
WG	Wage Grade Schedule

CHAPTER 1
Purpose and Need for Action

We, the U.S. Fish and Wildlife Service (Service), are an agency of the U.S. Department of the Interior. We want to enter into a greater partnership with the Confederated Salish and Kootenai Tribes (CSKT or Tribes) through an annual funding agreement (AFA).

The purpose for this action—an AFA—is to fulfill our desire to enter into an agreement with CSKT to forge a productive and long-term partnership that would allow the Tribes to take part in refuge programs that are of special geographic, historical, or cultural significance. An AFA is needed to carry out the desire for tribal involvement in activities on the National Bison Range Complex.

We have prepared this environmental assessment (EA) to evaluate the draft AFA with CSKT we have developed under the authority of the Tribal Self-Governance Act of 1994 (Self-Governance Act) (USHR 1994). As part of the environmental analysis process under the National Environmental Policy Act (USHR 1970a), we have developed and analyzed four other alternatives (including no action) to the draft AFA, which is the proposed action in this EA. Each AFA alternative would allow CSKT to manage or assist with programs, services, functions, and activities on the National Bison Range Complex (refuge complex) to various degrees for a term of 5 years.

We would retain the management of the conservation easement program under any AFA. An AFA would cover specific activities in only those portions of the refuge complex located within the boundaries of the Flathead Indian Reservation (reservation) in Lake and Sanders Counties in the Mission Valley of Montana (figure 1):

- National Bison Range (Bison Range)
- Ninepipe National Wildlife Refuge (Ninepipe Refuge)
- Pablo National Wildlife Refuge (Pablo Refuge)
- Nine waterfowl production areas in the Lake County portion of the Northwest Montana Wetland Management District (district)

All of these affected units, totaling 26,604 acres, and associated resources are further described in "Chapter 6—Affected Environment." The United States owns all the lands within the refuge complex except the Ninepipe and Pablo Refuges. CSKT owns these two refuges, which are tribal trust lands covered by easements that we bought in 1948.

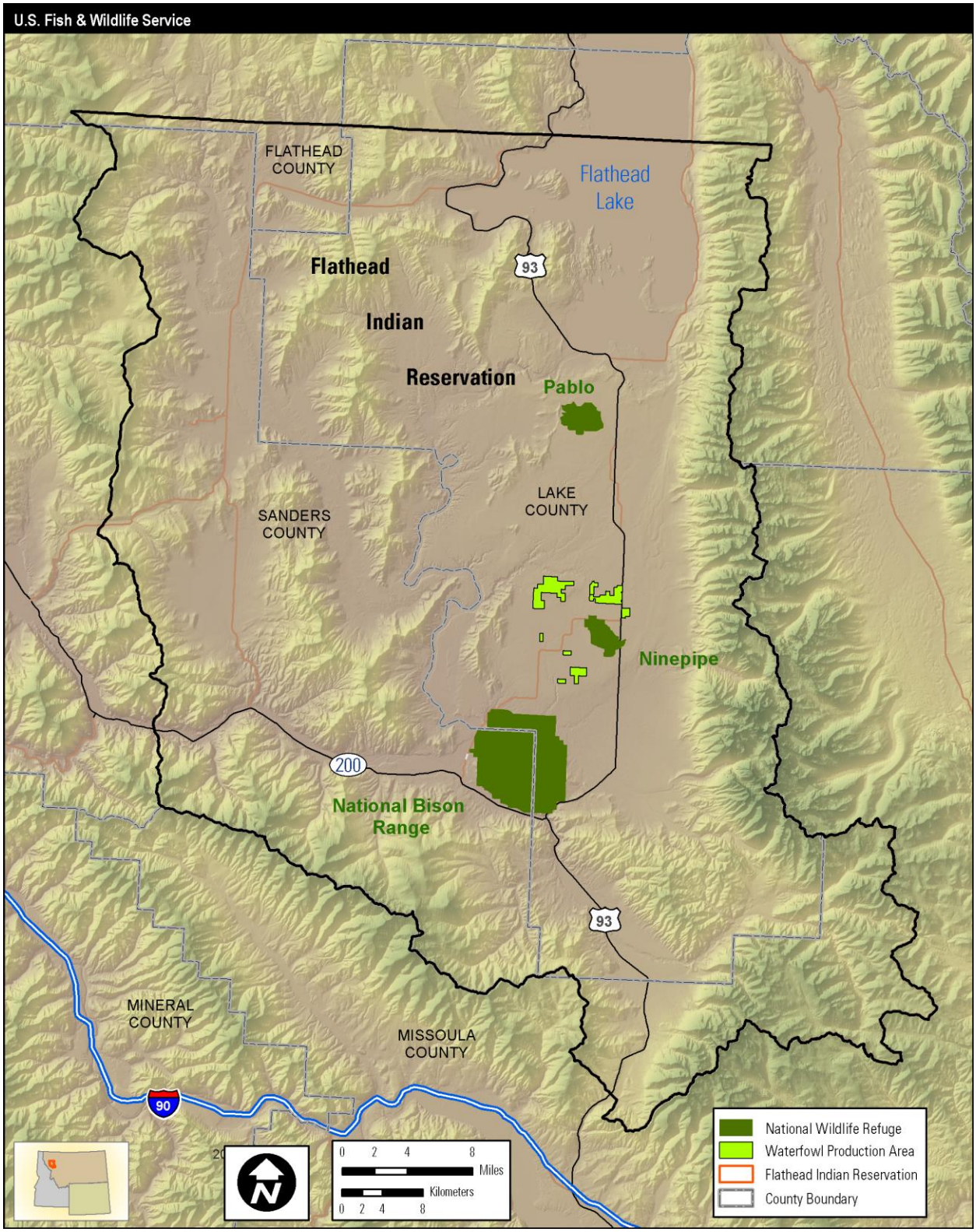

Figure 1. Map of the National Bison Range Complex within the boundary of the Flathead Indian Reservation, Montana.

Besides providing an avenue for involving the Tribes in managing the refuge complex, an AFA should also help the refuge complex to:

- add or combine resources that would increase our capabilities for better understanding, management, and protection of refuge complex resources;
- share biological information and resources on projects and issues of mutual interest, both as colleagues and neighboring landowners;
- develop and deliver quality visitor services programs that interpret and inform visitors about the historical, cultural, and biological aspects of the refuge complex;
- provide consistency in management that allows us to build on successes.

CHAPTER 2
Decision to Be Made

The Regional Director of our Mountain-Prairie Region will decide whether to proceed with an AFA with the Tribes and, if so, to what degree.

After the public reviews and provides comments on this draft EA, the planning team will present this document along with a summary of all substantive public comments to our Regional Director. The Regional Director will consider the public's input along with comments from CSKT and select a preferred alternative based on the following:

- our legal responsibilities including the mission and statutes that established and guide the National Wildlife Refuge System (Refuge System)
- the purposes of the units in the refuge complex
- the intent of the Self-Governance Act as it relates to the Refuge System
- the consequences of each alternative, as described in this document, and future budget projections

In considering the consequences of each alternative, the Regional Director will decide if effects of each alternative are significant. If the Regional Director finds that no significant impacts would occur, the Regional Director's decision will be disclosed in a finding of no significant impact. If the Regional Director finds a significant impact would occur, an environmental impact statement will be prepared.

If the Regional Director decides to proceed with an AFA, we are required to send the AFA to Congress for a 90-day review and comment period. If approved by Congress, we will immediately begin working with CSKT to begin implementing the selected AFA agreement.

CHAPTER 3
Background

We manage the National Bison Range Complex, established in 1908, as part of the Refuge System, which has a mission

> *to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.*

Located in northwestern Montana, most of the refuge complex is within the boundaries of the Flathead Indian Reservation, a 1.3 million-acre area established in 1855 through the Treaty of Hellgate with CSKT. The CSKT comprise the Bitterroot Salish, Pend d'Oreille, and Kootenai Tribes. Under the authority of the Indian Self-Determination and Education Assistance Act (Self-Determination Act) (USHR 1975), as amended, CSKT is recognized as a self-governing tribe.

Originally enacted in 1975, the Self-Determination Act was intended to assure "maximum Indian participation in the direction of educational as well as other Federal services to Indian communities…." 25 United States Code [U.S.C.] § 450a(a), Public Law No. 93-638, 88 Statute 2203 (1975). The Self-Determination Act authorizes the Secretary of the Interior to enter into contracts with Indian tribes to have them perform programs, functions, services, or activities, including administrative functions that would otherwise be performed by the U.S. Department of the Interior for the benefit of Indians. 25 U.S.C. § 450f(a)(1). In 1994, the act was amended when Congress passed the Self-Governance Act, which has given tribes the opportunity to exercise their inherent self-governing powers through greater control over tribal affairs and enhanced tribal governmental responsibilities. CSKT has exercised this authority and has negotiated for the administration of many programs, particularly those administered by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS).

As part of negotiating for agreements under the Self-Governance Act for BIA and non-BIA programs otherwise available to Indian tribes or Indians (section 403[a] and [b]), each self-governing tribe may also request negotiations for other non-BIA Department of the Interior activities as described in section 403(c) of the Self-Governance Act:

> 403(c) Additional Activities. Each funding agreement negotiated pursuant to subsections (a) and (b) of this section may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact.

On November 11, 2010, CSKT requested negotiations, under the authority of section 403(c), for an AFA on the refuge complex. This is the third negotiated AFA with CSKT in the last 9 years. The

two previous AFAs were cancelled, as described at the end of section 3.7 below. New negotiations for an AFA concluded in March 2012, and the resulting draft AFA is the proposed action (alternative B) in this EA and is being evaluated along with four alternatives.

3.1 The National Bison Range Complex

The units of the refuge complex affected by this proposal are in the Mission Valley of northwestern Montana within the boundaries of the Flathead Indian Reservation. The refuge complex headquarters is located in Moiese, Montana, in Lake County, about 45 miles north of Missoula.

The refuge complex is located on the gently rolling, glacial till deposits of ancient Lake Missoula and terminal moraines (mass of rocks and sediment) creating high densities of small wetlands. More than 205 bird species have been recorded in the area, a host for migrant birds of the Pacific flyway. Of these species, many are known to nest on the refuge complex and the remainder can be seen during the spring and fall migrations when peak numbers occur. The units of the refuge complex are generally surrounded by private land that is predominantly used as livestock pasture and for hay or other crop production. Refuge complex lands also border some State and tribal lands that are managed for conservation purposes.

The refuge complex is best known for the bison herd that roams the Bison Range. The beautiful setting of the Mission Valley combined with this diversity of wildlife species attracts almost 200,000 visitors to the refuge complex annually. These visitors are accommodated in the visitor center and on the 19-mile Red Sleep Auto Tour Route that travels through the various habitats found on the Bison Range.

NATIONAL BISON RANGE

Located about 40 miles north of Missoula, Montana, the National Bison Range is a national wildlife refuge within the Refuge System. Established in 1908, “for a permanent national Bison Range for the herd of bison to be presented by the American Bison Society.” the Bison Range (figure 2) is one of the oldest units of the Refuge System. Totaling 18,563 acres, the range was established by special legislation (35 Statute 267) and was the first refuge for which Congress appropriated funds for land acquisition.

We are responsible for managing, sustaining, and enhancing the herd of bison, averaging 350 animals, and other wildlife, including migratory birds, that use the diversity of grasslands, forests, and streams found on the refuge.

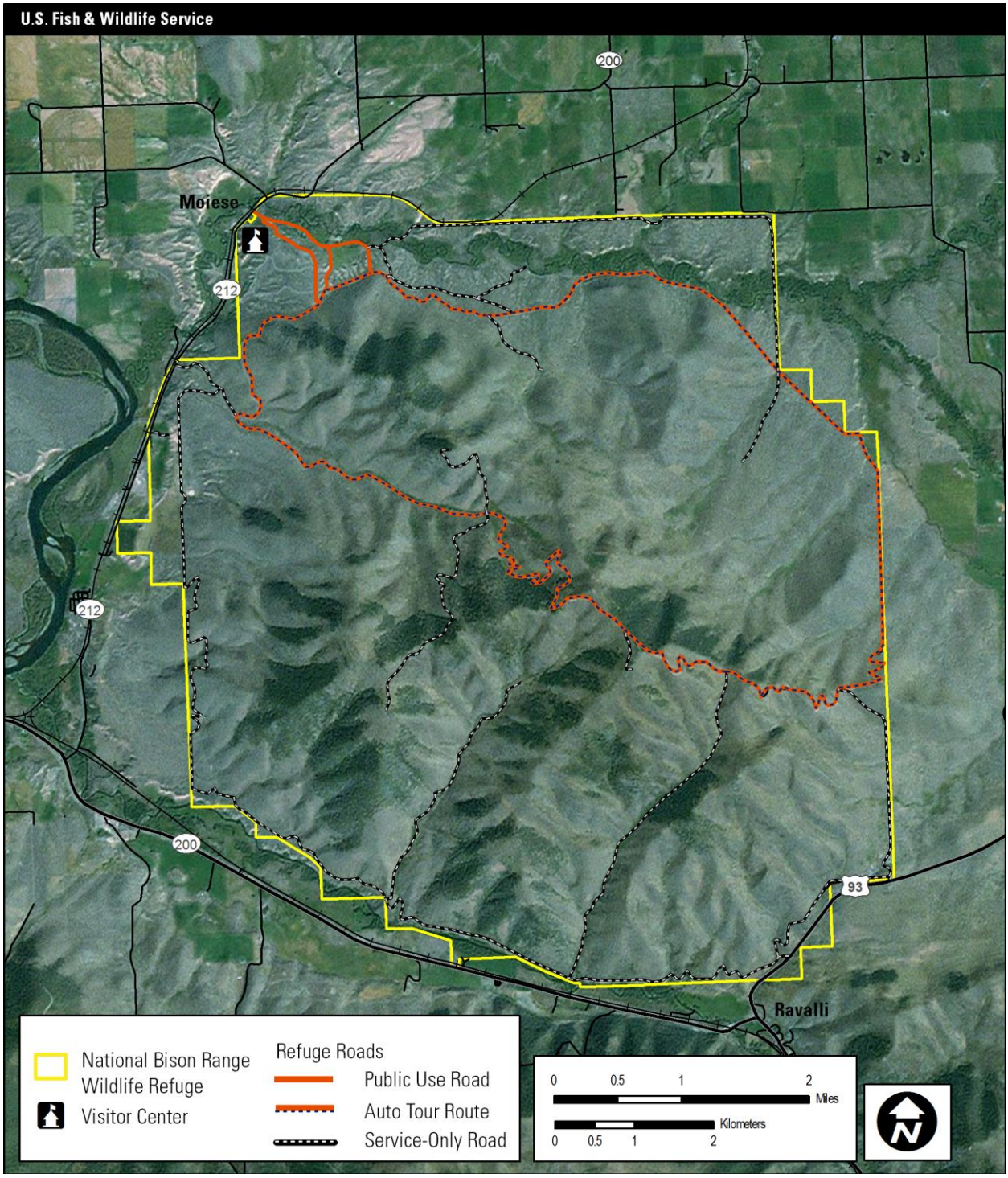

Figure 2. Base map of the National Bison Range, Montana.

The refuge is open to the public year-round, although part of the Red Sleep Auto Tour Route is closed in the winter. The most popular public use activity is wildlife observation and photography. The entire refuge is closed to hunting, but fishing is permitted on designated sections of Mission Creek.

NINEPIPE AND PABLO NATIONAL WILDLIFE REFUGES

Ninepipe National Wildlife Refuge (figure 3) encompasses 2,062 acres and is approximately 5 miles south of Ronan, Montana. Pablo National Wildlife Refuge (figure 4) is 2,542 acres and is approximately 2 miles south of Polson, Montana.

Both of these refuges are located on CSKT tribal trust lands. In 1910, these tribal trust lands were first designated as irrigation reservoirs as part of the Flathead Irrigation Project. In 1921, President Harding signed Executive Orders 3503 and 3504, which established these same lands as national wildlife refuges for migratory birds. It was not until 1948 that the Federal Government compensated CSKT for past and future reservoir operations at these refuges. At that time, the Government also bought an easement from CSKT for the right to operate these lands and waters as national wildlife refuges. In this easement agreement, it was written that CSKT "shall have the right to use such tribal lands, and to grant leases or concessions thereon, for any and all purposes not inconsistent with such permanent easement."

The refuges have relatively flat terrain and contain both natural and managed wetlands and grasslands. These refuges provide nesting and breeding habitat for migratory birds such as waterfowl, shorebirds, grassland birds, and wading birds. The Ninepipe Refuge is surrounded by State land managed by the Montana Department of Fish, Wildlife, and Parks as a wildlife management area.

Both refuges are open seasonally for compatible public use, primarily fishing and wildlife observation and photography. These refuges are not open to hunting and are closed seasonally to provide refuge areas primarily for migrating and nesting birds.

NORTHWEST MONTANA WETLAND MANAGEMENT DISTRICT

The Northwest Montana Wetland Management District was established in the 1970s. The Lake County part of the district encompasses nine waterfowl production areas totaling 3,268 acres: Anderson, Crow, Duck Haven, Ereaux, Herak, Johnson, Kicking Horse, Montgomery, and Sandsmark. All these units contain both wetland and grassland components that we manage for nesting, breeding, resting, and feeding areas for a variety of wetland-dependent migratory birds.

These waterfowl production areas are open to the public year-round for wildlife observation and photography. Hunting of waterfowl and upland gamebirds is permitted under both State and tribal regulations. Big game hunting and trapping is permitted, but the Flathead Indian Reservation regulations permit only tribal members to harvest big game and trap wildlife within reservation boundaries.

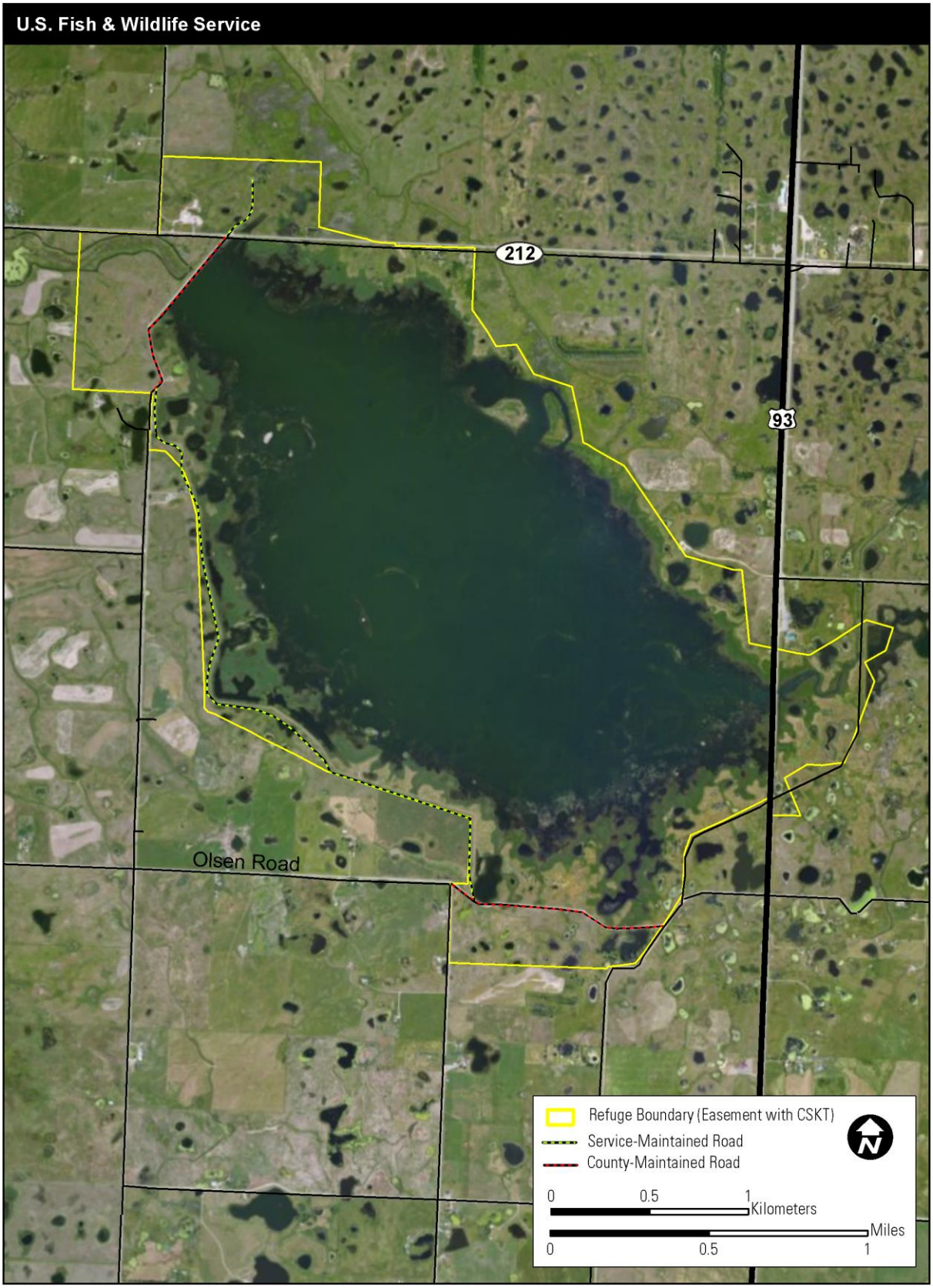

Figure 3. Base map of the Ninepipe National Wildlife Refuge, Montana.

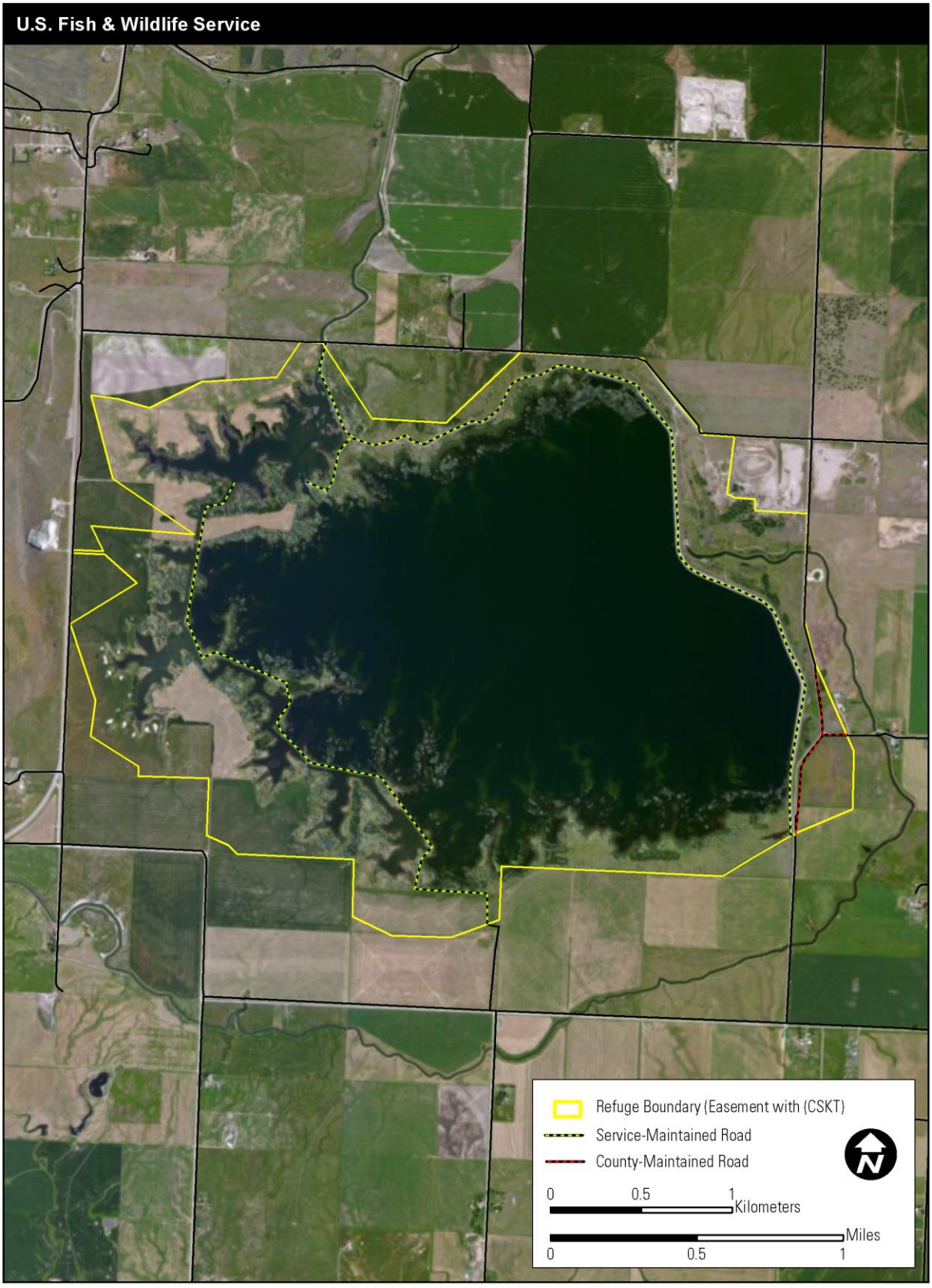

Figure 4. Base map of the Pablo National Wildlife Refuge, Montana.

3.2 The Confederated Salish and Kootenai Tribes

The Confederated Salish and Kootenai Tribes comprise primarily Salish (sometimes known as the Bitterroot Salish or Flathead), Pend d'Oreille (also known as Kalispel), and Kootenai Tribes. The 1.317 million-acre Flathead Indian Reservation is now the home of CSKT, but their ancestors' aboriginal territory encompassed most of what is now known as western and central Montana, parts of Idaho, eastern Washington, British Columbia, and Wyoming. Their home territory was mostly in the Columbia River drainage. However, the aboriginal territories of the Tribes encompassed vast areas on both sides of the Continental Divide, as documented in recorded oral histories, historical records, and many sources that scientifically describe their tribal cultures. In the 19th century, the aboriginal territory of the Tribes west of the Continental Divide exceeded 20 million acres, most of which they ceded (surrendered) to the United States in the 1855 Treaty of Hellgate (12 Statute 975). In this treaty, negotiated with Washington Territorial Governor Stevens, CSKT reserved for themselves certain areas including the Flathead Indian Reservation as well as the "right of taking fish at all usual and accustomed places, in common with citizens of the Territory…together with the privilege of hunting [and] gathering roots and berries…."

3.3 The National Wildlife Refuge System

Beginning in 1903 with President Theodore Roosevelt's designation of Pelican Island, Florida, as a bird sanctuary, and continuing through the 1960s, Congress and Presidents used a variety of authorities for wildlife conservation purposes. They used Executive orders, special acts of Congress, and general legislative authorities such as the Migratory Bird Conservation Act and the Fish and Wildlife Coordination Act to create hundreds of refuges. However, until 1966 there was no Federal law that tied these many refuges together. That year, Congress passed the National Wildlife Refuge System Administration Act (Administration Act) that created the National Wildlife Refuge System and, among other things, required that each unit of the Refuge System be managed to fulfill its establishment purposes (USHR 1966b).

Congress has twice amended the Administration Act—under the 1976 Game Range Act (USHR 1976) and under the 1997 National Wildlife Refuge System Improvement Act (USHR 1997). The Game Range Act added a new requirement that the Secretary of the Interior must administer the Refuge System through the U.S. Fish and Wildlife Service.

Besides the Administration Act, on March 1996, President Clinton issued Executive Order 12996, "Management and General Public Use of the National Wildlife Refuge System" (FWS 2009). This Executive order established a mission statement and four guiding principles for the Refuge System. The order provided direction to the Secretary "in carrying out his trust and stewardship responsibilities for the Refuge System."

In the 1997 National Wildlife Refuge System Improvement Act, Congress significantly amended the Administration Act, giving much of the language of Executive Order 12996 the force of law, but

also changing some of its guidance including revising the Refuge System's mission statement as follows:

> To administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of current and future generations of Americans.

It is the intent of Congress that the Refuge System be managed as a true system, rather than as a collection of disparate units. The Secretary and, through delegation, the Service, is required to manage each unit to fulfill the purposes for which the unit was established and to fulfill the mission of the Refuge System.

3.4 National Bison Range Complex Purposes

Every refuge has one or more purposes for which it was established. This purpose is the foundation on which to build all refuge programs, from biology and public use to maintenance and facilities. We are required to manage each Refuge System unit to fulfill its establishment purposes and allow no third party or public uses that materially interfere with or detract from these purposes, in accordance with the 1997 National Wildlife Refuge System Improvement Act. Refuge purposes are derived from the laws, Executive orders, permits, or other legal documents that provide the authorities to acquire land for a refuge. The following sections describe the establishing purposes for each unit of the refuge complex.

NATIONAL BISON RANGE

The 18,563-acre Bison Range was established for the following purposes under the authorities shown:

- "For a permanent national bison range for the herd of bison to be presented by the American Bison Society." 35 Statute 267, May 23, 1908
- "As refuges and breeding grounds for birds." Executive Order 3596, December 22, 1921
- "To provide adequate pasture for the display of bison in their natural habitat at a location readily available to the public." 72 Statute 561, August 12, 1958
- "Suitable for—(1) incidental fish and wildlife-oriented recreational development, (2) the protection of natural resources, (3) the conservation of endangered species or threatened species." 16 U.S.C. § 460k–1
- "The Secretary ... may accept and use ... real ... property. Such acceptance may be accomplished under the terms and conditions of restrictive covenants imposed by donors." 16 U.S.C. § 460k–2, Refuge Recreation Act of 1962, as amended

- "For the development, advancement, management, conservation, and protection of fish and wildlife resources." 16 U.S.C. § 742f(a)(4)
- "For the benefit of the United States Fish and Wildlife Service, in performing its activities and services. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude." 16 U.S.C. § 742f(b)(1), Fish and Wildlife Act of 1956

NINEPIPE NATIONAL WILDLIFE REFUGE

The 2,062-acre Ninepipe Refuge was established for the following purposes under the authorities shown:

- "Reserved, subject to Reclamation Service uses ... as a refuge and breeding ground for native birds." Executive Order 3503, June 25, 1921
- "For use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. § 715d, Migratory Bird Conservation Act

PABLO NATIONAL WILDLIFE REFUGE

The 2,542-acre Pablo Refuge was established for the following purpose under the authority shown:

- "As a refuge and breeding ground for native birds." Executive Order 3504, June 25, 1921

NORTHWEST MONTANA WETLAND MANAGEMENT DISTRICT

Nine waterfowl production areas cover 3,228 acres in the district, which was established for the following purposes under the authorities shown:

- "As Waterfowl Production Areas subject to ... all of the provisions of such Act [Migratory Bird Conservation Act] ... except the inviolate sanctuary provisions." 16 U.S.C. 718(c), Migratory Bird Hunting and Conservation Stamp Act
- "For any other management purpose, for migratory birds." 16 U.S.C. § 715d, Migratory Bird Conservation Act

3.5 The Self-Governance Policy of the United States

Since the Nixon Administration, the Federal Government's policy toward tribes has been one of self-determination and self-governance. Congress first codified the policy of self-determination and self-governance in the Self-Determination Act. It was enacted to ensure "effective and meaningful participation by the Indian people in the planning, conduct, and administration" of Federal services and programs provided to the Tribes and their members. 25 U.S.C. § 450a(b). As amended, this law (1) established the Self-Governance Demonstration Project, (2) outlined how tribes could achieve self-

governance status, and (3) authorized Indian tribes and organizations to contract for and run Federal service programs that directly benefited tribes and tribal members within agencies like BIA and IHS.

The CSKT was one of the first tribes to achieve self-governance status under the Self-Determination Act. Between 1991 and 2012 the number of tribes participating in the U.S. Department of the Interior self-governance program has grown from 7 tribes to 251 (44 percent of the 566 federally recognized American Indian and Alaska Native Tribes) (BIA 2012). This program adds, on average, two to three tribes every year.

In 1994, Congress amended the Self-Determination Act, passing the Self-Governance Act, which requires the Secretary of the Interior to carry out a permanent Self-Governance Program.

3.6 The Self-Governance Act and Annual Funding Agreements

The passage of the Self-Governance Act established the tribal self-governance program. 25 U.S.C. § 458aa. Under this amendment, tribes have the authority to request and enter into negotiations for AFAs with non-BIA Department of the Interior agencies, which includes the U.S. Fish and Wildlife Service (USHR 1994). The Self-Governance Act , 25 U.S.C. § 458aa, *et seq*., provides, in part:

> (a) Authorization. The Secretary shall negotiate and enter into an annual written funding agreement with the governing body of each participating tribal government in a manner consistent with the Federal Government's laws and trust relationship to and responsibility for the Indian people.
>
> (b) Contents. Each funding agreement shall--
> . . .
> (2) subject to such terms as may be negotiated, authorize the tribe to plan, conduct, consolidate, and administer programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, that are otherwise available to Indian tribes or Indians, as identified in section 405(c) [25 USCS § 458ee(c)], except that nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions, and activities, or portions thereof, unless such preference is otherwise provided for by law;
> . . .
> (c)Additional Activities. Each funding agreement negotiated pursuant to subsections (a) and (b) may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact.
>
> . . .

> Disclaimer. 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)[subsection (b)(2) of this section and 25 USCS § 458ee(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: 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 section 403(b)(2) [subsec. (b)(2) of this section].

On November 11, 2010, CSKT requested that we enter into government-to-government negotiations for an AFA that would allow the Tribes to receive funding and manage programs on the refuge complex. We entered into negotiations for a new agreement shortly thereafter. The negotiated draft AFA (appendix A) is the proposed action (alternative B) that we evaluate in this document.

OTHER NON-BIA ANNUAL FUNDING AGREEMENTS

The Self-Governance Act requires the Secretary of the Interior to annually publish: (1) a list of non-BIA programs, services, functions, and activities that may be eligible for inclusion in agreements under the self-governance program; and (2) programmatic targets for these bureaus (section 405[c], 25 U.S.C.). Non-BIA programs need not be listed to be eligible for negotiation with eligible tribes. The annual notice was last published in the Federal Register on January 23, 2013 (appendix B).

There are eight active AFAs for non-BIA programs across the Nation. AFAs are in force for a term up to 5 years. Examples include an AFA for operating maintenance and construction programs at Grand Portage National Monument in Minnesota and various elective projects at Isle Royal National Park, and an AFA for the development of on-reservation water resource projects managed by the Bureau of Reclamation on the Rocky Boy's Reservation in Montana.

Other than the two previous AFAs at the Bison Range, the only other AFA in the Refuge System was one with the Council on Athabascan Tribal Governments at the Yukon Flats National Wildlife Refuge in Alaska. Activities run by those tribes included harvest data collection, moose management, and maintenance of Federal property around Fort Yukon. That AFA is no longer active because of a lack of funding for the agreed-on activities; however, negotiations for a new agreement and activities are ongoing.

2005 ANNUAL FUNDING AGREEMENT

We and CSKT first entered into an AFA at the National Bison Range Complex in 2005. We terminated the first AFA based on our findings of CSKT's poor performance and conduct. The U.S. District Court, District of Columbia (D.D.C.), in *Reed* v. *Salazar* (744 F. Supp. 2d 98 [D.D.C. 2010]), summarized our findings as follows (from 744 F. Supp. 2d 98, 105–107, citations and footnote omitted):

> On March 1, 2006, FWS's Project Leader for the NBRC…compiled a report on the CSKT's implementation of the AFA in 2005. FWS found that in [FY] 2005 only 41% of the activities performed by the CSKT under the AFA were rated as successful. In

> the Biology Program, 9 out of 26 required activities were rated as unsuccessful, with 6 more rated as "needs improvement." FWS found that some activities were not initiated in a timely manner and some were not performed by qualified personnel. In the Fire Program, FWS found that only one of three required prescribed burns was completed, due in part to poor planning. In the Maintenance Program, FWS found that "[s]everal of the highest priority Activities, such as those that influence public health and long-term maintenance of vehicles and heavy equipment, were not completed at a satisfactory level."

An objective evaluation of the Service's reports on CSKT performance under the first AFA and the CSKT's later rebuttals to those reports makes several things clear. First, the Service's approach to evaluating CSKT performance was very different from its approach in evaluating its own performance and that of other contractors. Although both parties referred to the first AFA as a "partnership," Region 6 and Refuge System employees generally felt that an unworkable agreement had been forced on the Bison Range Complex, and that the CSKT wanted complete control of refuge complex programs. This was exacerbated by the fact that some Service employees were reassigned prior to implementation of the AFA and the rest were concerned about the security of their own positions.

As a result, the Service treated CSKT more like a contractor than a partner under the first AFA. The Service gave CSKT an Annual Work Plan (AWP) of over 1000 pages, listing the tasks to be performed and giving both general and some specific instructions on how to perform each task. However, the performance criteria were missing or unclear, so that the CSKT did not know what level of performance would be required to achieve "Fully Successful" or "Needs Improvement" ratings. Throughout FY 05 and 06 the refuge manager relied on Service staff as to whether CSKT completed tasks satisfactorily or not.

On March 1, 2006 the Service refuge manager submitted a report indicating CSKT had completed only 41% of assigned tasks satisfactorily. The first AFA provided, in Section 10 "Performance Assessment, Reporting and Review," that the Service was to monitor CSKT performance through direct observation and review of activity records and notify CSKT of any performance deficiencies. The AFA does not provide for the type of comprehensive written report that was prepared. CSKT was given only limited opportunity to review the findings of the performance report prior to submission to the Service's Regional Office, and in response prepared a long rebuttal. The Service prepared a similar report for FY 2006 after the AFA was terminated in January 2007, again without input from CSKT, and the tribe again provided a rebuttal document. Neither the Service nor any independent mediator reconsidered the FY 2005 and 2006 CSKT performance reviews in light of the CSKT rebuttals.

The methods the Service used to evaluate CSKT performance in 2005 and 2006 under the first AFA were different from those the Service uses to evaluate the performance of its own employees or private contractors. Each Service employee receives an annual performance plan, as well as an annual performance appraisal under that plan. Although the critical elements of those plans must be measurable, it is normal practice for supervisors to exercise discretion. Supervisors routinely provide fully satisfactory and superior ratings to employees who have done a good or excellent overall job during the performance period, even if they missed a few deadlines or did not get all of their assignments accomplished. Supervisors understand that good employees may not have gotten all their assignments done timely due to extenuating circumstances, changing priorities of higher managers, or

new unanticipated work assignments. Some flexibility in performance rating within the Service is normal.

In evaluating private contractors, Service contracting officers routinely negotiate and communicate extensively with vendors to achieve remedies for performance issues prior to cancelling a contract. If the inspector on a construction contract is concerned about contractor performance, the contracting officer will provide opportunities for the contractor to respond and challenge the assertion of deficiencies, or explain circumstances and offer a remedy. The CSKT was not provided a timely opportunity to respond to deficiencies in 2005 and 2006. Although the record shows that the refuge manager and CSKT Tribal Coordinator communicated often during the first AFA, there appears to have been little dialog opportunity for CSKT to rebut, explain, refute or remedy the reported deficiencies.

However, there is no doubt that CSKT employees did not perform all of their work under the first AFA in a satisfactory manner. There were, for example, real and serious deficiencies in fence maintenance in 2006. In their rebuttals, CSKT acknowledged some of the reported deficiencies and offered remedies to correct those deficiencies in the future.

