

From: [Brenna, Sharon](#)
To: [Will Meeks](#); [Noreen Walsh](#); [Dean Rundle](#)
Cc: [Dana Jacobsen](#)
Subject: CSKT meeting
Date: Thursday, October 31, 2013 11:45:04 AM

Dana thinks its appropriate to share the proposed schedule with CSKT.
Also believes its a nice idea for FWS to take official notes of the meeting to be included in the administrative record.

She's not feeling great just now, but says she can attend the meeting if you would like her to do that. An alternative may be for her to dial in to the meeting. Can you send us the telephone number just in case? Thanks!

Sharon

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



"Brenna, Sharon"
<Sharon.Brenna@sol.doi.gov>
>

05/06/2011 03:19 PM

To "Rundle, Dean" <dean_rundle@fws.gov>
cc "Brenna, Sharon" <Sharon.Brenna@sol.doi.gov>

bcc

Subject RE: AFA Negotiations

History:

✉ This message has been replied to.

Dean,

I just left you a message because our server was down for a time. As to your questions, (1) SOL HQ has determined that AFAs must be for one year, but can mention the expectation that there will be successor AFAs for a number of years. (2) I don't think there's any chance for a memo on FOIA as it relates to Self-Governance, but I think we have gone over that ground in detail during the litigation. (3) I don't believe CSKT can see the draft policy but will look into it. (4) As I recall, Cathy Willis made a distinction between team leaders and supervisors, and I will have to get with her on that.

So you see I haven't had time to do much with your questions so far, but will get to them next week. Things are crazy here.

Have a good weekend. Sharon

-----Original Message-----

From: Dean_Rundle@fws.gov [mailto:Dean_Rundle@fws.gov]
Sent: Friday, May 06, 2011 1:08 PM
To: Brenna, Sharon
Subject: Fw: AFA Negotiations

Hi Sharon - thanks for getting that conf. room reserved for next tuesday at your office - much appreciated.

I'm sure the CSKT will be interested to see if we have any answers or proposed answers to the questions posed below after our negotiating session in Polson back in mid-April. Just wondering if you've had time to chase down any of these issues?

Dean

----- Forwarded by Dean Rundle/R6/FWS/DOI on 05/06/2011 01:04 PM -----

Dean
Rundle/R6/FWS/DOI

04/18/2011 04:21
PM

Sharon Brenna/DNV/SOL/DOI

To

cc

Subject

AFA Negotiations

Sharon: Hi, just wanted to let you know that our meetings with CSKT went pretty well last week. Certainly a different environment than we had in 2008. It's still govt-to-govt negotiations, but the work Jeff did with the tribes during the last AFA certainly paid off in building trust, and we're in a much better place than we were 3 years ago. They are considering the proposals - as laid out in that negotiating platform I sent you last week - and we'll get back together in May. Jeff may go before the Tribal Council before then to further explain our positions/interests.

Several issues did come up last week that I told Brian I would have to get SOL advice on - so here's the initial list for you to chew on!

1. CSKT said they would like to have a new AFA for 10 years. This is to address the IG concern, and the concern we have about their ability to hire and retained a quality biologist. If they have a longer AFA, they can offer more job security. If you recall in 2008, I wanted a 5 year deal, but they would only do 3 years. I told Brian I wasn't aware of any authorities we have for agreements longer than 5 years. That is the max for us (5 yrs) for Cooperative Agreements - but I don't know if an AFA can be longer. Your advice/assistance is appreciated.

2. CSKT would like to see a written SOL Opinion on FOIA and how FOIA interacts with Self-Governance. Violation of FOIA was one of the charges in the PEER/BGA lawsuits and it seems to me that it would be good have SOL review the two laws to see if we can write an AFA that has less risk on the FOIA issue. I told Brian that typically, if we want a formal written SOL opinion, that usually means an written request from the Regional Director. I don't know if that goes to the Regional Solicitor, or if an issue like this would go to Washington. Brian seemed to think that SOLs at HQ would need to be involved. Your advice on how we would approach SOL to get such an opinion is appreciated.

3. CSKT knows that the Service is in the process of promulgating Agency-wide policy for AFAs. They know that the current negotiations we have with them are proceeding in the absence of Policy, but I also have guidance from my bosses to stay as close to draft policy as possible. I haven't seen the latest draft - I think it should come out this summer for Directorate-level internal review. CSKT would like to see that draft, but I told them I didn't think I could share that with them while it was still in internal review - but that I'd consult with you about that issue. Your thoughts appreciated.

4. We'd proposed that since the two staffs had worked well together in 09 and 10, that we should have more of combined staff, with everyone working under direction of the Project Leader/Deputy, each side formally supervising their own employees (performance/conduct/discipline, etc), and having Service and CSKT "leaders" directing day to day activities of everyone under them in the org chart. My idea was no IPAs, and that would just take the IPA charge off the table in further litigation. CSKT said that they did not believe there was a legal way for a CSKT employee (e.g. a Lead Biologist) to direct day to day work of a Federal employee (e.g. FWS lower-graded biologist) in the absence of an IPA agreement. Brian was citing provisions of the FAIR Act as prohibiting anyone other than a Fed to direct a Fed, in the absence of an IPA. Is that correct, or do you have any other ideas how that might work legally - if we didn't use IPA?

That's probably enough questions for you for now. Tentatively, CSKT will be coming to Denver for another negotiating meeting on May 11 - 12. Brian would like time during that trip to visit with you and Dana regarding NEPA

for a new AFA. What does your schedule look like for May 10 - 13? Can you check and see what Dana's calendar looks like that week?

Thanks! Maybe I'll see you tomorrow afternoon. A couple of us are coming over to visit about Seedskadee.

Dean

**Stephen
Guertin/R6/FWS/DOI**

02/01/2011 02:22 PM

To Gregory Siekaniec/NWRS/R9/FWS/DOI@FWS
cc Noreen Walsh/R6/FWS/DOI@FWS, Dean
Rundle/R6/FWS/DOI@FWS, Rick
Coleman/R6/FWS/DOI@FWS
Subj Re: Annual Funding Agreement⁽¹⁾
ect

We will get something pulled together for you and loaded into DTS through the system. I got a brief update from Dean after his return from Montana last Friday on some options.

Steve Guertin
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

-----Gregory Siekaniec/NWRS/R9/FWS/DOI wrote: -----

To: Stephen Guertin/R6/FWS/DOI@FWS, Noreen Walsh/R6/FWS/DOI@FWS
From: Gregory Siekaniec/NWRS/R9/FWS/DOI
Date: 02/01/2011 02:16PM
cc: Dean Rundle/R6/FWS/DOI@FWS, Rick Coleman/R6/FWS/DOI@FWS
Subject: Annual Funding Agreement

Hi Steve/Noreen,

We have a meeting request from Councilman Steele of the **Confederated Salish and Kootenai Tribes (CSKT)** to discuss the National Bison Range AFA and temporary hiring for this spring. Please provide an updated brief on the issue. Please indicate how you anticipate meeting the spring hiring need for the Bison Range. Also, knowing your preference for completing the next AFA will help the discussions as well. As you recently pointed out DAS Lyder voiced concern about completing an EA for a contract matter that is categorically excluded and has provisions for exceptional circumstances being addressed. I know recent discussions have centered around the idea that controversy may influence the use of either a cat ex or EA but concern is mounting that we need to advance the process.

The meeting request is for as early as next Wednesday morning. Please provide the brief no later than COB Tuesday 8 February. Sorry for the short time frame but the request came in just this afternoon.

greg

February 7, 2011

INFORMATION MEMORANDUM FOR THE ACTING DEPUTY DIRECTOR

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

SUBJECT: DCN: 047362 – Request for Briefing Paper on Annual Funding Agreement

I. SUMMARY

The Service continues Government-to-Government consultation with the Confederated Salish and Kootenai Tribes (CSKT) regarding the National Bison Range (NBR).

On January 27, 2011, Refuge Supervisor Rundle and NBR Refuge Manager King met with CSKT Staff and Tribal Council members to discuss options for continuing the Service/CSKT partnership at NBR. The two main issues were: format of new NEPA compliance document for a new AFA; and options for staffing NBR for the interim period before a new AFA can become effective

During the week of February 7, the Acting Dep. Director will meet with CSKT Tribal Council Member, James Steele, Jr. to continue the Government-to-Government discussion.

II. DISCUSSION

- DAS Lyder has indicated a desire to prepare a new CATEX to cover a new AFA to avoid precedent for preparing EAs for “contracts”. CSKT believes the Service should prepare an EA because of the controversy surrounding past AFAs at NBR, and concern that the Service would lose a NEPA lawsuit if a new AFA is based on a CATEX.
- R6, CSKT, and Rocky Mountain SOL have investigated various options for interim staffing. Options considered and rejected by one or more parties are: Cooperative Agreement; IPA Assignments; sole-source contract.
- R6 concurs that a CATEX, with statements addressing potential extraordinary circumstances, should be adequate NEPA compliance for a new AFA. However, R6 agrees with CSKT that preparing an EA for a new AFA at NBR would not set a precedent that would require the Service/DOI to prepare an EA for all future AFAs or for contracts. Therefore, R6 supports the CSKT proposal to prepare an EA for a new AFA for NBR.
- In negotiating a new AFA, R6 believes that changes from the voided FY 2009 – 2011 AFA are needed. These include: (1) the Service should not include the Outdoor Recreation Planner position in a new AFA; and (2) the Service should not provide the CSKT with a “co-equal” deputy refuge manager position in a new AFA. Rundle provided those recommendations to CSKT staff and one Tribal Council Member on January 27.

- In discussions with the CSKT Tribal Attorney on Feb. 1, 2011, R6 agreed with the Attorney that the parties would work to have a new AFA in effect “sometime” in FY 12, not in FY 11.
- CSKT Staff, and Tribal Council Members have been advised that CSKT will need to address their hiring practices as they relate to the Tribes’ ability to recruit and retain high quality senior employees. The Tribes currently have no equivalent of “career status” for their professional employees who all serve on multi-year contracts. This particularly relates to the Lead Biologist (GS-12 equivalent position), that was subject to draft IG Report Recommendations. R6 recommends that the Tribal Council provide the Service with a plan on how they can improve in recruiting/retention at that level before the Lead Biologist position is offered to the Tribes as part of a new AFA.
- NBR currently has eight (8) PFT Service employees on staff. This includes a Maintenance Position, Range Mgmt. Specialist/Biologist, and Full-Time LEO that were not assigned during the 2007 – 2008 time period between the two prior AFAs.
- R6 is proceeding with agency staffing actions to hire the necessary term/temporary/seasonal positions, as federal employees, needed to operate NBR during the remainder of FY 11, and until a new AFA can be negotiated and implemented. R6 will be recruiting to increase the workforce diversity of the Service staff at NBR. R6 will be recruiting for lower-graded seasonal positions through STEP authority at Salish Kootenai College, and will be working within merit staffing principles and OPM regulations to recruit a well qualified applicant pool, including well-qualified former CSKT employees for other positions.