The CSKT rebuttals did identify extenuating circumstances leading to their inability to meet deadlines and performance criteria, particularly the Service's failure to provide supplies and equipment or instructions in a timely manner. Although the Service denied withholding resources, the fact that CSKT had to rely on Service employees to order supplies, and unlock fuel pumps and tool storage areas certainly created a potential for CSKT operational performance to be affected by Service logistical performance.

CSKT rebuttals correctly note that, although the refuge manager had declared some of the tasks in the AWP as not required, those tasks were included in the 59% of tasks alleged to be not completed fully successfully. As a result, the FWS reports indicated CSKT performance to be poorer than it actually was.

In some instances, minor deficiencies in CSKT performance pushed the ratings out of "fully successful." The refuge manager's reports acknowledge that no distinction was made regarding the importance of various activities to achievement of refuge purposes, goals and objectives. A "needs improvement" or "unsuccessful" rating for something as relatively minor as grounds maintenance had the same weight as deficiencies in bison husbandry or fence maintenance.

For example, CSKT performance on a trail maintenance task was rated as "needs improvement" because CSKT did not update the information in the Service's SAMMS [need to define this acronym] data base in a timely manner. It is true that there was a need to improve SAMMS reporting at refuges in general, but many refuge managers would not view a delay in reporting as materially impacting their refuge purposes, goals and objectives. The 2006 AWP called for waterfowl pair counts to be conducted on horseback. Because CSKT employees assigned these surveys lacked the equestrian skill to safely conduct the surveys on horseback, they performed them on foot. The Service therefore rated CSKT's performance as deficient.

CSKT rebuttals stated Service employees were uncooperative when asked for information or assistance. The Service rejects the notion that all CSKT performance deficiencies can be blamed on

uncooperative staff, but acknowledges that not all of its employees were inclined to make the CSKT look good. There was responsibility on both sides under the first AFA.

Given the overall tension between the parties, it was asking too much to expect a fair and objective independent evaluation of either party by the other.

The seminal performance issue that led directly to termination of the first AFA involved husbandry of 64 bison that were maintained in a small pasture unit following the October 2006 round-up. These bison had been selected for potential relocation to other Refuge System units as part of the Service's bison meta-population program. The AWP required CSKT to provide husbandry to these bison, including twice-daily checks of conditions and provision of hay and water ad libitum (at the discretion of the bison), which means essentially that there should always be some water and hay left in the unit, documenting that the bison had all they wanted.

CSKT began feeding the confined bison on October 2, 2006. There is little in the record to indicate whether there were any issues with CSKT performance of this task in October, 2006. On November 9, 2006, the refuge manager reminded the CSKT Tribal Coordinator of the ad libitum feeding requirement. Apparently both parties understood that insufficient hay had been stored in the refuge barn in August 2006 to both feed the refuge's horses over the winter and to provide hay to the confined bison. It seems that little was done by either party to address the insufficient hay issue until late November.

At the end of the long Thanksgiving Day weekend, Service staff reported to the refuge manager that the confined bison were out of hay. During the following two weeks, the Refuge Manager inspected the confined bison pens 7 times and determined that on 6 of those inspections, there was insufficient hay available to document ad libitum feeding.

Based on reports of those findings, the Regional Director terminated the extension of the 2005–2006 AFA.

The Refuge Manager's January 4, 2007, memorandum report characterized the bison as having been "hungry" and "underfed." The report provided mathematical calculations to indicate the bison were fed far less hay than they should have been. The report did not characterize the bison as "starving" or "malnourished". However, as this story spread in the media and within the Service, DOI and CSKT, those words became attached to the story by others.

CSKT provided a response to that memorandum, dated March 2007, citing "allegations of bison malnourishment." The CSKT response included the statement of a licensed veterinarian who inspected the bison on December 8, 2006 and reported, "My general impression is that the animals are in good condition."

A review of the written record, including those reports leads to the following conclusions about the first AFA:

- On weekends and over the Thanksgiving holiday, CSKT did not follow the AWP protocol for twice-daily status checks of confined bison, and requirement to feed and water. CSKT did not feed the bison ad libitum, but according to mathematical calculations, which were incorrect. Neither the CSKT nor the Service provided a contemporary record of how much hay was fed each day.

- Although CSKT did not follow the required protocols of the AWP, Service Wildlife Health Office personnel found all of the confined bison suitable for transport to other refuges, where there was no mortality, and the Service had no further concerns about malnutrition.

- The Service did not follow regulations contained in 25 CFR 1000 Subpart M, or the AFA's procedures for reassumption when it reassumed bison husbandry duties or when it cancelled the AFA.

2008 ANNUAL FUNDING AGREEMENT

In January 2008, the Service entered negotiations with CSKT for the second AFA. Those negotiations were markedly different than the negotiations for the first AFA. The negotiations were facilitated by skilled, mutually agreed upon mediators, and both parties acknowledged their respective roles in the failure of the first AFA. The second AFA was fully implemented on January 1, 2009.

Building on the experiences gained during the 2005 AFA, all parties involved sought to improve coordination and implementation. The second agreement worked well. However, it was rescinded by the court in *Reed* v. *Salazar*, 744 F. Supp. 2d 98 (U.S. District Court, District of Columbia 2010). The court held that we had violated the National Environmental Policy Act (NEPA) because we failed to explain its application of a categorical exclusion in light of substantial evidence in the record of the Tribes past performance problems in the 2005 AFA.

The court did not cite allegations of poor conduct as influencing its decision under NEPA. The court also did not reach the issue of whether the Tribes had actually performed poorly under the first AFA and stated the "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 [Administrative Procedure Act]."

During that 2008–2011 AFA, the OIG received allegations of problems, including performance issues with CSKT. The OIG found no evidence to support allegations of inadequate law enforcement coverage, poor bison containment or fence maintenance, improper pesticide application, or that management of the Bison Range was adrift. The report did recognize the challenges with not having an effective leader in the biological program and issues related to a lack of continuity in programs due to the constant turnover in staff. The OIG did find a minor deficiency in preparation of annual work plans. This deficiency was within the normal range of annual work planning proficiency that typically occurs within the Region 6 refuge program.

PROPOSED ANNUAL FUNDING AGREEMENT

In proposing a third AFA with CSKT, we have acted to address the concerns of the two previous AFAs. Improvements have been incorporated to help the Tribes better their performance under the 2005 AFA. And we have sought to satisfy the court's decision with regard to our compliance with NEPA under the 2008 AFA.

CHAPTER 4
Public Involvement

The following section summarizes how we consulted with the public at the start of this environmental analysis process, including outreach methods and a summary of the comments received both internally and from the public during the 30-day comment period.

4.1 Public Scoping

We released the draft AFA to the public in May 2012 with a notice of intent to prepare an EA to evaluate the proposal and develop alternatives to the draft AFA. The Region 6 External Affairs Office in Denver, Colorado, sent the notice to media outlets throughout Montana.

Starting on May 15, 2012, the public had 30 days to review the draft AFA, provide comments, and give us other options to consider. All comments had to be received or postmarked by June 15, 2012. We received 16 comments and gave them to CSKT for their consideration.

On August 22, 2012, CSKT gave us a response to the public scoping comments along with a summary of recommendations for completing the environmental analysis and the supporting documents. We reviewed and considered all comments from the public, CSKT, and Service staff during development of this EA.

4.2 Issues Identified During Scoping

Below are descriptions of the substantive issues that we identified during the 30-day public scoping process for the draft AFA. We considered these issues in developing alternatives.

LACK OF POLICY ON ANNUAL FUNDING AGREEMENTS

Several commenters stated that, while there are Federal regulations for negotiating AFAs (25 Code of Federal Regulations 1000, subpart F), the regulations mostly cover the general financial aspects of AFAs. It was noted that these regulations do not address the applicability of AFAs to specific Federal programs or clarify the acceptable range of administrative control by the negotiating parties.

INHERENTLY FEDERAL FUNCTIONS AFFECTING THE INTER-GOVERNMENTAL PERSONNEL ACT MOBILITY PROGRAM

Several commenters suggested that certain management activities are inherently Federal functions and would affect how we and CSKT direct the day-to-day activities of employees under the Mobility Program of the Inter-Governmental Personnel Act of 1970 (IPA) (USHR 1970b).

COMMENTS RECEIVED FROM THE PUBLIC AND FOUND TO BE OUTSIDE THE SCOPE OF THE PLAN

Some issues raised during public scoping were found to be outside the scope of the plan because they conflict with existing policy, the Service's or the Refuge System's missions and purposes, the best available science, or with other information.

Lack of Comprehensive Conservation Planning

Several commenters noted that we have not yet developed a comprehensive conservation plan for the refuge complex, a requirement for each unit of the Refuge System. Policy, however, describes conservation planning as being entirely different from AFAs. Because AFAs are agreements of 5 years or less, we would not discuss this AFA in the comprehensive conservation plan, which is a 15-year planning document.

Impacts to Federal Employees

Several commenters raised concerns about how a change in management might affect staffing levels and the treatment of Federal employees. While we give our employees careful consideration when crafting management actions, evaluating consequences to our staff falls outside the scope of NEPA. Furthermore, future fluctuations in staffing cannot be determined or assumed.

Collaboration Challenges and Disruptions to Program Control

Two commenters questioned how disputes might be effectively settled through our collaboration with CSKT and how programs would be managed and sustained during times of conflict. We already collaborate with CSKT and have policy in place that gives our refuge manager final decisionmaking authority for activities conducted under, and beyond, an AFA, making further evaluation of this issue unnecessary.

CHAPTER 5
Proposed Action and Alternatives

This chapter describes the no-action alternative along with the proposed action and the alternatives that we considered for developing a partnership with CSKT through an AFA for managing or assisting with the operations at the National Bison Range Complex:

- Alternative A—No Action
- Alternative B—Draft AFA (Proposed Action)
- Alternative C—AFA for Fire and Visitor Programs
- Alternative D—AFA Same as Alternative C plus Incremental Addition of More CSKT Staff in All Programs
- Alternative E—AFA Same as Alternative D plus District Programs with Combined Service and CSKT Staff in All Programs

Section 5.8 describes alternatives that we considered but eliminated from detailed study.

5.1 Elements Common to Alternatives Considered for Further Analysis

- An AFA would have a term of up to 5 years.
- All current permanent Federal employees of the refuge complex would be able to maintain their current Federal employment status, pay, and benefits under any future AFAs.
- The refuge manager, deputy refuge manager, and law enforcement officer would remain Federal positions.
- Any positions transferred to CSKT would include money for associated salaries and $5,000 per full-time employee (prorated for seasonal positions) for indirect costs.
- We would convert our two term positions to permanent positions after they expire and before they are transferred to CSKT because they would otherwise expire before the end of the 5-year term of the AFA.
- We would keep most of the operating budget, excluding salaries and indirect costs associated with positions transferred to CSKT.
- CSKT staff would be required to follow all Service laws, policies, and planning documents.
- We would transfer construction and deferred maintenance project money to CSKT on a case-by-case basis.

- CSKT would offer no more than 5-year contracts to all its employees. These positions would depend on the AFA continuing. A year before the termination of these contracts and the AFA, we and CSKT would agree to extend the existing AFA or renegotiate another management option.
- If an AFA were cancelled, no CSKT employee would be guaranteed continued employment with us or the Tribes.

5.2 Alternative A—No Action

Alternative A is the no-action alternative, under which we would continue to administer and carry out all programs on the refuge complex and would not pursue an AFA with CSKT. This is the alternative against which we compare all the remaining alternatives for the environmental consequences analysis in chapter 7.

STAFF

Under the direction of the refuge manager and in accordance with approved Service plans and policies, our employees would plan, design, and conduct work on the refuge complex, augmented as needed by contractors, volunteers, and cooperators such as universities and researchers. We would continue targeted recruiting of CSKT tribal members and descendants for seasonal positions, vacated permanent positions, and the Federal Pathways Programs for students, which would give individuals the experience and opportunity to qualify for careers with us or other agencies.

We would keep the nine current permanent positions and convert the two term positions back to permanent status (figure 5) as follows:

- refuge manager
- deputy refuge manager
- supervisory wildlife biologist (program leader)
- supervisory outdoor recreation planner (program leader)
- range conservationist
- fish and wildlife biologist (convert term back to permanent)
- law enforcement officer
- equipment operator (program leader)
- maintenance worker
- maintenance worker (convert term back to permanent)
- range technician (permanent seasonal)

We would convert back to permanent appointments the 4-year term maintenance worker (seasonal) and fish and wildlife biologist.

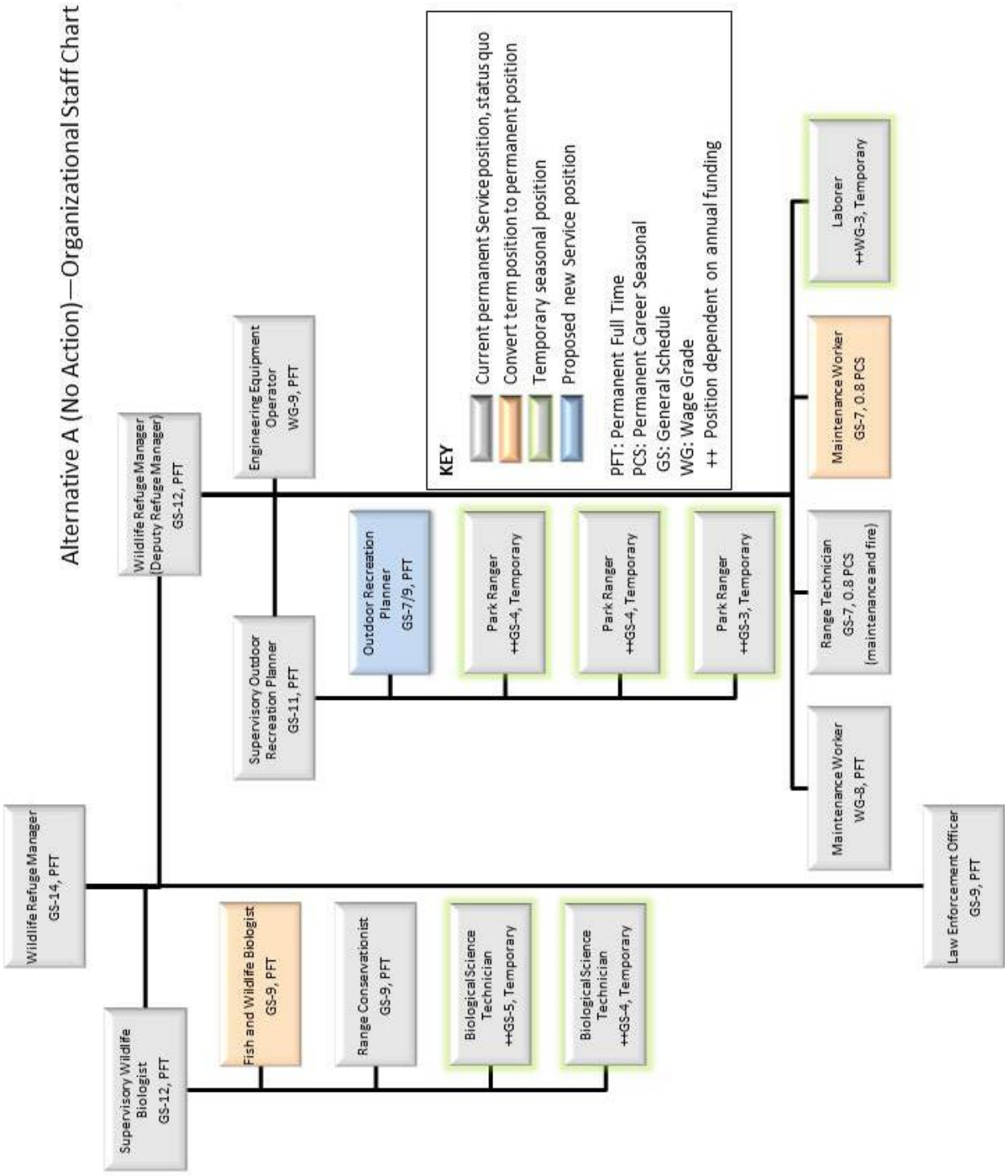

Figure 5. Organizational staff chart for alternative A (no action).

We would annually recruit two to six seasonal employees (figure 5), depending on project funding. Our program leaders in the biology, visitor services, and maintenance programs would continue to recruit and supervise or lead the respective staff in their programs. The refuge manager would propose adding a GS–9 outdoor recreation planner to help develop programs and projects and to manage the visitor center for the 200,000 visitors that come to the refuge complex each year.

TRIBAL COORDINATION

We would continue to coordinate with CSKT as the entity responsible for wildlife management throughout the adjacent Flathead Indian Reservation and as the owner of the lands within the Ninepipe and Pablo Refuges and other adjoining tribal lands. Our informal and formal cooperation with CSKT would continue on issues such as invasive plant species control, fire management, trumpeter swan restoration, habitat management and native plant restoration, and grizzly bear and gray wolf management on the reservation.

Agreements could allow for the transfer of money to CSKT to enlist the abilities of FWRC staff (such as for natural resources, fire, and water resources). The Tribes' staff would help us to conduct projects that support and enhance refuge complex operations and resources, including completing deferred maintenance projects such as construction of facilities.

We would continue to coordinate with FWRC to develop programs that highlight the values and importance of the refuge complex to the Tribes—the history of the uses of the bison and the cultural significance of this species and other wildlife along with the associated landscape.

BIOLOGY PROGRAM

We would continue to plan and manage all biological programs to support and accomplish the purposes for which each unit of the refuge complex was established. We would continue to set annual priorities, designing and monitoring short- and long-term projects to better understand the resources of the refuge complex and address management concerns. Inventory and monitoring programs would continue to focus on Federal trust species and the biological resources, including vegetation and water quality and quantity that support those species. We would develop or update our long-range management plans including the habitat management plan, integrated pest management plan, and inventory and monitoring plan.

Habitat Management

The quality of the forage, including the spread of invasive plant species and the effects of other grazing animals and insects, would continue to be studied and maintained on the Bison for range health and to fulfill management objectives.

Refuge complex staff would continue to inventory and monitor infestations of invasive plant species and develop and apply treatment strategies using an integrated approach of chemical, biological, cultural, and mechanical methods. We would continue to coordinate with CSKT and other partners in Lake and Sanders Counties to develop a treatment strategy that identifies priorities, new invaders, and treatment areas that would have a greater effect on a larger landscape.

Water quality data would be collected periodically on all refuge complex waters including wetlands, streams, and ponds. We would coordinate water level management on the Ninepipe and Pablo Refuges and waterfowl production areas with CSKT and the Flathead Irrigation District. We would use water level management structures to optimize nesting, feeding, and brood-rearing habitat for waterfowl and other waterbirds.

To improve and restore habitat, we would use prescribed fire, haying, and prescriptive cattle grazing on the Ninepipe and Pablo Refuges and the waterfowl production areas in the Northwest Montana Wetland Management District (Lake County).

Wildlife Management

Bird surveys, including surveys of waterfowl, neotropical migrants, and resident birds, would continue to be designed and carried out by our staff or coordinated with other agencies such as FWRC. We would conduct annual big game counts, per recommendations in the Bison Range's Fenced Animal Management Plan.

We would continue to monitor bison health and genetic integrity in coordination with the wildlife health office. We would monitor the health of our bison herd, conducting necropsies on all animals that died, to prevent the spread of disease. Our maintenance and biological staff would plan and conduct the annual bison roundup to collect genetic information and monitor herd health.

In coordination with the Service's wildlife health office, we would monitor wildlife health, including that of big game and bird species. Necropsies to monitor for diseases would be conducted on all big game animals that died naturally or were dispatched.

VISITOR SERVICES

We would continue to plan and execute all visitor services programs, which would focus on the Federal trust species such as bison and migratory birds, other resident wildlife, and habitats native to the areas around the refuge complex.

We would continue to provide hunting and fishing opportunities in areas where these uses would not detract from the purpose for which a refuge complex unit was established, following State and reservation laws.

We would continue to develop and provide environmental education and interpretive programs to local schools and conduct outreach through local media and online resources.

MAINTENANCE PROGRAM

We would continue to be responsible for all projects and programs associated with the maintenance program including the maintenance and repair of all facilities, roads, equipment, and vehicles to provide dependable, safe, and secure operating conditions for all programs. Our maintenance staff would continue to assist with habitat management projects, such as invasive species control, haying and grazing programs, habitat restoration, and water level management. Our maintenance staff would also continue to be responsible for the movement of bison for grazing management and the annual roundup activities necessary for monitoring herd health and excessing

animals. Using horses, our maintenance staff would relocate bison every 2 to 3 weeks (April through September) to manage refuge habitats and provide optimal grazing opportunities. They would also continue to lead the operations needed to move bison through the corral system during the annual roundup, upgrading and maintaining this system as needed. The two highest-graded maintenance employees would continue to train other employees, including management and biology staff, on how to safely assist with these operations.

OPERATIONS

We would continue to protect cultural resources according to section 106 of the National Historic Preservation Act (USHR 1966a) with the help of CSKT's Tribal Historic Preservation Officer, who inspects all sites proposed for disturbance.

The Tribes would continue to conduct initial attack operations for all wildfires on the refuge complex, and we would coordinate all prescribed fire activities with CSKT.

The refuge complex staff would continue to coordinate projects for construction and deferred maintenance. The refuge manager would approve all associated design, engineering, and construction plans, specifications, and drawings. This would include getting the necessary approvals from our regional engineer.

Our program leaders and their staff would plan and prepare all long-range management plans for the biology and visitor services programs, including the 15-year comprehensive conservation plan and supporting plans for habitat management, integrated pest management, fire management, and wildlife management. We would develop these documents with the full involvement of various partners including the Tribes and the State.

5.3 Alternative B—Draft AFA (Proposed Action)

We would execute and carry out the draft AFA negotiated with CSKT during 2011–2012 (appendix A). CSKT would be responsible for designing, implementing, and managing refuge programs, including biology, fire, maintenance, and visitor services.

STAFF

Three of the 11 current Service employees—refuge manager, deputy refuge manager, and law enforcement officer would remain employed by us. Remaining staff would be assigned or transferred to CSKT as described below. Figure 6 displays the Service and CSKT employees for the refuge complex that would manage and carry out all programs under this alternative.

Initially, we would keep the environmental education program, management of the cooperating association bookstore, and volunteer selection and coordination until the current supervisory outdoor recreation planner transferred or retired. At that time, we would transfer the position to CSKT for recruitment and transfer the remaining visitor services and volunteer program to CSKT.

Five permanent employees—lead wildlife biologist, range conservationist, equipment operator, maintenance worker, and range (fire) technician—would remain Federal employees. However, we would ask these to sign IPA agreements assigning them to work for CSKT. This would allow the Tribes to manage refuge programs, including supervising all program leaders and support staff and recruiting and supervising volunteers. IPA assignments are voluntary, and must be agreed to by our employees. Our employees assigned to CSKT under IPA agreements would have no change to their Federal pay, benefits, or other entitlements, rights, and privileges. If our five affected employees did not accept the options available to them through this AFA (appendix A, section 13.F), we would transfer these positions to CSKT for recruitment of their own employees (appendix A, section 13.F.4).

Two term employee positions—a maintenance worker and a fish and wildlife biologist—would not be renewed. These positions, salaries, and duties would be transferred to CSKT for recruitment.

We would give CSKT money to recruit two to six temporary seasonal employees to support all refuge complex programs during primarily spring through fall and to recruit a GS–11 (equivalent) wildlife refuge specialist. The individual occupying this new position would be supervised by the manager of FWRC, but would receive day-to-day direction from either our refuge manager or deputy refuge manager. The wildlife refuge specialist would supervise all CSKT and IPA Service staff (figure 6), directing the day-to-day work of employees and volunteers in the biology, fire, maintenance, and visitor services programs (appendix A, section 7.C). In the absence of the CSKT wildlife refuge specialist, a CSKT-designated official would provide day-to-day direction to CSKT and IPA employees and volunteers.

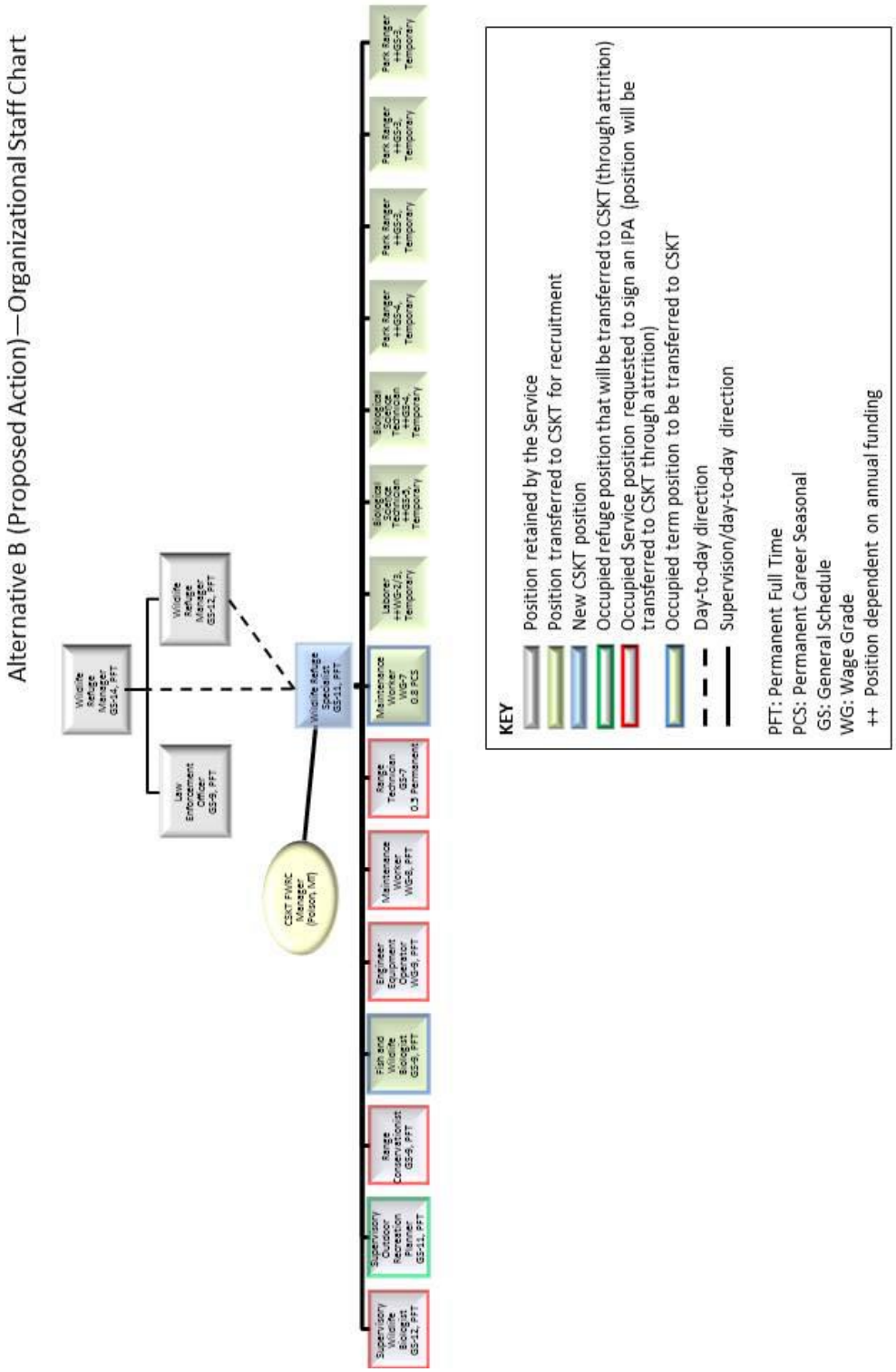

Figure 6. Organizational staff chart for alternative B, the draft AFA (proposed action).

TRIBAL COORDINATION

CSKT staff would protect cultural resources according to section 106 of the National Historic Preservation Act with the help of CSKT's Tribal Historic Preservation Officer, who inspects all sites proposed for disturbance.

The Tribes would continue to conduct initial attack operations for all wildfires on the refuge complex and would coordinate all fire management activities, including prescribed fire used to treat invasive plants and to restore and enhance habitat.

On agreement between CSKT and us, the AFA may be amended to include construction or deferred maintenance money for work to be performed by the Tribes. The Tribes would not begin any construction covered by this AFA without the refuge manager's previous written approval of all associated design, engineering, and construction plans, specifications, and drawings. The refuge manager would be responsible for obtaining necessary approvals from our regional engineer. We would oversee each project, and CSKT would be responsible for following established guidelines, design specifications, and relevant laws including helping with any analysis required under the National Environmental Policy Act. The Tribes would return to us any money not used for a project.

BIOLOGY PROGRAM

CSKT would be responsible for designing, implementing, and managing the biology program as described for alternative A, including the development of all long-range management plans under the direction of the refuge manager.

VISITOR SERVICES

CSKT would be responsible for designing, implementing, and managing the visitor services program as described for alternative A, including developing a visitor services plan for the refuge complex under the direction of the refuge manager.

MAINTENANCE PROGRAM

CSKT would be responsible for designing, implementing, and managing the maintenance program as described for alternative A, including all activities related to the movement of bison between grazing units and at the annual roundup under the direction of the refuge manager.

OPERATIONS

A refuge complex leadership team would be formed to develop annual work plans, set work priorities, address performance and conduct issues, prepare periodic status reports, and resolve disputes. The leadership team would include our refuge manager and deputy refuge manager, the CSKT wildlife refuge specialist, and the manager of FWRC. The team would meet as needed to discuss management plans and address any issues. The leadership team would develop and use consensus decision making in all of its work; however, if the team were unable to reach consensus on any matter, the decision of the refuge manager would prevail.

5.4 Alternative C—AFA for Fire and Visitor Programs

We would negotiate an AFA with CSKT, different from the draft AFA in alternative B, in which the partnership would include the Tribes conducting full fire management and collaborating on all aspects of the visitor services program. All work of the refuge complex would be accomplished under the direction and leadership of our refuge manager or deputy refuge manager and our program leaders in accordance with approved Service plans and policies.

STAFF

Besides keeping our refuge manager, deputy refuge manager, and law enforcement officer, we would retain the following staff (figure 7):

- eight permanent positions
- three temporary, seasonal positions (biology and maintenance)
- two term positions converted back to permanent positions

CSKT Fire Management Division staff would implement the fire management program. The Division (under the Tribes' Forestry Department) is responsible for wildland fire management including fire preparedness, wildfire suppression, and application of prescribed fire on the Flathead Indian Reservation. The Tribes' fire program is fully integrated into the National Interagency Fire Management Program. CSKT fire management employees are fully qualified under the National Interagency Fire Qualification System.

We would give the Tribes money to recruit a GS–9 (equivalent) outdoor recreation planner and up to four seasonal CSKT employees for visitor services depending on annual project funding (figure 7). The CSKT outdoor recreation planner would supervise these seasonal employees.

TRIBAL COORDINATION

Our coordination with the Tribes would be the same as described for alternative A, except that the Tribes would have more involvement in visitor services and fire management as described below.

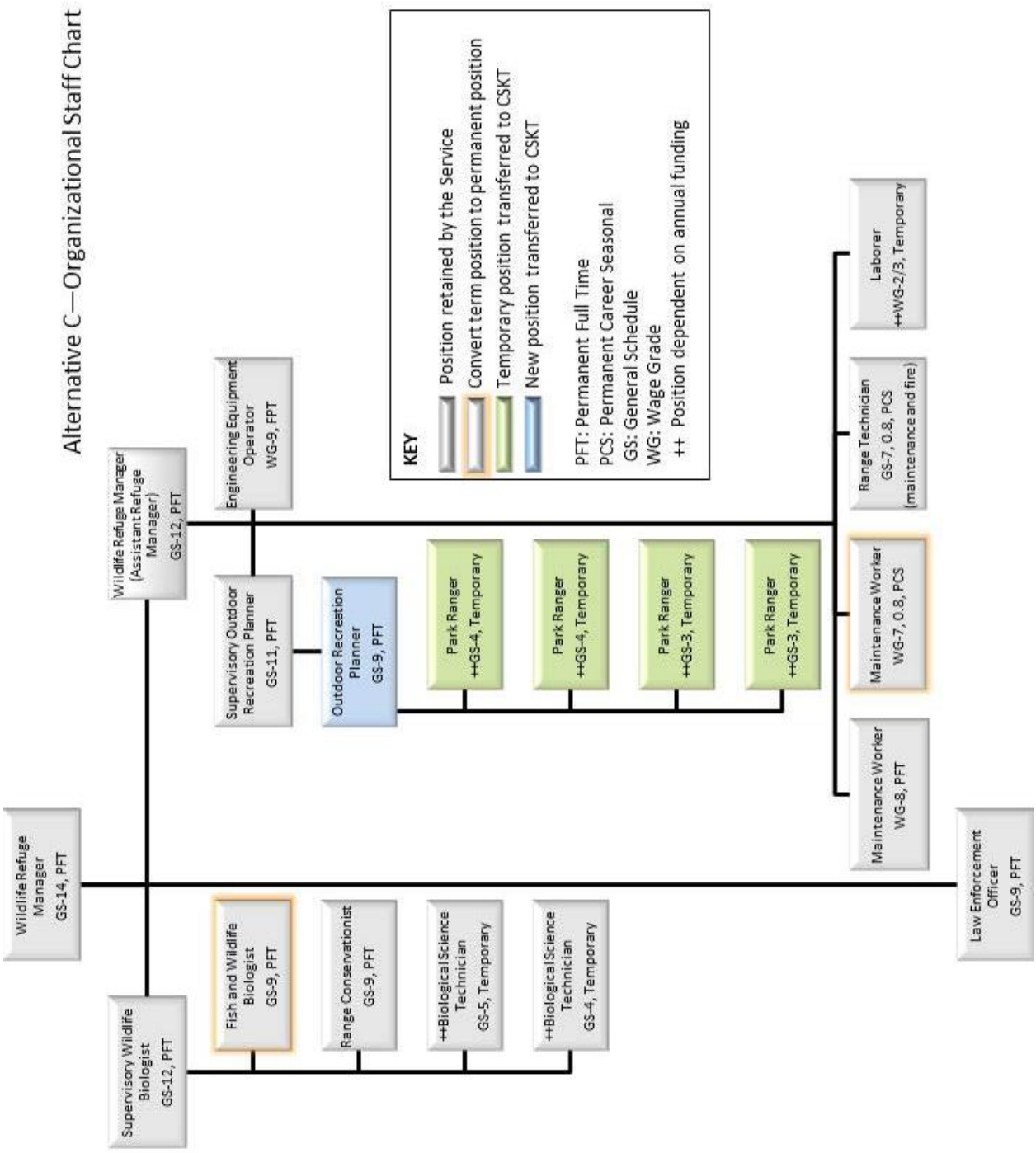

Figure 7. Organizational staff chart for alternative C, AFA for fire and visitor programs.

BIOLOGY PROGRAM

The program would be the same as described for alternative A.

VISITOR SERVICES

The CSKT-recruited outdoor recreation planner would work alongside our supervisory outdoor recreation planner. They would collaborate on interpretive and education programs and displays and on providing visitors with information on the resources, management, history, and cultural significance of the refuge complex. The CSKT outdoor recreation planner would supervise the Tribes' seasonal visitor services staff responsible for orienting and interacting with refuge visitors, collecting fees for the Red Sleep Auto Tour Route, operating the cooperating association sales outlet, and interpreting exhibits in the visitor center. These seasonal employees would also help develop interpretive programs and take part in public programs and events such as the annual bison roundup.

MAINTENANCE PROGRAM

The program would be the same as described for alternative A.

OPERATIONS

These actions would be the same as alternative A: cultural resource protection and plan development and implementation.

The Tribes would continue to conduct initial attack operations for all wildfires on the refuge complex, and we would coordinate all prescribed fire activities with CSKT. CSKT fire staff would continue to respond to all wildfires on the reservation, including the refuge complex. The AFA would expand this partnership into more habitat management programs using monitoring and prescribed fire, enhancing grasslands, and controlling invasive plant species. As described under alternative B, the AFA may be amended to include construction or deferred maintenance money for work to be performed by the Tribes.

5.5 Alternative D—AFA Same as Alternative C plus Incremental Addition of More CSKT Staff in All Programs

In addition to the fire operations and visitor services programs as described in alternative C, CSKT would receive funding to recruit up to three more seasonal employees (in addition to the four seasonal visitor services staff). These added CSKT employees would support the biology and maintenance programs. Our Service leaders would train all CSKT staff in all programs. The long-term objective would be to transfer more of the permanent positions to CSKT over time, through attrition and negotiation. All work of the refuge complex would be accomplished under the direction and leadership

of our refuge manager or deputy refuge manager and our program leaders in accordance with approved Service plans and policies.

STAFF

The objective would be to provide CSKT with more permanent positions over time as CSKT-recruited seasonal employees gained more experience and our current employees transferred or retired. The approach would be to provide the opportunity and time needed for the new CSKT employees to gain the experience and knowledge necessary to fully perform the activities of permanent positions.

In addition to the refuge manager, deputy refuge manager, and law enforcement officer, the following staff would remain Service employees (figure 8):

- program leader or highest graded position in the biology program
- program leader or highest graded position in the maintenance program
- program leader or highest graded position in the visitor services program
- second-highest graded maintenance worker (currently Wage Grade [WG]–8)

These seven positions could continue refuge programs and train new employees, including new CSKT staff, regardless the status of an AFA. The current term positions (fish and wildlife biologist and maintenance worker) would be converted back to permanent. Four positions could transfer to CSKT (after vacated through transfer, retirement, or resignation) (figure 8):

- GS–9 fish and wildlife biologist
- GS–9 range conservationist
- GS–7 range technician
- GS–7 maintenance worker

As these employees transferred or retired, our refuge manager would renegotiate with CSKT to decide whether or not to transfer these permanent positions to CSKT. Our employees would work closely with the Tribes' seasonal staff to provide the training and experience needed to support the operations and programs of the refuge complex and to help them compete for permanent positions with us or CSKT.

As in alternative C, we would give the Tribes money to recruit a GS–9 (equivalent) outdoor recreation planner and up to four seasonal CSKT employees for visitor services (figure 8), depending on annual project funding. The CSKT outdoor recreation planner would supervise these seasonal employees. Besides the GS–9 outdoor recreation planner, initially, most of the positions provided to CSKT would be temporary and seasonal (two to seven positions depending on annual funding). These seasonal positions would be in the biology, maintenance, and visitor services programs. Our refuge manager or the three program leaders would work collaboratively with CSKT to review applications and make selections, working with both personnel and human resources offices.

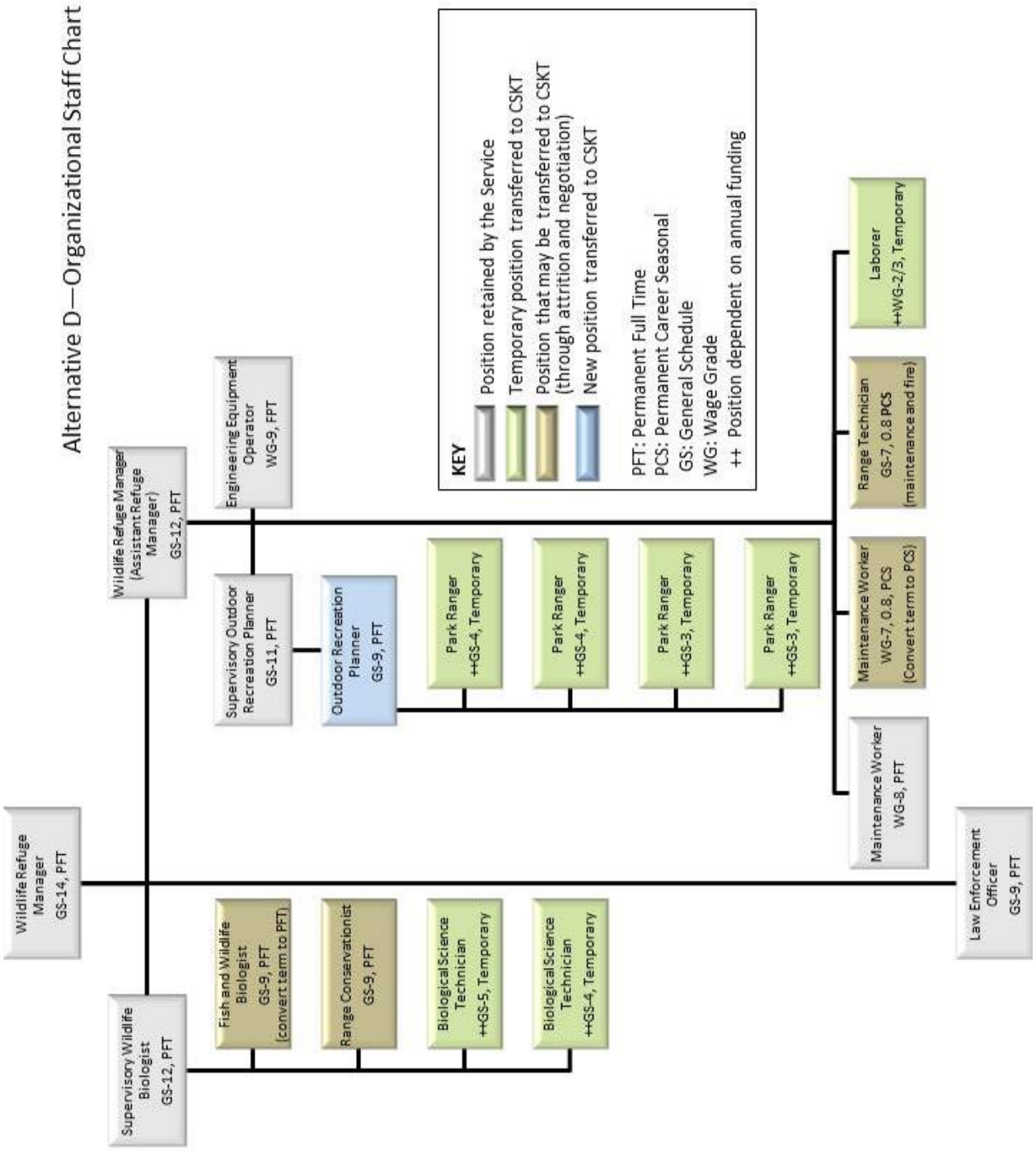

Figure 8. Organizational staff chart for alternative D, AFA same as alternative C with incremental addition of more CSKT staff.

TRIBAL COORDINATION

Our coordination with the Tribes would be the same as described for alternative C, except that the Tribes would have more staff and involvement in designing and implementing the biology, maintenance, and visitor services programs.

BIOLOGY PROGRAM

The program would be the same as described for alternative A, except CSKT would recruit up to two seasonal biological science technicians who would fully participate in developing and implementing all biological projects and programs.

VISITOR SERVICES

The program would be the same as described for alternative C.

MAINTENANCE PROGRAM

The program would be the same as described for alternative A, except CSKT would recruit a seasonal laborer position that would assist with maintenance operations. Our maintenance employees would train and lead all staff on how to safely use horses to move bison for grazing management and annual roundup activities as well as how to safely maintain and repair all facilities and equipment.

OPERATIONS

These actions would be the same as alternative A: cultural resource protection and plan development and implementation.

CSKT would provide personnel support to their employees including payroll, leave, benefits, and other human resources. Although CSKT would administer performance management and employee discipline for its employees in accordance with its personnel policies, our program leaders would direct the day-to-day activities of the assigned CSKT employees, except for the four seasonal visitor services staff. The CSKT outdoor recreation planner (under the direction of our supervisory outdoor recreation planner) would supervise these seasonal visitor services staff. The refuge manager or deputy refuge manager would work with the FWRC manager to address performance and conduct issues. As described under alternative B, the AFA may be amended to include construction or deferred maintenance money for work to be performed by the Tribes.

5.6 Alternative E—AFA Same as Alternative D plus District Programs with Combined Service and CSKT Staff in All Programs

In addition to transferring fire and visitor services operations to CSKT, as described in alternatives C and D, this AFA would add more CSKT staff positions, expanding our management capabilities on the refuge complex. CSKT-recruited staff would be involved in all operations on the refuge complex,

particularly the management of the district (the Ninepipe and Pablo Refuges and the nine waterfowl production areas). All work of the refuge complex would be accomplished under the direction and leadership of our refuge manager or deputy refuge manager and our program leaders in accordance with approved Service plans and policies.

STAFF

As described in alternatives C and D, the AFA would include CSKT helping with the fire management and visitor services programs and give the Tribes a new GS–9 (equivalent) outdoor recreation planner.

Although we currently coordinate some activities with CSKT for the Ninepipe and Pablo Refuges and nine waterfowl production areas in the district, historically we have managed these units exclusively with Service money and staff. Under this AFA, we would give the Tribes money to recruit two employees (figure 9) to help with the management of the district; the manager of FWRC would supervise these employees:

- GS–11 (equivalent) wildlife refuge specialist (wetland management district manager)
- WG–6 (equivalent) maintenance worker (permanent seasonal)

Besides the outdoor recreation planner and two positions to manage the district, we would give the Tribes money to recruit more employees to help with all refuge complex programs. Our program leaders would direct the day-to-day activities of the following CSKT employees:

- WG–6 (equivalent) maintenance worker (permanent seasonal)
- GS–5 (equivalent) biological science technician (permanent seasonal)
- GS–9 (equivalent) range conservationist to help with developing and implementing biological projects throughout the refuge complex
- an average of two to six temporary employees (depending on annual project funding) in the biology, visitor services, and maintenance programs

Our refuge manager and program leaders would be involved in the recruitment and selection of all CSKT staff, working collaboratively with both agencies' personnel or human resources offices.

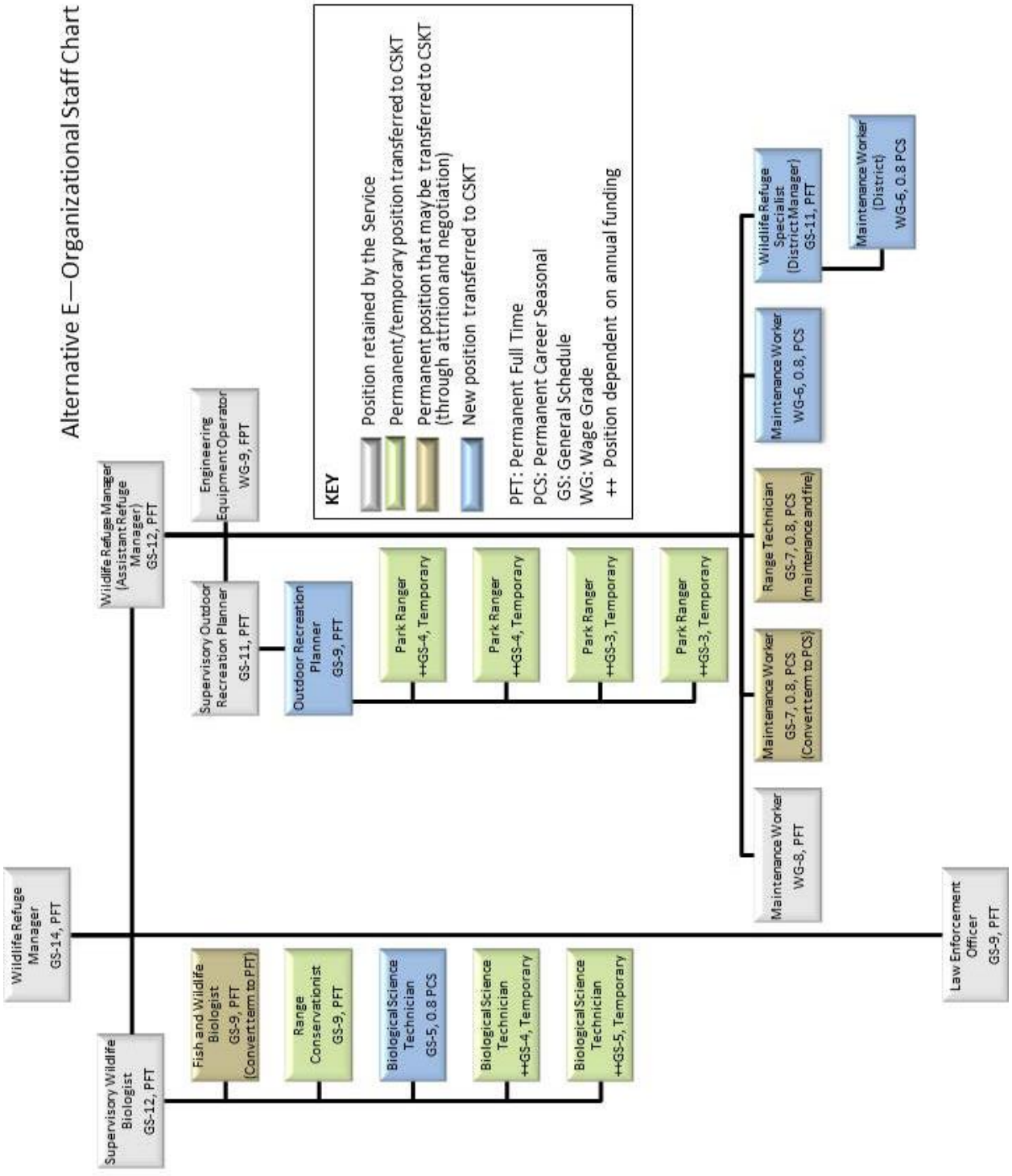

Figure 9. Organizational staff chart for alternative E, AFA same as alternative D plus district programs with combined Service and CSKT staff in all programs.

Initially, we would keep nine employees, working closely with the CSKT staff to provide the training and experience needed to support the operations and programs of the refuge complex and safely manage our bison herd. Through negotiation after transfer, retirement, or resignation of our in-place employees, we may transfer up to three more positions to the Tribes (figure 9):

- a GS–9 (equivalent) fish and wildlife biologist
- a WG–7 (equivalent) maintenance worker
- a GS–7 (equivalent) range technician

If all positions were transferred, we would keep 7 permanent positions, and CSKT would have 9 permanent positions or up to 15 positions, including temporary staff (figure 9).

TRIBAL COORDINATION

Our coordination with the Tribes would be the same as described for alternative D, except that the Tribes would have more involvement in all of the programs throughout the refuge complex. In addition, CSKT-recruited staff would be responsible for managing the Ninepipe and Pablo Refuges and the nine waterfowl production areas in the district. All work of the refuge complex would be accomplished under the direction and leadership of our refuge manager or deputy refuge manager and our program leaders in accordance with approved Service plans and policies.

BIOLOGY PROGRAM

The program would be the same as described for alternative A. In addition, under the direction of the refuge manager, the new CSKT wildlife refuge specialist and maintenance worker would conduct maintenance and habitat management activities for the district, such as maintaining public use areas, water level manipulation, habitat restoration, and invasive plant species management. They would also coordinate with current and future permittees for prescriptive activities such as grazing and haying on the Ninepipe and Pablo Refuges and the waterfowl production areas. Although these tribal employees would be assigned to work on the Ninepipe and Pablo Refuges and the waterfowl production areas, they would also take part in a variety of activities on the Bison Range, including bison management activities. CSKT would also recruit a GS–9 permanent range conservationist, a GS–5 permanent biological science technician, and up to two seasonal biological staff. These CSKT employees would assist with the design and implementation of all biological projects and programs on the refuge complex. Our lead biologist would direct the day-to-day activities of both the Service and CSKT biology staff.

VISITOR SERVICES

The program would be the same as described for alternative C.

MAINTENANCE PROGRAM

The program would be the same as described for alternative A, except CSKT would recruit two permanent employees and one temporary employee to support all maintenance projects and programs

throughout the refuge complex. Our maintenance employees would train and lead all staff on how to safely use horses to move bison for grazing management and annual roundup activities as well as all how to safely maintain and repair facilities and equipment.

OPERATIONS

Operations would be the same as described for alternative D, except for more tribal involvement in managing the district and the refuge complex. CSKT would provide personnel support to their employees including payroll, leave, benefits, and other human resources. Although CSKT would administer performance management and employee discipline for its employees in accordance with its personnel policies, our program leaders would direct the day-to-day activities of the assigned CSKT employees, except for the new district staff, who would be supervised and directed by the FWRC manager. CSKT staff would be required to follow all Service laws, policies, planning documents, and management objectives along with the specifics of the refuge easement agreement.

We would continue to help the Tribes manage the district units, providing equipment and staff time as approved by our refuge manager. We would also provide operating funds for the habitat management and maintenance programs on district units.

CSKT-recruited maintenance and biology staff would be involved in all habitat, wildlife, and maintenance programs on the refuge complex, including the management of the bison herd.

5.7 Alternatives Considered but Eliminated from Further Analysis

The following is a summary of the alternatives that we considered for forming a long-term partnership with CSKT but eliminated from detailed study for the reasons described below.

HIRING TRIBAL MEMBERS AS SERVICE EMPLOYEES

For this alternative, we would continue to diversify the refuge complex workforce through expanded outreach and targeted recruiting of highly qualified CSKT members to fill vacant positions through open competition. CSKT involvement would be through individual tribal members working as our employees.

We would use authorities such as the Federal Pathways Programs for students to develop, train, and hire CSKT members and other Native Americans enrolled at Salish Kootenai College in Pablo, Montana, and other accredited institutions to fill professional, technical, administrative, and skilled trade positions at the refuge complex. Many CSKT members are veterans of the U.S. Armed Forces, and a variety of veterans' hiring authorities would also be available to recruit new refuge employees.

This alternative would help us in achieving our workforce diversity goals and would meet the purpose and needs of this action in delivering the mission of the Refuge System and fulfilling the purposes of the refuge complex. Although this alternative could expand and strengthen a strong

partnership between CSKT and us, it would not support the purpose and need related to self-governance for CSKT as stated in chapter 1. We eliminated this alternative from further analysis.

Cooperating Through a Partnership Agreement

The Secretary of the Interior has many broad cooperative authorities in the management of fish and wildlife and their habitat. The Fish and Wildlife Act of 1956 provides the Secretary broad authority to "take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources." In addition, conservation partnerships with Tribes are allowed by Executive Order 12996 of March 25, 1996. For this alternative, we would use these authorities to transfer money to CSKT, which would provide tribal employees to perform a variety of work at the refuge complex as negotiated and set forth in a cooperative partnership agreement.

This alternative would achieve the purpose and need of expanding and strengthening a partnership between CSKT and us, furthering the mission of the Refuge System, and fulfilling the purposes of the refuge complex. This alternative would also meet our Native American Policy (FWS 1994), which lists a cooperative agreement as a viable option for supporting self-governance. However, this alternative would not meet the goals of the Self-Governance Act and its implementing regulations at 25 Code of Federal Regulations Part 1000, which call for the use of AFAs with self-governing tribes whenever possible. We eliminated this alternative from further analysis.

Assigning Tribal Employees to the Service

This alternative would involve the assignment of qualified CSKT employees to fill all seasonal positions and any permanent positions at the refuge complex that are not currently encumbered by our permanent or term employees with Intergovernmental Personnel Act (IPA) agreements. The IPA Mobility Program allows for the temporary assignment of employees from a tribal government to a Federal agency. To qualify for an IPA agreement, an individual must have been employed for at least 90 days in a permanent position with the tribal government (OPM 1997). Because CSKT would be bringing newly hired employees to these refuge complex positions, the 90-day requirement would not be met. We eliminated this alternative from further analysis.

Including More than the 2008 AFA

During government-to-government negotiations for the proposed action (alternative B), we and CSKT revisited the previous 2008 AFA and discussed adding other positions to CSKT staff. However, we mutually agreed that positions that were considered inherently federal in nature, such as the refuge manager and law enforcement officer, would not change. We also discussed the idea of CSKT handling other tasks, such as operational budgets (for utilities, maintenance, and biology), but these were not included in the negotiated AFA. Since both parties agreed not to add these to future AFAs, we eliminated this alternative from further analysis.

CHAPTER 6
Affected Environment

This chapter describes the characteristics and resources of the refuge complex considered in this analysis:

- 6.1 Physical environment
- 6.2 Habitat management
- 6.3 Wildlife management
- 6.4 Research, inventory, and monitoring
- 6.5 Threatened and endangered species
- 6.6 Special management areas
- 6.7 Visitor services
- 6.8 Cultural resources
- 6.9 Operations
- 6.10 Socioeconomics

The refuge complex comprises 3 national wildlife refuges and 14 waterfowl production areas in Lake, Sanders, and Flathead Counties of northwestern Montana (table 1). All three refuges and nine of the waterfowl production areas are entirely within the exterior boundaries of the Flathead Indian Reservation (figure 1 in chapter 1). The descriptions in this chapter cover these 12 units—the only areas of the refuge complex subject to the considered alternatives.

Table 1. Management units of the National Bison Range Complex, Montana.

Unit name	*Unit type*	*Acres*	*Ownership*	*County*
National Bison Range	National wildlife refuge	18,800	Service	Lake, Sanders
Ninepipe	National wildlife refuge	2,062	CSKT	Lake
Pablo	National wildlife refuge	2,474	CSKT	Lake
Anderson	Waterfowl production area	163	Service	Lake
Crow	Waterfowl production area	1,549	Service	Lake
Duck Haven	Waterfowl production area	719	Service	Lake
Ereaux	Waterfowl production area	28	Service	Lake
Herak	Waterfowl production area	80	Service	Lake
Johnson	Waterfowl production area	80	Service	Lake
Kicking Horse	Waterfowl production area	169	Service	Lake
Montgomery	Waterfowl production area	80	Service	Lake
Sandsmark	Waterfowl production area	400	Service	Lake
	Total acreage 26,604			

6.1 Physical Environment

This section describes the topography, soils, air quality, climate, and hydrology of the affected refuge complex units.

TOPOGRAPHY

The Bison Range is much more rugged than the rest of the refuge complex with elevations ranging from 2,530 to 4,892 feet. Elevation within the approved boundary of the Ninepipe Refuge ranges from 2,790 feet at the southern boundary to 2,937 feet in the northeastern corner. Elevation of the Pablo Refuge is 3,215 feet.

SOILS

The glacial history of the region has had a pronounced influence on the soils and landforms of the Flathead Valley. Glacier advance and retreat, Glacial Lake Missoula, and mountain runoff have deposited extensive, loose valley sediments, lakebed silts, and assorted glacial debris up to and including boulder-sized, glacially transported rocks that originated in British Columbia.

At the Bison Range, topsoils are generally shallow and mostly underlain with rock that is exposed in many areas, forming ledges, outcroppings, and talus slopes. Soils over most of the refuge complex were developed from pre-Cambrian quartzite and argillite bedrock. These well-drained soils range from shallow to moderately deep. They have a loamy surface horizon with near neutral pH (measure of acidity and alkalinity), high organic content (remains of once-living plants and animals), and varying amounts of parent material fragments. Except for surface soils, lower soil horizons have a loamy texture interspersed with rock fragments. Water infiltration rates are generally high and soil erosion is minimal.

The earliest known soil survey of the lower Flathead Valley was completed during the late 1920s (DeYoung and Roberts 1929). Soils to the south, west, and north of Pablo Reservoir were classified as Polson silt loam; Hyrum sandy loam was located to the east. A large area of different phases of Post silty clay loam surrounded Ninepipe Reservoir. Areas of Crow gravelly silt loam, Crow stoney loam, McDonald gravelly loam, and undifferentiated alluvium occurred to the east of silt loam and silty clay loam. Soil mapping, started in 1995, shows similar soil type patterns around the reservoirs, but has more detailed mapping with additional soil classifications (NRCS 2008, 2012). Compared to the 1929 soil map, sands to the east of Pablo Reservoir have been reclassified as McCollum fine sandy loam and Sacheen loamy fine sand. Polson silt loam to the west of Pablo Reservoir was mapped in complexes with Truscreek silt loam. Kerr loam and Truscreek silt loam also occur to the west of Pablo Reservoir.

AIR QUALITY

Air quality in the refuge complex is protected under several provisions of the Clean Air Act, including the National Ambient Air Quality Standards and the Prevention of Significant Deterioration program. One of the goals of the Prevention of Significant Deterioration program is to preserve,

protect, and enhance air quality in areas of special natural, recreational, scenic, or historic resources, including those of the refuge complex (Ross 1990). Only a limited amount of added air pollution—associated with moderate growth in the human population of the Mission Valley—can be allowed in the future.

The Flathead Indian Reservation was designated in 1979 as a voluntary class 1 airshed under provisions of the Clean Air Act, which confers the highest degree of protection under the act. Air quality is considered exceptionally good, with no nearby manufacturing sites or major point sources of pollution. However, the cities of Polson and Ronan in Lake County and areas of Flathead County are designated as nonattainment areas—areas that do not meet air quality standards—and are not in compliance with particulate matter, or PM_{10} (EPA 2002).

Seasonal burning of logging slash in the mountains and stubble fields at valley ranches cause short-term, localized smoke. In drought years, there has been heavy smoke from local wildfires or delivered from distant fires by prevailing winds. Smoke from wood-burning stoves is trapped in the valley during temperature inversions that are common in winter months.

CLIMATE

Average high temperatures in the Mission Valley range from approximately 30 °F in December and January to 90 °F in July; average low temperatures range from 18 to 50 °F. Most of the precipitation in the valley occurs during the spring and early summer, averaging more than 2 inches per month in May and June (Western Regional Climate Center 2011). Precipitation during the rest of the year averages between approximately 1 and 1.5 inches per month.

Long-term climate data—1895 to 2011—from the U.S. Historical Climatology Network is available for St. Ignatius, Montana (station number 247286), approximately 7 miles south of Ninepipe Reservoir. Long-term average precipitation for St. Ignatius, Montana, based on Menne et al. (2012) is 15.82 inches per year and shows considerable variation from year to year.

HYDROLOGY

Mission Creek drains the north side of the Bison Range, and the Jocko River drains the south side; both are tributaries to the Flathead River. More than 80 natural springs occur on the Bison Range, and about 40 of those have been developed into watering sites for bison and other wildlife.

Precipitation and snowmelt in the Mission Mountains influence stream flow entering the Lower Flathead subbasin. Average monthly discharge from Mission Creek (USGS station number 12377150) increases rapidly from April at 24 cubic feet per second (cfs) to May at 99 cfs and peaks during June at 179 cfs. Stream flow declines during the summer and early fall to less than 20 cfs from December through March. A similar seasonal pattern, but with less flow, is observed for South Crow Creek near Ronan.

Differing valley-fill sediments from sediment accumulation throughout the geologic history of the valley and multiple glaciations created a variable matrix of aquifers (bodies of permeable rock) in the Mission Valley. Direction of ground water flow in the valley is to the west and southwest from the

Mission Mountains. Aquifers occur in the deep valley-fill sediments and in zones of secondary permeability where bedrock is fractured.

In 2009, the Federal Government and the State of Montana signed a compact that settled water rights at the refuge complex for all time (Montana Code 85–20–1601). Besides instream flow and nonconsumptive uses for the Elk, Mission, Pauline, and Trisky Creeks, the compact documents water rights for 97 springs, seeps, and wells on the National Bison Range. At some locations, these water sources include or support small wetlands and associated wildlife.

6.2 Habitat Management

This section describes the grassland, forest, riparian area, and wetland habitats of the affected refuge complex units. There are also descriptions of the invasive plant species that grow in these habitats.

We manage many of the refuge complex habitats with an objective to maintain and restore biological diversity and integrity to these systems and provide habitat for Federal trust species. This section also describes management tools and considerations—prescriptive grazing and farming, the role of fire, and water-level management. An integral part of these programs is inventorying and monitoring the plant and animal species affected by these actions to gauge the effectiveness and success of the selected management activities.

GRASSLANDS

Grassland communities dominate all units of the refuge complex, covering approximately 85 percent of the area. While these communities remain productive and capable of supporting the bison herd and other associated wildlife with some native components intact, the condition of the refuge complex's grasslands has declined over the past century as invasive plants have become established and spread.

Wildland fire has helped shape the environment and maintains the structure and function of some systems; its removal as an ecological driver can have adverse effects. Periodic fires would have maintained the grasslands and killed most tree seedlings before they could become established. The elimination of the historical pattern of frequent low-intensity fires in ponderosa pine and pine–mixed conifer forests has resulted in major ecological disruption (Arno 1996). Most of these stands have replaced the grassland understory with dense thickets of small trees, thereby shifting composition toward the more shade-tolerant and widespread Douglas-fir. In the absence of fire, we are challenged to manage and control these expanding forests into native grasslands, resulting in a loss of forage for bison and nesting habitat for grassland birds. Fire is one tool that we can use to reduce tree infestations and restore grassland habitat.

FORESTS

Forest communities cover approximately 10 percent of the Bison Range. Little forestland occurs at the Ninepipe and Pablo Refuges or the waterfowl production areas. Suppression of natural and Native American–lit fires has altered the habitat mosaic that historically occurred in the Mission Mountains and Mission Valley. Large pines that were sustained by frequent low-intensity fires were replaced by younger trees after the large trees were logged. Subsequent fire suppression created crowded conditions that promoted insect and disease outbreaks and increased the hazard of large, more intense fires. A shift in dominant species from ponderosa pine to Douglas-fir occurred as a result of fire suppression.

Before Europeans settled the area, the forests of what is now western Montana were composed primarily of open stands of mixed-conifer species with a grass understory. Ponderosa pine occupied the drier sites, and Douglas-fir occupied wetter sites on north-facing aspects. In the interior of the southern Flathead Valley, the forests were likely restricted to a few areas along the upper elevations and rocky areas.

RIPARIAN AREAS

Productive, stable riparian areas occur along the Elk, Mission, Pauline, Sabine, and Trisky Creeks and the Jocko River. Common plant species at these sites are willows, water birch, cattails, sedges, and rushes. Many seeps and springs occur on the refuge complex. Though no formal condition assessment has occurred, these areas are generally believed to be in good functioning condition across the refuge complex.

WETLANDS

The refuge complex has a variety of natural and developed wetlands. Low-lying areas that allow the accumulation of surface water—depressional wetlands—are extensive around Ninepipe Reservoir and are primarily classified as freshwater emergent marsh or freshwater pond. Depressional wetlands in the Mission Valley have been described as kettle or pothole wetlands (Hauer et al. 2002) using the terminology of Stewart and Kantrud (1971, and as pingo ponds (Phillips 1993). Regardless of their geologic origin, depressional wetlands in the Mission Valley have highly variable physical properties resulting from varying interactions of surface and ground water hydrology (Phillips 1993).

INVASIVE PLANT SPECIES

Invasive plant species consistently threaten the health and quality of the habitat by not providing the necessary components of nutrition and cover for native species to thrive. Invasive plants detrimentally affect native communities through competitive exclusion, altering behaviors of insect pollinators, hybridization with native plants, and changes in insect predation. They outcompete, invade, and displace native plant communities, altering species composition and relationships and reducing species diversity. They form monocultures, where only one species grows, that change the physical structure of the native communities, increase soil erosion resulting in changes in soil structure and chemical composition, and alter microclimates (the climate characteristics in a small space such as the layer near the ground that is influenced by vegetation cover). Invasive plant species may alter

ecological processes such as community productivity; soil, water, and nutrient dynamics; plant community successional patterns (sequential changes in vegetation); and disturbance cycles. Research has shown that the replacement of native plant species has resulted in reduced soil organic matter, reduced soil nutrients, degraded soil structure, decreased water-holding capacity, and increased soil erosion.

Table 2 identifies species that the refuge complex staff has identified as either widespread or localized on the refuge complex along with the length of known infestation. The refuge complex has long battled with invasive plant species encroachment onto native habitats using integrated and adaptive management techniques. We expend considerable resources, including staff, equipment, and supplies to combat and control these species that threaten to compromise the purposes for which these units were established. Part of this effort is substantial coordination and combining of resources with the State and CSKT to combat invaders across the Mission Valley.

Table 2. List of invasive plant species identified on the National Bison Range Complex, Montana, as of 2012.

Documented in more than 10 years		*Documented in less than 10 years*	
Widespread	Localized	Widespread	Localized
Dalmatian toadflax	Houndstongue	Teasel	Hawkweed
Spotted knapweed	Purple loosestrife		Yellow toadflax
St. Johnswort	Yellowflag iris		Flowering rush
Canada thistle	Whitetop		Poison hemlock
Sulfur cinquefoil	Russian olive		Leafy spurge
Cheatgrass			

Source: FWS 2012a.

Many invasive plants grow within a suite of native species, complicating our ability to maintain the existing natives while attempting to control the target invaders. Consistent management and restoration of native habitats is particularly important in areas of dense infestations by established invaders.

Integrated pest management is an effective and environmentally sensitive approach to pest management that relies on a combination of common sense practices. Integrated pest management programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. We use this information, in combination with best management practices, to manage pests by the most economical means and with the least possible hazard to people, property, and the environment. One of the fundamental aspects of a successful integrated pest management program is the mapping and monitoring of invasive plants and treatment areas. We have completed some mapping of known invasive plant species on the refuge complex. All treatment sites are mapped and monitored.

Approaches to managing or responding to invasive plant species can be categorized as prevention, suppression, and eradication—all in an atmosphere of partnership with neighboring landowners.

- Prevention methods apply when an infestation is expected and we take action to prevent it from occurring. Some species are not known to occur statewide, while others are known local threats. Examples of prevention methods are (1) restricting the use of watercraft on refuge complex waters, (2) washing equipment used to apply herbicide before and after each application, (3) surveying areas of likely invasion, and (4) promoting education and outreach to increase public awareness about problems with invasive plants including noxious weeds.
- Suppression techniques are applied when a problem has been detected. Suppression methods include biological (integrated pest management), chemical, mechanical (grazing and burning), cultural (education), and legal measures. Early detection and rapid response is a programmatic strategy that incorporates active surveys with targeted treatment application. We apply containment and control strategies to manage or minimize the spatial extent of a known infestation.
- Eradication techniques are applied when an infestation can be totally removed. Eradication can be time- and cost-intensive and can be extremely difficult to achieve, especially for infestations of any size greater than a small patch of plants detected before a seedbank can be established.

It is generally accepted that early detection and rapid response measures to prevent a large-scale invasion by nonnative plants is more economical than the cost of suppression efforts after invaders become established. The refuge complex program emphasizes suppression and early detection and rapid response strategies for many species.

PRESCRIPTIVE GRAZING AND FARMING

The Service bought lands for waterfowl production areas with Federal Duck Stamp funds, underscoring the central goal of waterfowl production and hunting opportunity for management of these units. The refuge complex has used prescriptive grazing, mowing, and farming activities since acquisition of the various parcels. Initially, we used these practices to control various invasive plant species and to convert historical agricultural fields into more productive sites for nesting, brood, and escape cover for waterfowl and other birds. Activities on waterfowl production areas require clear coordination and communication with any private cooperators doing farming or grazing.

We currently use prescriptive grazing to reduce matted, thatched dead vegetation for more effective herbicide application on the target invasive forb species present. On some units, we apply these treatments on a 3–5 year rotational plan to develop optimal waterfowl-nesting cover and habitat complexity.

The refuge complex uses farming activities on selected waterfowl production areas when the density of invasive nonnative species requires the use of nonselective herbicide for several years to remove established perennials (plants that live more than two seasons). This also helps to deplete the seedbank of the invasive plant species before establishing the desired species composition. To prevent seed set on dense stands of invasive plant species, we use mechanical controls including rotary brush-hog mowing and sickle-bar cutting.

Grazing also occurs on the Ninepipe and Pablo Refuges; however, it is conducted by CSKT under a deferred rotational system worked out with CSKT through a memorandum of understanding with us.

THE ROLE OF FIRE

Before modern agriculture, fire suppression, and urbanization, vegetation patterns were shaped by fire regimes with characteristic severity, size, and frequency (Frost 1998, Gill 1998, Heinselman 1981, Kilgore 1981). The Palouse prairie and forested areas on the refuge complex evolved through a regime of frequent, low-intensity surface fires at intervals of between 1 and 30 years (Arno 1976, 1996). Lightning was the principle cause of these fires (Smith and Arno 1999). Even today, lightning-ignited fires occur almost annually on the refuge complex, particularly the Bison Range.

Wildfire Response

We and CSKT participate in the National Interagency Fire Qualification System, which includes employees of Federal, tribal, State, and local fire organizations. CSKT has been an excellent partner in our fire management program, including wildfire response and prescribed fire activities. Most of the refuge complex is within CSKT's fire response area, and we have an annual operating plan with the Tribes to provide initial attack on all wildfires throughout the refuge complex. Several Bison Range employees have the necessary training to conduct fire operations; however, the only employee with specific fire duties is the range technician, who is qualified as a type 4 incident commander.

Prescribed Fire

The refuge complex manages prescribed fire treatments and wildfire under our current fire management plan guidelines. We can use prescribed fire as a management tool to control invasive plant species, improve grassland habitat, and manage wildlife movements. Using this tool requires substantial planning and premonitoring to decide location, duration, and size of treatment area. Our biological and fire staffs are responsible for writing a prescribed burn plan, including the monitoring protocol and safety aspects of the operation. Completion of prescribed fire treatments depends on available money and meeting the prescriptive window (environmental requirements such as specified temperature, wind direction and speed, and humidity, along with available resources). Money for prescribed fire has almost been eliminated, making it challenging to use this tool in refuge complex programs. Nevertheless, prescribed fire is effective, and we would continue to use it throughout the refuge complex as money and resources allow.

WATER LEVEL MANAGEMENT

The main bodies of water in the refuge complex are the Ninepipe Reservoir (15,000 acre-foot capacity) and Pablo Reservoir (28,400 acre-feet capacity). The reservoirs were constructed as part of the Flathead Irrigation Project in the early 1900s. The Service's National Wetland Inventory classifies both reservoirs as lakes with varying amounts of freshwater emergent marsh, scrub-shrub along their perimeters.

The Ninepipe and Pablo Refuges were first established as reservoirs for irrigation and are operated under an agreement among CSKT, the Flathead Irrigation Project, and us. As part of the refuge easement agreement between CSKT and us, these reservoirs continue to supply irrigation water to neighboring landowners while providing habitat for wildlife. BIA ran the irrigation project until 2010, when it was transferred to the cooperative management entity established by agreement with Federal,

tribal, and State governments. Management of wildlife habitat is a secondary consideration to the irrigation uses of the Ninepipe and Pablo Reservoirs. Nevertheless, management of the water regime for irrigation has generally aided waterfowl and shorebirds, except in high water years when nests are often flooded.

The water level in both reservoirs peaks during May and June and gradually declines through the summer depending on irrigation needs. Average storage from 1961 to 1985 at the end of June was 14,700 acre-feet at Ninepipe Reservoir and 23,000 acre-feet at Pablo Reservoir. Average overwinter storage from 1961 to 1985 was approximately 6,000 acre-feet at Ninepipe Reservoir and approximately 8,000 acre-feet at Pablo Reservoir (FWS unpublished data located at the Bison Range).

In the 1980s, Ducks Unlimited, Inc. funded the following water management projects at the reservoirs:

- At the Ninepipe Refuge, projects included the construction of three islands within the Ninepipe Reservoir and the Scoonover Dike impoundment on the east side of the reservoir. The Scoonover project comprises the dike itself, islands, and 7 acres of impoundments on refuge lands and another 19 acres on State lands.
- At the Pablo Refuge, work included the construction of a ditch and dike for independent water level management of six bays on the western side of Pablo Reservoir. Collectively, these bays provide breeding pair and brood habitat on approximately 275 acres of wetlands with approximately 9 miles of shoreline habitats and 1,150 acre-feet of water. Historically, these low-gradient bays were rapidly dewatered during the irrigation season. The water control structures increased the quality and longevity of marsh and open-water habitats during nesting, brood rearing, and migration.

There are water management capabilities on some of the waterfowl production areas. Historically, refuge complex staff filled potholes on the Anderson Waterfowl Production Area and parts of the Crow Waterfowl Production Area by pumping water from Spring Creek and the Post canal, respectively. Parts of the Crow, Duck Haven, Herek, Montgomery, and Sandsmark Waterfowl Production Areas have ditch systems to fill potholes via check dams placed in established ditches. The potholes at the Johnson 80 and Hall 80 Waterfowl Production Areas are filled via flood irrigation from the ditch or natural precipitation and runoff events. Refuge complex employees are responsible for water manipulation activities, sometimes with the help of Flathead Irrigation District staff.

6.3 Wildlife Management

This section describes the major wildlife groups and their management.

BISON

The National Bison Range maintains an overwintering herd of 325–350 bison. The basic objectives of the bison program are to conserve bison genetic diversity, maintain herd health, and provide opportunities for the public to view bison in a natural prairie setting. The herd size reflects

range capacity balanced with other big game grazers such as elk, deer, bighorn sheep, and pronghorn. Comprehensive herd health and genetic monitoring programs are integral parts of herd management. Though health is an important aspect of herd management, we manage the bison as wild bison; we do not regularly vaccinate the bison for any diseases and do not provide supplemental feed.

Bison Grazing Management

The range started the current grazing management program in 2011 based on preliminary data and recommendations on herd and range condition data, delivered under a cooperative agreement with researchers at Montana State University.

From April through October (29 weeks), we rotate the herd twice through 6 available pastures. The first rotation calls for 2 weeks in each pasture; the second rotation is 3–4 weeks per pasture, depending on the conditions and available forage as determined by the range biologist.

For the remaining 22 weeks during the winter months (not including the 1 week during roundup that they spend in and around the corral system), the herd has historically resided on the south side of the range. However, in 2013, we let the bison roam throughout the range. Our staff will monitor the effects of this expansion of the winter range.

The rotational grazing program maximizes forage production and minimizes negative effects to vegetation communities and range condition. Various considerations must be weighed in crafting and carrying out an effective rotational system:

- herd and human safety
- minimal risk of movement-related stress on newborn calves and pregnant cows
- minimal potential for disease transfer between the Bison Range herd and domestic animals on adjacent properties
- provision of safe and secure calving locations during peak calving season (for example, consideration of environmental risks to newborn calves from spring high water in Mission Creek)
- available forage in each pasture and the timing of grazing demands relative to the annual timing of plant growth, productivity, and sensitivity
- viewing opportunities for refuge visitors
- ease of gathering the herd before roundup to bring the bison to corrals
- staff availability for moving bison between pastures
- adequate water, especially during warm months
- inability to control the movement of other big game grazers
- flexibility to adjust the grazing program based on real-time conditions and unpredictable events (such as unplanned bison moves through down fence)

Rotating the bison herd between grazing units requires unique skill in horseback riding and animal behavior related to wild bison. Experience with bison and horse behavior and the terrain of the range is

an important element for protecting the staff, horses, and bison during each move. The maintenance staff is responsible for leading all bison relocations, which involves developing a strategy based on the location of the herd, the weather, terrain, animal behavior, access to gates, timing of the move, and positioning and skill of riders. This rider and behavior program and associated activities help maintain the health and wellness of the bison and the habitat they depend on.