Prepared by: Stephen Guertin, Regional Director, (303) 236-7920
Date: February 7, 2011

From: [Matt Hogan](#)
To: [Noreen Walsh](#)
Subject: Fwd: CSKT Meeting in DC (Wed, March 20th)
Date: Tuesday, March 19, 2013 10:19:09 AM
Attachments: [BP NBR AFA EA 3 18 2013 final.doc](#)

Still seems a little thin on the SOL opinion but better than it was. ♦ Will you forward to Jorge?

Matt Hogan
Deputy Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
303-236-7920

Begin forwarded message:

From: Will Meeks <Will.Meeks@fws.gov>
Date: March 19, 2013, 9:42:42 AM MDT
To: Matt Hogan <matt_hogan@fws.gov>
Cc: Noreen Walsh <noreen_walsh@fws.gov>
Subject: RE: CSKT Meeting in DC (Wed, March 20th)

See attached with SOL opinion.



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



From: Matt Hogan [mailto:matt_hogan@fws.gov]
Sent: Monday, March 18, 2013 8:30 PM
To: Will Meeks
Cc: Noreen Walsh
Subject: Re: CSKT Meeting in DC (Wed, March 20th)



Will,
The memo does not say what the SOL opinion said....we should include that♦

Matt Hogan
Deputy Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
303-236-7920

On Mar 18, 2013, at 5:31 PM, Will Meeks <Will.Meeks@fws.gov> wrote:

Matt,



Here's a BP that included the timeline that Jorge references below.



Will Meeks

U.S. Fish and Wildlife Service

Mountain-Prairie Region

Assistant Regional Director

NWRS and PFW

303-236-4303 (w)



From: Matt Hogan [mailto:matt_hogan@fws.gov]

Sent: Monday, March 18, 2013 11:57 AM

To: Will Meeks

Subject: FW: CSKT Meeting in DC (Wed, March 20th)



See below. can you update the memo accordingly.



From: Noreen Walsh [mailto:noreen_walsh@fws.gov]

Sent: Monday, March 18, 2013 10:59 AM

To: jorge_silva-banuelos@ios.doi.gov; Dean_Rundle@fws.gov

Cc: Rachel_Jacobson@ios.doi.gov; matt_hogan@fws.gov; will_meeks@fws.gov

Subject: Re: CSKT Meeting in DC (Wed, March 20th)



Thanks Jorge, I will get something back to you this week.

Noreen



From: Silva-Banuelos, Jorge [mailto:jorge_silva-banuelos@ios.doi.gov]

Sent: Monday, March 18, 2013 09:08 AM

To: Noreen Walsh <noreen_walsh@fws.gov>; Dean Rundle <dean_rundle@fws.gov>

Cc: Jacobson, Rachel L <Rachel_Jacobson@ios.doi.gov>

Subject: CSKT Meeting in DC (Wed, March 20th)



Hi Noreen and Dean:



CSKT Chairman Joe Durgalo has set up a meeting with the Assistant Secretary for Indian Affairs this Wednesday, and Rachel and I were just invited to attend. The folks over at AS/IA assume bison and the AFA will come up.




I think we have enough info with respect to bison, but I could use some help to provide Rachel with an update on where things stand with the AFA.



I've attached the last briefing memo that you all provided us back in October for our trip. Is the timeline listed in this memo still on schedule? Did SOL get back to you with the opinion you

requested back in July?



Thanks for your help. 

Jorge Silva-Ba  uelos | Special Assistant | Office of the Assistant Secretary for Fish and Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 |  202.208.6211 (direct)

jorge@ios.doi.gov

<BP NBR AFA EA 3 18 2013.dr.a.doc>

INFORMATION MEMORANDUM FOR THE ACTING ASSISTANT SECRETARY

FROM: Noreen Walsh, Regional Director, Region 6 FWS

SUBJECT: National Bison Range Annual Funding Agreement

I. Summary: In March 2012, Region 6 and the Confederated Salish and Kootenai Tribes (CSKT) completed government-to-government negotiations for a new Annual Funding Agreement (AFA) for CSKT self-governance participation at the National Bison Range (NBR) Complex. To evaluate the negotiated agreement and comply with the National Environmental Policy Act (NEPA), it was decided to prepare a robust Environmental Assessment (EA) to evaluate the draft AFA and other viable alternatives for entering into a partnership with CSKT.

II. Status:

- Public scoping for the EA was initiated in May 2012 and ended in June 2012. Sixteen substantive scoping comments were received from individuals and organizations.
- Based on a scoping comment, a formal Solicitor's Opinion was requested (July 2012). The written opinion was received in December 2012 and was shared with CSKT. The opinion stated the Service cannot use Refuge Act authority for Cooperative Agreements to allow tribes to operate full refuge programs, but the Secretary has other authorities that allow full programs to be included in AFA.
- CSKT was provided all scoping comments; CSKT legal staff provided written responses.
- An EA team (refuge and regional staff) began drafting the EA in July 2012. In addition to the negotiated AFA and the No Action alternative, the EA team developed and is considering 3 other AFA alternatives. Region 6 contracted with a NEPA consulting firm, to prepare the Environmental Consequences chapter.
- CSKT provided comments on portions of the draft EA that characterizes the tribe, their history, and treaty. On advice of the Office of the Rocky Mountain Regional Solicitor (SOL), the complete draft AFA will be shared with CSKT after completion of the Environmental Consequences by the contractor and prior to public release.

III. Timeline:

- First drafts of Chapters 1 through 4, including purposes and need, issues, and alternatives, have been provided to the SOL for review prior to conducting impact analysis.
- The EA team plans to provide these draft chapters to the contractor by April 29. The contractor estimates the impact analysis should take no more than two months (the end of June).
- A draft EA should be ready in late July 2013 for a 30 day public review and comment period.
- If a FONSI is signed in the 4th Qtr, FY13, followed by the required 90 day report to Congress, an AFA could be implemented beginning in the 2nd Qtr, FY14. If the Regional Director decides an EIS is necessary that will delay an AFA for at least another year.
- CSKT Tribal Council was briefed on January 29, 2013 regarding the extended timeline.

IV. Issues of Concern: The solicitor review of the current draft chapters could generate additional questions and require revision of draft chapters prior to sending them to the contractor.

Prepared by: Dean Rundle, Refuge Supervisor, (303) 236-4306

Date: March 19, 2013

From: [Will Meeks](#)
To: [Noreen Walsh](#); [Matt Hogan](#)
Subject: RE: CSKT Meeting in DC (Wed, March 20th)
Date: Tuesday, March 19, 2013 11:44:15 AM
Attachments: [BP NBR AFA EA 3 18 2013.final.doc](#)

Yes – Env. Consequences. Changed on the attached.

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

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Tuesday, March 19, 2013 10:27 AM
To: Will Meeks; Matt Hogan
Subject: RE: CSKT Meeting in DC (Wed, March 20th)

Will, is the “impact analysis” the same as the “environmental consequences” section you have contracted out for?

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Tuesday, March 19, 2013 9:43 AM
To: Matt Hogan
Cc: Noreen Walsh
Subject: RE: CSKT Meeting in DC (Wed, March 20th)

See attached with SOL opinion.

Will Meeks
U.S. Fish and Wildlife Service
Mountain-Prairie Region
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Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | 📞 202.208.6211
(direct)

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<BP NBR AFA EA 3 18 2013.dr.a.doc>

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Date: Tuesday, March 19, 2013 9:42:44 AM
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- CSKT was provided all scoping comments; CSKT legal staff provided written responses.
- An EA team (refuge and regional staff) began drafting the EA in July 2012. In addition to the negotiated AFA and the No Action alternative, the EA team developed and is considering 3 other AFA alternatives. Region 6 contracted with a NEPA consulting firm, to prepare the Environmental Consequences chapter.
- CSKT provided comments on portions of the draft EA that characterizes the tribe, their history, and treaty. On advice of the Office of the Rocky Mountain Regional Solicitor (SOL), the complete draft AFA will be shared with CSKT after completion of the Environmental Consequences by the contractor and prior to public release.

III. Timeline:

- First drafts of Chapters 1 through 4, including purposes and need, issues, and alternatives, have been provided to the SOL for review prior to conducting impact analysis.
- The EA team plans to provide these draft chapters to the contractor by April 29. The contractor estimates the impact analysis should take no more than two months (the end of June).
- A draft EA should be ready in late July 2013 for a 30 day public review and comment period.
- If a FONSI is signed in the 4th Qtr, FY13, followed by the required 90 day report to Congress, an AFA could be implemented beginning in the 2nd Qtr, FY14. If the Regional Director decides an EIS is necessary that will delay an AFA for at least another year.
- CSKT Tribal Council was briefed on January 29, 2013 regarding the extended timeline.

IV. Issues of Concern: The solicitor review of the current draft chapters could generate additional questions and require revision of draft chapters prior to sending them to the contractor.

Prepared by: Dean Rundle, Refuge Supervisor, (303) 236-4306

Date: March 19, 2013

From: [Noreen Walsh](#)
To: [Jorge Silva-Banuelos](#); [Rachel Jacobson](#); [Jim Kurth](#); [Steve Guertin](#)
Cc: [Matt Hogan](#); [Will Meeks](#)
Subject: RE: CSKT Meeting in DC (Wed, March 20th)
Date: Tuesday, March 19, 2013 2:53:37 PM
Attachments: [20130319_BP_NBR_AFA_EA_3_18_2013.final.doc](#)

Attached is an update about the status of the AFA with CSKT.

Please let us know if you have questions.

Thanks,
Noreen

From: Silva-Banuelos, Jorge [mailto:jorge_silva-banuelos@ios.doi.gov]
Sent: Monday, March 18, 2013 10:08 AM
To: Noreen Walsh; Dean Rundle
Cc: Jacobson, Rachel L
Subject: CSKT Meeting in DC (Wed, March 20th)

Hi Noreen and Dean:

CSKT Chairman Joe Durgalo has set up a meeting with the Assistant Secretary for Indian Affairs this Wednesday, and Rachel and I were just invited to attend. The folks over at AS/IA assume bison and the AFA will come up.

I think we have enough info with respect to bison, but I could use some help to provide Rachel with an update on where things stand with the AFA.

I've attached the last briefing memo that you all provided us back in October for our trip. Is the timeline listed in this memo still on schedule? Did SOL get back to you with the opinion you requested back in July?

Thanks for your help.

[Jorge Silva-Bañuelos](#) | Special Assistant | Office of the Assistant Secretary for Fish and Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | ☎ 202.208.6211 (direct)

jorge@ios.doi.gov

INFORMATION MEMORANDUM FOR THE ACTING ASSISTANT SECRETARY

FROM: Noreen Walsh, Regional Director, Region 6 FWS

SUBJECT: National Bison Range Annual Funding Agreement

I. Summary: In March 2012, Region 6 and the Confederated Salish and Kootenai Tribes (CSKT) completed government-to-government negotiations for a new Annual Funding Agreement (AFA) for CSKT self-governance participation at the National Bison Range (NBR) Complex. To evaluate the negotiated agreement and comply with the National Environmental Policy Act (NEPA), it was decided to prepare a robust Environmental Assessment (EA) to evaluate the draft AFA and other viable alternatives for entering into a partnership with CSKT.

II. Status:

- Public scoping for the EA was initiated in May 2012 and ended in June 2012. Sixteen substantive scoping comments were received from individuals and organizations.
- Based on a scoping comment, a formal Solicitor's Opinion was requested in July, 2012. The written opinion was received in December, 2012 and was shared with CSKT. The gist of the opinion is that the Service cannot use Refuge Act authority for Cooperative Agreements to allow tribes to operate full refuge programs, but that the Secretary has other authorities that allow full programs to be included in AFA.
- CSKT was provided all scoping comments; CSKT legal staff provided written responses.
- An EA team (refuge and regional staff) began drafting the EA in July 2012. In addition to the negotiated AFA and the No Action alternative, the EA team developed and is considering 3 other AFA alternatives. Region 6 contracted with a NEPA consulting firm, to prepare the Environmental Consequences chapter.
- CSKT provided comments on portions of the draft EA that characterizes the tribe, their history, and treaty. On advice of the Office of the Rocky Mountain Regional Solicitor (SOL), the complete draft AFA will be shared with CSKT after completion of the Environmental Consequences by the contractor and prior to public release.

III. Timeline:

- First drafts of Chapters 1 through 4, including purposes and need, issues, and alternatives, have been provided to the SOL for review.
- Following SOL review, these draft chapters will be provided to the contractor NLT April 29. The contractor estimates the analysis of environmental consequences should take no more than two months (the end of June).
- A draft EA should be ready in late July 2013 for a 30 day public review and comment period.
- If a FONSI is signed in the 4th Qtr, FY 13, followed by the required 90 day report to Congress, an AFA could be implemented beginning in the 2nd Qtr, FY 14. If the Regional Director decides an EIS is necessary that will delay an AFA for at least another year.
- CSKT Tribal Council was briefed on January 29, 2013 regarding the extended timeline.

IV. Issues of Concern: The solicitor review of the current draft chapters could generate additional questions and require revision of draft chapters prior to sending them to the contractor.

Prepared by: Dean Rundle, Refuge Supervisor, (303) 236-4306
Date: March 18, 2013

From: [Matt Hogan](#)
To: [Paul Santavy](#)
Subject: RE: SOL Opinion "Tribal Self-Governance AFAs for Management of Refuge Programs" 12-31-12
Date: Tuesday, January 08, 2013 11:08:40 AM

Don't do that. I don't even know what the suit was over.

From: Santavy, Paul [mailto:paul_santavy@fws.gov]
Sent: Tuesday, January 08, 2013 8:35 AM
To: Matt Hogan
Subject: Re: SOL Opinion "Tribal Self-Governance AFAs for Management of Refuge Programs" 12-31-12

This is all I have. I can assign someone to write a summary if you'd like, but most likely not available until later in the week.

PAUL SANTAVY, CFP, AWP
Deputy ARD - NWRS and PFW
Mountain-Prairie Region
U.S. Fish & Wildlife Service
Phone: 303-236-4304
Cell: 307-690-6072

On Tue, Jan 8, 2013 at 8:29 AM, Matt Hogan <matt_hogan@fws.gov> wrote:
Do you have anything a little shorter (like a page) that summarizes the issue by chance?

From: Santavy, Paul [mailto:paul_santavy@fws.gov]
Sent: Tuesday, January 08, 2013 8:27 AM
To: Matt Hogan
Subject: Fwd: SOL Opinion "Tribal Self-Governance AFAs for Management of Refuge Programs" 12-31-12

SOL opinion

PAUL SANTAVY, CFP, AWP
Deputy ARD - NWRS and PFW
Mountain-Prairie Region
U.S. Fish & Wildlife Service
Phone: 303-236-4304
Cell: 307-690-6072

----- Forwarded message -----

From: **Rundle, Dean** <dean_rundle@fws.gov>
Date: Thu, Jan 3, 2013 at 2:37 PM
Subject: Fwd: SOL Opinion "Tribal Self-Governance AFAs for Management of Refuge Programs" 12-31-12
To: Paul Santavy <paul_santavy@fws.gov>

Paul: here's the SOL opinion on the NBR issue we had Noreen request last summer. I won't have time to read it before the weekend. Plan to read it then and discuss with Jeff King on Monday afternoon. Maybe you want to sit in on that call. After that, we'll share with CSKT.

Dean

----- Forwarded message -----

From: **Rundle, Dean** <dean_rundle@fws.gov>

Date: Thu, Jan 3, 2013 at 12:58 PM

Subject: Fwd: SOL Opinion "Tribal Self-Governance AFAs for Management of Refuge Programs" 12-31-12

To: Jeff King <Jeff_King@fws.gov>

Jeff: Here is the SOL opinion. I haven't read it yet - too busy packing boxes for our move out. Probably won't get to it until Monday. Note Matt McKeown's admonition to check with SOL prior to sharing outside FWS.

I will need to share this with CSKT, but will not do that until I get another OK from SOL, and not before we both can read this and then talk about it next week.

Dean

----- Forwarded message -----

From: **Brenna, Sharon** <sharon.brenna@sol.doi.gov>

Date: Thu, Jan 3, 2013 at 12:45 PM

Subject: SOL Opinion "Tribal Self-Governance AFAs for Management of Refuge Programs" 12-31-12

To: Noreen Walsh <noreen_walsh@fws.gov>, paul_santivy@fws.gov, Dean Rundle <dean_rundle@fws.gov>

Cc: Dana Jacobsen <dana.jacobsen@sol.doi.gov>, Matthew McKeown <Matthew.McKeown@sol.doi.gov>, Sharon Brenna <sharon.brenna@sol.doi.gov>

Noreen/Paul/Dean: Attached is the SOL opinion signed 12/31/2012. You may wish to engage with your external affairs personnel to coordinate discussion with the public if you feel it is appropriate. Please let us know if you have any questions.

Sharon

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



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

DEC 31 2012

MEMORANDUM

To: Regional Director, Region 6, U.S. Fish and Wildlife Service

From: Associate Solicitor for Parks and Wildlife *Bay Roberts*
Regional Solicitor, Rocky Mountain Region *Muller*

Subject: Tribal Self-Governance Annual Funding Agreements for Management of
Refuge Programs

This responds to your request for legal guidance on the U.S. Fish and Wildlife Service's (FWS or the Service) authority to enter into annual funding agreements (AFAs) with Self-Governance tribes for management of programs at National Wildlife Refuges. Your inquiry raises two questions:

1. Is Section 4(b)(4) of the National Wildlife Refuge System Administration Act (the Refuge Act), which references cooperative agreements only with State fish and wildlife agencies, an exclusive authority that serves to prohibit (pursuant to Section 403(k) of the Tribal Self-Governance Act of 1994) the type of participation (management of full programs) sought by the Confederated Salish and Kootenai Tribes (CSKT) at the National Bison Range Complex (NBRC) and which the Service has previously agreed the tribes could perform?

2. Does the enactment of the National Wildlife Refuge System Improvement Act of 1997 (the Improvement Act) modify any aspect of the Solicitor's Office opinions issued on May 8, 1995, that provided general guidance with respect to implementation of the Tribal Self-Governance Act of 1994, as it relates to the National Wildlife Refuge System?

Section 4(b)(4) of the Refuge Act specifically authorizes the Service "to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." "Cooperative agreement" is a term of art defined in 31 U.S.C. § 6305: In pertinent part, it is "the legal instrument reflecting a relationship between the United States Government and a [recipient] when . . . the principal purpose of the relationship is to transfer a thing of value to the [recipient] to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring . . . property or services for the direct benefit or use of the United States Government . . ." *Id.*, (emphasis added). Section 4(b)(4) provides for cooperative agreements for the management of programs on a refuge exclusively with State fish and wildlife

agencies. At the same time, the Section does not prohibit the Service from entering into cooperative partnerships in general, and does not prohibit the Service from entering into AFAs with self-governance tribes for management of programs on a refuge.

The Secretary of the Interior has numerous broad cooperative authorities in the management of fish and wildlife and their habitat. For example, the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq., authorizes the Secretary to “provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat” The Fish and Wildlife Act of 1956, 16 U.S.C. § 742f et seq., provides the Secretary almost open-ended authority to “take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources”

An AFA per se is not a cooperative agreement as referred to in section 4(b)(4) of the Refuge Act, or as defined in 31 U.S.C. § 6305; rather, it is a legal instrument authorized under the Tribal Self-Governance Act, of which the underlying policy is “to permanently establish and implement tribal self-governance” Tribal Self-Governance Act of 1994, Pub. L. No. 103-413, Title II, § 203, 108 Stat. 4271. An AFA allows tribes to administer, i.e., manage, programs “which are of special geographic, historical, or cultural significance” to them and which would otherwise be “administered by the Secretary of the Interior.”¹ 25 U.S.C. § 458cc(c).