Bison Herd Health

We designed the program for monitoring bison herd health to assess the presence and prevalence of diseases in the population as a whole, not necessarily to find out the disease status of individual animals. The program includes (1) year-round direct observations of the herd aimed at detecting acute injuries, chronic conditions, mortalities, and emerging disease, and (2) regular sampling during roundup for a suite of diseases of particular concern.

Bison Range staff performs year-round, direct observations during routine work. Much of the information gleaned from herd health observations is documented and discussed informally among refuge complex staff, who have the experience to deal with situations such as injuries, mortalities, and necropsies (medical examinations to establish the circumstances of death). We routinely coordinate with our wildlife health office in Bozeman, Montana, on concerns about disease or life-threatening conditions.

Annual sampling and disease testing has been conducted at the range since 2000 and focuses on several diseases such as paratuberculosis. This disease, commonly known as Johne's (pronounced YO-nees) disease, is a bacterial intestinal disease that causes diarrhea, severe weight loss, and eventual death in bison and cattle. The range staff also tests for several viral diseases common in the cattle industry, including bovine viral diarrhea (types 1 and 2), parainfluenza–3 (PI3), and bovine respiratory syncytial virus. Sampling is conducted every year on random bison and on any thin animals, excluding calves, for serology and on fecal samples collected at the chute that we use during the bison roundup. In addition, we assess body condition. Before the roundup, we collect random fecal parasitology samples in the field.

Some agents of diseases such as malignant catarrhal fever, Johne's disease, and bovine viral diarrhea have been detected at low levels, or preliminary data suggests that they may be present. In 2010–11, an antigen test for bovine viral diarrhea was conducted on the herd and none was detected.

Though regular vaccinations are not administered as a matter of course, bison would be vaccinated (if the vaccine is available and effective) in the case of a disease outbreak. The last time we used a vaccine at the Bison Range was in 2010 as a preventative measure for bovine viral diarrhea.

Annual Bison Roundup

The annual bison roundup is critical to managing the range's bison herd. The roundup, conducted in October, is necessary to manage the herd size, monitor herd health, collect genetic samples from calves, mark calves with microchips, and collect other necessary biological samples for disease monitoring.

Following the Bison Range's 1990 fenced animal management plan and an evaluation of the current habitat conditions, the range maintains an average herd size of 350 animals. We select surplus

bison for removal based on a combination of factors—sex, age, and genetics. Our wildlife health office maintains a database for all animals on the range. Once the biology staff selects the number of bison to surplus, the wildlife health office decides which specific animals (yearlings and older) to remove. We first offer the surplus bison to other Service herds for genetic conservation purposes. We can then donate the remaining surplus animals to American Indian tribes and research programs or sell them to private individuals. Sale animals are generally 7 years old or less, and we do not sell any calves.

The range's maintenance and biology staffs work specific stations and lead groups of team members in conducting various operations—from rounding up the bison and moving them through the corral system to collecting biological samples. By having these staffs lead individual teams at every stage in the process, we reduce the risks to workers, including volunteers, and the bison.

- The staff herds all bison on the range to the corral system through a series of fences and gates using horses and all-terrain vehicles.
- We first stage the bison in a series of smaller pastures next to the corral system. Our lead staff sorts the bison to ease their processing through the corral facility but also to make sure that each pasture contains only as many bison as the available grass and water would support. Even for the short-duration stay, this is an integral part of wildlife stewardship and the roundup.
- We scan each bison for a microchip that identifies the animal in a database. The animal is weighed and scored for body condition and any signs of disease or injury.
- After the bison are identified by their microchips, we either send the animals directly back to the range, to the hydraulic chutes for capture and testing, or to the surplus area.
- At the chute, we test adult bison for a variety of potential diseases while calves are microchipped and genetic information is gathered. Maintenance workers operate the hydraulic chutes and work with the biology staff to collect samples quickly, so the bison do not get injured or unnecessarily stressed.

This annual event takes extensive planning and preparation. Soon after the end of each bison roundup, we start getting ready for the next year's roundup. Each year, the staff looks for ways to further improve the corral and chute facilities, animal handling, and data processing procedures.

Bison Genetic Integrity and Monitoring

The Department of the Interior's bison herds are part of a metapopulation management approach to bison conservation—managing small scattered herds throughout several States as one herd for genetic considerations. It has been recognized that the smaller size herds are in greater danger of the effects of genetic suppression. When genetic diversity is used as the key criterion for evaluating management options, a population size of about 1,000 animals is needed to achieve a 90-percent probability of keeping 90 percent of alleles (Gross and Wang 2005). An allele is an alternative form of a gene, one member of a pair that is located at a specific position on a specific chromosome. One allele comes from each parent. If both alleles are the same, the individual is homozygous; if the alleles are different, the individual is heterozygous. In heterozygous individuals, one of the alleles is usually

dominant, and the other is recessive. In humans, for example, the allele for brown eyes is dominant, and the allele for blue eyes is recessive.

The Bison Range herd has a high level of genetic diversity, with one of the highest levels of allelic richness, genetic variation, and private alleles (genes of a specific subpopulation) of tested Federal herds (Halbert 2003, Halbert and Derr 2007, Hedrick 2009). Our bison also have a low level of cattle introgression (the incorporation of the genes of one species into the gene pool of another). The range has only had 12 animals brought into the herd in the last 98 years. We have closed the herd to bison from outside sources to preserve the high genetic quality and the low levels of cattle gene introgression. Though small, the actual amount of cattle genetic material in the range's herd is unknown. Genetic drift (random fluctuations of genes in offspring that do not represent the parents' genes) and management actions may be decreasing the level of cattle introgression.

The surplus animals that our wildlife health office selects have been through rigorous genetic analysis. Using the latest in microchip hardware and software technology, the Bison Range is able to effectively manage the bison herd to maintain high genetic diversity.

OTHER BIG GAME

Besides the bison herd, the range manages herds of Rocky Mountain elk, mule deer, white-tailed deer, Rocky Mountain bighorn sheep, and pronghorn (see table 3).

Table 3. The species and estimated populations of other big game animals on the National Bison Range, Montana, in 2012.

Species	*Estimated current population*
Rocky Mountain elk	130
Mule deer	200
White-tailed deer	200
Rocky Mountain bighorn sheep	125
Pronghorn	110

Elk

The only other big game species actively managed on the range are elk, which use the same grazing resources needed by bison, reducing available forage. To lessen this effect, we maintain a target population of elk on the range. As with bison, the range's fenced animal management plan establishes target elk herd numbers. This plan is scheduled to be updated in the next few years.

Deer, Sheep, and Pronghorn

Some of the smaller big game species, such as deer, are able to move in and out of the range. Other species, such as bighorn sheep and pronghorn, are resident to the range. In recent years, the range has documented a pronounced increase in the bighorn sheep population. Sheep are effective

grazers and can reduce forage availability for bison. The biology staff plans to work with researchers to evaluate the effects of the increasing sheep herd and decide if a response is needed, which could include offering sheep to relocation programs.

Other Big Game Health Issues

Wildlife health monitoring is a cornerstone of the wildlife management program. Our biology staff has worked with the wildlife health office to design and carry out a monitoring program for wildlife health. The wildlife health office (1) provides current information and guidance on wildlife threats, (2) helps in the development of protocols and plans for disease management on refuge complex lands, and (3) provides technical reports on lab results and findings.

Refuge complex staff monitors refuge animals for signs of disease and sickness and conducts necropsies on many big game animals that die or are removed from the herd. We also participate in other Federal and State programs to monitor for chronic wasting disease and West Nile Virus, a disease that can be spread to humans.

Chronic wasting disease is a transmissible spongiform encephalopathy in which infectious proteins accumulate in the brain and brain stem resulting in neurological impairment, diminishing body condition, and eventual death. The staff selects part of the elk herd to be culled for sampling for chronic wasting disease. We perform full necropsies either opportunistically or if a clear and present risk is identified. We also collect samples from deer that die from unknown causes. Together with the wildlife health office, our biology staff creates protocols for sample management and processing.

Bird surveys for West Nile Virus and bird flu are conducted based on perceived refuge-specific concerns or threats identified by local, State, and Federal officials.

OTHER WILDLIFE

The refuge complex supports a diverse array of other wildlife from birds to large carnivores.

Birds

More than 200 species of birds have been documented on the refuge complex. Notable grassland species include grasshopper sparrow, long-billed curlew, and western meadowlark. Forest and riparian areas support a diverse suite of species including western bluebird, yellow warbler, yellow-breasted chat, Townsend's solitaire, and Lewis' woodpecker, a bird identified by the State as a species of concern. Upland gamebird species include ring-necked pheasant, gray (Hungarian) partridge, blue grouse, and ruffed grouse.

Common raptors include American kestrel, northern harrier, red-tailed hawk, short- and long-eared owls, and great-horned owl, which forage and nest on the refuge complex. In some years, the Mission Valley, including the refuge complex, supports high densities of wintering rough-legged hawks.

Waterfowl, such as canvasback and American wigeon ducks, are abundant on the wetlands, rivers, and lakes found on the refuge complex but particularly on the district, which includes the Ninepipe and Pablo Refuges. We see the largest concentrations in the spring and fall, but many species, such as mallard and pintail, nest on the managed and natural wetland basins. In the past, artificial nesting

structures for waterfowl have been used intensively at the Ninepipe and Pablo Reservoirs in the form of nest platforms and boxes. Some of these still exist.

Trumpeter swans, a species of concern in Montana, nest on the waterfowl production areas and the Pablo Refuge. The swans spend the winter on the Flathead River and those district waters that do not freeze. Trumpeter swans are regularly observed on Mission Creek and its associated sloughs and wetlands but are not known to nest there.

Mammals

Large carnivores such as badger, bobcat, coyote, black bear, and mountain lion are year-round residents that reproduce on the Bison Range. In the winter of 2012 and again in 2013, a lone wolf was documented on the range.

Small mammals such as Columbian ground squirrel, yellow pine chipmunk, and voles are common and cyclical and are an important forage base for carnivorous mammals and raptors.

Muskrats are regular inhabitants of wetland potholes. Waterfowl, including swans, use the muskrat mounds or lodges for nesting. Although not considered common, mink and long-tailed weasel have also been recorded.

Fish, Reptiles, and Amphibians

Most of the units on the refuge complex support fish species. The reservoirs in the Ninepipe and Pablo Refuges support the largest populations of warm-water fish, such as yellow perch and largemouth bass. Mission Creek and the Jocko River, on the Bison Range, are the only bodies of water that support cold-water species such as rainbow trout and brown trout. Historically bull trout, a threatened species, occurred along the entire length of Mission Creek. Only a small part of this creek is on the range. Rising creek temperatures, particularly off the range, has affected this species' ability to survive.

The Crow, Ereaux, and Montgomery Waterfowl Production Areas are the only units in the district that have enough water in isolated wetlands, creeks, or drainage ditches to minimally sustain warm water fish, similar to those found in the Ninepipe and Pablo refuges. The refuge complex is known to support prairie rattlesnake, rubber boa, bullsnake, eastern racer, and garter snake. Painted turtles are common in wetlands and ponds.

6.4 Threatened and Endangered Species

As of August 2012, we have identified seven listed species that are known to or may occur on the Flathead Indian Reservation: bull trout (threatened), grizzly bear (threatened), Canada lynx (threatened), Spalding's campion (threatened plant), water howellia (threatened plant), wolverine (candidate), and whitebark pine (candidate) (FWS 2013):

- Bull trout may occur in the portion of Mission Creek that flows through the Bison Range.
- Grizzlies are known to occur occasionally and seasonally in the Ninepipe Refuge area and throughout the Mission Valley. There is one documented occurrence, using a game camera

setup on a dead bison, of a grizzly bear sow and two cubs on the Bison Range in 2013. No denning activity occurs on refuge complex lands.

- The other listed species have not been documented on the refuge complex.

Some species have legal protections in place, but are otherwise not recognized as federally listed under the Endangered Species Act and are not Montana species of concern. Bald eagles, golden eagles, and trumpeter swans are considered special status species in Montana because they are protected under the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act, or both. These species occur throughout the Mission Valley and are frequently documented on refuge complex units:

- CSKT has an ongoing effort to reestablish a breeding population of trumpeter swans in the area; we have cooperated with the Tribes on this project by providing wetlands for reintroduction sites.
- Bald eagles are known to nest and forage on units of the refuge complex.

6.5 Special Management Areas

All three national wildlife refuges within the refuge complex have been designated as important bird areas. The Important Bird Areas program, started in Montana in 1999, is a global effort to identify and conserve areas vital to birds and biodiversity. Thirty-nine important bird areas in Montana encompass more than 10 million acres of outstanding wildlife habitat, including streams and wetlands. To qualify as an important bird area, sites must satisfy at least one of the following criteria to support the following types of bird species groups:

- species of conservation concern (such as threatened and endangered species)
- restricted-range species (species vulnerable because they are not widely distributed)
- species that are vulnerable because their populations are concentrated in one general habitat type or biome
- species or groups of similar species (such as waterfowl or shorebirds) that are vulnerable because they occur at high densities because of their behavior of congregating in groups

6.6 Research, Inventory, and Monitoring

This section describes the studies and surveys that we coordinate and conduct on the refuge complex to gain data and understanding about the systems we manage.

RESEARCH

Research projects are designed to address management needs on the refuge complex. By supporting and facilitating research projects, we have an important means to improve our understanding of refuge resources. Support can include money, but most often we would provide in-kind contributions (such as housing, fuel, loaned equipment, transport, help with site selection, and access to refuge areas not open to the public).

Our biologists work with universities and other partners to design and evaluate proposals including evaluating techniques, methods, and projected products or outcomes. The Bison Range has several ongoing research projects:

- ecology of grasshoppers and their effects on available forage—University of Notre Dame
- hydrogeomorphic evaluation of ecosystem restoration and management options—Greenbriar Wetland Services
- pronghorn population ecology and demography—University of Idaho
- rangeland ecology and range condition assessment—Montana State University
- Rocky Mountain bighorn sheep population ecology and demography—Montana Conservation Science Institute

Our biology staff evaluates research projects to figure out if they are effectively addressing our management needs. These types of projects can be a cost-effective way to leverage limited resources into quality work. A key part of the success of this program is an experienced biology staff with the knowledge of refuge complex resources and scientific methods that allows them to prepare project proposals and evaluate research designs. We support expanding opportunities for universities to involve their graduate programs in conducting research projects that we can use to address and resolve management issues.

INVENTORY AND MONITORING

Our biologists complete annual pair and brood counts for waterfowl across the district. These annual counts consist of two to three crew members conducting point counts at fixed, permanent locations each May (pair counts) and July (brood counts). The crews collect data on standardized field forms and enter the information into an existing database that resides on the refuge complex's file server. In 2013, this data was summarized in an annual report, while historical data was entered into a waterfowl count database. In some years, the refuge complex participates in an aerial winter waterfowl survey. We coordinate with FWRC to conduct this part of the survey that includes the reservation.

We conduct two types of big game surveys on the Bison Range, often annually:

- Refuge complex staff does ground-based elk counts (sometimes with volunteer help) at fixed points.
- Aerial surveys focusing on deer populations are completed in most years in January or February, when snow conditions offer improved visibility of animals.

Our research partners also provide annual population information on our bighorn sheep and pronghorn herds.

6.7 Visitor Services

Visitors come from all over the Nation and the world to learn about the National Bison Range Complex and enjoy a variety of wildlife-dependent recreational activities. In 2012, approximately 203,500 resident (from within 50 miles of the refuge complex) and nonresident visitors viewed and photographed wildlife, hunted, fished, and participated in events and programs. The number of visitors comes from the car counter located at the entrance to the visitor center, combined with estimated counts for the remaining units of the refuge complex. The use by activity follows:

- 1,000 visitor days for hunting upland gamebirds and migratory birds on the district
- 11,500 visitor days for fishing
- 138,000 visitor days for the auto tour route
- 50,000 visitor days for wildlife photography
- 6,500 visitor days for environmental education, interpretation, and special events
- 40,000 visitors to the National Bison Range Visitor Center

Brochures containing area maps, public use regulations, bird species, and general information are available for all units in the refuge complex. Birding is a popular activity on all units, given the abundant species of waterfowl, songbirds, and raptors that use the lands and waters in the area. The refuge complex is open from dawn to dusk, except during waterfowl hunting season (waterfowl production areas only), when hunters are allowed reasonable time to access hunting areas. The Ninepipe and Pablo Refuges are closed to all public access during waterfowl hunting.

Visitation is most heavily concentrated on the Bison Range, Ninepipe Refuge, and Pablo Refuge during wildlife-viewing seasons in the spring, summer, and fall. The most popular activity for visitors is driving the 19-mile Red Sleep Auto Tour Route on the range. This route offers spectacular scenery and opportunities to view and photograph wildlife. The Bison Range visitor center is open during intermittent hours Monday through Friday in the winter and from 8 a.m. to 6 p.m. every day of the week in the summer.

Visitation on the district is highest during the waterfowl and upland gamebird hunting seasons in the fall. We permit hunting on the waterfowl production areas, which accounts for less than 1 percent of all visits.

HUNTING

The Bison Range, Ninepipe Refuge, and Pablo Refuge are closed to all hunting.

Hunting is permitted on waterfowl production areas in accordance with State law and per joint State and CSKT regulations. District units in Lake County that are open to hunting for big game,

waterfowl, and upland birds and open to trapping are the following waterfowl production areas: Anderson, Crow, Duck Haven, Ereaux, Herak, Johnson 80, Kicking Horse, Montgomery, and Sandsmark. In 2012, it was estimated that approximately 1,100 visitors take part in hunting waterfowl and upland birds. Shotgun hunters may possess and use only nontoxic shot on lands within the refuge complex. Vehicle travel on the waterfowl production areas is not permitted except in designated parking areas and pullouts.

FISHING

Visitors often travel from Missoula and Kalispell during the summer months to fish for largemouth bass, while yellow perch is the most common species fished for in the winter months. Besides the refuge-specific regulations mentioned below, fishing is permitted on designated areas of the refuge in accordance with State law and per joint State and CSKT regulations.

Seasonal recreational fishing opportunities are available on all or part of the Bison Range, Ninepipe Refuge, and Pablo Refuge. Fishing is permitted on the waterfowl production areas but the wetlands provide minimal fishing opportunities. We prohibit (1) the use of boats, float tubes, or other flotation devices, and (2) the use of lead or lead-based fishing tackle.

National Bison Range

Anglers visiting the Bison Range enjoy fishing for cold-water species, such as rainbow and brown trout, along parts of the scenic Mission Creek and Jocko River. Mission Creek is open seasonally, spring through fall, and the Jocko River (next to the range's southern boundary) is open to catch-and-release fishing year-round. In 2012, an estimated 300 visitors fished on the range.

Ninepipe National Wildlife Refuge

Fishing is popular on the Ninepipe Refuge with approximately 8,000 visitors annually. Visitors often travel from Missoula and Kalispell during the summer months to fish for largemouth bass, while yellow perch is the most common species fished for in the winter months.

We close the refuge to fishing during the waterfowl-hunting season in the fall to provide resting and loafing areas for waterfowl. The entire refuge is open to fishing, including ice fishing, from the close of the waterfowl-hunting season to the end of February. From March 1 to July 14, we restrict fishing to specific areas to minimize disturbance to ground-nesting birds. The entire refuge is open to fishing from July 15 until the waterfowl-hunting season.

Pablo National Wildlife Refuge

In 2012, approximately 3,000 visitors fished on the Pablo Refuge for warm-water species, such as yellow perch and largemouth bass. Winter ice fishing is popular with the local residents and visitors from Missoula and Kalispell.

We seasonally open the refuge to fishing. We close the southern and western parts of the refuge year-round to provide sanctuary for wildlife. During waterfowl hunting, we close the refuge to fishing to provide resting and loafing areas for waterfowl. We keep the northern and eastern parts of the refuge open the rest of the year for fishing, including ice fishing.

Northwest Montana Wetland Management District (Lake County)

The Crow, Ereaux, and Montgomery Waterfowl Production Areas are the only units in the district that have enough water in isolated wetlands, creeks, or drainage ditches to minimally sustain fish; therefore, fishing is poor. In 2012, we estimate that only 50 visitors fished the entire district.

WILDLIFE OBSERVATION AND PHOTOGRAPHY

Opportunities for wildlife observation and photography are abundant within the refuge complex, and in 2012 it is estimated that more than 200,000 people visited for these purposes. Given the beautiful setting and unique wildlife found on the refuge complex, we receive many requests for commercial filming. Commercial filmmakers must acquire special use permits to work on refuge complex lands. The permits specify regulations and conditions that permittees must follow to protect the wildlife and habitats they have come to capture on film and to prevent unreasonable disruption of other visitors enjoyment of the refuge complex.

National Bison Range

Wildlife photography is popular on the refuge complex especially on the Bison Range. Many photographers come to the range to capture the landscape of the Mission Mountains, the Bison Range itself, and the wildlife species present. The most popular species for wildlife photographers are the large mammals including bison, elk, deer, pronghorn, bighorn sheep, and black bear. Elk are especially popular during the rutting season in the early fall months.

The most popular activity for visitors to the Bison Range is the 19-mile Red Sleep Auto Tour Route that guides visitors through a variety of wildlife habitats. The auto tour route is graveled and fully maintained through the summer months, including annual treatment for dust control. In the winter, the upper road is closed; but a shorter 6-mile winter route is kept open October through May. More than 120,000 visitors traveled the auto tour route in 2012.

The range has a day use area and nature trail near the main visitor entrance gate. There are picnic tables, a covered pavilion, drinking water fountains, and nine vault outhouses. The area receives a tremendous amount of use during the summer, especially on weekends and holidays. Many visitors begin or end the auto tour route with a visit to the day use area. Foot access at the Bison Range is restricted to a few designated trails to reduce the risk of visitors coming into close contact with bison.

Northwest Montana Wetland Management District (Lake County)

Birdwatching is particularly popular on the Ninepipe Refuge, Pablo Refuge, and waterfowl production areas, given the thousands of waterfowl, shorebirds, grassland birds, and wading birds that nest, feed, and rest on these areas every year. There are several walking trails on both the refuges, including an interpretive trail at the Ninepipe Refuge. Parking and walk-in access is allowed on the refuges during certain times of the year, but year-round access for wildlife observation is available on the nine waterfowl production areas.

ENVIRONMENTAL EDUCATION

The diversity of habitats and wildlife found throughout the refuge complex makes it an ideal "classroom" for the area's environmental education needs. The Bison Range receives more than 3,000 educators and students, from preschool to university level, on field trips. The refuge complex staff has created educational programs to promote an appreciation and understanding of the wildlife and habitats the refuge complex was established to protect.

Refuge staff and volunteers provide onsite programs, demonstrations, and talks, particularly at the visitor center. We hold teacher workshops and give out educational materials to participants. School groups can check out various field kits, which can include activity sheets on various topics, field guides, and collection tools for wetland fauna. School groups extensively use the day use area near the main visitor entrance gate and nature trail for environmental education activities, staging, and eating.

INTERPRETATION

The visitor center has extensive interpretive displays and an orientation video. Here, the public can receive brochures containing area maps, public use regulations, bird lists, and general information for the refuge complex. Many displays focus on the wildlife found on the refuge complex, particularly the bison. The displays show both the importance and the destruction of the large, free-ranging herds of bison—from estimated populations of 30 to 60 million animals to the remaining public and private herds today. There is also a display developed by CSKT on the cultural importance and uses of bison.

There are several interpretive kiosks on the range and at least one each on the Ninepipe and Pablo Refuges. These kiosks orient visitors and provide information on refuge complex management. We are also working with CSKTs Division of Fire to create an interpretive kiosk at the visitor center that highlights the historical importance of fire on the landscape in the Mission Valley.

We give local newspapers periodic news articles on refuge complex activities and informative articles about the values and protection of the area's natural resources. The refuge complex's Web site provides information about the area's natural resources, programs, and regulations. Our Facebook page provides highlights and updates on activities including the following annual events:

- Migratory Bird Day bird and photo walks
- National Wildlife Refuge Week
- Public Lands Day
- Bison roundup
- American Outdoor Fee-Free Weekend
- National Bison Range birthday

6.8 Cultural Resources

The following section describes the cultural resources and history of the refuge complex and the Mission Valley, starting with the documented occupation by the tribes that now compose CSKT. Next,

we describe Euro-American settlement in the valley and summarize changes to the area's land uses, including those within the refuge complex boundary.

THE PROTOHISTORIC PERIOD AND EARLY NATIVE AMERICANS

The Protohistoric Period is the period between the arrival of horses and manufactured goods but before the arrival of Euro-American traders and explorers. This period lasted only about 70 years because of the arrival of the Lewis and Clark expedition in 1805.

Malouf (1952) noted that these Intermountain areas of western Montana were the last areas of the United States for whites to settle. Many traits of aboriginal times survived through this period without influence from Euro-American culture. When early Euro-American explorers arrived, the area of western Montana was occupied primarily by three tribal groups: the Flathead and Pend d'Oreille (both considered Salish) and the Kutenai (Kootenai). In 1855, Governor Isaac Stevens stated the tribal population in western Montana to be 2,750 (Ryan 1977).

Early tribes were hunters and gatherers, and as such they did not accumulate surplus food and supplies. However, famines were rare. Nearly 30 species of plants were the main sources of foods, medicines, cookware, and housing. The root of the bitterroot plant was a central dietary feature. Families could dig 50–70 pounds of bitterroot in late March or April. Arrowleaf balsamroot, an abundant plant at most elevations of western Montana, was also extensively eaten. Stems were typically peeled and eaten raw before flowering, and later the roots were harvested and cooked. Ponderosa pine provided four forms of food: inner bark, sap between woody layers, cone nuts, and moss hanging from branches. Narrowleaf willow on river gravel bars was used in the construction of sweat lodges and baskets for cooking (sealed with gum). Tribes hunted most of the common mammals present today in western Montana including white-tailed deer and mule deer. Columbian ground squirrels were also harvested. Most birds, except waterfowl, were not harvested, yet mallard eggs were particularly plentiful and a popular food. Other gamebirds were not numerous. Fishing was employed on bison hunts and by those left behind.

HISTORY OF THE CONFEDERATED SALISH AND KOOTENAI TRIBES

The Salish and Pend d'Oreille are the two easternmost tribes of the people composing the Salish language family, whose territory extended from Montana to the Pacific Coast, generally north of the Columbia River. The Salish-speaking people separated thousands of years ago into different bands. These individual bands became separate tribes in different parts of the Northwest when the population began to exceed food supplies. Eventually these tribes began speaking different dialects of the Salish language (CSKT 2003). The Kootenai Tribe occupied the northern part of Montana and north into Alberta and British Columbia in Canada. Although the Salish and Pend d'Oreille share a common language, the Kootenai language is not related to any other tribe.

The cultures and life practices of these tribes were similar. In the traditional way of life, they gathered roots, including bitterroot and camas, from early spring through the growing season. Camas was a staple that was baked and dried for preservation. Tribes also picked chokecherries, hawthorn

berries, huckleberries, serviceberries, and strawberries, and they fished for salmon and bull trout. The tribes' medicines and flavoring herbs all came from the earth.

In the fall, the men hunted mostly deer and elk. The tribes also hunted bison, which provided food, clothing, and important tools. They fashioned tools from stone, bones, and wood. The women dried meats and prepared animal skins for clothing, coloring the hides with natural dyes and decorating them with porcupine quills.

Over the past several centuries, the lives and traditions of the western Indian tribes has been dramatically altered by a series of transformations relating to non-Indian incursions into their traditional way of life. The first was the horse, acquired in the 1730s from the Shoshone Tribe in Idaho. The horse greatly expanded the tribes' range, enabling more efficient travel and hunting, particularly of bison. However, the erosion of intertribal boundaries also contributed to an intensification of conflicts with enemy tribes.

In the 1780s, the Bitterroot Salish were devastated by a smallpox outbreak. The disease spread rapidly and is estimated to have killed one-half to three-fourths of the Salish and Pend d'Oreille bands.

French and British fur traders arrived in the 1790s. However, it was the Bitterroot Salish interaction with the Lewis and Clark expedition in 1805 that opened the door to fur trading in the Bitterroot Valley, which is south of Mission Valley. The Hudson's Bay Company eventually entered the Bitterroot Valley and began to trade with different tribes that traveled through the valley. Traders secured furs from Indians and established forts and missions. In 1841, Catholic missionaries initially established the oldest consistently occupied town in Montana at the present-day site of Stevensville (Stevensville Historical Society 1971).

The expansion of fur trading significantly altered the economy and culture of this region, including providing access to firearms, which changed the way tribes hunted and protected themselves from enemies. The introduction of the gun by the Hudson's Bay Company decimated many tribes. This particularly affected the Salish people whose enemies, the Blackfeet, had acquired the weapons early on, giving the Blackfeet a significant advantage in any battles over resources and territories.

EURO-AMERICAN SETTLEMENT AND LAND USE CHANGES

Western tribes have long used the Mission Valley as a traditional gathering place. Its setting offered excellent hunting and gathering opportunities that provided enough economic resources to accommodate short-term gatherings of large contingents of tribes. The valley was used as a rendezvous site where bartering and gaming was conducted by tribes of the Bitterroot Salish, Kalispel, Kootenai, and Pend d'Oreille. The Mission Valley was known to have excellent soil, good grasses, plenty of water, and abundant forest nearby. The valley was also somewhat protected from Blackfeet Tribe war parties because it was flanked to the east by the rugged Mission Mountains. The richness of the valley and its traditional use by the western tribes as a central gathering place made it a favorable location for a trading fort.

Saint Ignatius Mission

Father Pierre-Jean de Smet, a Belgian Jesuit priest, arrived in the Bitterroot Valley in September 1841 at the request of the Salish Tribe to establish a mission. The result was the Saint Mary's Mission,

the oldest mission in Montana. The religious foothold by the Jesuits among the Bitterroot Salish in Montana soon expanded to other Salish-speaking tribes. Sometime before the spring of 1854, Chief Victor of the Lower Pend d'Oreille band and Chief Alexander of the Upper Pend d'Oreille band searched together for a new mission location. The Jesuit priest required the new site to be more central to the various Salish and Kootenai tribes, provide sufficient natural resources to support the planned population density, and agreeable for agriculture.

After considering all the requirements, Chiefs Victor and Alexander decided to locate the new site in the Mission Valley. In 1854, the Jesuits established the new mission in the heart of Upper Pend d'Oreille territory, some 60 miles north of the town of Saint Mary, 7 miles from Fort Connah, and 7 miles from a major Upper Pend d'Oreille encampment along the Jocko River near present-day Ravalli. The new mission was named Saint Ignatius.

When the mission was moved from the Pend d'Oreille River during August and September of 1854, nearly all the Lower Pend d'Oreille or Kalispel joined with the upper bands in making the move to the new location. Small barges were prepared for transporting the food crops and equipment. Pack horses were used for moving tribal members and other cargo. The group arrived at the site on September 24, 1854, but by October, the main body of the Kalispel decided to return to their homeland on the Pend d'Oreille River. The Kalispel felt uncomfortable with the grouping of tribes that swelled the mission. Chief Victor declared that the Kalispel could not keep their autonomy, so he led his people downriver back to the main camp.

By the end of 1854, a log hut, chapel, houses, and a carpenter and blacksmith shop had been erected at Saint Ignatius Mission. By April of 1855, a population of more than 1,000 people lived near the Saint Ignatius Mission including Bitterroot Salish, Kalispel, Kootenai, Pend d'Oreille, and Spokane tribal members. Because of the establishment of the Saint Ignatius Mission, many Indian families built homes and developed agricultural lands along Mission Creek, including the lower valley that is now a part of the National Bison Range.

Fort Connah

During the winter of 1846–47, the Hudson's Bay Company built Fort Connah along Post Creek in the Mission Valley. Traders Angus McDonald and Neil MacArthur did the construction, and by 1847, 18 buildings were completed. One of those buildings still stands today. Fort Connah became the center of Hudson's Bay Company operations in Montana during the twilight years of the fur trade, continuing business until 1871.

The establishment at Fort Connah brought small groups of European trappers and farmers into the Mission Valley to work as support staff for the facility. They established gardens and crop fields and grazed livestock. The farmers exported seeds and domestic stock to the Columbia River Basin. By 1871, with the era of fur trading passed and an increasing emphasis on gold mining in northwestern Montana, Fort Connah was forced to close—it was the last fur trading post in Montana.

THE FLATHEAD INDIAN RESERVATION

When the United States divided the Oregon Territory into the Washington Territory and the Oregon Territory in 1853, western Montana was included in the Washington Territory. President

Millard Fillmore appointed Isaac I. Stevens as the Territorial Governor of Washington and the Superintendent of Indian Affairs. Stevens began an aggressive plan to deprive the Indian nations within the territory of title to their lands. His plan restricted the western Montana tribes to one reservation, thereby opening the rest of the land to white settlement.

Stevens eventually began negotiations with the Salish tribes living on their homelands of the Bitterroot Valley. During these negotiations, observers noted a clear lack of understanding of the specifics of the treaty by the Bitterroot Salish, Kootenai, and Pend d'Oreille Tribes because of the cultural and language barriers. The interpreter, Ben Kyser, was reported to speak Salish badly and was not any better at translating English. During negotiations, the Lower Pend d'Oreille's Chief Victor proposed that Stevens conduct a study to determine the best site for the reservation, which stopped the immediate transfer of their lands in the Bitterroot Valley.

The 1855 Treaty of Hellgate defined the ceded aboriginal territory of the Bitterroot Salish, Kootenai, and Pend d'Oreille Tribes and set up reserved lands for the "exclusive use and benefit" of these tribes. The treaty provided money and infrastructure including mills, shops, schools, and employment. The treaty also recognized tribal members' right to hunt, fish, and gather in their usual and accustomed places outside the reservation

After the Treaty of Hellgate, pressure increased for the removal of the Salish from the Bitterroot Valley to the Jocko Valley on the Flathead Indian Reservation. In 1872, General James Garfield presented Salish Chiefs Charlo, Arlee, and Adolf with a second treaty that Charlo refused to sign. Chief Charlo remained in the Bitterroot Valley for 20 more years until 1891 when General Carrington and troops from Fort Missoula escorted the chief and his band to the Flathead Indian Reservation.

On the Flathead Indian Reservation, the Federal Government established increasingly restrictive control over traditional cultural practices of the Tribes, banning traditional dances, spiritual ceremonies, and even the speaking their language. Despite this repressive climate, the Tribes, in comparison to those at other reservations, were relatively prosperous, establishing farms and cattle operations. They also welcomed other tribal members to the reservation including Kalispels and Spokanes. Despite efforts to restrict the Tribes' cultural practices, the tribal languages and many of the Tribes' traditions are practiced today.

6.9 Operations

The maintenance staff carries out an extensive variety of operations on the refuge complex. Maintenance of facilities and equipment is essential at all the units, and managing the bison herd is a unique and complex program at the Bison Range.

MAINTENANCE OF FACILITIES AND EQUIPMENT

As on many national wildlife refuges, the maintenance staff is responsible for the maintenance and repair of all facilities, roads, equipment, and vehicles to provide dependable, safe, and secure operating conditions for all programs. Maintenance staff also helps with habitat management projects, such as

invasive plant species control, haying and grazing programs, habitat restoration, and water level management.

Facilities

Well-maintained facilities help the staff effectively manage the units as well as provide safe, functional places for visitors to experience the refuge complex.

Fences

The maintenance staff repairs and replaces approximately 60 miles of the exterior and interior fences, which are 6–8 feet tall. This includes maintaining the electrified portions of the interior fence that is required to hold the bison herd for the length of the prescribed rotation based on habitat conditions. Maintenance of the exterior fence is critical to keep the bison from going outside the boundaries of the range onto private lands.

Water Developments

There are approximately 80 tanks on the Bison Range, associated with naturally occurring springs, that provide a year-round water source for the bison. The maintenance staff use underground pipes and collection boxes to move the spring water to the watering tanks. The staff maintains and cleans the tanks, pipes, and collection boxes to provide the bison with an adequate supply of fresh, clean water.

Buildings

There are 10 buildings on the Bison Range including three staff homes, the visitor center and administrative office, a shop, and a barn for our horse herd. The visitor center and associated administrative office require a great deal of routine maintenance. More than 120,000 people pass through the visitor center annually. The maintenance staff addresses mechanical and structural issues in this facility. Other public use facilities, such as the day use area, also require seasonal maintenance such as mowing, cleaning the numerous restroom structures, picking up trash, and maintaining associated facilities.

Public Access

There are approximately 21 miles of interior roads throughout the refuge complex that are open to the public, at least seasonally. The most heavily used and popular road is the 19-mile Red Sleep Auto Tour Route on the Bison Range traveled by approximately 100,000 vehicles annually. These public roads, some of which travel over steep terrain, must be maintained and graded periodically to make sure they are safe for the visiting public.

Other public areas, such as the Jocko fishing access, parking areas, and observation pullouts and structures, require constant inspection and maintenance throughout the busy visitor season of spring through fall.

Equipment

The maintenance staff maintains about 30 pieces of small equipment including trucks, cars, all-terrain vehicles, and trailers. The staff also maintains eight pieces of heavy equipment including tractors, motor graders, a front-end loader, a bulldozer, a dump truck, and a backhoe. To help us manage the wetlands, the staff maintains various water control structures.

STAFF

The refuge complex has a permanent staff of nine employees:

- refuge manager
- deputy refuge manager
- supervisory wildlife biologist
- fish and wildlife biologist
- supervisory outdoor recreation planner
- law enforcement officer
- range technician
- engineering equipment operator
- maintenance worker

In addition, there are two term positions: a fish and wildlife biologist and a maintenance worker. All these positions, including the two current terms, are included in the base budget for staff. We also use the money for a vacant WG–7 maintenance worker (permanent seasonal) position to keep the current GS–7 range technician and WG–7 term maintenance worker on longer into the year.

Up to six temporary seasonal employees help with the biological, visitor services, and maintenance programs. The employees range between a GS–3 and a GS–5 (biology and visitor services) or a WG–3 (maintenance). The number of temporary employees depends on the annual funding for refuge complex programs. Because of recent budget cuts, we have become more reliant on volunteers, such as those in the Student Conservation Association, to staff the visitor center.

Bison and Horse Herd Management

We have placed bison handling responsibilities on our maintenance employees because they possess the necessary skill. Other employees help with the bison moves as their riding skills allow or progress.

The maintenance staff also feed and train the range's herd of 10–12 horses used in the bison management program. These employees select the animals, based on their knowledge of horses and the needs of the operation. They look for injuries or illnesses and conduct minor veterinary care. This ensures that the horses are treated humanely and are able to perform when needed to move the bison efficiently, while also providing for the safety of the riders and the horses.

6.10 Socioeconomics

This section describes the social and economic aspects that the alternatives may affect, as follows:

- population, demographics, and employment
- public use of the refuge complex
- baseline economic activity

The refuge complex has been part of the surrounding communities for more than 100 years. Most local community members have come to enjoy and appreciate the resources and public use activities available to them. Besides local and State residents, visitors come from all over the country and the world to visit the refuge complex and experience these iconic refuges. Several of the refuge complex units are located along a major State highway that is also the main road leading to Glacier National Park, 2 hours north. The National Bison Range, although located on a county road, is well identified by directional signage on the highway. The Bison Range is listed as one of the top ten tourist attractions in Montana by the Institute for Tourism and Recreation Research (Grau et al. 2012).