The broad authorities cited above grant the Secretary the ability to enter into agreements for management of programs on refuges with entities other than States. This view is buttressed by the positions taken by the Department of Justice in its brief in the recent litigation involving the NBRC, in which it stated, “[A]greements for management of programs at a refuge are not limited to state fish and wildlife agencies.” According to the Government’s brief:

[T]he Chairman and Ranking Member of the House Committee on Natural Resources stated in a letter to the Secretary of the Interior on May 15, 2007, in support of further negotiations with the CSKT, that partnerships with Tribes should be viewed no differently than partnerships with State governments, particularly in this case:

Working with Tribal governments in the same manner under the authorization of the Tribal Self-Governance Act should not be

¹It is important to point out here that the “management of programs” delegated to tribes under AFAs pursuant to the Tribal Self-Governance Act cannot include, and therefore, as used in this opinion, does not refer to those aspects of administering a national wildlife refuge that involve inherently federal functions which constitutionally can only be performed by a federal official. *See* 25 U.S.C. § 458cc(k). Since the enactment of the Tribal Self-Governance Act in 1994, the Solicitor’s Office has consistently advised that AFAs may not allow tribes to assume management functions that involve decisions that can only be made by a federal official. This same limitation applies equally to cooperative agreements with States under section 4(b)(4) of the Refuge Act—such agreements may not allow a State fish and wildlife agency to make inherently federal decisions or perform inherently federal functions in the “management of programs” at a national wildlife refuge.

viewed any differently than partnering with State governments especially in this instance where the [CSKT] owns the land on which the ancillary facilities of the ... National Bison Range Complex [the Ninepipe and Pablo National Wildlife Refuges] are located.

In addition, conservation partnerships with Tribes are allowed by Executive Order and by statute. Executive Order 12996 of March 25, 1996, 61 Fed. Reg. 13647, provides that, in furtherance of the Refuge Act, among other wildlife protection laws, one guiding principle is that “[c]onservation partnerships with ... **Tribes** . . . can make significant contributions to the growth and management of the Refuge System.” Executive Orders are ordinarily “accorded the force and effect of a statute.”

Moreover, although the Refuge Act allows the Secretary to enter into cooperative agreements with States, it does not preclude similar arrangements with others. In other words, it does not limit the Secretary’s authority The statute does not indicate that the Secretary may only enter into cooperative partnerships with States. . . . [T]he Agency’s interpretation of other statutes as providing ample authority for the AFA with the CSKT is a reasonable one and represents a reasonable policy choice for the Department of Interior to make. The AFA represents a reasonable balancing of the statutory goals of both the Refuge Act and the Tribal Self-Governance Act, as well as the Executive Order, and a harmonious reading of all three [is] what the Secretary is required to do.²

We agree with the Department of Justice’s reasoning as shown above, supporting the Secretary’s authority to enter into management programs on refuges with entities other than States.

The disclaimer found at Section 403(k) of the Tribal Self-Governance Act of 1994 does not preclude the Secretary from entering into AFAs with self-governance tribes for management of refuge programs. It provides:

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) [for non-BIA programs] 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).

² Federal Defendants’ Memorandum in Support of their Cross-Motions for Summary Judgment and Oppositions to Plaintiffs’ Motions for Summary Judgment at 13-15, *Reed v. Salazar*, 744 F. Supp. 2d 98 (D.D.C. 2010) (Nos. 08-2117 and 09-640) (citations omitted; emphasis supplied by DOJ).

This disclaimer sets forth two exceptions: Section 403 is not intended to expand or alter existing statutory authorities to authorize an agreement for non-BIA programs (1) with respect to inherently federal functions; or (2) where the statute establishing the existing program does not authorize the type of participation sought by the tribes. The Solicitor's Office has previously worked with you on the CSKT AFA and we are in agreement that the programs, services, functions and activities which you have previously agreed to include in the predecessor AFAs are not inherently federal. Thus, the only question raised at this time is the interpretation of the second exception, "where the statute establishing the existing program does not authorize the type of participation sought by the tribes."

This exception was addressed in the memorandum dated May 8, 1995, from Solicitor John Leshy, which also included as an attachment a memorandum from Associate Solicitor Robert Baum. As explained in the Leshy memorandum, this exception is inapplicable to the Refuge Act and similar generic statutes that vest general management responsibility in a particular agency. It applies only to "those statutes that specifically and affirmatively prevent delegation or compacting under Self-Governance certain functions that would otherwise be compactible"; for example, more specific programs like state-federal wildlife revenue sharing, or specific functions like law enforcement.

The Leshy memorandum bases this conclusion on four factors: (1) the broader reading, that the exception referred to generic statutes, would render superfluous the other exception in the disclaimer—inherently federal functions; (2) the proviso in the disclaimer that tribes "need not be identified in an authorizing statute in order for a program or element of a program" to be compactible suggests that Congress "did not want breadth of scope or lack of specificity in a statute by itself to create a blanket exclusion from compactibility"; (3) the legislative history shows that Senator John McCain, a principal sponsor of the Tribal Self-Governance Act, explained this exception by citing two relatively discrete programs—the Federal Aid in Fish Restoration Act and the Federal Aid in Wildlife Restoration Act—rather than something as generic as Refuge administration; and (4) the Supreme Court has long recognized broad authority in federal agencies to contract for the assistance of others in the performance of their responsibilities.

The Baum memorandum provides more specific guidance as to the meaning of the disclaimer, which is that "general management of refuges and parks can only be compacted with self-governance tribes (a) to the extent that such functions are not inherently federal, and (b) the 'type of participation sought,' either the role the tribe intends to play in administering the activity or the authority under law for particular units or officers of government to carry out the particular activity involved, is not precluded by the underlying organic authorities of FWS and NPS." (Emphasis in original)

The Baum memorandum does provide an example where the second exception would apply—Coordination Areas. These are "areas that have been withdrawn from the public domain or have been acquired and made available to a state by a cooperative agreement [citing the Fish and Wildlife Coordination Act]. . . . Thus, these areas would not be available for compact because

the statute is not sufficiently broad to include Indian tribes within those who may carry out this specific activity.”

As the Leshy memorandum states, the “better reading of Section 403(k) is as a caution that the Secretary may neither divest inherently federal functions by compact, nor be disabled from compacting other functions so long as *no specific statute prevents such compacting*.” (Emphasis added.) While the Baum memorandum may in retrospect be somewhat ambiguous in several respects, we see nothing in it that is inconsistent with the Leshy memorandum or suggests that a self-governance tribe is actually precluded from entering into an AFA for management of refuge programs. In any event, a Coordination Area would not be available to a self-governance tribe while its management is being undertaken by a separate entity. Nor do we read Section 4(b)(4) as precluding the Service from utilizing the cooperative agreement authority referenced in the Baum memorandum. We see nothing in the subsequent enactment of the Improvement Act that changes the advice provided in these two memorandums concerning implementation of the Tribal Self-Governance Act within the Refuge System.

Conclusion:

The Secretary is specifically authorized under a provision of the Refuge Act to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on wildlife refuges. Although that specific provision of the Refuge Act does not authorize the Secretary to enter such cooperative agreements with tribes, under the Tribal Self-Governance Act and his broad cooperative authorities, the Secretary may enter into AFAs with tribes for the management of refuge programs, so long as they do not involve the transfer of inherently federal functions or administrative functions that are statutorily prohibited from such transfer.

From: [Brenna, Sharon](#)
To: [Noreen Walsh](#); [Will Meeks](#)
Cc: [Dana Jacobsen](#)
Subject: Self-Governance/Inherently federal issues
Date: Thursday, August 22, 2013 3:50:10 PM
Attachments: [OMB Policy Letter 11-01 9-12-11.pdf](#)
[050895 Leshy memo on Indian Self Governance, attaching Baum, Beneke memos.pdf](#)
[123112 Roth-McKeown Memo on Tribal Self-Governance AFAs for Management of Refuge Programs.pdf](#)

Noreen, Will,

Attached are the OMB Policy Letter and the Solicitor's Office memos. Please let me know if there's anything else you would like me to send you.

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

nonresponse in key Bureau surveys. Moreover, as the use of Web-based surveys continues to grow, so too will the need for careful tests of instrument design and usability, human-computer interactions, and the impact of multiple modes on data quality. The BSRL is uniquely equipped with both the skills and facilities to accommodate these demands.

The extension of the accompanying clearance package reflects an attempt to accommodate the increasing interest by BLS program offices and other agencies in the methods used, and the results obtained, by the BSRL. This package reflects planned research and development activities for FY2012 through FY2014, and its approval will enable the continued productivity of a state-of-the-art, multi-disciplinary program of behavioral science research to improve BLS survey methodology.

III. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: Cognitive and Psychological Research.

OMB Number: 1220-0141.

Affected Public: Individuals and Households, Private Sector.

Total Respondents: 1,200.

Frequency: One time.

Total Responses: 1,200.

Average Time per Response: 60 minutes.

Estimated Total Annual Burden

Hours: 1,200 hours.

Total Burden Cost (capital/startup): \$0.

Total Burden Cost (operating/maintenance): \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 31st day of August 2011.

Kimberley D. Hill,

*Chief, Division of Management Systems,
Bureau of Labor Statistics.*

[FR Doc. 2011-23209 Filed 9-9-11; 8:45 am]

BILLING CODE 4510-24-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Publication 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 (Pub. L. 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 FR 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 (Pub. L. 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 FR 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 FR16188–94.

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 (Pub. L. 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.	<p><i>During acquisition planning:</i></p> <ol style="list-style-type: none"> (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. <p><i>During source selection:</i></p> <ol style="list-style-type: none"> (1) Determination of price reasonableness of offers, (2) participation as a voting member on a source selection board, and (3) awarding of contracts. <p><i>During contract management:</i></p> <ol style="list-style-type: none"> (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. 	<p><i>Support acquisition planning by:</i></p> <ol style="list-style-type: none"> (1) Conducting market research, (2) developing inputs for government cost estimates, and (3) drafting statements of work and other pre-award documents. <p><i>Support source selection by:</i></p> <ol style="list-style-type: none"> (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. <p><i>Support contract management by:</i></p> <ol style="list-style-type: none"> (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 developed 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 (Pub. L. 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 (UARC).* 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 Web site: <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 9–9–11; 8:45 am]

BILLING CODE P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities, The National Foundation on the Arts and the Humanities.

ACTION: Cancellation of panel meeting.

Notice is hereby given of the cancellation of the following meeting of the Humanities Panel at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 which was published in the **Federal Register** on August 23, 2011, 76 FR 52698.