Attractions like the refuge complex brought almost 11 million visitors to the State in 2012, an increase of 9.1 percent from 2011. The most frequently cited activity was scenic driving. Nature photography and wildlife watching were the second and third most popular activities engaged in by 46 and 44 percent of vacationers, respectively. Most of the refuge complex is open to compatible public use, at least seasonally, and these recreational opportunities attract nonresident visitors who spend thousands of dollars in the local communities. Visitor spending brings an estimated 3 billion dollars into the State, contributing significantly to the local economies, including lodging, food, gas, and tourism industries (Grau et al. 2012).

Because Montana does not have a sales tax, the State and local tax receipts generated by nonresident travelers are generally lower than other States. However, Montana does have a statewide accommodations tax of 7 percent on overnight lodging. In addition, nonresident travelers contribute to the tax base through the payment of excise taxes on items such as gasoline and alcohol and by supporting industries that pay corporate taxes and whose workers' pay income, property, and other taxes (Grau et al. 2012).

POPULATION, DEMOGRAPHICS, AND EMPLOYMENT

The portions or units of the refuge complex affected by the alternatives are located in Lake and Sanders Counties. Sixty-two percent of these refuge complex lands are in Lake County; the remaining 38 percent are in Sanders County. The largest community in this area is Polson, Montana, which is the Lake County seat and has an estimated population of 4,500. The remaining communities in Lake County are Arlee, Big Arm, Charlo, Dayton, Dixon, Elmo, Pablo, Ravalli, Ronan, St. Ignatius, and Swan Lake. The communities in Sanders County are Dixon, Heron, Hot Springs, Lonepine, Noxon, Paradise, Plains, and Trout Creek, with the closest being Dixon, Hot Springs, and Plains.

Lake County Population and Demographics

Lake County is Montana's ninth most populous county, with an estimated population in 2011 of 28,947. This number represents almost 3 percent of the State population, estimated at 997,667 (U.S. Census Bureau 2010). Between 1999 and 2009, the number of people living in Lake County increased by 9.7 percent, which was higher than the State average of 8.6 percent. In 2010, the population density for Lake County was 19.3 people per square mile, much higher than the State average of 6.8. Approximately 25 percent of Lake County's population lives within the incorporated communities of Polson, Ronan, and St. Ignatius. Between 2007 and 2011, the median household income in Lake County was $38,268, which is 16 percent below the State average. Approximately 68 percent of

residents own their own homes. Future population projections for the study area and the State overall are expected to follow historical trends, increasing slowly.

In 2011, most of the residents in Lake County were under 18 years, estimated at 25.4 percent. Persons over 65 years of age represented 17.3 percent of the population. In 2011, 69.7 percent of the study area population was white persons and 22.4 percent were American Indians or Alaska Natives (CSKT 2013a).

Montana and Lake County Employment

The Montana and Lake County economies have changed significantly over the past 40 years. In 1970, half of Montana's workers were employed in the basic industries of farming and ranching, the Federal Government, forestry, manufacturing, mining, and tourism. By 1997, only one-quarter of Montana's workers were employed in these industries. In Lake County, farming and ranching are still major contributors to the economy along with local and tribal governments and services.

In 2012, the labor force in Lake County was estimated at 11,256. The unemployment rate was 8.5 percent, meaning 956 individuals were unemployed. The service sector employs more workers and produces more personal income than any other sector in Lake County. Services do not typically make a "product," but use knowledge to generate income. Some examples are medical care, auto repair, legal representation, and tourism. This sector now employs one out of every three workers in Lake County (Lake County [no date]). Some of the largest employers in the study area include CSKT, Jore Corporation, St. Luke Community Healthcare, and the school districts. CSKT employs an average of 1,100 workers, including seasonal employees, in several tribal programs. An additional 250 employees work at the tribal college, S&K Technologies, and the KuaTaqNuk Resort (both owned by CSKT). Of these CSKT employees, approximately 75 percent are tribal members.

The National Bison Range Complex employs 9 permanent, full-time Federal employees; 2 term full-time positions (not to exceed 4 years); and an average of 2–6 seasonal employees (working 6 months or less). Except for some of the seasonal employees, all the staff at the refuge complex are permanent residents in the surrounding communities (primarily Lake County), owning or renting homes and purchasing goods from local businesses.

Sanders County Population and Demographics

Sanders County is Montana's seventeenth most populous county, with an estimated population in 2011 of 11,440. This number represents almost 1 percent of the State population (U.S. Census Bureau 2010). Between 2000 and 2010, the number of individuals living in Sanders County increased by 11.6 percent, which was higher than the State average of 8.6 percent (CSKT 2013a). In 2010, the population density for Sanders County was 4.1 people per square mile, lower than the State average of 6.8. Between 2007 and 2011, the median household income in Sanders County was $38,268, which is 16 percent below the State average. Approximately 68 percent of residents own their own homes. Future population projections for the study area and the State overall are expected to follow historical trends, increasing slowly.

In 2011, most of the residents in Sanders County were over 65, estimated at 22.6 percent. Persons under 18 years of age represented 19.9 percent of the population. In 2011, 91.6 percent of the study

area population were white, 4.4 percent were American Indians, and 4 percent were other ethnic groups, including 2 percent Hispanic (CSKT 2013a).

Sanders County Employment

In Sanders County, farming and ranching are still major contributors to the economy along with local and tribal governments and services.

In 2010, the labor force in Sanders County was estimated at 4,384, and the unemployment rate was 14.6 percent, meaning 642 individuals were unemployed. The average annual salary in 2010 was $26,855. Services such as education, health care, and social services account for most (21.6 percent) of the employment opportunities (City-Data.com 2013). The other major employment industries are agriculture, forestry, fishing and hunting, and mining (12.8 percent) and construction (11.0 percent).

Some of the largest employers in the study area include the Clark Fork Valley Hospital, Avista Corporation, Quinn's Hot Springs Resort, Thompson River Lumber, and schools, banks, and grocery stores.

Flathead Indian Reservation Population and Demographics

In 2010, 28,359 individuals lived within the boundaries of the Flathead Indian Reservation. Of this population, 65 percent were white, 24 percent were American Indians, and 13 percent were other ethnic groups. When compared with the other 10 reservations in Montana, the Flathead Indian Reservation has the largest population. Most of the non-Indian residents live on nontribal lands, which make up 38 percent of the reservation. Since 1934, CSKT has been actively buying back much of the lands lost to the Tribes during the Allotment Era. Today, CSKT owns 62 percent of the reservation lands, either in fee title or through the Tribal Land Trust (CSKT 2013b).

PUBLIC USE OF THE REFUGE COMPLEX

Wildlife observation, photography, and hiking account for 94 percent of visits to the refuge complex (FWS 2012b). Most wildlife observers visit in the spring, summer, and fall, when the greatest numbers of migratory birds inhabit the area and the full length of the Red Sleep Auto Tour Route on the Bison Range is open.

Hunting accounts for less than 1 percent of visitation to the refuge complex. The only hunting permitted is on the waterfowl production areas for waterfowl and upland gamebirds, such as ducks and pheasants. Big game hunting and trapping is permitted, but the hunting and trapping regulations of the Flathead Indian Reservation only permit tribal members to harvest big game and trap within the boundaries of their reservation.

The only units that support a viable fishery are the Bison Range, the Ninepipe Refuge, the Pablo Refuge, and three waterfowl production areas. In 2012, approximately 11,350 visitor use days were dedicated to fishing these areas. Some of the units, like Ninepipe Refuge, are popular for fishing; nevertheless, this number only accounts for 6 percent of the annual visitation.

The refuge complex has a visitor center located in the refuge complex headquarters. Approximately 120,000 visitors pass through this visitor center annually. Our supervisory outdoor recreation planner develops programs, designs displays, and conducts school programs and events. We

recruit two to four seasonal employees to run the visitor center, interact with visitors, and help with programs. In addition, the visitor center has a bookstore, supported by the Glacier Natural History Association, that generates money, along with collecting the entrance fee, a portion of which remains at the refuge complex for visitor services programs and facilities.

We do not allow camping on the refuge complex; however, there are several privately owned campgrounds, including recreational vehicle campgrounds, in the surrounding communities. There are also several motels, restaurants, and gift shops located near the refuge complex.

Visitation Levels

Annual visitation to the refuge complex is an estimated 203,500 visitor use days, according to our counts and estimates. Visitation is most heavily concentrated during wildlife-viewing seasons, spring through fall. The staff estimates that 80 percent of all visitor days at the refuge complex are from outside the local area.

BASELINE ECONOMIC ACTIVITY

The refuge complex affects the economy through the resident and nonresident visitor spending it generates, the employment it supports, and the value it adds to surrounding property values.

The refuge complex employs nine full-time equivalent employees and 4–6 seasonal employees, with a payroll of $495,887, excluding benefits. Using the Bureau of Labor Statistics Consumer Expenditure Survey data for individuals in these income categories, roughly 79 percent of annual income is spent locally. Under this assumption, the refuge complex contributes $391,750 to the local economy in employee spending.

Visitors to the refuge complex, particularly nonresidents, contribute significantly to the State and local economy. It is estimated that nonresidents spend an average of $133.72 per day while residents who travel more than 50 miles spend $32.55 per day (personal communication, Kara Grau, Assistant Director of Economic Analysis, University of Montana, March 4, 2013). Based on these figures, it is estimated that visitors to the refuge complex contribute approximately 18 million dollars to the State and local tourism economy. These expenditures primarily include food, gas, transportation, souvenirs, lodging, and associated supplies.

In addition, the presence of these refuge units adds value to neighboring and surrounding landowners. The presence of natural areas like wildlife refuges near residential areas is a desirable trait for most buyers, particularly in Montana. The presence of the refuge complex adds value to the associated communities and private lands.

CHAPTER 7
Environmental Consequences of the Proposed Action and Alternatives

This chapter describes the potential environmental consequences of implementing the no-action alternative and the four AFA alternatives. It is organized by resource topics described in chapter 6. These include habitat management; wildlife management; research, inventory, and monitoring; visitor services; cultural resources; and socioeconomics.

Resource topics that were excluded from further consideration are physical environment, threatened and endangered species, and special management areas. These resources would not be affected by any of the proposed alternatives and were dismissed from further consideration. Likewise, none of the proposed alternatives would:

- affect State, tribal, or local laws imposed for the protection of the environment;
- result in the use, storage, release or disposal of hazardous substances;
- cause changes in the function of the surrounding community;
- cause disproportionate impacts to minority or low-income populations;
- affect culturally valued properties; or impact wetlands or other sensitive habitats.

According to the Council on Environmental Quality regulations, NEPA directs us to study effects that affect the human environment, as described below (Section 1508.14 Human Environment):

> 'Human environment' shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

Potential cumulative effects of past, present, or reasonably foreseeable actions are described at the end of this chapter.

7.1 Analysis Approach

Resource impacts are discussed in terms of the context of the intensity, duration, and type of impact. The intensity and type of impact (or "effect") is described as negligible, minor, moderate, or major and as adverse or beneficial, defined as follows:

- **Negligible**—An adverse or beneficial effect would occur, but would be at the lowest levels of detection.
- **Minor**—The effect would be noticeable, but would be relatively small and would not affect the function or integrity of the resource.
- **Moderate**—The effect would be readily apparent and would influence the function or integrity of the resource.
- **Major**—The effect would be substantial and would result in severely adverse or exceptionally beneficial changes to the resource.

Some of the other important NEPA concepts for this analysis are defined as follows:

- **Direct Effect**—caused by the action and occur at the same time and place
- **Indirect Effect**—caused by the action, are later in time or farther removed in distance, but are still reasonably foreseeable
- **Cumulative Effect**—the incremental effects of the action when added to other past, present, and reasonably foreseeable actions. These effects are discussed in "Section 7.10 Cumulative Effects."
- **Reasonably Foreseeable**—reasonably foreseeable events, although still uncertain, must be probable. Those effects that are considered possible, but not probable, may be excluded from NEPA analysis.

This analysis is based on the following assumptions:

- For all AFA alternatives, the staffing and administrative structure proposed in each would be fully and successfully implemented.
- None of the proposed alternatives would result in physical impacts or disturbance to resources.
- None of the proposed alternatives would result in a change to resource management objectives, approaches, or implementation.
- Effects to the no-action alternative are based on a comparison to existing conditions, while the effects of the proposed AFA alternatives (B through E) are compared to the no-action alternative.

The duration of impacts is also considered. In this case, all of the proposed action alternatives describe AFAs with a term of 5 years. Therefore, short-term effects are considered to be those that would occur immediately following the implementation of an AFA, or up to about one year following

implementation. Long-term effects are considered to be those that would occur after the AFA is fully implemented, or between about two and five years (this period is also referred to as the full term of the AFA).

7.2 Habitat Management

Anticipated effects of the no-action and proposed AFA alternatives on habitat management at the refuge complex are described below.

HABITAT MANAGEMENT

Refuge habitat management efforts that may be affected by the proposed alternatives include invasive species management, prescriptive grazing, wildfire response, and water level management. Note that fire management (wildfire response) is already coordinated with CSKT under an annual operating plan; that would not change under any of the alternatives.

Alternative A

Under the no-action alternative, the limited expansion of staff would likely have negligible, indirect benefits.

Alternative B

Same as alternative A. Additional refuge staff proposed under the proposed action would have negligible indirect benefits.

Alternative C

Same as alternative A, there would be negligible indirect benefits resulting from the additional staff on the refuge.

Alternative D

Same as alternative A, there would be negligible indirect benefits resulting from the additional staff on the refuge.

Alternative E

Under alternative E, four additional CSKT positions and several seasonal staff would likely improve the refuge complex's ability to implement habitat management efforts at Ninepipe Refuge, Pablo Refuge, and the district and would likely increase management capacity at the National Bison Range. Compared to alternative A, these additions would likely result in minor, indirect benefits.

HABITAT RESOURCES

Habitat resources in the refuge complex generally consist of grassland communities, forest communities, riparian areas, and wetlands. These are the resources that are influenced by the habitat

management efforts to meet the purposes of the refuge complex and the mission of the Refuge System. As described above, the no-action and action alternatives are likely to result in negligible to minor indirect benefits on habitat management.

While the effects of the alternatives on habitat management can be anticipated, it is much more difficult to predict the effects of habitat management on actual habitat resources. This is because the trajectory of individual habitat resources becomes apparent over long periods of time and is influenced by a variety of interrelated biotic and abiotic factors that include precipitation, climate, wildlife populations, natural and human-caused disturbances, and refuge management actions. To attempt to predict the effects of relatively minor changes in habitat management on these resources would be speculative. For these reasons, the effects of the alternatives on habitat resources are unknown.

7.3 Wildlife Management

This section describes that anticipated effects of the no-action and action alternatives on wildlife management, primarily bison, other ungulates, and general wildlife.

BISON MANAGEMENT

The management of bison is central to the mission of the refuge complex, and is described in detail in "Section 6.3 Wildlife Management."

Alternative A

Under the no-action alternative, the proposed expansion of staff (converting two term position back to permanent) would have a negligible, indirect benefit to bison management by increasing the number of individuals available to conduct or assist with operations.

Alternative B

Same as alternative A. Additional refuge staff (primarily the CSKT wildlife refuge specialist) would have a negligible, indirect benefit to bison management.

Alternative C

Same as alternative A—negligible indirect benefit resulting from the additional staff on the refuge.

Alternative D

Same as alternative A—negligible indirect benefit resulting from the additional staff on the refuge.

Alternative E

Same as alternative A—negligible indirect benefit resulting from the additional staff on the refuge.

BIG GAME MONITORING AND MANAGEMENT

The refuge complex manages herds of elk, mule deer, white-tailed deer, bighorn sheep, and pronghorn. Big game populations are managed under our fenced animal management plan, and deceased animals are evaluated for health and disease.

Alternative A

Under alternative A, our staff would continue to monitor and manage ungulate populations. The small expansion of staff capacity under this alternative would result in negligible, indirect benefits.

Alternatives B through D

Under all of the AFA alternatives, new or expanded positions would improve the capacity of the refuge complex to implement big game management efforts, resulting in negligible indirect benefits.

Alternative E

Compared to the no-action and the other AFA alternatives, alternative E would likely improve the capacity of the refuge to implement big game management efforts due to its proposed additional staff positions, resulting in minor indirect benefits.

7.4 Research, Inventory, and Monitoring

Biological staff design and implement research, inventory, and monitoring programs for a variety of plant and animal resources found on the refuge complex. Some efforts are funded by, or coordinated through, outside partners, including universities, other Federal agencies, and CSKT.

Alternative A

Under the no-action alternative, our staff would continue to design and implement research, inventory, and monitoring programs. The small expansion of staff under this alternative would result in negligible, indirect benefits to research, inventory, and monitoring programs.

Alternatives B through D

Same as alternative A. The proposed changes in refuge staff and capacity under alternatives B through D would have negligible benefits on research, inventory, and monitoring programs.

Alternative E

Under alternative E, the addition of several CSKT staff, including a district manager and a seasonal biological science technician would result in minor, indirect benefits to research, inventory, and monitoring programs, particularly those associated with wetlands.

7.5 Visitor Services

Visitor services include hunting and fishing access and programs, wildlife observation and photography opportunities (including the management of the auto tour route), and environmental education and interpretation facilities and programs.

Alternative A

Under the no-action alternative, we would seek to add an outdoor recreation planner to the refuge complex staff. This increase would result in minor, indirect benefits to visitor services.

Alternative B

Under the proposed action, alternative B, several visitor services positions would transfer to CSKT, including a supervisory outdoor recreation planner (through attrition). Expanded CSKT involvement in visitor services and interpretive information is expected to benefit these programs, resulting in minor, indirect benefits to visitor services over the long term.

Alternative C

Under alternative C, a new CSKT outdoor recreation planner would be added and four temporary seasonal park ranger positions would be transferred to CSKT. Similar to alternative A, this staff increase would result in minor, indirect benefits to visitor services.

Alternatives D and E

Under alternatives D and E, staff changes affecting visitor services would be the same as alternative C, with the same overall minor, indirect benefits.

7.6 Cultural Resources

Many historical and cultural resources are inextricably linked to CSKT, and we collaborate with CSKT on most interpretation programs and clearances for infrastructure projects. In general, an AFA with CSKT would strengthen these programs and actions and our overall relationship with the Tribes.

Alternative A

Under the no-action alternative, the current level of collaboration with CSKT would continue, resulting in no effect.

Alternative B

Under the proposed action, alternative B, a stronger role for, and partnership with, CSKT would result in negligible, indirect benefits.

Alternatives C, D, and E

Under alternatives C, D, and E, a strong role for, and partnership with, CSKT would be further strengthened by additional CSKT staff (outdoor recreation planner and park rangers) who would contribute to cultural resource preservation and interpretation, resulting in minor, indirect benefits.

7.7 Operations

Operations comprises the infrastructure and administrative systems that are necessary to manage and fulfill the purposes of the refuge complex. By entering into an AFA with CSKT, we seek to forge a long-term partnership for managing or assisting with the operations of the refuge complex. The proposed AFA alternatives present four different approaches to achieving this, while the proposed action (alternative B) is based on a specific AFA agreement (see appendix A).

Distinctions between alternatives under operations stem from the number and type of staff positions proposed. Currently, the refuge complex operates with nine permanent staff, two term appointments, and several temporary seasonal employees and volunteers. Under any alternative, the number of temporary seasonal positions recruited by us or CSKT would vary each year depending on the annual budget for the refuge complex and station priorities. While there may not be a direct relationship between the number of refuge staff and effective operations, it is reasonable to assume that additional staff would, over time, improve or expand refuge complex operations.

Alternative A

Under the no-action alternative, the proposed additional staff (for a total of 12 permanent and up to 6 temporary seasonal positions) would result in minor benefits.

Alternative B

Under the proposed action, alternative B, the number of permanent positions would be similar to the no-action alternative, with the addition of a GS-11 wildlife refuge specialist. This would result in negligible benefits, compared to the no-action alternative.

Alternatives C and D

Alternatives C and D would be similar to the no-action alternative (12 permanent and up to 7 temporary seasonal positions), resulting in negligible benefits.

Alternative E

Under alternative E, additional permanent positions would be added (primarily associated with district management) for a total of 16 permanent staff positions and up to 6 temporary seasonal positions. Compared to the no-action alternative, these additions would result in minor benefits.

COMPARISON OF COSTS FOR EACH ALTERNATIVE

Table 4 summarizes the costs above current management costs for each alternative. We would provide this money to CSKT to support the positions transferred. The table shows indirect costs for the four AFA alternatives (B–E). We negotiated the indirect costs at $5,000 per full-time employee, prorated for seasonal staff, following 25 Code of Federal Regulations 1000.138. The indirect costs vary because the number of temporary positions transferred to the Tribes would depend on annual funding; therefore, some positions may not be filled each year. When making these estimates, we assumed that all temporary positions would be filled. In addition, we used the step 6 pay scale for 2014 and included benefits estimated at 35 percent for permanent and term employees and 7.65 percent for temporary employees.

Table 4. Additional cost estimates for each alternative when compared to current conditions.

Alternative	*Added salary cost including benefits*	*Indirect cost*	*Total estimated added cost*
A	[1]$75,477	None	$75,477
B	$91,322	[2]$47,300 to $61,800	[2]$138,622 to $153,122
C	$75,477	[2]$2,100 to $16,600	[2]$77,577 to $92,077
D	$75,477	[2]$28,800 to $43,300	[2]$104,277 to $118,777
E	$296,729	[2]$45,800 to $60,300	[2]$342,529 to $357,029

[1] *Proposal to add a GS–9 outdoor recreation planner to current staff.*

[2] *Range accounts for from two to seven seasonal positions filled.*

7.8 Socioeconomics

This socioeconomic analysis is based on various factors that may influence the location and magnitude of potential socioeconomic effects. These factors include:

- the location of and access to the refuge
- the likely residence area for people working at the refuge (existing residents or any in-migrating employees)
- the rate and magnitude of in-migration, if any (which will be influenced by the availability of a trained or trainable local workforce)
- the rate and magnitude of population and employee turnover, if any (including student population turnover in schools, employee turnover, and employee turnover from existing jobs to employment at the refuge)
- the availability and location of existing housing and potential housing and the capacity and condition of existing local services and facilities

- the people directly and indirectly affected economically by the proposed action, such as from wages and taxes

The socioeconomic effects for the no-action alternative and the AFA alternatives were evaluated within the above context. The impacts for all of the alternatives would be relatively the same, so the discussion of alternatives A through E have been combined. Costs associated with each of the alternatives are discussed separately in "Section 7.7 Refuge Complex Operations."

POPULATION AND DEMOGRAPHICS

Under all the alternatives, existing patterns and trends would continue to drive the social structure and economy of the area. There would be no effect to either the population trends in, or demographics of, Lake and Sanders Counties. Likewise, none of the alternatives would result in disproportionately high and adverse human health or environmental effects on a minority population, low-income population, or Native American tribe.

EMPLOYMENT AND INCOME EFFECTS

The potential employment and labor income effects from the alternatives is shown in table 5. Employment for alternatives A through D would result in one new job with an annual labor income of $75,477. Alternative B would result in an annual labor income of $91,322. Alternative E would result in five new jobs with a total annual labor income of $296,729. On a per-job basis, direct annual labor income for alternative E would range from $39,854 to $75,477. For all alternatives, regional or national economic conditions could cause refuge operations to be curtailed or shut down at any point, particularly affecting the funding for temporary seasonal positions.

Table 5. Alternative Employment and Annual Labor Income Estimates

Employment, labor income	*Alternative A*	*Alternative B*	*Alternative C*	*Alternative D*	*Alternative E*
Direct employment	1 – Outdoor recreation planner	1 – Wildlife refuge specialist	1 – Outdoor recreation planner	1 – Outdoor recreation planner	5 – Outdoor recreation planner, biological science tech., district manager, two maintenance workers
Direct annual labor income	$75,477	$91,322	$75,477	$75,477	$296,729

ECONOMIC ACTIVITY EFFECTS

Using the Bureau of Labor Statistics Consumer Expenditure Survey data for individuals with the above income estimates, roughly 79 percent of annual income would be spent locally. Under this assumption, alternatives A, C, and D would contribute $59,627 to the local economy in employee spending. Alternative B would contribute $72,144 to the local economy in employee spending, while

alternative E would contribute $234,416. This additional economic activity generated in alternative E would result in minor benefits, compared to negligible benefits under alternatives A through D.

COMMUNITY EFFECTS

Given the nature of the employment effects under all alternatives, there is unlikely to be any in-migrating population. Therefore, local governments would not likely experience the need to serve a fluctuating population. There would be no effect to specific local governmental units within Lake and Sanders Counties due to in-migrating workers. Community fire, emergency, medical, and social service providers would not likely see any need to adjust their staffs, as there would be no increases in service demands associated with any of the alternatives. Alternatives A through E would not add to population and housing demand pressures and would not increase costs for cities, schools, and counties through refuge-related in-migration and resulting increases in local government service costs.

7.9 Summary of Environmental Consequences

Environmental consequences of the no-action and the AFA alternatives are summarized in table 6.

Table 6. Summary of environmental consequences.

Resource topic	*Alternative A*	*Alternative B*	*Alternative C*	*Alternative D*	*Alternative E*
Habitat management	Negligible benefits	Negligible benefits	Negligible benefits	Negligible benefits	Minor benefits
Habitat resources	Unknown	Unknown	Unknown	Unknown	Unknown
Bison management	Negligible benefits	Negligible benefits	Negligible benefits	Negligible benefits	Negligible benefits
Big game monitoring and management	Negligible benefits	Negligible benefits	Negligible benefits	Negligible benefits	Minor benefits
Research, inventory, and monitoring	Negligible benefits	Negligible benefits	Negligible benefits	Negligible benefits	Minor benefits
Visitor services	Minor benefits	Minor benefits	Minor benefits	Minor benefits	Minor benefits
Cultural resources	No effect	Negligible benefits	Minor benefits	Minor benefits	Minor benefits
Refuge operations	Minor benefits	Negligible benefits	Negligible benefits	Negligible benefits	Minor benefits
Socioeconomics	Negligible benefits	Negligible benefits	Negligible benefits	Negligible benefits	Minor benefits

7.10 Cumulative Effects

Cumulative effects are defined in the Council on Environmental Quality regulations as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such actions" (40 CFR § 1508.7). Cumulative effects can result from individually minor, but collectively significant, actions taking place over a period of time. This section analyzes cumulative effects of the alternatives when combined with the effects of other relevant past, present, and reasonably foreseeable future activities.

REASONABLY FORESEEABLE ACTIONS

Reasonably foreseeable future activities are actions and activities that are independent of the action alternatives, but could result in cumulative effects when combined with the effects of the alternatives. These activities are anticipated to occur regardless of which alternative is selected. Reasonably foreseeable future actions that could potentially result in cumulative effects include the following, and are described below:

- **CSKT Water Compact**—For many years, the CSKT, the State of Montana, and the United States Government negotiated a proposed water rights settlement compact. The compact quantifies the tribe's water rights and sets forth the conditions on their use, provides water for the Tribes for existing and future tribal water needs (both consumptive and instream flow) to settle the Tribes' claims to reserved water rights, protects all current water users non-irrigation rights from the Tribes' exercise of their senior water rights, and protects on-reservation irrigators. (DNRC 2013). The proposed compact is expected to be submitted for approval during the 2015 Montana legislative session (Missoulian 2013).
- **CSKT Wetland Enhancement Projects**—Consistent with the CSKT Fish and Wildlife Implementation Strategy (2000) and the Habitat Acquisition and Restoration Plan (2000), the CSKT has completed, or has plans to complete, multiple projects to restore and enhance prairie pothole wetland habitat. Completion of these projects is expected to increase the size and quality of wetland habitat on CSKT lands, several of which are in close proximity to Ninepipe Refuge and other units managed by the Service (CSKT 2009).
- **Land Buy-Back Program for Tribal Nations**—In 2012, the U.S. Department of the Interior published a plan to use funds from the Cobell Settlement Agreement to acquire and consolidate fractional land interests in trust for the beneficial use of tribal nations. Fractional lands are those tribal trust lands with more than one landowner, some as high as 200 owners of a single 5-acre parcel. Under this program, interested individual owners of fractional land interests would receive payments for voluntarily selling their land. As outlined in the implementation plan, there are 696 fractionated tracts with purchasable interests in the defined CSKT region, comprising over 25,000 acres. Successful acquisition, consolidation, and use of many of these fractional land interests could result in economic, community, or resource benefits for the

CSKT and the region. However, the extent and nature of these benefits are uncertain and depend on the location, extent, cost, and ultimate use of the affected land interests (DOI 2013).

CUMULATIVE EFFECTS OF THE PROPOSED AFA ALTERNATIVES

The potential cumulative effects of the proposed AFA alternatives, when combined with the effects of past, present, and reasonably foreseeable future actions, are described below. Resources with no cumulative effects are not discussed further.

CUMULATIVE EFFECTS ON WILDLIFE AND HABITAT MANAGEMENT

The ongoing restoration and enhancement of wetlands and other habitat types by CKST would be beneficial to the overall abundance and function of wetland habitats and the wildlife species that depend on them. While ongoing or improved management of these habitats within the refuge complex would generally benefit these regional wetland systems, the cumulative effect of the no-action and proposed AFA alternatives are not known.

Implementation of the proposed CSKT Water Compact could is not anticipated to result in a direct or cumulative effect on the management and availability of water for wetland habitats within the refuge complex, particularly in the district.

CUMULATIVE EFFECTS ON SOCIOECONOMICS

In addition to the proposed AFA, the Land Buy-Back Program for Tribal Nations would affect Lake and Sanders Counties. Successful consolidation and use of fractional tribal trust land interests could result in economic and community benefits. However, the extent and nature of these benefits is uncertain and are not expected to lead to major developments in the reasonably foreseeable future. Under any likely situation, each alternative is not expected to have any cumulative effect on employment, income, population, or demand for public services in Lake or Sanders Counties.

CHAPTER 8
Agency Coordination

We worked with CSKT to develop the draft AFA (alternative B). We also consulted with CSKT on the sections in this document related to tribal history and culture. We kept the Tribes apprised of how the planning process was proceeding and gave them copies of the public scoping comments. We also consulted with our regional office in Lakewood, Colorado, and headquarters office in Washington, DC, to gather information and get clarification on various sections of this document.

APPENDIX A
Draft Annual Funding Agreement

FISCAL YEARS 2013–2016 ANNUAL 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
March 8, 2012 draft reflecting technical corrections through April 12, 2012

Section 1. Nature of Document, Parties

This is an annual funding agreement ("AFA") between the United States Fish and Wildlife Service ("Service", or "FWS"), a bureau of the United States Department of the Interior ("Department"), and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation ("CSKT") (hereinafter referred to collectively as the "Parties"). The CSKT is a Federally-recognized Indian Tribe represented by its Tribal Council, participating in the Tribal Self-Governance Program established by the Secretary of the Interior ("Secretary") under the Indian Self-Determination and Education Assistance Act ("ISDEAA"), 25 U.S.C. §§ 450-450n, as amended by § 204 of the Tribal Self-Governance Act of 1994 ("TSGA"), now codified at 25 U.S.C. §§ 458aa-458hh.

The Parties will work together, and the CSKT will perform each Activity covered by this AFA, to ensure that the National Bison Range Complex ("NBRC") is managed as part of the National Wildlife Refuge System ("NWRS") and consistent with: the National Wildlife Refuge System Administration Act ("NWRSAA"), 16 U.S.C. §§ 668dd and 668ee, as amended; NWRS regulations found at 50 C.F.R. Chapter 1, Subchapter C; the policies of the Service as found in the Service Manual and Refuge Manual; and the Operational Standards provided by Service line officers responsible for administration of the NWRS within the Mountain-Prairie Region (Region 6) of the Service.

Section 2. Purpose

A. *Recognize Partnership; Fund and Perform Activities.* The purpose of this AFA is to recognize and formalize the partnership between the Service and the CSKT in operating and maintaining all programs of the NBRC. The Parties are committed to a partnership that: 1) is an on-the-ground partnership with Service and CSKT Employees working together on the NBRC to accomplish common goals and objectives to benefit wildlife, habitat and people; 2) provides the CSKT with a substantive role in the day-to-day operations and maintenance of programs of the NBRC under overall administration and management by the Service, thereby furthering Federal Tribal Self-Governance policy; and 3) leverages the complementary resources and abilities of the Parties to manage the NBRC as a unit of the NWRS, and better serve the natural resources of the NBRC, the people of the CSKT, and all Americans. This partnership facilitates achievement of Departmental and Congressional objectives for both its NWRS and Tribal Self-Governance programs. This AFA establishes the responsibilities of the Parties and the terms and conditions

under which the Service will fund and the CSKT will perform programs, services, functions, and activities, or portions thereof (Activities) at the NBRC. The Secretary has identified some of the programs which may be eligible for inclusion in an AFA at the NBRC in the list published in the Federal Register at 76 F.R. 57068 (September 15, 2011).

B. *Recognize and Further Relationship; Significance.* This AFA recognizes and furthers: 1) the government-to-government relationship that exists between the Federal government and the recognized Indian Tribes of the United States generally, and the CSKT specifically; and 2) the special geographic, historical, and cultural significance to the CSKT of the NBRC, including CSKT's ownership of the land upon which the Ninepipe and Pablo National Wildlife Refuges are located.

C. *Benefits to the Parties:*

1. The Service benefits from this AFA because it:

a. furthers the mission of the Service which is: "Working with Others to conserve, protect, and enhance fish, wildlife, plants and their habitat for the continuing benefit of the American people";

b. helps the Service achieve both the mission of the NWRS and the intent of Congress in the National Wildlife Refuge System Improvement Act of 1997, which states at Section 5(a)(4)(E):

> "In administering the System, the Secretary shall . . . -
>
> ensure effective coordination, interaction, and cooperation with owners of land adjoining refuges and the fish and wildlife agency of the States in which units of the System are located";

c. helps the Service comply with Executive Order 12996 ("Management and General Public Use of the National Wildlife Refuge System"), which establishes Guiding Principles for management of the System, including:

> "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."

d. improves the ability of the NBRC to discharge its responsibilities to protect the cultural resources of the NBRC, through close collaboration with the Native people in whose homeland the NBRC is located;

e. provides the Service with closer cooperation with its professional peers employed by the CSKT Division of Fish, Wildlife, Conservation and Recreation, who have extensive scientific knowledge, significant traditional ecological knowledge, and a long and successful history of conserving, managing, and restoring the fish, wildlife, and habitat resources of the Flathead Reservation; and

f. furthers and supports the Department's statutory responsibility under the Tribal Self-Governance Act, and the policy of the United States regarding Tribal Self-Governance. This participation fulfills Congressional and Departmental objectives as set forth in 25 C.F.R. §§ 1000.4(b) and (c).

2. The CSKT benefits from this AFA because the agreement:

a. provides Tribal participation in Federal programs within the exterior boundaries of the Flathead Indian Reservation, consistent with the Tribal Self-Governance Act (25 U.S.C. §§ 458cc-458hh), and House Report No. 103-653 (page 10 of which stated that the House Natural Resources Committee intends the Self-Governance legislation "to ensure that any federal activity carried out by the [Interior] Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement.");
b. provides CSKT with the ability to more effectively help the Service manage Refuge lands which CSKT beneficially owns (Ninepipe and Pablo National Wildlife Refuges), as well as lands adjoining the National Bison Range which CSKT owns either beneficially or in fee;
c. better enables CSKT to holistically address natural resources management issues on its Reservation, due to the NBRC's central location within the Reservation;
d. improves CSKT's ability to help protect the cultural resources of the NBRC, through closer collaboration with the Service;
e. improves upon CSKT's history of, and ongoing commitment to, assisting the Service with fire suppression and fire management issues at the NBRC; and
f. furthers Tribal capacity-building with respect to Reservation natural resources management, consistent with Federal objectives for the Tribal Self-Governance program.

Section 3. Authority, Interpretation and Compliance

A. *Authority.* This AFA is authorized by:

1. Title IV of the ISDEAA, 25 U.S.C. §§ 458aa–hh, as amended by Section 204 of the TSGA, as amended;
2. Section 403(c) of the Tribal Self-Governance Act, codified at 25 U.S.C. § 458cc(c), which authorizes tribal contracting of Interior programs, services, functions or activities which are of special geographical, historical, or cultural significance to a tribe; and
3. Section 403(i)(1) of the Tribal Self-Governance Act, 25 U.S.C. § 458cc(i)(1), which, except as otherwise provided by law, requires the Secretary to interpret each Federal law,

including the NWRSAA, as amended, and each Federal regulation in a manner that will facilitate the inclusion of programs, services, functions, and activities in an AFA and the implementation of an AFA.

B. *Interpretation.* This AFA shall be interpreted consistent with applicable Federal laws and regulations including Title IV of the ISDEAA and the Tribal Self-Governance Regulations, and as provided below in this AFA in Sections 3.C (Compliance); Section 19.C (Tribal Administrative Procedures); and Section 19.D (Indian Preference).

C. *Compliance.* In conducting any Activity covered by this AFA, the CSKT will comply with all applicable Federal and Tribal laws and regulations, and all Departmental and Service Operational Standards guiding the management of the NWRS. This provision is not intended to expand the applicability of any Federal or Tribal law or regulation. In case of any conflict between a Federal law or regulation and a Tribal law or regulation, Federal law will govern.

Section 4. Definitions

The following terms and their derivatives have the meanings specified within this Section:

Activity, when capitalized, means a program, service, function, activity, or portion thereof, which the Service agrees to fund and the CSKT agrees to perform under this AFA.

AFA means an annual funding agreement, including all recited attachments, under Title IV of the Indian Self-Determination and Education Assistance Act ("Act").

Affected Federal Employee means a career or career-conditional Service employee at the NBRC:

A. Who was employed by the Service to perform an Activity as of the date of the last approving signature on this AFA; and

B. Whose duties are contracted by CSKT under this AFA.

Chairman means the Chairman of the CSKT Tribal Council.

CSKT Employee means a person employed by the CSKT to perform an Activity, including a Service employee assigned to work for CSKT under an Intergovernmental Personnel Act ("IPA") assignment.

IPA means Intergovernmental Personnel Act, codified at 5 U.S.C. §§ 3371-76.

IPA Employee means any Service employee assigned to work for CSKT through an IPA agreement.

National Bison Range means the unit of the National Wildlife Refuge System authorized by Congress in Chapter 192 of the Act of May 23, 1908, at 35 Stat. 267.

National Bison Range Complex, or *NBRC,* includes the following units of the National Wildlife Refuge System: National Bison Range, Ninepipe National Wildlife Refuge, Pablo National Wildlife Refuge, and the Northwest Montana Wetland Management District in Lake County.

Ninepipe National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3504 on June 25, 1921.

Operational Standard means 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.

Pablo National Wildlife Refuge means the unit of the National Wildlife Refuge System established by the President of the United States by Executive Order 3503 on June 25, 1921.

Plan: see "*Work Plan*"

RAPP means Refuge Annual Performance Plan, a database reporting system that forecasts planned, and reports actual, accomplishments for each unit of the National Wildlife Refuge System for each fiscal year.

Refuge Leadership Team means the following team of officials: FWS Refuge Manager; FWS Deputy Refuge Manager; Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation; and the CSKT Wildlife Refuge Specialist.

Refuge Manager means the FWS line officer in charge of the National Bison Range Complex.

Refuge Supervisor means the FWS line officer, located in the Mountain and Prairie Regional Office, with direct supervisory authority over the Refuge Manager.

Region or *Region 6* means the Mountain and Prairie Region of the U.S. Fish and Wildlife Service, which includes the states of Montana, Wyoming, Utah, Colorado, Kansas, Nebraska, South Dakota and North Dakota.