Dates: September 27, 2011.

Time: 9 a.m. to 5 p.m.

Room: 315.

Program: This meeting will review applications for Request for Proposals for A Cooperative Agreement with NEH to Support Bridging Cultures at Community Colleges, submitted to the Division Education Programs at the August 23, 2011 deadline.

Michael P. McDonald,

Advisory Committee, Management Officer.

[FR Doc. 2011–23264 Filed 9–9–11; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397–LR; ASLBP No. 11–912–03–LR–BD01]

Energy Northwest; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.*, 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Energy Northwest (Columbia Generating Station)

This proceeding involves an application by Energy Northwest to renew for twenty years its operating license for Columbia Generating Station, which is located near Richland, Washington. The current operating license expires on December 20, 2023. In response to a Notice of Opportunity for Hearing, published in the **Federal Register** on March 11, 2010 (75 FR 11,572), a request for hearing was submitted by Nina Bell, Executive

Director, Northwest Environmental Advocates. The request, entitled “Petition for Hearing and Leave to Intervene in Operating License Renewal for Energy Northwest’s Columbia Generating Station,” was received via E-Filing on August 22, 2011.¹

The Board is comprised of the following administrative judges:

Alan S. Rosenthal, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. William H. Reed, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland this 6th day of September 2011.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2011–23199 Filed 9–9–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–018–COL, 52–019–COL, 52–025–COL, 52–026–COL; ASLBP No. 11–913–01–COL–BD01]

Duke Energy Carolinas, LLC; Southern Nuclear Operating Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see, e.g.*, 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over this proceeding, which involves the following captioned cases:

Duke Energy Carolinas, LLC, (William States Lee III Nuclear Station, Units 1 and 2), Docket Nos. 52–018–COL & 52–019–COL;

Southern Nuclear Operating Company, (Vogtle Electric Generating Plant,

¹ On August 22, 2011, petitioner, Ms. Bell, also filed a petition for rulemaking, coupled with a request to suspend licensing decision. Those requests are under review by Commission advisers as a separate action.



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

May 8, 1995

Memorandum

To: Glynn Key, Assistant to the Secretary
From: Solicitor *[Signature]*
Subject: Indian Self-Governance

This responds to your request of April 3, 1995, for guidance on the compactibility of programs of certain non-BIA agencies under the Tribal Self-Governance Act of 1994 (Act). I am attaching memoranda from the Associate Solicitors for Conservation and Wildlife and Energy and Resources that answer your inquiries. Specifically, they address the limitations of §403(k) of the Act on the compactibility of various National Park Service (NPS) and Fish and Wildlife Service (FWS) management responsibilities, and on the Bureau of Land Management (BLM) grazing program. They apply the principles outlined by the Associate Solicitor for General Law in her December 16, 1994, Opinion to determine what part of those responsibilities are "inherently Federal" and thus non-compactible. I agree with their conclusions.

Section 403(k) contains a second limitation, for it provides that programs are not compactible if "the statute establishing the existing program does not authorize the type of participation sought by the tribe." This raises the question whether this category of statutes includes generic statutes that vest general management responsibility in a particular agency. For example, the National Wildlife Refuge System Administration Act, 16 U.S.C. §§ 668dd(a)(1), requires that the System be administered by the Secretary of the Interior through the FWS. See Trustees for Alaska v. Watt, 524 F. Supp. 1303 (D. Ak. 1981), aff'd mem. 690 F.2d 1279 (9th Cir. 1982). If this statute is considered one that "does not authorize the type of participation sought by the tribe," very little if anything that has to do with Refuge management would be compactible.

This language might, on the other hand, be construed to apply only to those statutes that specifically and affirmatively prevent delegation or compacting under Self-Governance certain functions that would otherwise be compactible. Under this view, §403(k)'s reference to "existing program" does not refer to something as broad as wildlife refuge management writ large, but rather to more specific programs (state-federal wildlife revenue sharing) or functions (law enforcement). An example would be a statute like 16 U.S.C. §1a-6(b), which says the Secretary of the Interior may delegate authority "to maintain law and order and protect persons and property within areas of the National Park System" only to "officers and

employees of the Department of the Interior," except in certain limited situations where the Secretary may designate as special police "officers and employees of any other Federal agency or law enforcement personnel of any State or political subdivision thereof." 16 U.S.C. §1a-6(c). Because tribes do not fit within this specifically delineated exception, the Park Service would be precluded from compacting this law enforcement function.

I believe the second, narrower reading of the exception is more consistent with the intent of the Congress. For one thing, the broader reading essentially swallows up and makes superfluous the "inherently federal" limitation in the same subsection. The attached memoranda from the Associate Solicitors make clear that the "inherently federal" limitation prevents these federal agencies from turning over complete or general management for individual Refuges, Parks, etc., to tribes under the Self-Governance Act. But if the Refuge Administration Act is interpreted to prohibit the FWS from contracting out any part of its management functions, no matter how ministerial or far removed from policymaking, there is no need to consider what parts of those functions are "inherently federal."

Second, the proviso at the end of §403(k) cautions that tribes "need not be identified in an authorizing statute in order for a program or element of a program" to be compactible. This suggests that Congress did not want breadth of scope or lack of specificity in a statute by itself to create a blanket exclusion from compactibility.

Third, the legislative history supports the narrower interpretation. Senator McCain, one of the Act's principal sponsors, explained this second limitation by citing the Federal Aid in Fish Restoration Act and the Federal Aid in Wildlife Restoration Act as examples where the "exclusive authority appears to relate to aid to the States." See 140 Cong. Rec. S14678-80 (Oct. 7, 1994). The fact that these statutes deal with relatively discrete programs, rather than something as generic as "Refuge administration," suggests an intent that the second limitation not be given a broad construction.

Fourth, while the introductory part of §403(k) provides that nothing in this section "shall be construed to expand or alter existing statutory authorities," the Supreme Court has long recognized broad authority in federal agencies to contract for the assistance of others in the performance of their responsibilities. See, e.g., United States v. Tingey, 30 U.S. (5 Pet.) 115 (1831). This suggests the better reading of §403(k) is as a caution that the Secretary may neither divest inherently federal functions by compact, nor be disabled from compacting other functions so long as no specific statute prevents such compacting.

There remains the question whether this interpretation is consistent with Trustees for Alaska v. Watt, *supra*. In that case the court interpreted the statute directing the FWS to "administer[]" the Refuge System to prevent Secretary Watt from giving the U.S. Geological Survey (USGS) authority to perform certain management responsibilities in connection with the Arctic National Wildlife Refuge. The basic question was whether the concept of "administration" encompassed the transferred functions; specifically, preparing regulations to govern hydrocarbon exploration to prevent significant adverse effect on fish and wildlife, and reporting to Congress on the results. Citing the dictionary definition of "administer" to include "manage the affairs of," the court concluded that the statute meant the FWS should

"control and direct the affairs of the Refuge," and that Secretary Watt's decision was inconsistent with the statute.

This holding is not inconsistent with our interpretation of the Self-Governance Act. Trustees involved the transfer of management authority from one federal agency to another, so the "inherently federal" issue was not present. More important, the kind of responsibility Secretary Watt transferred to the USGS would be regarded as "inherently federal" and therefore not compactible under the Self-Governance Act. I believe, in other words, that the concept of "inherently federal" as used in the Self-Governance Act, and the concept of "administer" as used in the Refuge Administration Act and comparable acts, are mutually reinforcing.

If we were to interpret the Refuge Administration Act to forbid compacting of any functions, it would essentially remove National Wildlife Refuges entirely from the Self-Governance program. There is no evidence Congress intended such a sweeping result by including §403(k).

In sum, I believe it is not an adequate ground to refuse to compact specific functions that are not inherently federal in character, simply because an organic statute vests an agency with generic management authority over a broad category of land. On the other hand, compacting may be precluded by the second limitation of §403(k) where Congress has specifically vested a specific agency with authority for a particular function that is not (at least in part) inherently federal.

Finally, while you have not asked us to address the proviso in §403(b)(2), which applies to non-BIA programs, it has important implications that relate to the questions you did ask. It cautions 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.

With respect to many non-BIA activities, no tribal preference is "otherwise provided by law." Therefore, most non-BIA programs compactible under §403(b)(2) likely would be subject to requirements for competitive bidding under the federal procurement law. There are, however, a couple of important exceptions. One is provided by the Indian Self-Determination Act, which provides a preference permitting the awarding of particular types of contracts on a non-competitive basis. See 25 U.S.C. §450f(a)(1):

The Secretary is directed, upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs or portions thereof, including construction programs . . . for the benefit of Indians because of their status as Indians without regard to the agency or office of the Department of Health and Human Services or the Department of the Interior within which it is performed.

The other important exception is found in §403(c) of the Self-Governance Act itself. It gives the Secretary of the Interior broad discretion to include in self-governance compacts

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.

I believe this section gives the Secretary the discretion to decide to enter into funding agreements without competition upon a determination that such a special nexus exists. The caution in §403(b)(2) that no new preference is being created applies only to §403(b)(2) itself, and does not affect such preferences "otherwise provided for by law." Accordingly, §403(c) can, and in my judgment should, be construed as giving the Secretary the discretion to provide such a preference in the circumstances to which that section applies.

Section 403(c) is available to non-BIA bureaus whenever a tribe also has a funding agreement entered under the authority of §§403(a) and (b). Thus, where a tribe has entered into a funding agreement with the BIA, or with a non-BIA bureau pursuant to §403(b), the bureau may add "nexus" programs to that funding agreement on a non-competitive basis.

A few examples may be helpful in defining those programs or activities where a geographic, historical, or cultural connection of special significance exists, and therefore where those programs can be compacted to a tribe without competitive bidding even though normally contracted through the competitive process. The Navajo Nation clearly has a special nexus to the lands of the Canyon de Chelly National Monument (title to which is held by the United States in trust for the Nation). Section 403(c) would give NPS the authority to compact with the Nation to provide services for the park unit on a non-competitive basis, if the tribe were a self-governance tribe. Other examples include the Pine Ridge Sioux at Badlands National Monument and the Crow Tribe at Bighorn Canyon National Recreation Area, if these tribes were to become self-governance tribes.

Additional questions will undoubtedly arise as we proceed further with self-governance implementation. Our Office stands ready to assist in this process.



United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

MAY 8 1995

Memorandum

To: Glynn Key, Special Assistant to the Secretary

From: Associate Solicitor, Conservation and Wildlife

Subject: Your Memorandum dated April 3, 1995, Requesting an Opinion with Reference to the "Tribal Self-Governance Act of 1994"

The Solicitor has asked me to respond to the questions posed in your memorandum as they relate to the National Wildlife Refuges administered by the United States Fish and Wildlife Service (FWS) and areas administered by the National Park Service (NPS). You have asked:

(1) How does section 403(k) of the Tribal Self-Governance Act apply to the general management of (a) parks, monuments, historic sites, battlefields, seashores and lakeshores, and recreation areas that are administered by the National Park Service; and (b) wildlife refuges that are administered by the Fish and Wildlife Service?

(2) Specifically applying section 403(k), what inherently Federal limitations, if any, apply to the general management operations of the Department programs listed above in (1)?

(3) Specifically applying section 403(k), do the applicable statutes for the Department programs listed above in (1) authorize general management operations to be administered by a tribe through a funding agreement under the Tribal Self-Governance Act?

Title II of P.L. 103-413 (108 Stat. 4250, signed October 25, 1994), entitled the "Tribal Self-Governance Act of 1994" (Act), amends the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq., Self-Determination Act) by adding to it a new Title IV entitled "Tribal Self-Governance". In accordance with section 405(c) of the Act, the Secretary reviewed all programs, services, functions and activities administered by the Department other than through the Bureau of Indian Affairs and provided Congress with a listing of all such programs or portions thereof determined by the Secretary to be eligible for inclusion in agreements under this title. Under section 403(b)(2) of the Act, self-governance tribes are authorized to "plan, conduct, consolidate, and administer

programs, services, functions, and activities, or portions thereof, ... , that are otherwise available to Indian tribes or Indians" as identified in the Secretary's report to Congress. This report did not clearly state whether the entirety of a particular park or refuge unit was required or eligible to be compacted to a self-governance tribe. It is important to note that the organic authorities relating to the two systems preclude transferring any unit in a manner that removes it from either the National Wildlife Refuge or National Park Systems unless done in accordance with those laws.

- (1) How does section 403(k) apply to the general management of wildlife refuges and parks?

Section 403(k) contains a provision (entitled "Disclaimer") stating that:

Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe: 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).

Inasmuch as the inherently federal standard is based on the requirements of the Appointments Clause of the Constitution which vests the executive authority in the President and other officials appointed in compliance thereto, the interpretation of these provisions would be the same without the disclaimer as to this standard. See, e.g., Buckley v. Valeo, 424 U.S. 1 and Bowsher v. Synar, 478 U.S. 714. However, the disclaimer is significant in instructing on the interrelationship of section 403(b)(2) to the organic authorities of the non-BIA Interior bureaus. The disclaimer makes clear that this section does not supersede or override the bureaus programmatic authorities in the compacts or funding agreements negotiated with the self-governance tribes.

Thus, applying section 403(k), general management of refuges and parks can only be compacted with self-governance tribes (a) to the extent that such functions are not inherently federal, and (b) the "type of participation sought", either the role the tribe intends to play in administering the activity or the authority under law for particular units or officers of government to carry out the particular activity involved, is not precluded by the underlying organic authorities of FWS and NPS.

(2) What inherently Federal limitations apply to the "general management" of refuges and parks?

We understand your inquiry to focus initially on whether the entirety of operations and activities pertaining to a particular refuge or park may be the subject of a compact. It is our opinion that many of the management functions, programs, and activities at refuges and parks may be compacted. However, turning over the "general management" of a refuge or park in its entirety is effectively precluded by the inherently Federal limitation on contracting. Thus, to the extent requests are being made to transfer management responsibility for a refuge or park unit, the relevant bureau may compact with a self-governance tribe for only those activities that are not inherently federal in nature.

The inherently federal limitation was analyzed, and the long standing legal and policy positions of the executive branch explained, in the memorandum of the Associate Solicitor, Division of General Law, dated December 16, 1994. As discussed in that memorandum, inherently Federal functions are those that involve the exercise of significant discretion or authority in applying or carrying out Federal law. The Office of Management and Budget (OMB) described such functions to include binding the United States to take an action by contract, policy, regulation, or otherwise; determining, advancing, and protecting economic, political, territorial, or property interests by means that include civil or criminal proceedings and contract management; significantly affecting life, liberty, or property of private persons; hiring and controlling officers and employees of the United States; or exerting ultimate control over acquiring, disposing, and using the property of the United States. OMB Policy Letter 92-1 (September 23, 1992). The administration of a refuge or park entails many functions, at least some of which fall within the framework of this constitutional limitation.

Applying the guidance of the December 16 memorandum, the following is a partial listing of "general management" activities within a refuge or park which involve inherently federal functions that must be retained by an appropriate federal official:

- promulgating new or modifying existing regulations;
- issuing special use permits when it would require the exercise of significant discretion;
- approving rights of way or easements;
- making determinations of refuge compatibility or defining the permitted general public uses of a refuge or park area;
- establishing entry and user fees;

- approving concession contracts;
- adopting or modifying refuge and park management plans; and
- carrying out certain elements of the law enforcement process, including investigatory matters and referral of cases to the Department of Justice for prosecution.

The following are examples of general management activities or functions at refuges and parks which would generally be available for compacting to self-governance tribes or other entities:

- operating concessions and other visitor services;
- collecting entrance and use fees;
- operating a visitor center;
- conducting on the ground resource related activities within the framework of the refuge or park management plan, e.g., operating water control structures, monitoring the health and status of resident or seasonal animal populations, and physically manipulating habitat;
- controlling access to all or parts of the refuge by applying standards prepared by the refuge or park or contained in the relevant management plan;
- carrying out construction and maintenance activities; and
- conducting research and data collection in support of refuge and park management decision making.

The above examples are illustrative and are not exhaustive of either all the compactible or non-compactible aspects of general management. With the expected participation of attorneys from the regional and field offices in the negotiation of annual funding agreements, we believe that timely advice on the limits of compacting in response to the specific negotiating requests can be provided to FWS and NPS officials.

- (3) Do the statutes for management of refuges and parks authorize general management operations to be administered by a tribe?

Your inquiry relates to the second part of the section 403(k) disclaimer that states that the section is not intended to expand or modify existing authorities to authorize an agreement where the statute establishing the program does not authorize the type of participation sought by the tribe. This disclaimer also provides that the statute need not specify a tribe or tribes. The application of this provision to the National Wildlife Refuge

System Administration Act (16 U.S.C. 668dd-668ee) is discussed as an example illustrating the meaning of the second provision of section 403(k) in the Solicitor's cover memorandum transmitting this memorandum

Additionally with regard to the National Wildlife Refuge System, it is our opinion that this part of section 403(k) would apply to the situation involving a particular class of refuge areas commonly referred to as Coordination Areas. These are areas that have been withdrawn from the public domain or have been acquired and made available to a state by a cooperative agreement. 50 C.F.R. 25.12. These areas are authorized by the Act of March 10, 1934 (commonly referred to as the Fish and Wildlife Coordination Act). 16 U.S.C. 661-666c. That Act provides that "...lands having value to the National Migratory Bird Management Program may, pursuant to general plans, be made available without cost directly to the State agency having control over wildlife resources...." 16 U.S.C. 664. These areas would not be available for compact because the statute is not sufficiently broad to include Indian tribes within those who may carry out this specific activity.

The legislative history accompanying the Tribal Self-Governance Act of 1994 is relevant on this point. Senator McCain, speaking on the floor of the Senate during the debate on this bill, referred to a letter dated September 28, 1994, from the Secretary of the Interior, and said that "I agree with the Secretary's construction...that the bill is not intended to change the jurisdictional authorities of the tribal, State and Federal governments over natural resources...." 140 Cong. Rec. S14678 (October 7, 1994). The "jurisdictional" authority provided by the Fish and Wildlife Coordination Act was not altered by the Tribal Self Governance Act of 1994.¹

With regard to the National Park System, several inquiries have already been received from tribes about compacting for law enforcement services within park units. To the extent that elements of law enforcement are not inherently federal, NPS remains limited by its organic provisions in delegating such authority outside the Department. Specifically, 16 U.S.C. 1a-6(b) limits the class of individuals to whom the Secretary may delegate authority "to maintain law and order and protect persons and property within areas of the National Park System" to "officers or employees of the Department of the Interior." The Secretary is also authorized in certain limited situations to designate as special policeman "officers and employees of any other Federal agency or law enforcement personnel of any State or political subdivision thereof." 16 U.S.C. 1a-6(c). As Indian tribes are clearly not part of any State government or political subdivision thereof, the

¹ There may be other limiting authorities that apply to specific refuge units but we are not aware of any.

Memorandum to Glynn Key

6

provisions of section 403(k) would also appear to preclude utilizing self-governance funding agreements to authorize tribal employees to carry out the Secretary's law enforcement authorities under this provision. In dealing with this issue in the forthcoming negotiations, it will be necessary to examine the enabling legislation for the particular park unit. Unless such a unit is clearly within the boundaries and is part of an Indian reservation where its own police force would have jurisdiction, this activity generally appears to be precluded.

If you have any questions in relation to refuges, please contact Alan Palisoul at (202) 208-6172. If you have questions in relation to the NPS areas, please call Barry Roth at (202) 208-7597.



Robert L. Baum

cc: Solicitor
Director, FWS
Director, NPS



United States Department of the Interior

OFFICE OF THE SOLICITOR

Washington, D.C. 20240

MEMORANDUM

MAY 8 1995

TO: Glynn Key
Special Assistant to the Secretary

FROM: Associate Solicitor
Division of Energy and Resources

SUBJECT: Indians -- Tribal Self-Governance Act

The Solicitor has asked that I address the questions contained in your request of April 3, 1995, for legal advice regarding section 403(k) of the Tribal Self-Governance Act of 1994 (the Act), 25 U.S.C. §§ 458aa-458gg. These questions pertain to the negotiation on a case-by-case basis of compacts with Tribes to perform certain functions relating to the range management programs of the Bureau of Land Management (BLM).

Section 403(k), 25 U.S.C. § 458cc(k), reads as follows:

(k) 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) 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).