Regional Director means the Director of the Mountain and Prairie Region, U.S. Fish and Wildlife Service.

Secretary means the Secretary of the Interior or her or his authorized representative.

Volunteer means any person who performs work at the NBRC with no, or only nominal, pay, benefits, or other commonly accepted attribute of employment.

Work Plan or Plan means the jointly-developed and mutually-agreed upon document that identifies the work and projects to be performed to accomplish each Activity for each fiscal year.

Section 5. Physical Area Covered

The physical area covered by this AFA consists of those parts of the NBRC that lie entirely within the boundaries of the Flathead Indian Reservation. Specifically, the NBRC consists of the following units of the NWRS:

A. National Bison Range (Org. Code 61540);
B. Ninepipe National Wildlife Refuge (Org. Code 61541);
C. Pablo National Wildlife Refuge (Org. Code 61542); and
D. Northwest Montana Wetland Management District in Lake County (Org Code 61544).

As of April 1, 2012, the NBRC Refuge Manager will also administer the following units of the NWRS as part of the NBRC. This AFA does not include any programs located on these units:

- Lost Trail National Wildlife Refuge (Org. Code 61545); and
- Northwest Montana Wetland Management District in Flathead County (Org. Code 61546)

Section 6. Activities Covered

A. *Five Categories*. The CSKT will perform Activities in five categories:

1. Management of Contracted Activities. CSKT shall contract a new Wildlife Refuge Specialist position to oversee Activities contracted under this AFA. The Service shall retain the Refuge Manager and Deputy Refuge Manager positions, and their associated activities, subject to this AFA;
2. Biological Program (including Habitat Management);
3. Fire Program;
4. Maintenance Program; and
5. Visitor Services Program, including all Activities except: environmental education, cooperating association oversight, and Volunteer coordination activities.

The Activities in the above five categories will be more fully described in the Work Plan as set forth in Section 7.E below.

B. *Redesign and Reallocation*. In accordance with 25 U.S.C. § 458cc(b)(3), CSKT may redesign any Activity or reallocate funding between Activities with the prior written approval of, and subject to any conditions imposed by, the Refuge Manager.

C. *Activities Retained by the Service*. The Service retains all activities not explicitly covered by this AFA. Subsequent AFAs may include some of these retained activities. The Service will negotiate with the CSKT in good faith to explore and implement opportunities for adding activities to subsequent AFAs.

D. *Absence of Activity from AFA*. The absence from this AFA of any activity at the NBRC is not intended to denote or imply that the activity is, or is not, an inherently Federal function within the meaning of Section 403k of the Act, codified at 25 U.S.C. § 458cc(k), and does not preclude negotiation by the Parties for inclusion of additional non-inherently-Federal activities in a subsequent AFA.

Section 7. Management, Direction, and Control

A. *CSKT*. Subject to the final authority of the Refuge Manager, the CSKT will perform the Activities contracted under this AFA.

B. *Refuge Manager*. The Refuge Manager will retain final responsibility and authority for managing, directing, controlling and administering the operation of the NBRC. The Deputy Refuge Manager, in accordance with Service policy (030 FW 1.9.D), exercises all authority delegated to the Refuge Manager that is not restricted to the Refuge Manager. This authority will be exercised in a collaborative fashion, with full and objective consideration of CSKT recommendations, through the work of the Refuge Leadership Team (see Section 7.D, below). The Refuge Manager (or, consistent with 030 FW 1.9.D, the Deputy Refuge Manager) shall retain sole and final authority with respect to the following actions for the NBRC:

1. Setting work priorities through the NBRC Work Plan;
2. Approval of any uses of the NBRC by third parties, including secondary uses and economic uses;
3. Signature authority for Appropriate Use Determinations and Compatibility Determinations;
4. Signature authority for Special Use Permits;
5. Expenditure of Federal funds allocated to the NBRC, but not transferred to the CSKT under this AFA;
6. Supervision of Service personnel performing activities retained by the Service;
7. Establishment or modification of regulations for public use that can be accomplished at the field level under 50 C.F.R. Chapter 1, Subchapter C;
8. Final field-level approval of: environmental compliance documents (including NEPA and Intra-Service Section 7 consultations required by the Endangered Species Act) and refuge management plans, including: Comprehensive Conservation Plans; step-down management plans; prescribed fire burn plans and GO/ NO GO checklists;
9. Final field-level approval of: emergency operations documents, including Delegations of Authority and Return of Delegated Authority letters associated with incident management and investigation team activities; Wildland Fire Situation Analysis; and Wildland Fire Cost Share agreements;

10. Final field-level approval of implementation of any actions concerning necessary security issues and concerns; and
11. Any action which is an inherently Federal function.

C. Wildlife Refuge Specialist.

1. The CSKT Wildlife Refuge Specialist will:

   a. Supervise all CSKT Employees and direct the day-to-day work of CSKT Employees and Volunteers in the Biological, Maintenance, and Fire Programs and those Activities of the Visitor Services Program that are the responsibility of the CSKT. In the absence of the CSKT Wildlife Refuge Specialist, a CSKT-designated official will provide day-to-day direction to CSKT Employees and Volunteers. Personnel actions for Service employees assigned to CSKT, including management of performance and conduct, will be handled in accordance with AFA Sections 13.B.1, 13.F.5.c, and 13.G;
   b. From the pool of qualified applicants, select Volunteers to work in Activities for which the CSKT is responsible; and
   c. Perform additional specific duties as negotiated by the Refuge Leadership Team.

D. *Refuge Leadership Team*: Subject to the final authority of the Refuge Manager, the Parties will collaborate in the management of the NBRC through the Refuge Leadership Team.

1. The Refuge Leadership Team shall be comprised of the following officials:

   a. Refuge Manager;
   b. Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation, Natural Resources Department (or designee);
   c. Deputy Refuge Manager; and
   d. CSKT Wildlife Refuge Specialist

2. Subject to the final authority of the Refuge Manager, the Refuge Leadership Team will jointly write the Work Plan, set work priorities, and prepare the periodic status reports required under Section 12.C and all other reports required by this AFA or by Service Operational Standards.

3. The Parties recognize that it is impossible to include in the Work Plan every detail and decision necessary to achieve NBRC goals and objectives. The Refuge Leadership Team will meet as needed.

4. The Refuge Leadership Team and the CSKT Tribal Council shall meet at least quarterly to discuss the performance of both Parties under this AFA. The Refuge Supervisor shall meet with the Tribal Council at least twice a year unless otherwise

agreed to by the parties. At least once a year, the Regional Director will meet with the Tribal Council.

5. The Parties expect the Refuge Leadership Team to work in a cooperative, collaborative and consultative process. The Refuge Leadership Team will develop and use consensus decision-making in all of its work together. If the Refuge Leadership Team cannot reach consensus, the decision of the Refuge Manager will prevail. The Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation can invoke the dispute resolution process in Section 20.A if the Refuge Manager has decided not to accept a CSKT recommendation and, upon request, has failed to provide a reasonable explanation for the decision, and the CSKT believes the Refuge Manager's decision is arbitrary or capricious. Upon mutual agreement, the Parties may also utilize the dispute resolution procedures for any other issue.

E. *Work Plan (Plan).*

1. The Service and CSKT will work jointly to develop and establish a mutually agreed-upon Plan, to be amended as necessary to reflect current needs, priorities and available resources. The Plan shall include Activities to be performed taking into account the resources which the Service is providing CSKT. The Refuge Manager will order, or memorialize in writing within a reasonable amount of time, any significant change or reduction in CSKT duties under the Plan. The Refuge Manager shall prioritize Plan activities according to available resources.

2. *Work Plan Preparation.* The Parties will jointly develop the Work Plan. The Refuge Leadership Team will prepare the Plan as a narrative document to accompany the annual submission of the NBRC RAPP. Each fiscal year, typically in the August – September time frame, the Service will provide the NBRC with a budget forecast for the following fiscal year. Based on that budget forecast, the Refuge Leadership Team will prepare the RAPP, reporting accomplishments for the current fiscal year, and planning accomplishments for the next. While the RAPP itself is a database and is not conducive to communicating planned work to the staff, the RAPP Workbook provides a foundation for the Plan. The Refuge Leadership Team will further develop information from the RAPP Workbook into the Plan. In concise narrative format, the Plan will describe the routine, on-going and project-specific work to be accomplished in the following fiscal year. It will establish priorities, project completion dates, and any quality requirements for work, and will assign responsibilities for accomplishing work to individuals and teams of CSKT and Service employees. The Plan will include all significant planned work in the areas of wildlife monitoring, habitat management, facility and equipment maintenance and construction, and visitor services.

F. *Safety.* Nothing in this AFA shall be interpreted as restricting the authority of any employee (federal or tribal) to take immediate steps to address any safety concerns.

Section 8. Fire Program Guidance

A. *Responsibility & Intent.* CSKT responsibility for the contracted Fire Program at NBRC will be managed through the CSKT Fire Program in coordination with the Service's District and Zone Fire Management Officers, and the Refuge Manager, under the approved Fire Management Plan for the NBRC. It is the Parties' intent to integrate fire management on Refuge System lands within the Flathead Indian Reservation into CSKT's highly skilled professional wildland fire management program.

B. *Meetings & Coordination.* The Parties agree to hold planning meetings at least twice a year (usually pre- and post-fire season) to coordinate NBRC fire program operations, assess needs, and schedule projects.

C. *Fuels Treatments & Prescribed Fire.* The Parties agree that CSKT will perform prescriptive work to the extent funds are available under the AFA or from other sources.

1. The Service will recommend fuels projects and plan for them 2-5 years out.
2. CSKT will develop and submit project requests and data entry to the National Fire Plan Operating and Reporting System (NFPORS) to compete for, and receive, National Fire Plan funding.
3. CSKT will perform planning, including writing of burn plans.
4. CSKT will perform pre- and post-burn monitoring to its standard, with the exception of monitoring in the grasslands which will be done by the Service.
5. National Environmental Policy Act (NEPA) requirements for fire projects will be the responsibility of the Service.
6. Smoke management requirements will be the responsibility of the CSKT.
7. CSKT will get credit for acreage in NFPORS but the Service will enter reports into Fire Management Information System (FMIS) for Service requirements.
8. CSKT will notify the Service of any impending project/burn and the GO/NO GO decision will be signed by the Service's NBRC Agency Administrator (Refuge Manager).

D. *Wildfire Suppression & Initial Attack*

1. The CSKT will provide Initial Attack (IA) to the NBRC as it does on all Tribal land. This does not preclude Incident Qualification Certification System (IQCS)-qualified Service firefighters from conducting IA activities on Service lands.
2. The CSKT will open a Firecode for all IA fires.
3. The CSKT will input all fires into the Wildland Fire Decision Support System (WFDSS). The Service will provide a profile for CSKT to access WFDSS for the NBRC.

4. The CSKT, with the Refuge Manager's concurrence, will provide all support for extended attack and large fire operations.
5. The CSKT will generate a fire report for any fire and submit it to the Service within 10 days of the fire being declared out. The Service will enter a fire report into FMIS.
6. The Parties will coordinate in preparing Severity requests. Generally, CSKT's Severity requests will include coverage of the NBRC. The Service will make the request for any Severity resources to specifically be stationed on the NBRC.

E. *Preparedness*

1. The Service will provide the equivalent dollar amount of 0.25 FTE of a GS-7 salary to be used by the CSKT to support the Service's fire preparedness program.
2. The CSKT will administer IQCS for CSKT Employees (excluding Federal employees assigned to CSKT under an IPA agreement). The Service will do the same for Federal employees, including those assigned to CSKT under an IPA agreement.
3. The Service will pay for fire training as needed for Service employees and CSKT Employees. Local or in-house training will be complimentary.
4. The Service will status Service employees in the Resource Ordering Supply System (ROSS).
5. The six man fire cache at the NBRC will be maintained by the Service.
6. The fire engine at the NBRC will be maintained by the Service.
7. Fire Program Analysis (FPA) tasks will be a joint effort as the NBRC and the CSKT are in the same Fire Planning Unit (FPU).

Section 9. Healthy and Safe Workplace

A. *Zero Tolerance for Discrimination and Harassment*

1. The Parties are committed to providing a healthy work environment free from discrimination, retaliation and harassment of any type based upon race, color, national origin, sex, age, mental or physical disability, or sexual orientation. It is the policy of the Service and the CSKT that discrimination, harassment, and retaliation in any of their various forms will not be tolerated at the NBRC. The Refuge Leadership Team is responsible for ensuring that this zero tolerance policy is enforced.

2. Employees of both Parties are required to treat all other people in the workplace with dignity and respect, including Service and CSKT Employees, Volunteers, and third parties.

3. All members of the Refuge Leadership Team will foster a work environment that facilitates communication within the Service/CSKT partnership. They will all maintain an "open door" policy allowing employees and Volunteers of either Party to

have reasonable access to them to express any concerns about the work environment, or report any allegations of discrimination or harassment.

4. Once reported, any allegations of discrimination or harassment shall become a top priority for investigation and resolution by the Refuge Leadership Team. Any investigation will be conducted jointly by a Service and CSKT member of the Refuge Leadership Team. It shall be the responsibility of the Refuge Leadership Team to jointly resolve any allegations or incidents that occur, with the assistance of Service and CSKT Human Resources personnel, as appropriate, and either take corrective action or refer the allegations or incidents to higher authorities within the Parties, as appropriate.

5. Within ten working days of any report of discrimination or harassment, the Refuge Manager and CSKT Wildlife Refuge Specialist will make a joint written report to the Refuge Supervisor and the CSKT Natural Resources Department Head. This report shall include the facts, including: the allegation(s) raised; the Refuge Leadership Team's assessment of the allegation(s); and its assessment of whether the allegation(s) or incident can be resolved and appropriate action taken at the field level.

6. Any incidents or threats of physical violence must be reported to Service and CSKT leadership immediately, by the most expeditious means available.

7. Not less than annually, the Parties will provide jointly agreed-upon training to all NBRC employees to foster a workplace free of discrimination and harassment. Topics of these trainings may include, but are not limited to: cultural awareness; team building; and communications skills.

8. Nothing in this AFA diminishes or replaces the existing rights and responsibilities of the Service, CSKT, or their employees under their respective personnel laws and policies, including, but not limited to: the right to file grievances; EEO complaints; and whistleblower complaints, as may be applicable.

B. *Safety*. The Parties are committed to providing a safe workplace for all employees and Volunteers. In addition to Operational Standards and CSKT policies related to health and safety in the workplace, the following safety rules apply at NBRC:

1. All employees and Volunteers have the responsibility and authority to stop any work or project in progress and immediately notify a member of the Refuge Leadership Team when they observe unsafe working conditions or practices. Work will resume when the Refuge Leadership Team has determined, and notified the employees and/or Volunteers, that the safety concerns have been resolved.
2. All employees and Volunteers have the right to refuse work on the basis of safety if they have not received:

a. adequate training or instructions to perform the assigned task(s) safely; or
b. the proper tools, supplies or equipment, including personal protective equipment, necessary to perform the assigned work safely.

Section 10. Performance Standards

A. *Operational Standards.* The CSKT will perform each Activity covered by this AFA in compliance with all applicable Operational Standards, as defined in Section 4, subject to the Refuge Manager's prioritization as provided in Section 7.E.

B. *Waivers.* The TSGA authorizes the Secretary to waive regulations in accordance with the procedures in § 403(i)(2) of that Act, 25 U.S.C. § 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart J. However, CSKT agrees to consult with the Refuge Manager prior to making any request for the Secretary to waive a regulation

C. *Environmental Compliance.* In conducting an Activity, the CSKT will comply with all applicable Operational Standards concerning the environment, with the following stipulations:

1. *National Environmental Policy Act of 1969 (NEPA),* 42 U.S.C. §§ 4321–4335. The Refuge Manager will identify any Activity that will require NEPA compliance documents. The Parties will work together to complete any necessary NEPA process for the Activity.

2. *Historic Preservation.* The Refuge Manager will identify any Activity that will require compliance with the National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470-470mm, or another cultural resource law, regulation, or policy. The Parties will work together to complete any necessary process for the Activity.

3. *Endangered Species Act.* The Refuge Manager will identify any Activity that will require compliance with the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, including Intra-Service Section 7 consultations. The Parties will work together to complete any necessary process for the Activity.

D. *Construction Review and Inspection.*

1. *Addition of Funding.* Upon agreement of the Parties, the budget in Attachment B may be amended to include construction and/or deferred maintenance funding for work to be performed by CSKT.

2. *Review and Approval of Plans, Specifications, and Drawings.* The CSKT will not begin any construction covered by this AFA without prior written approval from the Refuge Manager of all associated design, engineering, and construction plans, specifications, and drawings. The Refuge Manager will be responsible for obtaining

necessary approvals from the Service's Regional Engineer. To the extent the CSKT is responsible for preparing or providing design, engineering, construction plans, specifications, or drawings for any construction covered by this AFA, the CSKT will consult with, and incorporate or otherwise adequately respond to the comments of, the Refuge Manager. This includes, but is not limited to, seeking the Refuge Manager's review and tentative approval at approximately the 25% and 75% stages of completion.

3. *Inspection and Reporting System*. The CSKT will use an inspection and reporting system, implemented by appropriate professionals, adequate to verify and document to the Service that any construction was performed to all applicable Operational Standards.

E. *Use of CSKT Performance Standards*. With the prior written approval of the Refuge Manager, the CSKT may substitute for an Operational Standard a written performance standard that is at least as protective of the NBRC resources and equipment as the corresponding Operational Standard.

F. *Disclaimer*. Nothing in this AFA is intended to exempt the CSKT from complying with any Federal law, regulation, or other provision otherwise applicable to the CSKT.

Section 11. Records and Other Information

A. *General Requirement*. The CSKT will collect, maintain, and provide to the Service all records and other information specified in this AFA or the Work Plan which the Service needs in order to comply with requirements imposed by law or policy with regard to any Activity, including but not limited to: construction; finance; environmental compliance; performance of IPA Employees; and claims based on property damage, injury, or death.

B. *Activity Records*. The Parties will set forth in the Work Plan an explanation of any Activity record CSKT will need to maintain as part of its performance of the Activity. Each Activity record will contain information sufficient to document the nature of the Activity and when, where, and by whom it was performed. The Refuge Manager and the CSKT Wildlife Refuge Specialist will cooperate to ensure that the level of detail in Activity records is adequate for Service purposes without imposing an undue administrative burden on the CSKT. Upon request, and with reasonable advance notice, the CSKT will provide to the Service a copy of any Activity record.

C. *Financial Records and Reports*.

1. *Records of Expenditures*. Using standard accounting practices, the CSKT will maintain financial records of its expenditures of Service-provided funds under this AFA. The CSKT will provide those financial records to the Service to the extent the Service

requires them for its budget appropriation and apportionment processes, or in the event of retrocession or reassumption under AFA Sections 18.B or 18.C.

2. *Financial Status Reports.*

a. *Annual Report and Carry-Over.* The CSKT will provide the Service a complete financial status report within 90 days of the close of each fiscal year. At a minimum, this report will identify CSKT expenditures for the fiscal year in the following categories: permanent staff salaries and benefits; temporary staff salaries and benefits; travel; training; itemized contracts with third party vendors; itemized specific projects with costs exceeding $5,000; itemized equipment purchases, and equipment or facility repairs exceeding $3,000; and general supplies and equipment for each program (biology, maintenance, visitor services). This report will be used by both Parties to reconcile the status of ongoing projects and Activities. Any funds remaining with the CSKT at the end of a fiscal year may be retained by CSKT and used on future projects at the NBRC (*see also* Section 21.B.2 of this AFA).

The Parties recognize that funds must be available to CSKT on October 1st annually. The Parties acknowledge that, since it is generally not possible for the Service to provide funds on the first day of a new fiscal year, it is both necessary and appropriate for CSKT to carry-over funds to cover, for example, payroll in the new fiscal year.

b. *Other Reports.* Within 180 days of the effective date of any retrocession or reassumption under Section 18.B or 18.C of this AFA, the CSKT will provide the Service a complete financial status report concerning the funds the Service provided to the CSKT under this AFA and the CSKT expended through the effective date of the retrocession or reassumption.

D. *Inapplicability of the Freedom of Information Act (FOIA) (5 U.S.C. § 552) and the Privacy Act (5 U.S.C. § 552a).* As authorized by 25 U.S.C. §§ 450*l*(b), 450*l*(c)(1)(b)(7)(A), 458cc(*l*), and 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, records of the CSKT shall not be considered Federal records for the purpose of the FOIA. The FOIA does not apply to records maintained solely by CSKT. As authorized by 25 C.F.R. § 1000.393, CSKT records shall not be considered Federal records for the purposes of the Privacy Act.

E. *Conflicting Requirement.* The CSKT must not take any action under this Section 11 that would conflict with any Federal law or regulation applicable to the CSKT and governing audits and administrative records.

Section 12. Performance Assessment, Reporting, and Review

A. *Monitoring, Evaluation, and Notice of Performance Concerns.*

1. *Joint Monitoring.* The Service and CSKT will jointly monitor NBRC operations and provide timely notice to each other of any concerns. In accordance with this Section, the Service will notify the CSKT in writing of any performance concern or perceived deficiency in work performed under this AFA.

2. *Evaluation.* In the event the Parties do not agree on any portion of any evaluation, assessment or report, such document shall include the relevant views of each party, presented together for ease of reference by any reader of the document.

3. *Notice to CSKT.* The Service will notify the CSKT concerning its performance under this AFA as follows:

   a. *Comments.* The Service promptly will notify the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation in writing of each written comment and documented oral comment received from third parties concerning the CSKT's performance of any Activity. The Service will promptly provide to the CSKT a copy of each written comment or documented oral comment without requiring any request from CSKT, in accordance with disclosure practices under FOIA and the Privacy Act. The Service will not take any action regarding the CSKT's performance on the basis of any oral comment that the Service did not document in writing, or any comment the Service did not promptly provide to the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation.

   b. *Performance Deficiency Concerns.* If the Service perceives a deficiency in the performance of the CSKT, the Service will notify the CSKT of the perceived deficiency, as follows:

      i. *Emergency.* If the perceived performance deficiency is of an emergency nature, the Refuge Manager shall notify the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation orally and follow up with a written notification to that Division Manager within one week from the date of oral notice.

      ii. *Notice of Significant Perceived Deficiencies.* With prior approval from the Refuge Supervisor, the Refuge Manager will notify the Tribal Council in writing of any significant perceived performance deficiency, including one which potentially constitutes grounds for reassumption under Section 18.C. The written notice will identify the Activity and describe: the performance deficiency at issue; the applicable baseline data; Operational Standard; approved Work Plan provision; or term or condition of this AFA; and why the

performance of the CSKT does not meet that requirement. The notice will give the CSKT a reasonable amount of time either to remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists. The amount of time allowed for remediation or such demonstration will be set by the Refuge Manager depending on the nature of the deficiency. Prior to providing written notice of a perceived performance deficiency that the Service believes could be the basis for reassumption, the Service shall consult with CSKT, the Assistant Regional Director - Refuges and the Regional Director and provide CSKT with an opportunity to respond.

iv. *Failure to Provide Notice.* If the Refuge Manager does not follow the notice procedures outlined in this subsection "b", the Service may not cite such perceived deficiency as a basis for any action concerning CSKT or this AFA.

B. *Reports.* If either Party chooses to draft an evaluation or similar report concerning this AFA, it will first consult with the other Party to discuss the subjects to be covered in the report and how the Service and the CSKT can work jointly to ensure that both Parties' positions are included.

C. *Periodic Status Reports.*

1. Upon implementation of this AFA, periodic status reports will be prepared quarterly. The Refuge Manager shall endeavor to submit the status reports to the FWS Refuge Supervisor and the CSKT Tribal Council by the 15th day of January, April, July, and October. The Parties may agree to submit the status reports on a more or less frequent basis.
2. The Refuge Leadership Team jointly will prepare and approve the status reports. At minimum, reports will include any significant concerns either Party has regarding the performance of the other Party that, if unresolved, could potentially result in Service reassumption, or CSKT retrocession of any Activity or Activities contracted under this AFA. If the Parties disagree on any part of the report, the relevant views of each Party will be included. The status reports will be signed by the Refuge Manager.

Section 13. Personnel

A. *General Staffing.*

1. Consistent with the funding level provided in this AFA, the CSKT will perform the Activities covered by this AFA using the services of CSKT Employees, contractors and/or Volunteers.

3. To perform the work under this AFA, CSKT will fill vacant positions with well-qualified CSKT Employees. The Service will provide funds for, and CSKT will hire, employees to fill seasonal positions in the biological and visitor services program,

which may not be included on the Service's NBRC organizational chart, but which are necessary to accomplish the annual Work Plan.

3. Except for the positions of Refuge Manager, Deputy Refuge Manager, and Refuge Law Enforcement Officer, as other staff positions on the Service's NBRC organizational chart are vacated by Service-employed incumbents, those positions will be filled by CSKT with well-qualified CSKT Employees. If the Service staff position vacated was not originally included in work included in this AFA, work performed by that position that is not inherently Federal will also be transferred to CSKT, and the budget in Attachment B will be amended to provide CSKT with the funding associated with the position.

4. Each Party agrees to allow the other Party to participate in all staffing actions taken to fill permanent and temporary position vacancies at the NBRC, to the extent that such participation is authorized by the personnel policies and regulations of the hiring Party. Federal personnel rules allow for the CSKT to participate in the interview process when the Refuge Manager is hiring a new Service employee, and to make recommendations to the Selecting Official. The Service agrees to that authorized level of CSKT participation in the Federal hiring process, and the CSKT agrees to reciprocate, as allowed by CSKT's Ordinance 69C, as amended..

B. *Supervision, Direction and Off-Station Duty Assignments of NBRC employees*.

1. *Supervision.* Each Party will administer, for their respective NBRC employees, individual performance planning and evaluation, standards of conduct enforcement and disciplinary actions, and other personnel actions such as promotions, awards, and training. The Service will administer the above categories of actions for any of its employees assigned to CSKT under IPA agreements.

2. *Direction of Day-to-Day Work Activities.* The Refuge Manager shall provide day-to-day direction to the CSKT Wildlife Refuge Specialist, who shall be supervised by the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation. The CSKT Wildlife Refuge Specialist will provide day-to-day direction to the program leads in the Biology, Maintenance, Fire, and Visitor Service Programs (except for the Outdoor Recreation Planner, unless that position is contracted to CSKT), as well as to CSKT Employees, contractors and Volunteers performing work contracted under this AFA.

3. *Off-Station Duty Assignments of NBRC employees.* The Parties agree to provide NBRC employees, whether Federal or Tribal, with the same training and career building experience opportunities available to other Federal employees employed with Region 6 refuges. The Parties further agree that NBRC employees, whether Federal or Tribal, will generally be available to assist other National Wildlife Refuges with specific work projects as needed. The Service may detail Service or CSKT NBRC employees to work

at other units of the Refuge System, including units of the NBRC not covered by this AFA. The Service may detail employees from other Service duty stations to assist with work at NBRC without restriction and subject to agreements between the NBRC Refuge Manager and refuge managers of the other Service field stations involved. NBRC employees of either Party who are qualified for the assignment may be made available for inter-agency fire suppression assignments, or for other all-hazard emergency responses.

C. *Management; Office Space.* At a minimum, the Service will provide secure, private office space for the CSKT Wildlife Refuge Specialist. CSKT agrees to fund a dedicated phone line and computer lines using the operational budget provided in this AFA. The Service will provide access to its Information Technology staff to assist with the technology issues involved.

D. *Training and Skill.* CSKT will staff and oversee the Activities under this AFA through the professional staff of its Natural Resources Department. The Service will provide access to, and funding for, FWS training for CSKT Employees (or Volunteers, if appropriate) for work performed under this AFA in the same manner it would have provided training for its own staff if Service employees were performing the same work. The Service will provide resident training to CSKT Employees at the National Conservation Training Center on the same basis as it provides training to Service employees, without charging tuition, room and board. As is the normal practice with Service employees, CSKT Employees' training will be funded from the operational budget transferred to the CSKT under the AFA.

E. *Uniform.* While on duty, each CSKT Employee will wear a uniform that clearly identifies her or him as a CSKT Employee. As part of the consideration described in the Attachment B budget, FWS will provide uniform allowance funding to CSKT in an amount equal to that which the Service would have allocated to its own employees who would have performed the Activities in the absence of this AFA.

F. *Affected Federal Employees.*

1. *Information.* Promptly after executing this AFA, the Service and the CSKT will discuss with each Affected Federal Employee all available options for her or his employment under this AFA.

2. *Opportunity to Elect.* Each Affected Federal Employee has the following options and must select an employment option no later than thirty (30) days after the last date of signature for this AFA. Each Affected Federal Employee shall have one additional opportunity to choose a different employment option during the term of this AFA.

3. *Available Options.* The options available to each Affected Federal Employee for continued employment at the NBRC under this AFA are:

a. *Assignment to the CSKT under the Intergovernmental Personnel Act (IPA),* 5 U.S.C. §§ 3371-3376. Continued employment by the Service with an assignment to the CSKT under an IPA Agreement;

b. *Employment by CSKT with CSKT Benefits*. Direct employment by the CSKT as a CSKT employee with CSKT benefits;

c. *Employment by CSKT with Federal Benefits*. Upon the election of both the Affected Federal Employee and the CSKT, as provided by § 104 of the Act, 25 U.S.C. § 450i, direct employment by the CSKT as a CSKT employee with Federal benefits; or

d. *Reassignment*. Affected Federal Employees have the same ability as other Service employees to request reassignment at any time. If requested, and where practicable, reassignment by the Service to another duty station may be possible.

4. If all of the above options are unsuccessful, the work performed by an Affected Federal Employee's position that is not inherently Federal will be transferred to CSKT, and Attachment B will be amended to provide CSKT with the funding associated with the position.

5. *Assignment to the CSKT under an IPA Agreement*.

a. *Execute IPA Agreement*. After any Affected Federal Employee has chosen to work under an IPA assignment, the Service and the CSKT will promptly execute an IPA agreement for that employee.

b. *Continuation of Employment*. In the case of an assignment of a Federal employee to an Indian tribe, the IPA authorizes the Service, under delegation from the Secretary, to "extend an initial period of assignment for any period of time where it is determined that this will continue to benefit both the executive agency and the Indian tribe or tribal organization." *See* 5 U.S.C. § 3372(a). The Service and the CSKT agree that extending the initial period of assignment for each Affected Federal Employee will continue to benefit the Service and the CSKT for the full term of this AFA and each subsequent AFA, except for a retrocession or reassumption under AFA Sections 18.B or 18.C below, or cancellation for cause in accordance with Section 13.F.5.c below.

c. *IPA Employee Performance and Conduct*.

i. If CSKT perceives a deficiency in the performance or conduct of an IPA Employee, the Refuge Manager and the CSKT Wildlife Refuge Specialist will confer, and the Service will apply Federal personnel procedures to address any such deficiency.

ii. CSKT may terminate an IPA agreement only for cause, with cause being defined as one of the following:

aa. The IPA employee is determined by the Service, in a disciplinary action, to have engaged in misconduct resulting in adverse action of suspension of 14 days or longer, or termination, as prescribed in 370 DM 752. CSKT can, but is not required to terminate the assignment of an IPA employee who receives disciplinary action from the Service that is less than termination;

bb. The IPA employee is determined to perform at a less-than-fully-satisfactory level and fails to successfully complete a Performance Improvement Plan, as prescribed in 224 FW 2;

cc. The IPA employee is referred to a medical professional for a fitness for duty determination and is determined by a physician or other approved medical professional to be physically unable to perform the work described in the employee's position description; or

dd. Any other cause as agreed to by the Service.

iii. Upon termination of an IPA agreement for cause, the Activities that had been performed by that IPA Employee will remain the CSKT's responsibility under this AFA. The Service will transfer to CSKT the balance of salary and benefits for that position in the current and subsequent fiscal years covered by this AFA.

iv. CSKT may invoke the dispute resolution process (see Sec. 20.A of this AFA) up to the Regional Director level to resolve issues related to IPA assignments.

v. Consistent with 5 C.F.R. § 334.107(a), CSKT may terminate an IPA agreement at any time and for any reason, including for cause other than as defined in this AFA. However, in the event CSKT terminates an IPA agreement for a reason other than cause as defined above in this AFA , the Service will retain funding for the salary and benefits for such position and the Service shall assume responsibility for any Activities performed by such position.

d. *Holidays.* On Federal holidays, IPA Employees will either be excused from duty without charge to leave or receive holiday premium pay for work performed. The Service will provide funds from its operational budget to cover any holiday premium owed to IPA Employees for Columbus Day or Presidents' Day.

6. *Direct Employment by the CSKT.*

a. *Employment Election.* At its discretion, the CSKT may directly employ each Affected Federal Employee who elects that option. As agreed by the Affected Federal Employee and the CSKT, either CSKT benefits or Federal benefits will be provided.

b. *Continuation of Employment.* The CSKT will give each Affected Federal Employee directly employed by the CSKT the highest level of protection of continued employment and retention of benefits afforded to any other employee of the CSKT.

7. *Nondiscrimination.* The Parties will not tolerate unlawful discrimination against any CSKT or Service employee, contractor, or Volunteer. The NBRC shall be a workplace free of unlawful harassment and employees shall be provided a civil work environment.

G. *Performance and Conduct.*

1. The Parties are committed to a strong partnership and appreciate the challenges and the benefits of leading an integrated team of Service and CSKT employees to accomplish a common mission at NBRC. To support that goal, each Party will include in the individual performance plans of its own employees, as a requirement of successful employee performance, a critical element providing that the employee work cooperatively with the other Party and its employees and work to successfully implement this AFA.

2. Each Party will supervise its own employees for purposes of maintaining standards of conduct and administration of disciplinary action in accordance with the personnel regulations and policies of the Department and CSKT, respectively.

3. In the event that either Party believes that the performance or conduct of an employee of the other Party is negatively impacting its ability to effectively perform its own work, the matter will be referred to the Refuge Leadership Team for resolution. If the Refuge Leadership Team is unable to resolve the issue, the alternative dispute resolution process described in Section 20.A below will be used to resolve the issue.

H. *Personnel Records.* The Service will maintain the official personnel records and files of its own employees, including employees assigned to work for CSKT under an IPA agreement, in accordance with the personnel regulations and policies of the Department. CSKT will maintain the official personnel records and files of its own employees in accordance with its own personnel regulations and policies. Access to and release of personnel records of one Party, to the other Party or to any other person/entity, will be governed by the statutes, regulations and policies of the Party maintaining those records.

I. *Volunteers.* The Parties recognize that the service of Volunteers is an important resource for accomplishing goals and objectives throughout the NWRS, including at the NBRC. When properly trained and qualified, Volunteers may perform any approved work function at NBRC except for: management/supervision; law enforcement; fire suppression; and prescribed burning.

1. *Qualifications and Training*:

    a. Prior to implementation of this AFA, the Parties will mutually develop standard Volunteer Position Descriptions (VPDs) for the duties historically performed by Volunteers at NBRC. The VPDs will include the general duties and qualification standards, including safety trainings and certifications required for each Volunteer position. The VPDs will include lists of any required personal protective equipment that must be provided to the Volunteer.
    b. Prior to being assigned duties, all Volunteers will attend an NBRC Volunteer orientation training program. The orientation training will be developed jointly by the Service's Outdoor Recreation Planner and the CSKT Wildlife Refuge Specialist (or designee), and will be offered to Volunteer applicants not less than semi-annually, or as often as requested by either Party.
    c. The orientation training program will include at a minimum: the Parties' expectations for a safe workplace; the Parties' zero tolerance policy for discrimination or harassment of any kind; the history and culture of the CSKT; the history and mission of the NWRS and NBRC; and the Tribal Self-Governance Act laws and policies. Upon completion of the orientation, Volunteers will be required to sign statements acknowledging their training. Once applicant Volunteers have completed any trainings or certifications identified in their VPDs, they will be qualified for duty at NBRC.

2. *Volunteer Program Administration.* The Parties agree to assist in recruiting, training and referring Volunteer candidates.

    a. All NBRC Volunteers must sign the standard Volunteer Service Agreement, with attached VPD, and will work under the general oversight of the Refuge Manager.
    b. From the pool of qualified Volunteers, the CSKT will select and direct the day-to-day work of Volunteers working in the Activities which the CSKT has contracted. The Service will select and direct the day-to-day work of Volunteers working in activities remaining with the Service.
    c. Volunteer records, including signed Volunteer Service Agreements, VPD's, and certificates of training, will be retained by the Service's Volunteer Coordinator throughout the service of each Volunteer, with copies to CSKT for any Volunteer directed by CSKT, except that personal information protected by the Privacy Act will not be released to CSKT without permission from the Volunteer. The CSKT will provide the Service's Volunteer

Coordinator with data on the number of Volunteers employed by the CSKT, and number of hours worked by Volunteers annually, for preparation of required Volunteer reports and the RAPP.

d. NBRC Volunteers are considered to be employees for the purposes of the Service's and CSKT's respective workers' compensation coverage. All NBRC Volunteers are protected by the Federal Tort Claims Act and/or by liability insurance purchased by the Bureau of Indian Affairs, consistent with 25 U.S.C. § 450f(c) and Sections 16.A and 16.D below.

3. *Suspension and Termination of Volunteers.* Any NBRC Volunteer may be unilaterally suspended from duty for alleged misconduct. Alleged misconduct upon which a suspension may be directed includes suspected safety violations or suspected violation of the zero tolerance policy for discrimination and harassment. Suspended Volunteers will not be allowed to work at the NBRC while the Refuge Manager completes an investigation and makes a determination for final disposition. The Refuge Manager shall consult with the Refuge Leadership Team prior to making a determination for final disposition. Final disposition may include: no action – return to duty; counseling; training; or termination.

4. *Volunteers for Round-Up.* The Parties jointly will select Volunteers to participate in the annual Round-Up events.

K. *Background Checks.* The Parties understand that background checks may be required for NBRC employees. Such background checks will be consistent with, and implemented in accordance with, Homeland Security Presidential Directive #12 which outlines Federal standards for identification and obtaining these credentials. To the extent possible, the Service agrees to assist in expediting the processing of any such background checks. Any associated costs will be addressed through Attachment B. Employees may report to work pending completion of any background check.

Section 14. Consideration

A. *Base Funding; Non-Recurring Funding.* Base funding for this AFA will be identified annually in Attachment B. The Parties hereby agree that the funding will not be reduced from the base funding level except for the reasons specified in 25 U.S.C. 450j-1(b). Attachment B will also identify one-time, non-recurring funding for special projects such as Deferred Maintenance, vehicle replacement, Challenge Grant Cost Share Agreements and other flexible funding. For the first year of this AFA, Attachment B will reflect that the Service will transfer funds to CSKT in an amount pro-rated to reflect the [phasing-in of performance as mutually-agreed upon per Section ____ of this AFA] or [implementation of this AFA at a mid-point in the fiscal year].

B. *Funding.* In return for the CSKT performing the Activities, and subject to the terms and conditions in this Section, the Service will provide the CSKT the consideration specified in

Attachment B. Attachment B will be revised for each fiscal year, and will be prepared by August 31st annually for the following fiscal year. Consistent with Section 25.A below, for FY 2013 the Parties may agree to phase in Activities and their associated funding over the [first quarter] of that fiscal year.

1. The Service will retain funding and responsibility for administering and paying general fixed operational costs, except for those costs that can be processed with greater efficiency and cost-effectiveness by CSKT, as jointly determined by the Refuge Manager and the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation. Transfer of funds to CSKT for such costs will be reflected annually in Attachment B.

2. The Service will provide funding for, and CSKT will be responsible for, hiring seasonal staff in the biological, visitor services and maintenance programs.

3. The Service may either retain or transfer to CSKT funding for acquisition of goods and services necessary for the following operations for which CSKT is responsible: maintenance of facilities and equipment (including care and feeding of animals); execution of the Biological Program (including habitat management); and Visitors Services Programs. Division of funds for these operations and maintenance requirements will be jointly determined by the Refuge Manager and the Manager of the CSKT Division of Fish, Wildlife, Recreation and Conservation and will be reflected annually in Attachment B.

4. The Service will provide CSKT with funding equivalent to 0.25 of a GS-7 Technician position for implementation of the Fire Program responsibilities outlined in Section 8 of this AFA.

5. Generally, Attachment B specifies the following types of consideration:

   a. *IPA Employees.* Assignment by the Service to the CSKT of those Affected Federal Employees who elect to continue Federal employment under this AFA pursuant to an IPA Agreement; and

   b. *Appropriated Funds.*

      i. *Program Funds.* The Program funds that the Service would allocate to performance of the Activities if performed by the Service (less the salary and benefits of IPA Employees and the fixed costs identified in Subsections 14.B.1 and 14.B.3 above) including: salary and benefits for organizational chart permanent positions filled by CSKT, (including those existing at the time of implementation of this AFA, and positions that may be vacated by Service employees and later filled by CSKT employees during the period covered by this AFA); funds for

employment of seasonal employees; funds for travel and training of CSKT Employees; funds to compensate CSKT for time worked in support of NBRC by employees of the CSKT Division of Fish, Wildlife, Conservation and Recreation who are not assigned permanently to NBRC (e.g. participation in the Refuge Leadership Team by the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation); funds for acquisition of supplies and services to support programs, as agreed upon by the Refuge Manager and Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation; and other fixed costs jointly identified as being transferred to CSKT in Subsections 14.B.1 and 14.B.3 above; and

ii. *Contract Support Costs*.

C. *Cost of IPA Employees*. The Service will pay the salary and benefits of each IPA Employee. To cover those costs, the Service will reduce the funds it otherwise would pay to the CSKT under this Section by an amount equal to the salary and benefits of that position. If an IPA Employee is reassigned outside of the NBRC or his/her employment with the Service is terminated, or if CSKT terminates the IPA agreement in accordance with Section 13.F.5.c above, the assignment of that employee and the obligations of the CSKT under that IPA agreement will end. At the end of the IPA assignment, the Service will transfer funds to the CSKT in the amount the Service would have spent on the salary and benefits of the IPA Employee from the date of termination of her or his employment or IPA assignment through the last date of the term of this AFA or the effective date of any applicable retrocession or reassumption, using the payment procedures in Section 14.E.2 below.

D. Contract Support Costs. During this AFA, the Service will provide contract support costs as required by 25 U.S.C. § 458cc(g)(3) and 25 C.F.R. §1000.137(b). CSKT will provide the Service with all necessary information, including CSKT's indirect cost rate approved by the Department's National Business Center (NBC rate), in accordance with 25 C.F.R. §1000.138.

In lieu of full contract support cost reimbursement using CSKT's federally-approved indirect cost rate, and in recognition of the Service's anticipated budget reductions, the Parties agree that the Service will pay CSKT a flat rate equivalent to $5000.00 per fiscal year for each Service full-time equivalent (FTE) staff position filled by CSKT. For positions that CSKT fills for less than one full fiscal year, the Service shall prorate the flat rate reimbursement accordingly. Similarly, for positions that constitute less than 1.0 FTE, the Service shall prorate the flat rate accordingly.

Under this formula, the Service's indirect costs reimbursement to CSKT shall not exceed $40,000.00 during any one fiscal year. However, the Parties agree that, prior to the third fiscal year of this AFA, they will revisit the issue and discuss amending the AFA to provide full reimbursement of indirect costs, using CSKT's federally-approved indirect cost reimbursement rate.

1. All direct and indirect costs will be negotiated and agreed upon by the Parties prior to initiation of funds transfers.

2. Prior to submission of cost proposals and requests for projects outside the base budget as represented by Attachment B, the Refuge Leadership Team will ensure that all necessary indirect costs to support CSKT administrative functions are included.

3. Per longstanding practice in the Department's cooperative agreements with Tribes, indirect costs will not be assigned in support of wildfire suppression/rehabilitation activities.

E. *Transfer of Consideration.*

1. *Affected Federal Employees.*

a. *IPA Employees.* The Service will assign each IPA Employee to the CSKT on the effective date of this AFA.

2. *Payment of Funds.*

a. *Annual Base Payment.* Subject to final Federal appropriation, within 10 calendar days of the beginning of each fiscal year, the Service will pay to the CSKT 100% of the funds identified in Attachment B. The Service's Regional Office will initiate funds transfers and will include all funds that Congress has appropriated and that are available for expenditure by the Service on the Activities covered by this AFA and that are due to the CSKT as consideration under this AFA. The Attachment B budget will be adjusted annually thereafter to a mutually agreed-upon amount prior to funds transfer.

b. *Additional Payments.* The Service's Regional Office may effect additional funds transfers that are not described in Attachment B as warranted for Activities covered by this AFA. Such amounts will be mutually agreed upon by the Parties in advance and will be transferred within ten calendar days of receipt of the request. In addition, if at any time Congress has appropriated to the Service, and as a result the Service has paid the CSKT, less than all of the funds due to the CSKT under this AFA, the Service will pay the CSKT the balance due only to the extent additional appropriations and allocations become available.

c. *Application of Congressional Rescissions.* The Service shall apply congressional appropriation rescissions to funds allocated to CSKT in the same manner as the Service applies them to its own funds (e.g., if the Service does not make staff salaries subject to rescissions, it shall not deduct any amount from the funds it provides to CSKT for staff salaries).

F. *No Reallocation or Reprogramming of Consideration.* Consistent with 25 C.F.R. §§ 1000.397–399, the CSKT will use the funds provided by the Service, and any interest earned on those funds, to perform only Activities covered by this AFA.

G. *Funding Errors or Omissions.* In the event of errors or omissions necessitating adjustment of funds provided by the Service, the Parties will amend this AFA as provided in Section 22.A below.

H. *Antideficiency Act.* This AFA is subject to the requirements of the Antideficiency Act, 31 U.S.C. § 1341. Nothing in this AFA shall be construed as requiring the Service to obligate, or the Service to provide, any consideration in advance or in excess of funds appropriated by Congress for expenditure on Activities.

I. *Lobbying.* No funds provided under this AFA may be used for lobbying Congress or any other entities. 18 U.S.C. § 1913.

J. *Rights in Data.* Each Party shall have complete and unlimited access to use, modify, copy, and disseminate all research data collected or produced under this AFA, including original data sheets, without notice to or approval from the other Party. Neither Party will withhold any such data; each will ensure timely transmission of all data to the other Party so it may be stored at the NBRC and CSKT offices for future use. Original data sheets will also be stored at the NBRC. Any research conducted at NBRC which collects Protected Personal Information (PPI) from individual people must be approved under U.S. Office of Management and Budget (OMB) guidelines, and any such PPI that is collected will protected from unauthorized disclosure per OMB guidelines and the Privacy Act.

K. *Recognition of Service Funding; Use of Logos.* Recognition of Service funding is required on any product, material, or publication produced under this AFA. The CSKT is encouraged to use the Service's logo/images on all materials and publications produced under this AFA. However, prior approval of the Refuge Manager is required for use of Service-owned images not available to the general public, and proper crediting of those images must be given to the Service.

Section 15. Property

A. *Availability and Use; Access to Property and Facilities.* The Service will make available to the CSKT, for non-exclusive use in performing Activities, all personal and real property currently on hand or subsequently acquired by the Service. The Service will make such property and equipment available to CSKT staff on the same basis as to Service staff, and the property shall be equivalent in quality. Significant changes in the use of buildings or other real property of NBRC are subject to approval of the Refuge Manager.

B. *Inventories of Personal Property and Real Property.* Attachment C is the Service's inventory of personal property (including condition) and sensitive or controlled items. Attachment D is an inventory of real property (including condition). The Service will update these inventories to reflect any changes, and will provide to the CSKT copies of such updates.

C. *NBRC Data.* The CSKT shall have ongoing reasonable access to data and the right to copy it.

D. *Title and Ownership; Protection.* All personal property and real property (including natural resources), owned by the United States, will remain Federal property. The United States will hold title to any equipment, materials, or supplies the CSKT purchases with funds provided by the Service under this AFA. Keys will be assigned to the CSKT on a Standard Form DI-105, Receipt for Property. The CSKT will take reasonable steps to protect all such property from fraud, theft, abuse, damage, or loss.

E. *Disposal.* With the prior written approval of the Refuge Manager, the CSKT may dispose of any item of Federal property in accordance with Federal property procedures.

F. *Excess Property.* At CSKT's request, the Service may transfer to the CSKT ownership of any Federal property that is not needed by the Service. Pursuant to 25 U.S.C. § 458ff(c), which incorporates 25 U.S.C. § 450j(f), the Service will facilitate transfer of any such property to the CSKT in accordance with Federal property procedures.

G. *Use of CSKT Equipment.* The CSKT may elect to perform any Activity using equipment owned or otherwise available to it. The Service will supply fuel and lubricating oil for any such equipment.

Section 16. Claims and Liability

A. *Federal Tort Claims Act.* In performing Activities, the CSKT will be covered by: the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 2671–2680, as provided by 25 U.S.C. § 450f(c); § 314 of Pub. L. No. 101-512 (*reprinted at* 25 U.S.C.A. § 450f, note); and applicable Tribal Self-Governance Regulations at 25 C.F.R. §§ 1000.270-283. Except as otherwise provided by Federal law and Section 16.D below, the CSKT accepts any risk not covered by the FTCA in performing Activities.

B. *Notice of Incident or Claim.*

1. *Notice of Incident.* The CSKT promptly will notify the Refuge Manager in writing of any incident involving personal injury, death, or property damage resulting from the performance by the CSKT of an Activity covered by this AFA.

2. *Notice of Claim.* The CSKT and the Service promptly will notify each other in writing of any claim received from a third party for damage, injury, or death at, or involving, the NBRC.

C. *Unemployment and Workers' Compensation Insurance.* The CSKT will provide unemployment and workers' compensation insurance for each CSKT Employee other than an IPA Employee, and workers' compensation insurance for each CSKT-directed Volunteer, commensurate with that provided to other CSKT Tribal government employees. The CSKT will

ensure that each CSKT contractor is covered by workers' compensation insurance commensurate with that provided to CSKT Tribal government employees. The CSKT will hold the United States harmless from any unemployment or workers' compensation claim made by a CSKT contractor or CSKT Employee, other than an IPA Employee, in connection with the performance of any Activity.

D. *Liability Insurance for Volunteers.* In accordance with 25 U.S.C. § 450f(c), the Bureau of Indian Affairs will purchase insurance protecting CSKT-directed Volunteers from liability for potential claims based upon their activities involving the NBRC. This insurance is supplementary to any coverage afforded the Volunteers by the FTCA.

Section 17. Emergencies and Unusual Events

A. *Notice.* Where practicable, after learning of any emergency or other unusual event at the NBRC, or involving its staff, either Party will orally notify the other Party promptly. The Service and the CSKT will give each other the name, address, and telephone number of one or more persons to receive such notice in the absence of the Refuge Manager or the CSKT Wildlife Refuge Specialist.

B. *Temporary Operation and Control.* In accordance with Section 7.F above, nothing in this Section shall be interpreted to limit the ability of either Party to respond to emergency safety concerns. Where necessary to deal with an emergency, including any situation which the CSKT determines it cannot resolve independently, the Service temporarily may assume operation and control of any Activity, including supervising any CSKT Employee engaged in the Activity. When the emergency ceases to exist, the Service will return operation and control of the Activity to the CSKT. Nothing in this Section shall be interpreted as authorizing the Service to reassume an Activity without complying with the provisions of Section 18.C below and Federal regulations governing reassumption.

C. *Emergency Procedures.* In an emergency, the Parties will use the following procedures:

1. *Determination by Refuge Manager.* The Refuge Manager will determine when an emergency exists and when it has ended.

2. *Notice to CSKT Employees.* The Refuge Manager will notify the CSKT Wildlife Refuge Specialist or another available CSKT Employee that an emergency exists, as provided in Section 17.A above.

3. *CSKT Response.* Following notice of an emergency under Sections 17.A and 17.C.2 above, at the oral request of the Refuge Manager any CSKT Employee performing an Activity will:

    a. relinquish operation and control of the Activity to the Service;

b. assist the Service in responding to the emergency; and

c. follow any related instructions issued by the Refuge Manager.

4. *CSKT Employee Not Available*. Where neither the CSKT Wildlife Refuge Specialist nor another CSKT Employee is available to receive notice of an emergency, the Service will, without notice, take over operation and control of any Activity that is, or may become, involved. Upon later receiving notice of the emergency, each CSKT Employee responsible for performing the Activity will respond as provided in Section 17.C.3 above.

5. *Emergency Has Ceased to Exist*. When the Refuge Manager determines that an emergency has ceased to exist, she or he orally will notify the CSKT Wildlife Refuge Specialist or, where such official is not available, the employee designated in Section 17.A above. At that time, the Refuge Manager will relinquish to the CSKT operation and control of any Activity over which she or he had taken operation and control.

6. *Report and Adjustments*. Following any emergency, the Refuge Leadership Team will prepare any required reports and review the Work Plan to determine if any adjustments are needed due to impacts on available resources.

Section 18. Retrocession, Reassumption, and Expiration

A. *Technical Assistance*. Both Parties wish to avoid the need for retrocession or reassumption of any Activity. The Service will provide the CSKT reasonable technical assistance to try to avoid reassumption or retrocession of any Activity.

B. *Retrocession by the CSKT*. At its option, the CSKT may retrocede and cease performing any or all of the Activities in accordance with Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart N, using the procedures below. Unless the Service has not provided sufficient funding for CSKT to perform under the AFA, or unless there are exigent circumstances, CSKT shall provide at least 90 days advance notice prior to a retrocession taking effect.

1. *Notice*. CSKT will provide to the Refuge Manager 30 days advance written notice of intent to retrocede (Notice of Retrocession);

2. *Orderly Transition*. From the date of Notice of Retrocession to the Refuge Manager, through the effective date of the retrocession, CSKT will work with the Refuge Manager to ensure an orderly transition in returning to the Service responsibility for performing each Activity retroceded;

3. *Property*. On the effective date of the retrocession, CSKT will return all Federal property which is not needed for performance of a retained Activity;

4. *Return of Funds*. Within 30 days after the effective date of the retrocession, CSKT will return to the Service any remaining funds that the Service has provided for performing the retroceded Activity and that the CSKT has not expended in performing the retroceded Activity; and

5. *Final Report*. Within thirty days after the effective date of the retrocession, CSKT will submit to the Service a final report of work accomplished for each retroceded Activity from the beginning of the fiscal year through the date of retrocession (see also Section 11.C.2 of this AFA regarding a financial status report).

C. *Reassumption by the Service.*

1. *Tribal Self-Governance Regulations.* Subject to Section 18.A above and this Section 18.C, the Service may reassume any or all of the Activities covered by this AFA in accordance with the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart M.

2. *Criteria for Reassumption.* In accordance with the regulations cited in Section 18.C.1 above, the Service may reassume any or all of the Activities in the event the Director, on behalf of the Secretary, finds, and notifies the CSKT in writing, that its performance is causing imminent jeopardy to natural resources or public health and safety.

3. *CSKT Response to Reassumption.* Upon receiving a Notice of Reassumption of any Activity as provided in the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.313, the CSKT will comply with the following procedures:

   a. From the date of receipt of the Notice of Reassumption, through the effective date of the reassumption, CSKT will work with the Service to ensure an orderly transition in returning responsibility for performing the reassumed Activity to the Service;

   b. On the effective date of the reassumption, CSKT will cease performing the reassumed Activity;

   c. On the effective date of the reassumption, CSKT will return all Federal property which it does not need for performance of a retained Activity;

   d. Within 30 days after the effective date of the reassumption, CSKT will return to the Service any funds that the CSKT has not expended in per-

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forming the Activity from the effective date of this AFA through the effective date of the reassumption; and

e. Within 30 days after the effective date of the reassumption, CSKT will submit a final report of work accomplished for each reassumed Activity from the beginning of the fiscal year through the date of reassumption (also see Section 11.C.2.b above concerning a financial status report).

D. *Expiration.* Due to the occurrences under the extended FY 2005-06 AFA, the Parties agree that CSKT will not perform work under an extension to this AFA but will perform work only under a successor AFA. The Parties therefore agree that they will commence negotiations for a successor AFA no later than February 1, 2016, with any signed successor AFA to be delivered to Congress prior to July 1, 2016. This schedule will allow such successor AFA to be effective on October 1, 2016, thereby accommodating the 90 day period required prior to the effective date of any AFA (*see* 25 U.S.C. § 458cc(f)). A Party opting to cease negotiations for a successor AFA will provide thirty days' written notice to the other Party, subject to the provisions of 25 C.F.R. § 1000.179(b) with respect to any last and best offer.

In the event that the Parties do *not* negotiate a successor AFA covering an Activity:

1. *Transition.* In the last month of the term of this AFA, the CSKT will work with the Service to ensure an orderly transition in returning to the Service responsibility for performing the Activity; and

2. *Property.* On the last day of the term of this AFA, the CSKT will return all Federal property not needed by the CSKT to perform the Activity or Activities for which the Parties are negotiating, or have executed, a successor AFA.

Section 19. Other Tribal Rights and Administrative Remedies

A. *No Effect on Trust Responsibility.* Nothing in this AFA is to be interpreted as waiving, modifying, or diminishing the trust responsibility of the United States under treaties, executive orders, and other laws with respect to any Indian Tribe or individual Indian.

B. *No Waiver of Sovereign Immunity.* Nothing in this AFA shall be construed as waiving or otherwise affecting the CSKT's sovereign immunity.

C. *Tribal Administrative Procedures.* In addition to any other available right or remedy provided by law, under CSKT Tribal Administrative Procedures Ordinance No. 86B (as amended), CSKT Tribal law and forums provide administrative due process rights to all persons with respect to Activities performed by CSKT under this AFA, except to the extent CSKT is covered by the FTCA, 28 U.S.C. §§ 2671–2680.

D. *Indian Preference.* In the administration of this AFA, the provisions of 25 U.S.C. §§ 450e(b) and (c) shall apply with respect to Indian preference, with the term "contract" interpreted as meaning this AFA.

Section 20. Dispute Resolution and Appeals

A. *Dispute Resolution.*

1. At all levels, the Parties may use written correspondence, e-mail, telephone conferences or face-to-face meetings to conduct good faith dispute resolution. For any dispute elevated, the Parties jointly will prepare a written summary of the resolution/decision to provide to the Refuge Leadership Team.

2. The Refuge Leadership Team is empowered and encouraged to informally resolve all disputes between the Parties at the field level. If the Refuge Leadership Team is unable to reach consensus, the decision of the Refuge Manager will prevail. The Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation may invoke the dispute resolution process in the event CSKT disagrees with the Refuge Manager's decision for reasons outlined in Section 7.D.5 above. If a dispute involves an ongoing operational issue, the work will continue as decided by the Refuge Manager while the issue is in dispute.

3. To invoke the dispute resolution process, the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation and the Refuge Manager will notify the Refuge Supervisor and the CSKT Natural Resources Department Head of the dispute issue. The notification shall be in writing and identify the issue in dispute. The notification shall also include a statement of the Refuge Manager's decision and the Manager of the CSKT Division of Fish, Wildlife, Recreation & Conservation's statement explaining why the decision is unacceptable to the CSKT. Once notified, the CSKT Natural Resources Department Head and Refuge Supervisor will make a good faith effort to resolve the dispute within ten working days. If they are unable to reach consensus, the decision of the Refuge Supervisor will prevail. However, if the Refuge Supervisor's decision is unacceptable to the CSKT Natural Resources Department Head, she or he may elevate the dispute to the CSKT Tribal Council and the Regional Director.

4. To elevate the issue, the Refuge Supervisor and the CSKT Natural Resources Department Head jointly will prepare a written summary of the dispute issue for transmission to the Tribal Council and Regional Director, who will make a good faith effort to resolve the dispute within fifteen working days. If the dispute cannot be resolved by the Tribal Council and Regional Director, either may request the assistance of a mediator acceptable to both Parties. The Tribal Council and Regional Director will agree on a timeframe for the mediated dispute resolution process. If the Parties cannot reach consensus through the mediation, the decision of the Regional Director shall prevail. However, if that

decision is not acceptable to the Tribal Council, it may appeal to the FWS Director. If a mediator was used by the Parties at the Regional Director/Tribal Council level, elevation of the dispute to the FWS Director shall be through the mediator.

5. For any dispute handled under this subsection involving a personnel issue, including one involving an IPA Employee, CSKT will substitute for the Tribal Council its Executive Secretary (or equivalent position in the event of any reorganization to the CSKT executive staff structure).

6. Due to the uniqueness of this AFA, the officials identified in this Section may not delegate their responsibilities under this Section.

7. Nothing in this Section diminishes or replaces the existing rights and responsibilities of the Parties or their employees under their respective personnel laws and policies.

B. *Appeals*. Resolution of disputes arising under this AFA shall be governed by the Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R ("Appeals"), and section 450m-1 of the ISDEAA ("Contract disputes and claims"). Nothing in this Section precludes either Party from availing itself of the informal dispute resolution procedures identified in Section 20.A above. However, neither Party shall be required to use those procedures prior to engaging in any appeals under this Section 20.B.

Section 21. Indian Self-Determination and Education Assistance Act's Title I Provisions

A. In accordance with 25 U.S.C. §§ 450j(k) and 458cc(*l*), in performing the Activities covered by this AFA the CSKT will have access to Federal sources of supply. Nothing in this AFA is intended to limit the availability, or use by the CSKT, of technical or financial assistance that may be available from any other Federal agency, including from the Bureau of Indian Affairs under 25 U.S.C. § 450h.

B. The Parties agree that this AFA incorporates the following provisions from Title I of ISDEAA, as authorized by 25 U.S.C. § 458cc(*l*):

1. 25 U.S.C. § 450j(a): applicability of federal contracting laws and regulations
2. 25 U.S.C. § 450j-1(a): amounts of funds provided; carry-over
3. 25 U.S.C. § 450j-1(b): reductions and increases
4. 25 U.S.C. § 450j-1(d): treatment of shortfalls
5. 25 U.S.C. § 450j-1(f): limitation on remedies for cost disallowances
6. 25 U.S.C. § 450j-1(g): addition to contract of full amount contractor entitled
7. 25 U.S.C. § 450j-1(h): indirect costs for construction programs
8. 25 U.S.C. § 450j-1(j): use of funds for matching or cost participation requirements
9. 25 U.S.C. § 450j-1(k): allowable uses of funds
10. 25 U.S.C. § 450j-1(m): use of program income earned
11. 25 U.S.C. § 450j-1(o): re-budgeting

12. 25 U.S.C. § 450k(e): exceptions in, or waiver of, regulations
13. 25 U.S.C. §§ 450*l*(b) and
    450*l*(c)(1)(b)(7)(A): Tribal records not considered Federal records for purposes of chapter 5 of Title 5 of United States Code.

Section 22. Modification and Correction

A. *Modification of AFA*. Consistent with 25 U.S.C. § 450m-1(b), the Parties may modify this AFA only by amendment executed in the same manner as this AFA (but requiring only three originals rather than five), except as provided in the following AFA provisions: Section 10.B (Secretarial waiver of regulations); Section 10.E (use of CSKT performance standards); and in Section 22.B (correction of minor, non-substantive errors or omissions). Provided, however, that the Parties may execute modifications involving augmentation of funds or resources under Attachment B upon approval by the Refuge Supervisor and the Tribal Chairman. The Parties agree that, in the event the Tribal Self-Governance Act is amended, the provisions contained in this AFA shall remain in effect until the Parties jointly execute any amendments or modifications as a result of changes in the Tribal Self-Governance Act statutes or accompanying regulations.

B. Minor Errors or Omissions. The Parties may correct minor, non-substantive errors or omissions in this AFA that do not affect funding, by means of an errata sheet signed and dated by the Refuge Manager and the Tribal Council Chairman.

Section 23. Structure and Severability

A. *Structure*. Except as used to cross-reference sections of this AFA, the section numbers and headings and the other structural elements of this AFA are for convenience only and have no bearing on the interpretation of this AFA.

B. *Severability*. If any provision of this AFA is found to be invalid by operation of law or otherwise, the remainder of this AFA will remain in full force and effect.

The Parties have reviewed relevant legal authorities and guidance on what may constitute an "inherently Federal function" within the meaning of the Tribal Self-Governance Act, including, but not limited to, the NWRSAA (as amended), other federal statutes, federal court decisions, and Interior Solicitor opinions. The Parties believe that this AFA: 1) is consistent with those legal authorities; and 2) does not contract any "inherently Federal functions" to CSKT. In the event a federal court were to determine that one or more of the Activities contracted to CSKT was "inherently Federal", it is the intent of the Parties that the remainder of this AFA shall remain in effect and the AFA shall be reformed to exclude such function(s) from the Activities contracted to CSKT.

Section 24. Entire Agreement

This AFA, including Attachments A-D, sets out the entire agreement between the Parties concerning the terms and conditions under which the Service will fund and the CSKT will

perform Activities at the NBRC. This AFA supersedes any and all previous, express or implied, oral or written understandings and/or agreements for funding and performing those Activities. However, nothing in this AFA shall be interpreted to supersede or nullify any Annual Fire Management Operating Plan in effect between the Parties.

Section 25. Dates of Performance

A. *Effective Date*. The effective date of this AFA shall be no earlier than ninety days after the date the Secretary submits this signed AFA to Congress, as provided in 25 U.S.C. § 458cc(f); provided that if, prior to commencement or completion of such ninety-day period, the Tribal Self-Governance Act is amended to eliminate the ninety-day congressional review period, this AFA may become effective immediately upon signature by all Parties. In order to provide time for CSKT to hire necessary staff, the effective date for CSKT performance of Activities will be [phased in, as mutually agreed-upon by the Parties, during FY 2013. This AFA will be fully effective, and CSKT will be fully performing contracted Activities, by no later than _____, 20__].

B. *Commencement of Activities*. The CSKT may commence performing any Activity on the effective date, and in accordance with the terms and conditions, of this AFA. Any payment to the CSKT for performing any such Activity shall be subject to compliance with the Antideficiency Act, as provided in Section 14.H above, and other applicable laws and regulations. If the Service has reason to anticipate that Congress will not appropriate sufficient funds to pay the CSKT for performing any Activity covered by this AFA, the Service will give the CSKT prompt written notice.

C. *Term*. This AFA covers funding and Activities from its effective date through September 30, 2016. All of the terms and conditions of this AFA will apply during any extension of the term of this AFA. The Parties may modify the Activities covered by this AFA only by amending this AFA as provided in Section 22.A.

THE FOREGOING PROVISIONS OF THIS FUNDING AGREEMENT FOR FY 2013-2016 ARE HEREBY AGREED TO ON THE DATES INSCRIBED BELOW, EXECUTED IN FIVE ORIGINALS.

CONFEDERATED SALISH AND KOOTENAI TRIBES, BY:

_____ _____

Joe Durglo Date
Chairman, CSKT Tribal Council

UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

Dan Ashe, Director, U.S. Fish & Wildlife Service	Date
_____, Assistant Secretary for Fish, Wildlife and Parks	Date
Mike Black, Director, Bureau of Indian Affairs	Date

APPENDIX B
Federal Register Notice

Individuals or groups requesting to make comment at the public Committee meeting will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact Lisa Young, DFO, in writing (preferably via email), by Wednesday, August 22, 2012. (*See* **FOR FURTHER INFORMATION CONTACT**, to be placed on the public speaker list for this meeting.)

In order to attend this meeting, you must register by close of business Tuesday, February 12, 2013. The meeting is open to the public. Calls in lines are limited, so all interested in attending should pre-register, and at that time will be given the call in information. Please submit your name, email address and phone number to Lisa Young via email at *Lisa_Young@ios.doi.gov* or by phone at (202) 208–7586.

Dated: January 17, 2013.

Lisa Young,

Designated Federal Officer.

[FR Doc. 2013–01304 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

List of Programs Eligible for Inclusion in Fiscal Year 2013 Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2013 funding agreements with self-governance Indian tribes and lists programmatic targets for each of the non-Bureau of Indian Affairs (BIA) bureaus in the Department of the Interior, pursuant to the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2013.

ADDRESSES: Inquiries or comments regarding this notice may be directed to Sharee M. Freeman, Director, Office of Self-Governance (MS 355H–SIB), 1849 C Street NW., Washington, DC 20240–0001, telephone: (202) 219–0240, fax: (202) 219–1404, or to the bureau-specific points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the ''Tribal Self-Governance Act'' or the ''Act'') instituted a permanent self-governance program at the Department of the Interior. Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribe.

Under section 405(c) of the Tribal Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Tribal Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is ''otherwise available to Indian tribes or Indians,'' can be administered by a tribe through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies, ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance tribe.

Under section 403(k) of the Tribal Self-Governance Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, the non-BIA Bureaus will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances. In those instances where the tribe disagrees with the Bureau's determination, the tribe may request reconsideration from the Secretary.

Subpart G of the self-governance regulations found at 25 CFR part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

Response to Comments

No comments were received.

II. Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior for Fiscal Year 2012

A. Bureau of Land Management (1)
- Council of Athabascan Tribal Governments

B. Bureau of Reclamation (5)
- Gila River Indian Community
- Chippewa Cree Tribe of Rocky Boy's Reservation
- Hoopa Valley Tribe
- Karuk Tribe of California
- Yurok Tribe

C. Office of Natural Resources Revenue (none)

D. National Park Service (3)
- Grand Portage Band of Lake Superior Chippewa Indians
- Lower Elwha S'Klallam Tribe
- Yurok Tribe

E. Fish and Wildlife Service (2)
- Council of Athabascan Tribal Governments
- Confederated Salish and Kootenai Tribes of the Flathead Reservation

F. U.S. Geological Survey (none)

G. Office of the Special Trustee for American Indians (1)
- Confederated Salish and Kootenai Tribes of the Flathead Reservation

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either ''otherwise available to Indians'' under Title I and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating tribe. The list represents the most current information on programs potentially available to tribes under a self-governance funding agreement.

The Department will also consider for inclusion in funding agreements other programs or activities not listed below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either

sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Bureau of Land Management (BLM) Programs

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, dependent upon availability of funds, the need for specific services, and the self-governance tribe demonstrating a special geographic, culture, or historical connection, may also be available for inclusion in self-governance funding agreements. Once a tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for tribal participation through a funding agreement.

Tribal Services

1. Minerals Management. Inspection and enforcement of Indian oil and gas operations: Inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

2. Cadastral Survey. Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

Other Activities

1. Cultural Heritage. Cultural heritage activities, such as research and inventory, may be available in specific States.

2. Natural Resources Management. Activities such as silvicultural treatments, timber management, cultural resource management, watershed restoration, environmental studies, tree planting, thinning, and similar work, may be available in specific States.

3. Range Management. Activities such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. Riparian Management. Activities such as facilities construction, erosion control, rehabilitation, and other similar activities, may be available in specific States.

5. Recreation Management. Activities such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. Wildlife and Fisheries Habitat Management. Activities such as construction and maintenance, implementation of statutory, regulatory and policy or administrative plan-based species protection, interpretive design and construction, and similar activities may be available in specific States.

7. Wild Horse Management. Activities such as wild horse round-ups, adoption and disposition, including operation and maintenance of wild horse facilities may be available in specific States.

For questions regarding self-governance, contact Jerry Cordova, Bureau of Land Management (MS L St-204), 1849 C Street NW., Washington, DC 20240, telephone: (202) 912–7245, fax: (202) 452–7701.

B. Eligible Bureau of Reclamation Programs

The mission of the Bureau of Reclamation (Reclamation) is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of the Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control; outdoor recreation; and enhancement of fish and wildlife habitats.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement. This list was developed with consideration of the proximity of identified self-governance tribes to Reclamation projects.

1. Klamath Project, California and Oregon
2. Trinity River Fishery, California
3. Central Arizona Project, Arizona
4. Rocky Boy's/North Central Montana Regional Water System, Montana
5. Indian Water Rights Settlement Projects, as authorized by Congress.

Upon the request of a self-governance tribe, Reclamation will also consider for inclusion in funding agreements, other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

For questions regarding self-governance, contact Mr. Kelly Titensor, Policy Analyst, Native American and International Affairs Office, Bureau of Reclamation (96–43000) (MS 7069–MIB); 1849 C Street NW., Washington DC 20240, telephone: (202) 513–0558, fax: (202) 513–0311.

C. Eligible Office of Natural Resources Revenue (ONRR) Programs

Effective October 1, 2010, the Office of Natural Resources Revenue (ONNR) moved from the Bureau of Ocean Energy Management (formerly MMS) to the Office of the Assistant Secretary for Policy, Management and Budget (PMB). The ONRR collects, accounts for, and distributes mineral revenues from both Federal and Indian mineral leases.

The ONRR also evaluates industry compliance with laws, regulations, and lease terms, and offers mineral-owning tribes opportunities to become involved in its programs that address the intent of tribal self-governance. These programs are available to self-governance tribes and are a good prerequisite for assuming other technical functions. Generally, ONRR program functions are available to tribes because of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA) at 30 U.S.C. 1701. The ONRR program functions that may be available to self-governance tribes include:

1. Audit of Tribal Royalty Payments. Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in ONRR cooperative audits, this program is offered as an option.)

2. Verification of Tribal Royalty Payments. Financial compliance verification, monitoring activities, and production verification.

3. Tribal Royalty Reporting, Accounting, and Data Management.

Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. Tribal Royalty Valuation. Preliminary analysis and recommendations for valuation, and allowance determinations and approvals.

5. Royalty Internship Program. An orientation and training program for auditors and accountants from mineral-

producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance funding agreement, but have not yet acquired mineral revenue expertise via a FOGRMA section 202 cooperative agreement, as this is the term contained in FOGRMA and implementing regulations at 30 CFR 228.4.

For questions regarding self-governance, contact Shirley M. Conway, Special Assistant to the Director, Office of Natural Resources Revenue, Office of the Assistant Secretary—Policy, Management and Budget, 1801 Pennsylvania Avenue NW., 4th Floor, Washington, DC 20006, telephone: (202) 254–5554, fax: (202) 254–5589.

D. Eligible National Park Service (NPS) Programs

The National Park Service administers the National Park System, which is made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. The National Park Service maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list below was developed considering the proximity of an identified self-governance tribe to a national park, monument, preserve, or recreation area and the types of programs that have components that may be suitable for contracting through a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of programs which may be eligible for tribal participation through funding agreements.

Elements of Programs That May Be Eligible for Inclusion in a Self-Governance Funding Agreement

1. Archaeological Surveys
2. Comprehensive Management Planning
3. Cultural Resource Management Projects
4. Ethnographic Studies
5. Erosion Control
6. Fire Protection
7. Gathering Baseline Subsistence Data—Alaska
8. Hazardous Fuel Reduction
9. Housing Construction and Rehabilitation
10. Interpretation
11. Janitorial Services
12. Maintenance
13. Natural Resource Management Projects
14. Operation of Campgrounds
15. Range Assessment—Alaska
16. Reindeer Grazing—Alaska
17. Road Repair
18. Solid Waste Collection and Disposal
19. Trail Rehabilitation
20. Watershed Restoration and Maintenance
21. Beringia Research
22. Elwha River Restoration
23. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska
2. Bering Land Bridge National Preserve—Alaska
3. Cape Krusenstern National Monument—Alaska
4. Denali National Park & Preserve—Alaska
5. Gates of the Arctic National Park & Preserve—Alaska
6. Glacier Bay National Park and Preserve—Alaska
7. Katmai National Park and Preserve—Alaska
8. Kenai Fjords National Park—Alaska
9. Klondike Gold Rush National Historical Park—Alaska
10. Kobuk Valley National Park—Alaska
11. Lake Clark National Park and Preserve—Alaska
12. Noatak National Preserve—Alaska
13. Sitka National Historical Park—Alaska
14. Wrangell-St. Elias National Park and Preserve—Alaska
15. Yukon-Charley Rivers National Preserve—Alaska
16. Casa Grande Ruins National Monument—Arizona
17. Hohokam Pima National Monument—Arizona
18. Montezuma Castle National Monument—Arizona
19. Organ Pipe Cactus National Monument—Arizona
20. Saguaro National Park—Arizona
21. Tonto National Monument—Arizona
22. Tumacacori National Historical Park—Arizona
23. Tuzigoot National Monument—Arizona
24. Arkansas Post National Memorial—Arkansas
25. Joshua Tree National Park—California
26. Lassen Volcanic National Park—California
27. Redwood National Park—California
28. Whiskeytown National Recreation Area—California
29. Yosemite National Park—California
30. Hagerman Fossil Beds National Monument—Idaho
31. Effigy Mounds National Monument—Iowa
32. Fort Scott National Historic Site—Kansas
33. Tallgrass Prairie National Preserve—Kansas
34. Boston Harbor Islands National Recreation Area—Massachusetts
35. Cape Cod National Seashore—Massachusetts
36. New Bedford Whaling National Historical Park—Massachusetts
37. Isle Royale National Park—Michigan
38. Sleeping Bear Dunes National Lakeshore—Michigan
39. Grand Portage National Monument—Minnesota
40. Voyageurs National Park—Minnesota
41. Bear Paw Battlefield, Nez Perce National Historical Park—Montana
42. Glacier National Park—Montana
43. Great Basin National Park—Nevada
44. Aztec Ruins National Monument—New Mexico
45. Bandelier National Monument—New Mexico
46. Carlsbad Caverns National Park—New Mexico
47. Chaco Culture National Historic Park—New Mexico
48. White Sands National Monument—New Mexico
49. Fort Stanwix National Monument—New York
50. Great Smoky Mountains National Park—North Carolina/Tennessee
51. Cuyahoga Valley National Park—Ohio
52. Hopewell Culture National Historical Park—Ohio
53. Chickasaw National Recreation Area—Oklahoma
54. John Day Fossil Beds National Monument—Oregon
55. Alibates Flint Quarries National Monument—Texas
56. Guadalupe Mountains National Park—Texas
57. Lake Meredith National Recreation Area—Texas
58. Ebey's Landing National Recreation Area—Washington
59. Mt. Rainier National Park—Washington
60. Olympic National Park—Washington
61. San Juan Islands National Historic Park—Washington
62. Whitman Mission National Historic Site—Washington

For questions regarding self-governance, contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service (Org. 2560, 9th Floor), 1201 Eye Street NW.,

Washington, DC 20005–5905, telephone: (202) 354–6962, fax: (202) 371–6609.

E. Eligible Fish and Wildlife Service (Service) Programs

The mission of the Service is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for tribal participation through an annual funding agreement.

1. Subsistence Programs within the State of Alaska. Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs, and facilitate Tribal Consultation to ensure ANILCA Title VII terms are being met as well as activities fulfilling the terms of Title VIII of ANILCA.

2. Technical Assistance, Restoration and Conservation. Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.

3. Endangered Species Programs. Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA); candidate species under the ESA may be eligible for self-governance funding agreements. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.