25 U.S.C. § 458cc(k).

You inquire:

- (1) How does section 403(k) of the Act apply to the general administration of range management operations that are the responsibility of the BLM?
- (2) Specifically applying section 403(k), what inherently federal limitations, if any apply to the general management of the BLM range management operations?
- (3) Specifically applying section 403(k), do the applicable statutes establishing the programs in relation to which the BLM range management operations are conducted

authorize general management operations to be administered by a tribe through a funding agreement under the Act?

I shall discuss these questions in the order presented.

I. Application of Section 403(k) to BLM Range Management Operations

Section 403(k) refers expressly to agreements that the Secretary of the Interior (Secretary) may enter into "under sections 403(b)(2) and 405(c)(1)," of the Act. Section 403(b)(2), 25 U.S.C. § 458cc(b)(2), authorizes the Secretary to negotiate annually, with participating tribes, on a nonpreference basis, Self-Governance funding agreements as to non-Bureau of Indian Affairs (BIA) programs, services, functions and activities, or portions thereof, that are "available to Indians" and that are listed as eligible pursuant to section 405(c)(1), 25 U.S.C. § 458cc(c)(1). The first such list (for 1995) has been issued and submitted to the appropriate congressional committees, as required by the statute. All of the BLM's range management operations, including the BLM's reindeer monitoring and range assessment program, are included in the section 405(c)(1) list. Thus, by virtue of the preceding linkage, section 403(k) applies, as a matter of law, to all of the BLM's range operations that may be included in a 1995 Self-Governance funding agreement.¹

II. Inherently Federal Limitations Applicable to BLM Range Management

Section 403(k) states in part that nothing in section 403 is to be construed to expand or alter the existing statutory authorities granted to the Secretary so as to authorize that official to enter into a Self-Governance funding agreement with

¹ Section 403(c), 25 U.S.C. § 458cc(c), provides additional grounds, apart from those in section 403(b)(2), for the negotiation of Self-Governance funding agreements relative to Interior programs "of special geographic, historical or cultural significance to the participating Indian tribe requesting a compact [i.e., funding agreement]." Section 403(c), however, is not mentioned expressly in section 403(k). This additional, discretionary category was added at the recommendation of the Secretary. The Department has taken section 403(c) programs into account in its section 405(c)(1) listings for 1995. Section 403(c) agreements and section 403(b)(2) agreements are both equally subject to the constitutional limitations and statutory restraints that are of concern in section 403(k).

respect to "functions that are inherently Federal." Section 403(k) was added to the final version of the Self-Governance legislation, without explanation, by Representative Bill Richardson, chairman of the Native American Affairs Subcommittee of the House Natural Resources Committee. When the legislation was passed by the Senate on the following day, Senator John McCain, vice-chairman of the Senate Committee on Indian Affairs and the bill sponsor, explained the inherently federal clause in this manner:

To make clear that nothing in H.R. 4842 is intended to permit the Secretary to enter into a compact [i.e., funding agreement] for the performance of responsibilities which are inherently federal, that is, Federal responsibilities vested by the Congress in the Secretary which are determined by the Federal courts not to be delegable under the constitution.

140 Cong. Rec. S14679 (October 7, 1994).

The constitutional basis for the inherently federal functions limitation, as well as the executive branch's legal and policy interpretations of the limitation was explained in a memorandum opinion dated December 16, 1994, prepared by the Associate Solicitor, Division of General Law. The content of that memorandum need not be summarized or repeated here. I understand that you are familiar with it. Suffice it to say, that because of constitutional restraints a number of federal administrative functions and activities are considered as inherently not being delegable and, therefore, those functions must be performed by officials of the executive branch of the Government who are appointed for that purpose. Senator McCain recognized the import of the inherently federal functions limitation in his explanation of section 403(k):

It is not possible at this time to list all of the elements of Federal programs which may not be subject to self-governance compacts, but such a list certainly could include discretionary administration of Federal Fish and Wildlife protection laws, promulgation of regulations, obligations and allocation of Federal funds, the exercise of certain prosecutorial powers and other discretionary functions vested in Federal officials....

140 Cong. Rec. S14678 (October 7, 1994)

Not all "discretionary functions" are non-delegable, however. It is only the exercise of "significant authority," exercised pursuant to federal law, that triggers the constitutional restraint. Buckley v. Valeo, 424 U.S. 1, 126 (1976).

We turn now to the application of the inherently federal function limitation in relation to the operation of the BLM's range management programs. Five statutes govern these programs: (1) the Taylor Grazing Act, as amended, 43 U.S.C. §§ 315-315r; (2) Titles II and IV of the Federal Land Policy and Management Act, 43 U.S.C. §§ 1711-12 and 1751-53; (3) the Public Rangelands Improvement Act, 43 U.S.C. §§ 1901-08; (4) the Alaska Grazing Act, 43 U.S.C. §§ 316-316o; and (5) Section 14 of the Alaska Native Subsistence Act of 1937, 50 Stat. 902. The relevant regulations will be found in 43 C.F.R. Parts 4100, 4200 and 4300 (October 1, 1994). See, also, 43 C.F.R. Subpart 9264 (October 1, 1994).²

We have reviewed the statutes and regulations, and we have conferred with knowledgeable BLM grazing specialists, in order to provide the summary of the most important BLM range management functions and activities that is attached to this memorandum. The summary contains our comments concerning whether or not the functions and activities are, in general, subject to the inherently federal function limitation.

Needless to say, whether a particular function or activity is subject to constitutional restraints will not always be readily ascertainable. In such instances, a case-by-case analysis must be made, taking all of the relevant circumstances into account.

III. Tribal Administration of BLM Range Management Operations

Section 403(k) further provides in pertinent part that nothing in section 403 is to be construed to expand or alter the existing statutory authorities vested in the Secretary so as to authorize that official to enter into a Self-Governance funding agreement "where the statute establishing the existing program does not authorize the type of participation sought by the tribe...."³

The Solicitor is addressing this aspect of section 403(k) in a separate memorandum, which accompanies this memorandum. The Solicitor construes the quoted language as applying to only those statutory provisions that affirmatively prevent delegating, under

² New grazing rules have been published in final form, 60 Fed. Reg. 9894 (February 22, 1995). These regulations, however, are not scheduled to take effect until August 21, 1995.

³ Given the context of this phrasing, "the statute establishing the existing program" is, logically, the statute authorizing, or appropriating funds for, any program that is subject to a Self-Governance funding agreement under the terms of section 403(b)(2). See also section 403(c) and note 1 supra.

Self-Governance, particular functions that otherwise would be compactible. There are not any such provisions in the statutes governing the BLM range programs.⁴

If you should have any questions or wish to receive additional legal guidance, please feel free to telephone me at 208-3972 or, in my absence, Mr. Dennis Daugherty at 208-4803.



Patricia J. Beneke

Attachment

cc: Solicitor
Director, BLM

⁴ See, however, section 303(c) of the Federal Land Policy and Management Act, 43 U.S.C. § 1733(c). This section is concerned with the enforcement of federal laws and regulations on the BLM-managed federal lands, including range areas. Under its terms, only federal personnel or, pursuant to contract, appropriate, local law enforcement officials, may be authorized by the Secretary of the Interior to carry out the Secretary's law enforcement responsibilities.

APPLICATION OF THE INHERENTLY FEDERAL FUNCTION
LIMITATION IN THE TRIBAL SELF-GOVERNANCE ACT TO
BLM RANGE ADMINISTRATION STATUTES

I. FEDERAL LAND POLICY AND MANAGEMENT ACT OF 1976

43 U.S.C. §§ 1711-12 and 1751-52

§ 1711 Continuing inventory

(a) The Secretary prepares and maintains on a continuing basis an inventory of all public lands and their resource and other values, giving priority to areas of critical environmental concern. The inventory must be kept current.

Analysis: The Bureau of Land Management (BLM) conducts numerous resource inventory and monitoring studies that relate to the livestock grazing program. Ecological site inventories, utilization monitoring, trend studies, as well as inventories of the condition of range improvements are typical examples. Gathering field information and preparing reports based on this data are activities that could be accomplished through Tribal Self-Governance compacts. Making managerial decisions based on such studies and data is an inherently federal function.

(b) Subject to the availability of funds and personnel, the Secretary ascertains the boundaries of the public lands, provides means of public identification, including signs and maps, and provides state and local governments with data from the inventory for the purpose of planning and regulating the uses of non-federal lands in proximity to such public lands.

Analysis: The BLM land survey program includes the establishment and resurvey of grazing allotment boundaries. Much of this work is not an inherently federal function. The issuance of survey instructions and the approval of the surveys are inherently federal functions.

§ 1712 Land use plans

(a) The Secretary develops, maintains and revises land use plans, with public involvement.

Analysis: The development, maintenance and revision of land use plans is not a rangeland management activity, per se, though planning does influence the livestock grazing program as much as any other land use. Data gathering, document preparation, drafting of maps and overlays and similar support to planning efforts could be accomplished through Tribal Self-Governance compacts, whereas the actual approval and issuance of the planning decision must remain an inherently federal function.

(e) The Secretary may issue management decisions for the implementation of revised or modified plans.

Analysis: The making of management decisions, based on BLM land use planning, is inherently a federal function.

§ 1751 Distribution of range betterment funds

(b)(1) Fifty percent of the grazing fees go to range betterment projects as the Secretary directs. Twenty-five percent of the amount goes to the district or region where generated and the remaining twenty-five percent is distributed at the Secretary's discretion, but normally goes to projects in the state that generated the money.

Analysis: Most of the range betterment funds are distributed on a discretionary basis by the Secretary after taking into account the recommendations of interested grazing advisory boards. Decisions to fund or not to fund projects, and how much to allocate, are considered to be inherently federal functions that are not delegable.

§ 1752 Grazing leases and permits

(a) Grazing permits are issued for periods of ten years, subject to such terms and conditions as the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary to cancel, suspend, or modify a grazing permit or lease, in whole or in part pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) The Secretary may issue permits or leases for less than 10 years under limited circumstances.

Analysis: Studies and analyses required for the issuance of permits or leases can be accomplished through Tribal Self-Governance compacts. These studies and analyses usually result in archaeological clearances [Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f], threatened or endangered species clearances [Section 7 of the Endangered Species Act, 16 U.S.C. § 1536] and the preparation of appropriate environmental documents [Section 102 of the National Environmental Policy Act, 42 U.S.C. § 4332]. The background studies and clearance work are subject to Tribal Self-Governance compacting. The BLM has the responsibility to assess the quality and adequacy of the work. The necessary decisionmaking process is an inherently federal function. Applications to transfer permits and leases from one party to another require determinations, which are inherently federal

functions, though the studies needed to make informed decisions could be accomplished through Tribal Self-Governance compacts.