4. Education Programs. Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off national Wildlife Refuge lands in a variety of communities, and assist with environmental education and outreach efforts in local villages.

5. Environmental Contaminants Program. Conduct activities associated with identifying and removing toxic chemicals, which help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.

6. Wetland and Habitat Conservation Restoration. Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. Fish Hatchery Operations. Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit Tribes and National Wildlife Refuges that may be eligible for a self-governance funding agreement. Such activities may include, but are not limited to: Taking, rearing and feeding of fish, disease treatment, tagging, and clerical or facility maintenance at a fish hatchery.

8. National Wildlife Refuge Operations and Maintenance. Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes

The Service developed the list below based on the proximity of identified self-governance tribes to Service facilities that have components that may be suitable for contracting through a self-governance funding agreement.

1. Alaska National Wildlife Refuges—Alaska
2. Alchesay National Fish Hatchery—Arizona
3. Humboldt Bay National Wildlife Refuge—California
4. Kootenai National Wildlife Refuge—Idaho
5. Agassiz National Wildlife Refuge—Minnesota
6. Mille Lacs National Wildlife Refuge—Minnesota
7. Rice Lake National Wildlife Refuge—Minnesota
8. National Bison Range—Montana
9. Ninepipe National Wildlife Refuge—Montana
10. Pablo National Wildlife Refuge—Montana
11. Sequoyah National Wildlife Refuge—Oklahoma
12. Tishomingo National Wildlife Refuge—Oklahoma
13. Bandon Marsh National Wildlife Refuge—Washington
14. Dungeness National Wildlife Refuge—Washington
15. Makah National Fish Hatchery—Washington
16. Nisqually National Wildlife Refuge—Washington
17. Quinault National Fish Hatchery—Washington
18. San Juan Islands National Wildlife Refuge—Washington
19. Tamarac National Wildlife Refuge—Wisconsin

For questions regarding self-governance, contact Patrick Durham, Fish and Wildlife Service (MS–330), 4401 N. Fairfax Drive, Arlington, VA 22203, telephone: (703) 358–1728, fax: (703) 358–1930.

F. Eligible U.S. Geological Survey (USGS) Programs

The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.

For questions regarding self-governance, contact Kaye Cook, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192, telephone: (703) 648–7442, fax: (703) 648–7451.

G. Eligible Office of the Special Trustee for American Indians (OST) Programs

The Department of the Interior has responsibility for what may be the largest land trust in the world, approximately 56 million acres. OST oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust financial assets, and reporting on these transactions. The mission of the OST is to serve Indian communities by

fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. Beneficiary Processes Program (Individual Indian Money Accounting Technical Functions).

2. Appraisal Services Program. Tribes/consortia that currently perform these programs under a self-governance funding agreement with the Office of Self-Governance may negotiate a separate memorandum of understanding (MOU) with OST that outlines the roles and responsibilities for management of these programs.

The MOU between the tribe/consortium and OST outlines the roles and responsibilities for the performance of the OST program by the tribe/consortium. If those roles and responsibilities are already fully articulated in the existing funding agreement with the BIA, an MOU is not necessary. To the extent that the parties desire specific program standards, an MOU will be negotiated between the tribe/consortium and OST, which will be binding on both parties and attached and incorporated into the BIA funding agreement.

If a tribe/consortium decides to assume the operation of an OST program, the new funding for performing that program will come from OST program dollars. A tribe's newly-assumed operation of the OST program(s) will be reflected in the tribe's funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Office of the Special Trustee for American Indians (MS 5140—MIB), 1849 C Street NW., Washington, DC 20240–0001, phone: (202) 208–7587, fax: (202) 208–7545.

IV. Programmatic Targets

During Fiscal Year 2013, upon request of a self-governance tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: January 15, 2013.

Ken Salazar,

Secretary.

[FR Doc. 2013–01246 Filed 1–22–13; 8:45 am]

BILLING CODE 4310–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2012–N199; FXES11130100000C2–123–FF01E00000]

Endangered and Threatened Wildlife and Plants; Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (Brachylagus idahoensis)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the approved Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (*Brachylagus idahoensis*). The recovery plan includes recovery objectives and criteria and prescribes specific recovery actions considered necessary to achieve downlisting of the population from endangered to threatened status on the Federal List of Endangered and Threatened Wildlife and Plants.

ADDRESSES: An electronic copy of the recovery plan is available at *http://www.fws.gov/endangered/species/recovery-plans.html* and *http://www.fws.gov/pacific/ecoservices/endangered/recovery/plans.html.* Copies of the recovery plan are also available by request from the U.S. Fish and Wildlife Service, Eastern Washington Field Office, 11103 East Montgomery Drive, Spokane, Washington 99206 (phone: 509–891–6839). Printed copies of the recovery plan will be available for distribution within 4 to 6 weeks of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Chris Warren, Fish and Wildlife Biologist, at the above Spokane address and telephone number.

SUPPLEMENTARY INFORMATION: We announce the availability of the approved Recovery Plan for the Columbia Basin Distinct Population Segment of the Pygmy Rabbit (Columbia Basin pygmy rabbit).

Background

Recovery of endangered or threatened animals and plants is the primary goal of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of a listed species to the point at which listing it is no longer required under the criteria set forth in section 4(a)(1) of the Act and its implementing regulations at 50 CFR 424. The Act requires the development of recovery plans for endangered or threatened species unless such a plan would not promote the conservation of the species. Recovery plans help guide the recovery effort by prescribing actions considered necessary for the conservation of the species, establishing criteria for downlisting or delisting listed species, and estimating time and cost for implementing the measures needed for recovery.

In 2007 we developed a draft recovery plan (Draft) for the Columbia Basin pygmy rabbit in coordination with the Columbia Basin Pygmy Rabbit Recovery Team, which included representatives from two U.S. Department of the Interior bureaus (Fish and Wildlife Service and Bureau of Land Management), one U.S. Department of Agriculture bureau (Natural Resources Conservation Service), two State agencies (Washington Department of Fish and Wildlife and Washington Department of Natural Resources), Washington State University, The Nature Conservancy, Oregon Zoo, Foster Creek Conservation District, and several adjunct expert contributors. In order to address available new information, ongoing implementation of adaptive management measures, and prescribed changes to specific actions defined in the Draft, we developed an amendment to the draft recovery plan (Amendment) for the Columbia Basin pygmy rabbit in 2011. Several of the above recovery team members also contributed to development of the Amendment and the final approved recovery plan.

Section 4(f) of the Act requires public notice and an opportunity for public review and comment during recovery plan development. From September 7 through November 6, 2007, we provided the Draft to the public and solicited comments (72 FR 51461). From June 29 through August 29, 2011, we provided the Amendment to the public and solicited comments (76 FR 38203). We considered all information we received during the public comment periods, along with comments solicited from expert peer reviewers, and have summarized that information and our responses to comments in an appendix to the final recovery plan. We welcome continuing comment on the recovery plan, and we will consider all substantive comments on an ongoing basis to inform the implementation of

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Whealdon, B., Bigart, R. 2001. I will be meat for my Salish. Salish Kootenai College, Pablo, MT. Helena, MT: Montana Historical Society Press. 280 p.

BUREAU: Fish and Wildlife Service
MEMBER: Baucus (MT)
ISSUE: National Bison Range (NBR) Annual Funding Agreement (AFA) Update

Key Points:

.

- Two separate lawsuits were filed against the Secretary of Interior and the Director of the U.S. Fish and Wildlife Service (Service), one by the Public Employees for Environmental Responsibility (December 2008) and another by the Blue Goose Alliance (April 2009). Both suits charge that the Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT) on the National Bison Range (NBR) violates the Refuge Administration Act, the Endangered Species Act, and numerous other laws, including National Environmental Policy Act (NEPA). The CSKT moved to intervene as a party defendant with the Secretary of Interior and the Service Director.

- The United States District Court for the District of Columbia issued an order, dated September 28, 2010, "set[ting] aside and rescinding" the fiscal years 2009-2011 AFA between the Service and the CSKT. The AFA was rescinded due to the failure of the Service to demonstrate it had conducted the appropriate analysis required by NEPA. The court dismissed the other charges without prejudice.

Background:

- Following a failed AFA in 2006, the Service entered into government-to-government negotiations in January 2008 to develop a new AFA with the CSKT. Negotiations were successfully completed in June 2008.

- In the new AFA, the CSKT assumed administration and management of biological, maintenance, fire, and portions of the visitor services programs in January 2009. These duties were performed under the direction and with considerable coordination by the Service's on-site refuge manager. The CSKT recruited staff for positions in administration, management, biology, maintenance, and visitor services. These staff participated in a variety of Service-sponsored training aimed at enhancing their performance. The first year of the AFA implementation went well.

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

Current Status:

- This ruling represented a significant setback to the Service's and the Department of the Interior's (Department) efforts to work with Indian people to implement the Indian Self Determination and Education Assistance Act.
- This ruling also poses significant legal and policy questions for Service and Department leadership to consider, including whether the Service should develop and

adopt national policy for AFAs. This step would ensure that AFAs are legally defensible and are not continually rescinded, significantly impacting refuge operations and resources. Deputy Assistant Secretary Jane Lyder has requested that the Service negotiate a new AFA while national policy is being developed.

- On November 9, 2010, refuge manager Jeff King and refuge supervisor Dean Rundle met with the CSKT tribal council to discuss options to continue the partnership. The group agreed to pursue an interim cooperative agreement or contract with the CSKT Department of Natural Resources to provide critical staff until a new AFA could be negotiated. The tribal council also supported the suggestion that a national policy be developed for AFAs. They share the Service's concerns about the impacts to the NBR and to their CSKT employees if future AFAs continue to be challenged and rescinded in court in the absence of national policy.
- The CSKT tribal council prepared a letter for the Service's acting director Rowan Gould supporting the decision to prepare national policy; however, they would like to resume a "self-governance partnership" while it is being developed.
- While leadership considers these issues and how to proceed, the Service is currently seeking/investigating a sole source contract agreement with the CSKT. Personnel employed by or assigned to the CSKT Department of Natural Resources will perform all or portions of the work necessary to accomplish biological, fire, maintenance, and visitor services programs, including developing the Comprehensive Conservation Plan for the refuge complex. The Service will retain all operation and maintenance (O&M) funding at NBR.

Prepared by: Stephen Guertin, Regional Director, Region 6, (303) 236-7920
Date: December 7, 2010

From: "Brian Upton" <brianu@cskt.org>
To: Dean_Rundle@fws.gov
Cc: Jeff_King@fws.gov; Tomm@cskt.org
Subject: Re[2]: AFA revisions
Date: Friday, March 09, 2012 10:54:25 AM

Dean,
I made a mistake in the p. 4 revision; I meant to say "career-conditional" rather than "non-career". I'll fix that - thanks for catching it.

I'm fine with your suggested tweak to the IPA revision on p. 21. I'll change the phrase you referenced so it reads "for a reason other than 'cause' as defined above in this AFA. . . ."

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.

On page 4 I think we just had a misunderstanding on the "federal" terms. The change attached says "career or non-career" federal employees...
That would include everyone, and that is not our intent here. I think we meant to say "career or career-conditional" federal employees to inlcude only those employees who have a "permanent" rather than a term or temporary position.

In the change on page 18, the last phrase you inserted says: "for reason or cause other than as defined in this AFA" I would suggest "for a reason, other than defined above as "cause" , in this AFA". I think that would avoid any confusion over "cause".

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 respect to the IPA revision on p. 21, I added a citation to the CFR provision that makes clear that IPA assignments may be terminated at any time. Let me know if these changes are acceptable on your end.

The revisions are on pages 4, 18, 21, and 25 of the draft AFA. Those are the only changes I've made, other than putting today's date on the draft. Let me know if any questions.

Thanks,
BU

From: "Brian Upton" <brianu@cskt.org>
To: Jeff_King@fws.gov
Cc: Dean_Rundle@fws.gov; jamessteelejr@vzw.blackberry.net; "Rich Janssen"; tomm@cskt.org
Subject: RE: CSKT IDC proposal
Date: Thursday, September 15, 2011 10:52:08 AM
Attachments: image001.gif

Jeff,

See responses to your questions below. Let me know if you need any more information.

1) OC& G stands for “Office of Contracts & Grants”, which oversees and administers contracts, including the NBRC AFA;

2) General Operations includes administration of workman’s compensation, unemployment claims, liability insurance, phone lines, intranet; background checks, drug testing, employee assistance program, etc.;

3) Tribal Council includes the time the Council spends in overseeing, monitoring, and engaging in decision-making for programs, including NBRC;

4) Financial Management includes payroll services, budget development, IDC proposals, etc. Administrative Services includes oversight of: OC&G; funds/cashflow; Tribal communications director; etc.

5) Disaster & Emergency Services provides training and information to all programs.

From: Jeff_King@fws.gov [mailto:Jeff_King@fws.gov]
Sent: Thursday, September 15, 2011 9:06 AM
To: brianu@cskt.org
Cc: Dean_Rundle@fws.gov; jamessteelejr@vzw.blackberry.net; 'Rich Janssen'; tomm@cskt.org
Subject: Re: CSKT IDC proposal

Brian,

Can you provide a breakdown in what activities are included in some of the categories you listed below? Many are self explanatory but I would like clarification on a few. For instance:

1. What's OC & G?
2. What's General Operations?
3. What's included in Tribal Council?
4. What's included in Financial Management vs. Administrative Services?
5. Disaster & Emergency Services?

Thanks,

jk
[IMAGE]
Inactive hide details for "Brian Upton" <brianu@cskt.org>"Brian Upton"
<brianu@cskt.org>

"Brian Upton" <brianu@cskt.org>

09/07/2011 06:39 PM

Please respond to
<brianu@cskt.org>

[IMAGE]

To

[IMAGE]
<Dean_Rundle@fws.gov>, <Jeff_King@fws.gov>

[IMAGE]

cc

[IMAGE]
<jamessteelejr@vzw.blackberry.net>, "'Rich Janssen'" <richj@cskt.org>,
<tomm@cskt.org>

[IMAGE]

Subject

[IMAGE]
CSKT IDC proposal

[IMAGE]

[IMAGE]

Following up on your request about CSKT's proposal for a tailored IDC rate, in June we had offered to include in the proposed NBRC AFA only the following categories of CSKT's approved IDC rate:

1) OC & G – 2.74%;
2) Personnel – 3.4%;
3) Disaster & Emergency Services – 0.3%;
4) IT – 8.85%;
5) Records Mgmt – 2.28%;
6) Office of Financial Management – 12.94%;
7) Office of Administrative Services – 3.61%;
8) Office of Tribal Services – 1.45%;
9) Central Mail – 2.29%;
10) General Operations – 14.81%;
11) Tribal Council – 5.26%; and
12) Legal Dept – 6.41%

This totals 64.34% of CSKT's approved IDC rate.

For the proposed NBRC AFA, the categories we had excluded from CSKT's approved rate are as follows:

1) Facilities O & M – 24.48%;
2) Tribal Council Support – 2.24%;
3) Property & Supply – 2.98%;
4) Char-Koosta (Tribal newspaper) – 0.78%;
5) Building Use – 4.73%; and
6) Equipment Use – 0.45%

While we do use some of the above categories for NBRC programs (e.g., advertising job vacancies in Char-Koosta, etc.), we felt these six categories could reasonably be excluded from our IDC rate in a compromise for the NBRC AFA. We recognize that CSKT does not incur the same kind of property/facility costs in administering the NBRC AFA as we do in many other programs. But please remember that CSKT has to pay the balance of our approved IDC rate when applied to the NBRC AFA. That means that, in the above proposal, CSKT would have to pay, out of tribal dollars, 35% of our approved rate amount as applied to the NBRC AFA. If you have any questions about that, please let me know. - image001.gif - image002.gif - image003.gif - image004.gif

From: "Brenna, Sharon" <Sharon.Brenna@sol.doi.gov>
To: Rundle, Dean; brianu@cskt.org; jamess@cskt.org; tomm@cskt.org; King, Jeff
Subject: RE: Draft AFA
Date: Tuesday, October 04, 2011 4:16:33 PM

Thanks, Dean. I am reviewing it, including Brian's proposed Section 23 language as requested. Sharon

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Monday, October 03, 2011 3:37 PM
To: brianu@cskt.org; jamess@cskt.org; tomm@cskt.org; King, Jeff; Brenna, Sharon
Subject: Draft AFA

Brian: I'm sorry I didn't finish this on Thursday, but just didn't have time to do a thorough job that evening and had family stuff this weekend. Attached is my further edits and comments on the entire draft AFA you provided on September 27. I continue to have some issues with "track change", but I think all of my requested edits and comments are in red in the text and should be fairly easy to identify and locate.

I think we remain without agreement on two major issues:

1. Indirect Costs: After further discussion with my management, our prior offer of $5K per permanent FTE filled by CSKT remains our best offer. Given the current federal budget situation with significant known cuts in place for FY 12 and beyond, and anticipated additional reductions in appropriations, we feel this is a fair offer to off-set the costs of CSKT employing people to work at NBR. While we appreciate your position as it relates to OIG rates and much appreciate the reduced rates offered, this is the best we can do.

2. Current Service Employees/IPA: We agree to include options for current employees to accept CSKT employment with CSKT or Federal Benefits, in addition to IPA assignment as options for current career employees whose work is being contracted to CSKT. We're also willing to include language clarifying that employees can ask for a reassignment - just like any employee can do at any time. We want to remove the language about RIFs - see my comments on the draft. It is not our intent that any federal employee loses their job because of this AFA, and we need an AFA that insures all current career staff at NBR retain their jobs. We need the IPA agreements to be standard - like the one used at Grand Portage. We believe both parties need the skills and experience of the current staff to be successful in implementation and this is the best way to achieve that end. I have proposed language to define the conditions under which CSKT may terminate an IPA agreement - serious misconduct, unsatisfactory performance, or medically determined disability, for your consideration.

I'm also proposing some langauge to clarify when CSKT can invoke dispute resolution regarding a Refuge Manager decision. The last AFA simply allowed disputes to be elevated if the CSKT Deputy "disagreed" with a decision by the Refuge Manager. This never occurred during 2009/2010. That language was jumped on by our lawsuit plaintiffs, and we feel that every decision by the manager shouldn't be subject to dispute. I raised this in my draft sent on August 12, but we haven't discussed it much since then. We propose that CSKT be able to invoke the dispute process in three situations: 1) The CSKT asks

for an explanation of why a CSKT recommendation is not accepted, and the manager can't/won't provide his/her rationale and CSKT believes the manager is being arbitrary and capricious.; 2) there is a legitimate dispute over interpretation of science supporting a decision; or 3) the Refuge Manager is has failed to consider traditional ecological/cultural/historical knowledge provided by CSKT in making a decision.

In terms of "inherently federal" that is mentioned a couple places in the AFA. Its my understanding that the Service policy on AFA's, will address and define this term for the Service. I don't know when that policy will be completed, but probably within the term of this AFA. I suggest some tweaks in Section 6.D. to address that and ask for SOL review of Section 23 in the same light.

Your review and consideration of these proposed comments/edits is much appreciated. I am in the office all this week. I'll give you all a couple days to look over and consider this input and will call Brian on Wednesday afternoon to see where we are in terms of another conference call or face-to-face negotiations.
I know the NBR folks are tied up with Round-up for a couple days.

Sharon - if you can look at the language proposed in Section 23 regarding the review of relevant legal authorities related to Inherently Federal, and let me know if SOL is good with that - that would be much appreciated.

Dean

From:	"Brian Upton" <brianu@cskt.org>
To:	Dean_Rundle@fws.gov; jamess@cskt.org; tomm@cskt.org; Jeff_King@fws.gov; Sharon.Brenna@exchange.sol.doi.gov
Subject:	RE: Draft AFA
Date:	Tuesday, October 04, 2011 8:40:41 AM

Thanks Dean. We'll review and discuss your proposed revisions.

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Monday, October 03, 2011 3:37 PM
To: brianu@cskt.org; jamess@cskt.org; tomm@cskt.org; Jeff_King@fws.gov; Sharon.Brenna@exchange.sol.doi.gov
Subject: Draft AFA

Brian: I'm sorry I didn't finish this on Thursday, but just didn't have time to do a thorough job that evening and had family stuff this weekend. Attached is my further edits and comments on the entire draft AFA you provided on September 27. I continue to have some issues with "track change", but I think all of my requested edits and comments are in red in the text and should be fairly easy to identify and locate.

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Refuge Manager. This never occurred during 2009/2010. That language was jumped on by our lawsuit plaintiffs, and we feel that every decision by the manager shouldn't be subject to dispute. I raised this in my draft sent on August 12, but we haven't discussed it much since then. We propose that CSKT be able to invoke the dispute process in three situations: 1) The CSKT asks for an explanation of why a CSKT recommendation is not accepted, and the manager can't/won't provide his/her rationale and CSKT believes the manager is being arbitrary and capricious.; 2) there is a legitimate dispute over interpretation of science supporting a decision; or 3) the Refuge Manager is has failed to consider traditional ecological/cultural/historical knowledge provided by CSKT in making a decision.

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Sharon- if you can look at the language proposed in Section 23 regarding the review of relevant legal authorities related to Inherently Federal, and let me know if SOL is good with that - that would be much appreciated.

Dean

From:	Jeff King <Jeff_King@fws.gov>
To:	Bud_Oliveira@fws.gov
Cc:	Dean_Rundle@fws.gov; Desiree_Patterson@fws.gov; Rick_Coleman@fws.gov; Tina_Dobrinsky@fws.gov
Subject:	Re: Fw: DCN: ESO-00024004 - Salazar CC"ed: Confederated Salish and Kootenai Tribes request negotiations for new Annual Funding Agreement for National Bison Range Complex activities
Date:	Thursday, December 09, 2010 8:27:48 AM
Attachments:	24004.pdf

Bud,

This letter was a result of the meeting Dean and I had with CSKT on 11/9/2010. The Tribal Council agreed with us that we should explore some method of formal agreement that would allow essential CSKT staff to return to work at NBR in the interim while a new self-governance AFA is negotiated. They also agreed that the Service should develop national policy (referred to in the letter as Tribal Self Governance policy) for AFA's to make them legally defensible and reduce the chance of rescission. However, the Council stipulated that they would like the policy development to follow a parallel course with the negotiation of a new AFA and resume the self-governance partnership on NBR.

The Tribal Council felt that a letter highlighting our meeting and showing our unity on this issue would be beneficial. I agree that a reply is not necessary.

Let me know if you have questions.

jk

Bud Oliveira/R6/FWS/DOI12/09/2010 07:41 AM

To: Dean Rundle/R6/FWS/DOI, Jeff King/R6/FWS/DOI@FWS, Rick Coleman/R6/FWS/DOI

cc: Ella Denmon/R6/FWS/DOI@FWS, Tina Dobrinsky/R6/FWS/DOI, Desiree Patterson/R6/FWS/DOI

Subject: Fw: DCN: ESO-00024004 - Salazar CC"ed: Confederated Salish and Kootenai Tribes request negotiations for new Annual Funding Agreement for National Bison Range Complex activities

You may have responded to the Rowan Gould letter. There does not appear to be a reply requirement on this one.

b----- Forwarded by Bud Oliveira/R6/FWS/DOI on 12/09/2010 07:33 AM -----

desiree_patterson@fws.gov12/09/2010 07:31 AM

To: Bud_Oliveira@fws.gov, Desiree_Patterson@fws.gov, Ella_Denmon@fws.gov, Ellie_Arden@fws.gov, Tina_Dobrinsky@fws.gov

cc:

Subject: DCN: ESO-00024004 - Salazar CC"ed: Confederated Salish and Kootenai Tribes request negotiations for new Annual Funding Agreement for National Bison Range Complex activities

DEPARTMENT OF THE INTERIOR
TASKING PROFILE

ACCN #:	ESO-00024004	Status:	Closed	Fiscal Year:	2011
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
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

OFFICE OF THE
EXECUTIVE SECRETARIAT
2010 NOV 16 PM 2:25
RECEIVED
49660

From: "Jacobsen, Dana" <Dana.Jacobsen@sol.doi.gov>
To: Rundle, Dean; Brenna, Sharon; Willis, Cathey; King, Jeff
Cc: brianu@cskt.org
Subject: RE: Meeting on April 30??
Date: Thursday, April 12, 2012 10:16:35 AM

I am generally around that day except for the lunch hour.

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Thursday, April 12, 2012 9:20 AM
To: Jacobsen, Dana; Brenna, Sharon; Willis, Cathey; King, Jeff
Cc: brianu@cskt.org
Subject: Meeting on April 30??

I think Sharon and Brian Upton are wrapping up a last few details on our draft AFA with CSKT. The RD has been briefed,and Brian is scheduling a briefing with the tribal council in the next couple weeks. I met with him in Pablo on Tuesday this week, and we agreed that it would be good for all of us to get together soon to make final plans for NEPA compliance on the AFA. We've had some meetings last spring and a good phone call with SOL a couple months back, but time is moving and if we're going to get to implementation in early FY 13, we need to start writing that EA very soon.

Brian, Jeff and myself are all available for a meeting in Denver on Monday April 30, and need to know if Sharon and Cathy are available and if Dana wants to join as well. Please advise whether that date works and if we might possibly use a conference room at the SOL office. Thanks.

Dean

From:	Brian Upton <brianu@cskt.org>
To:	Dean_Rundle@fws.gov; Jeff_King@fws.gov; Sharon.Brenna@sol.doi.gov
Cc:	James Steele; Richard Janssen; Tom McDonald; daleb@cskt.org; Tony Harwood; James K. Steele; Ruth Swaney; brianu@cskt.org
Subject:	revised AFA
Date:	Friday, September 16, 2011 2:43:51 PM

Dean, Jeff, and Sharon,

Attached is a revised draft AFA. This draft should reflect: 1) all mutually agreed-upon changes to date; 2) all of FWS' proposed revisions from August with which CSKT concurs; and 3) CSKT's own proposed revisions to date. Please note that CSKT modified some of FWS' August revisions, so please review carefully all of those revisions that came from Dean's proposed August draft.

I added text identifying benefits to CSKT from the AFA, per Dean's suggestion. We appreciate the time and thought that went into the new subsection identifying the AFA's benefits to FWS.

The attached document is in change tracking format so you can easily identify any changes made from our base document, which is the FY 2009-11 AFA. With the change-tracking and comments, the draft is starting to get cumbersome to read, so hopefully we can go over this draft during our next conference call and come to agreement on most or all of the proposed changes. Then we could start with a clean document for a final round of edits, revisions and final clean-up (including formatting, cross-references, etc.).

Draft Environmental Assessment for a Draft Annual Funding Agreement

National Bison Range Complex
Moiese, Montana

INTERNAL REVIEW
April 2014

Prepared by
U.S. Fish and Wildlife Service
Region 6, Mountain-Prairie Region
National Wildlife Refuge System
134 Union Boulevard, Suite 300
Lakewood, CO 80228

Fw: Review of Chapter 1 language

1 message

Jeff_King@fws.gov <Jeff_King@fws.gov> Tue, Nov 13, 2012 at 10:06 AM
To: Laura_King@fws.gov, Brendan_Moynahan@fws.gov

See attached.

jk

AMERICA'S NATIONAL WILDLIFE REFUGES...
where wildlife comes first!
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----- Forwarded by Jeff King/R6/FWS/DOI on 11/13/2012 10:06 AM -----

"Brian Upton" <brianu@cskt.org>

11/06/2012 02:24 PM

To<Dean_Rundle@fws.gov>, <tom@cskt.org>

cc<Jeff_King@fws.gov>

SubjectRE: Review of Chapter 1 language

Dean,
Thanks for checking in with CSKT regarding the tribal background portions of your draft text. The attached documents include CSKT's proposed input (one file in change-tracking format and the other with identical clean text). I filled in some of the blanks regarding the Court of Claims opinion you had referenced, and made a few other proposed revisions and comments. I added for your consideration a sentence about the Act of May 25, 1948 regarding Ninepipe/Pablo, and also proposed a couple lines about Big Medicine since he was of great significance to CSKT and he helps illustrate the ongoing importance of the Bison Range to CSKT between the time of the Range's establishment and the Self-Determination era.

Most of the additions you see in the attached document come from Salish Cultural Committee staff, who drafted some proposed text after talking with NRD staff. The first sentence of the second paragraph in the attached files refers to various histories, records and ethnographic sources. I didn't include the examples provided by staff in the proposed revisions since I didn't think it had been your intent to incorporate that sort of secondary material. But, in case you either want to include examples of such sources in a footnote, or would like to have them on file, the materials cited by Cultural Committee staff include:

> (e.g., James Teit's "The Salishan Tribes of the Western Plateaus," ed. Franz Boas (*45th Annual Report of the Bureau of American Ethnology*, 1927-28),

Claude Schaeffer's ethnographic notes at the American Museum of Natural History in New York and Glenbow Institute in Calgary, the papers of Carling Malouf at the University of Montana, and volume XII the *Handbook of North American Indians*).

We understand that the EA is a federal document and that it is subject to your/FWS' decisions in terms of what to include or not include. The proposed text is not an official tribal statement but is offered in the spirit of what I understood you to be requesting: informal tribal staff review/input. Thanks again for the opportunity to share our thoughts and let me know if you have any questions.

BU

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Thursday, October 25, 2012 3:20 PM
To: brianu@cskt.org
Cc: Jeff_King@fws.gov
Subject: Review of Chapter 1 language

Brian: Based on advice from our SOL and per last week's meeting in Pablo, I'm attaching some excerpts from our Draft of Chapter 1 of the EA for the AFA. These paragraphs discuss items related to the culture, and history of the CSKT and some of it's members, your treaties with the United States, and CSKT participation in the Self-Governance Program.

Some of this language was pulled directly from the Tribes' website, and other material was gleaned from publications of the Salish Cultural Committee, and from papers I have that Rob McDonald and Refuge Staff worked on. Some of it is what I believe to be common knowldege from my own understanding of historic events from prior discussions with yourself, other CSKT staff and Council Members.

Please review these excerpts and let me know if you think this language accurately and appropriately reflects:

1. CSKT connection to the Flathead Reservation and NWRS lands on the Reservation;
2. Your treaties with the United States;
3. The roles of tribal members with bison in the 19th and early 20th centuries (do we have Latati's name correct. In one Cultural Committee document, he is referred to as "Latati (Little Peregrine Falcon Robe)", and in another as "Susep Latati")
4. Impacts of the Flathead Allotment Act of 1904
5. US policy towards Tribes, including CSKT participation in Self-Governance.

One excerpt is a short paragraph that addresses the successful CSKT lawsuit against the US in the late 60's or early 70's. I don't think I have an actual copy of that. If you can provide the proper date/citation/ and the amount of the award and tell me if you think we have accurately described the court decision in that case, that would be appreciated.

Thanks!

Dean

(See attached file: Chapter 1 Excerpts for CSKT Review - CSKT comments.doc)(See attached file: Chapter 1 Excerpts for CSKT Review - CSKT comments CLEAN.doc)

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2 attachments

Chapter 1 Excerpts for CSKT Review - CSKT comments.doc
46K

Chapter 1 Excerpts for CSKT Review - CSKT comments CLEAN.doc
41K

CSKT proposed edits, for FWS consideration:

The Confederated Salish and Kootenai Tribes (CSKT) are comprised primarily of the Salish (sometimes known as the Bitterroot Salish or Flathead), the Pend d'Oreille (also known as Kalispel), and Kootenai tribes. The 1.317 million acre Flathead Reservation is now the home of the CSKT, but their ancestors' aboriginal territory encompassed virtually all of what is now known as western and central Montana, parts of Idaho, eastern Washington, British Columbia and Wyoming. In the 19th century the aboriginal territory of the tribes west of the Continental Divide exceeded 20 million acres, most of which they ceded to the United States in the 1855 Hellgate Treaty. In that treaty, negotiated with Washington Territorial Governor Stevens, the CSKT reserved for themselves certain areas, including the Flathead Reservation, as well as the continued right to hunt and fish in aboriginal territory.

Although their home territory was mostly in the Columbia River drainage, the aboriginal territories of the tribes that comprise the CSKT encompassed vast areas on both sides of the Continental Divide, as documented in recorded oral histories, historical records, and many ethnographic and anthropological sources. Bison stood at the heart of the CSKT traditional way of life. Countless accounts of elders tell of the tribes' profound spiritual and physical relationship with the bison. Tribal members were bison-hunting people, and prior to the near-extinction of bison in the late 19th century the tribes made hunting trips at least bi-annually through the mountains to the plains of eastern Montana. Indeed they reserved hunting rights to buffalo country on the east side of the Continental Divide in the 1855 Hellgate and Judith River Treaties (12 Stat. 975 and 11 Stat. 657, respectively). "Going to buffalo" was part of the traditional cycle of life for these tribes.

Comment [BU1]: The CSKT attorneys I spoke with generally refer to this as the Treaty of the Upper Missouri, or the "Buffalo Commons" Treaty.

By the mid-nineteenth century, it was already clear to CSKT people that bison populations were in decline. As the decline accelerated, a Pend d'Oreille man named Atatice? (Peregrine Falcon Robe) proposed bringing bison back to the Flathead Reservation. At first, tribal leaders could not agree to such a fundamental change in the tribes' spiritual and cultural life. But in the late 1870's, as the extermination of bison unfolded and it became obvious that the annual bison hunts to the eastern plains of Montana could not continue, tribal leaders allowed the son of Atatice?, Łatatí (Little Peregrine Falcon Robe), to bring back some orphaned calves. Łatatí returned to the Flathead Reservation with some bison calves. Some years later, when the rescued calves had reached maturity and begun to reproduce, Łatatí's father-in-law, Samwél (often referred to as Samuel Walking Coyote) sold the bison to tribal member/ranchers Michel Pablo and Charles Allard, who grew the herd into hundreds of bison. Łatatí's calves were the nucleus of what became the famous Pablo-Allard herd that ranged on the Flathead Reservation until the Reservation was opened to non-Indian homesteaders by the Flathead Allotment Act of 1904. Ultimately, the Pablo-Allard herd provided the foundation for many of today's bison conservation herds, including the NBR herd and Canada's Elk Island herd. This herd also made a significant contribution to the Yellowstone National Park bison herd. Nearly 40% of the founders of today's Yellowstone herd were Pablo-Allard bison.

With the impending implementation of the Flathead Allotment Act of 1904, and the opening of tribal lands to non-Indian settlement, U.S. officials told Michel Pablo that he could no longer run his bison and cattle on the open range of the reservation. The American Bison Society (ABS), meanwhile, had been recently established by wealthy conservationists in New York, with the aim of saving bison from extinction. In 1908, Congress passed a law directing the President to set aside land on the Flathead Reservation for a national bison range, for which the ABS would provide bison. Pend d'Oreille elder Mose Čx̣awté (Chouteh) told of a meeting in the Reservation town of St. Ignatius in which a federal Indian agent informed tribal members of the National Bison Range's establishment. Mose Čx̣awté said that tribal leaders told the federal agent that they did not want to give up that land because it was some of their good hunting grounds, but the agent told them they had no choice in the matter.

ABS had wanted to purchase bison to stock the NBR from Pablo, but the parties could not agree on price, and Pablo sold his herd to the Canadian Government. However, Pablo-Allard bison were still available. Charles Allard had died in 1896, but his heirs had sold some of his bison to Charles Conrad, of Kalispell, MT, around 1901. In 1909, Conrad's widow, Alicia Conrad, agreed to sell 34 bison to ABS, and also to donate two of her best bulls. Those 36 bison, descended from Łatatí's calves and the Pablo-Allard herd, along with one cow donated by Charles Goodnight of Texas, and three calves donated by Mr. Corbin of New Hampshire in 1910, formed the original nucleus herd of 40 bison on the NBR.

In 1933, a white bison was born on the National Bison Range. Not a true albino, the bison had blue eyes and a white coat, but with a brown top-knot of hair between its horns. The bison was called Big Medicine and was of great significance to CSKT tribal members. Big Medicine died at the age of 26.

A federal court, in 1971, (*Confederated Salish and Kootenai Tribes v. United States*, 437 F.2d 458) found that the federal acquisition of Flathead Reservation land from the CSKT in 1908 -1909, including for the National Bison Range, was an "unconstitutional taking", and ordered the U.S. to pay CSKT, as just compensation for the lands (including the NBR property), the 1908 fair market value of the lands plus interest, a total of $XXXX.

On June 25, 1921, Pablo and Nine-pipe National Wildlife Refuges were established by Executive Order, on trust lands for which CSKT is the beneficial owner, within the Flathead Reservation. E.O. 3503 established Nine-pipe NWR as: "reserved subject to Reclamation Service uses, as a refuge and breeding ground for native birds." Nine-pipe NWR subsequently was provided purposes, under the Migratory Bird Conservation Act (MBCA) "for use as an inviolate sanctuary or for any other management purposes for migratory birds". Pablo NWR was established by E. O. 3504 "as a refuge and breeding ground for native birds". Significantly, in the cases of Pablo and Nine-pipe NWRs, the underlying land owner, the CSKT, requested that the United

Comment [BU2]: It appears that 1912 was the date of valuation for all of the lands in the Court of Claims case (see, *e.g.*, ¶ 34(b) in the finding of facts and ¶ 35 in the "Ultimate Conclusions of Fact and Law").

Comment [BU3]: Because I've often heard/read some incorrect references to what CSKT was paid under this Court of Claims case, I want to point out that the court paid interest "not as interest but as a part of just compensation" (see last paragraph of the opinion). I point this out because I think when some people see "with interest" they tend to think of it as a windfall or otherwise unearned profit from litigation. The court stressed that the tribes weren't getting interest on damages, but were having interest incorporated into what would be a fair calculation of "just compensation" for the taking of the lands.

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States establish these overlay refuges for bird conservation purposes on tribal lands. In § 5(b) of the Act of May 25, 1948 (62 Stat. 269), as part of its authorization of funds to be paid to CSKT as payment 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."

The policy of the United States towards various sovereign Indian Nations, from whom most of this country was acquired through treaty, has evolved and changed over the course of history. NBR was established during what is often referred to as the "Allotment Era" of US/Tribal policy. In the late 19th and early 20th centuries the policy of the United States was to attempt to absorb Indian people into the American melting-pot. Instead of tribes holding their reservations in common, each individual Indian was to have their own plot of land where they would learn to be farmers and ranchers, in a similar way that the original Northwest Ordinance and later Homestead Acts opened America, west of the Allegheny Mountains to settlement. The United States hoped and wrongly assumed that Indian farmers would assimilate into the predominant European agricultural economy and society. During this phase of relations between the federal government and tribes, the tribes lost much of the land that they had reserved for themselves in earlier treaties.

The Allotment Act was ended in 1934 by passage of the Indian Reorganization Act (IRA). The IRA represented the beginning of a new direction in federal policy that would support and encourage tribal self-government. Other than the federal government's brief turn to policies of termination and relocation in the 1950's, the federal government has continued to advance the IRA's objectives of increased tribal autonomy. Since the Nixon Administration, the official policy of the United States toward tribes has been a policy of self-determination and self-governance. Congress first codified the policy of self-determination and self-governance in the Indian Self-Determination and Education Assistance Act of 1975 (P.L. 93-638) (ISDEAA). Later amendments to that Act established the Tribal Self-Governance program, which outlines how tribes can achieve Self-Governance status and allows successful tribes to administer programs that previously had been administered by the Bureau of Indian Affairs, Indian Health Service, or other federal agencies. The CSKT was one of the first tribes to achieve Self-Governance status under provisions of the ISDEAA, and is acknowledged as among the most successful tribes participating in the Self-Governance program.

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