(d) All permits and leases for livestock grazing may incorporate allotment management plans (AMP's), developed by the Secretary.

Analysis: The preparation of documents to meet interdisciplinary goals are not inherently federal functions. Whether an AMP will be prepared for a given range area, the final adoption of such a plan and its incorporation into a grazing permit or lease, are all inherently federal functions.

II. PUBLIC RANGELANDS IMPROVEMENT ACT

43 U.S.C. §§ 1903 -04

§ 1903 Rangelands Inventory and Management

(a) The Secretary of the Interior shall update, develop and maintain on a continuing basis thereafter, an inventory of range conditions and a record of trends of range conditions on the public rangelands, and shall categorize or identify such lands on the basis of the range conditions and trends thereof as they deem appropriate. Such inventories shall be conducted and maintained by the Secretary as a part of the inventory process required by § 201(a) of the Federal Land Management and Policy Act, 43 U.S.C § 1711.

Analysis: See above references to inventory and analysis. Also considered part of range condition inventory and maintenance are programs for: fire protection and rehabilitation, noxious weed control, pest control, riparian area protection and rehabilitation, watershed planning and condition analysis. Staff work for these activities could be accomplished through Tribal Self-Governance compacts. BLM does not consider animal damage control part of the livestock grazing program.

(b) The Secretary shall manage the public rangelands in accordance with the Taylor Grazing Act and the Federal Land Policy and Management Act (FLPMA). Except where the land use planning process required by § 202 of FLPMA, 43 U.S.C. § 1712, determines otherwise or the Secretary determines and sets forth his reasons for this determination, that grazing uses should be discontinued (either temporarily or permanently) on certain lands, the goal of such management shall be to improve the range conditions of the public rangelands.

Analysis: Decisions not to make improvements and to discontinue grazing are inherently federal functions.

§ 1904 Range improvement funding

(d) Prior to use of range improvement funds, an environmental assessment shall be done for each range improvement.

Analysis: Tribal Self-Governance compact entities would be eligible to perform the staff-level functions in connection with required environmental assessments. Approval of an environmental assessment is an inherently federal function.

III. TAYLOR GRAZING ACT (and supp. legislation)

43 U.S.C. §§ 315 - 315r

§ 315 Grazing districts

Pursuant to the Taylor Grazing Act, the Secretary establishes grazing districts, adds to or modifies the boundaries of districts, grants rights of way for adjacent landowners and convenes hearings before establishing districts.

315a Protection, administration and regulation of the districts

The Secretary makes provision for the protection, administration, regulation, and improvement of districts, makes rules and regulations, enters into cooperative agreements, insures the objects of use of grazing districts by regulating their use and occupancy, namely to preserve land and its resources from destruction or unnecessary injury, and to provide for the orderly use, improvement, and development of the range. The Secretary is authorized to study erosion patterns and flood control, and to perform work to protect and rehabilitate areas through funds made available for that purpose.

Analysis: Range use supervision involves ongoing oversight of the grazing permits and leases for compliance with terms and conditions. Inspection and data collection components can be accomplished through Tribal Self-Governance compacts. Ultimate supervisory responsibility is an inherently federal function.

§ 315b Grazing permits and fees

The Secretary issues permits, according to fees fixed or determined from time to time in accordance with governing law. The Secretary specifies the numbers of stock and seasons of use; and may remit, reduce or postpone payment of fees during emergencies.

Analysis: Issuing Decisions or Cooperative Agreements Concerning Livestock Grazing. The BLM authorized officer regulates the numbers, seasons of use, kinds and classes of livestock and

management prescriptions through the issuance of formal decisions or by agreement. In either case, the decision or agreement must be reserved to federal officials. Data collection and recommendations based thereon may be accomplished through a Tribal Self-Governance compact.

Analysis: Grazing Billings. Issuance of the bills, as well as approval of any adjustments to the previous billing documents, are inherently federal functions. Staff work necessary to prepare bills for adjudication (receiving billing adjustment requests from permittees and processing this information for final decision by the authorized officer), as well as processing billing payments once received and depositing these funds, could be administered through a Tribal Self-Governance compact.¹

§ 315c Fences, wells, reservoirs and other improvements

The Secretary must approve permits to build fences, wells, reservoirs and other improvements, or approve cooperative arrangements. The Secretary shall require permittees to comply with state law regarding cost and maintenance of partition fences.

Analysis: Whether the decisionmaking required by these actions is so significant as to be an inherently federal function, and thus not delegable, requires a case-by-case analysis.

§ 315d Free grazing for domestic purposes

The Secretary may authorize free grazing, under regulations.

Analysis: As above, the actual approval of applications is an inherently federal role. This is not a common grazing application and involves little time in the field.

§ 315k Cooperation with Governmental departments

The Secretary is authorized to cooperate with any department of the Government to carry out the purposes of the Taylor Grazing Act, especially where stock grazes part-time in a district, part-time in a national forest, or part-time in some other reservation.

§ 315m-2 Grazing leases

Leased lands, not included in a grazing district, are administered under the provisions of the Taylor Grazing Act.

¹ BLM believes the current national billing system is efficient and effective in preventing fraud and other abuses and, therefore, it should not be decentralized.

Analysis: This provision is almost never used. The decision to lease or renew a lease is an inherently federal function.

IV. ALASKA GRAZING ACT

43 U.S.C. §§ 316 - 316o

§ 316 Policy

Analysis: The grazing program in Alaska is limited to a single permit to graze cattle. The analogy is the same as given above for the cattle-grazing permits. Field data collection can be subject to Tribal Self-Governance compacts, as can report preparation and formulation of recommendations. Issuance of decisions, issuance of contracts, and commitment to agreements remain inherently federal functions.

§ 316b Grazing districts.

(a) The Secretary may establish grazing districts upon public lands outside of the Aleutian Islands Reservation, national forests, and other reservations and monuments.

Analysis: The Alaska Grazing Act authorizes the Secretary to establish grazing districts. This is an inherently federal function. Staff work done prior to final decision making could be accomplished through Tribal Self-Governance compacts. Though this authority exists, the Secretary has not exercised the options included under this subsection. No grazing districts have been established in Alaska pursuant to this statute.

§ 316c The Secretary may alter districts, by adding or excluding lands, subject to valid existing rights, and enter into cooperative agreements with any person, in respect of administration as part of the district, of lands owned by such person which are contiguous or adjacent to the district.

§ 316d Before establishing or altering a district, the Secretary must give notice of hearings in the area of a district.

§ 316f Lease terms and conditions

(a) The terms of a lease or permit is determined by the Secretary, as deemed reasonable, but may not exceed 55 years.

(b) The size of a leasehold is determined, except where it is more practicable to consider the number of stock.

(c) The terms of surrender include an evaluation of compliance with the terms of a lease.

(d) The terms of renewal may be negotiated

Analysis: Although Secretarial authority exists to lease lands for grazing in Alaska, currently, no leases for cattle grazing have been issued. Were the Secretary to invoke this statutory authorization, the actual issuance of any lease would be an inherently federal function. Staff work done prior to the decisionmaking could be completed through a Tribal Self-Governance compact.

§ 316g Fees

a) The Secretary fixes the grazing fee based on the size of the area leased, or based on the number of stock, as a seasonal or annual fee. The fee is fixed with regard to the economic value of the grazing privilege and is required to be moderate in amount.

(b) The Secretary may extend time for payment, reduce the amount, or release the lessee from payment due to calamity or disease causing destruction of livestock, or due to depletion or destruction of the range by a cause beyond the control of the lessee.

Analysis: Grazing fees are assessed in Alaska for cattle in the same manner as in the lower 48 states. Therefore, staff work done prior to final decisionmaking could be accomplished through Tribal Self-Governance compacts.

§ 316i Lease assignments

The lessee may, with the approval of the Secretary, assign in whole or in part any lease.

§ 316j Improvements

The Secretary may authorize a lessee to construct and/or maintain and utilize any fence, building, corral, reservoir, well, or other improvements needed, so long as miners shall have the right of ingress and egress.

§ 316l Stock driveways and free grazing

(a) The Secretary may establish, maintain and regulate the use of driveways. Fees may be charged.

(b) The Secretary may permit free grazing of a small number of stock.

(c) The Secretary may grant free allotments to Alaskan Natives.

§ 316k Penalties

It is unlawful to graze cattle without a permit.

Analysis: Inspection of public land to detect trespass and reporting and investigating of trespass are all activities that could be performed through Tribal Self-Governance compacting. A federal official, however, issues notices of trespass, notices of acceptance of settlements and other, similar decisions. The participating tribe or Native Alaskan group may prepare calculations of damages, for final determination by an authorized officer. Notices of Intent to Impound livestock, likewise, would be issued by a federal official, but a tribal entity could impound the trespassing livestock.

V. ALASKA NATIVE SUBSISTENCE ACT OF 1937

50 Stat. 900 - 902

§ 14 Reindeer grazing ranges

In order to coordinate the use of federally-owned public lands in Alaska for grazing reindeer, the Secretary is authorized to regulate the grazing, by defining ranges, issuing permits, and controlling round-ups, handlings, markings, and butcherings of reindeer on those lands.

Analysis: Reindeer account for most of the grazing that occurs in Alaska. Consequently, most grazing is governed by the 1937 Act. Approximately thirteen leases for reindeer grazing have been issued to Native Alaskans, who pay a \$10 filing fee for five-year permits. Staff work necessary for the issuance of permits and monitoring of rangelands, in addition to studies on the condition of the rangeland, could be executed through Tribal Self-Governance compacts. The field work -- round ups, markings, etc., would also be delegable under a Tribal Self-Government compact. Decisions relating to reindeer grazing regulatory activities, including the charging of filing fees, are inherently federal functions.



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

DEC 31 2012

MEMORANDUM

To: Regional Director, Region 6, U.S. Fish and Wildlife Service

From: Associate Solicitor for Parks and Wildlife *Bay Roberts*
Regional Solicitor, Rocky Mountain Region *Muller*

Subject: Tribal Self-Governance Annual Funding Agreements for Management of
Refuge Programs

This responds to your request for legal guidance on the U.S. Fish and Wildlife Service's (FWS or the Service) authority to enter into annual funding agreements (AFAs) with Self-Governance tribes for management of programs at National Wildlife Refuges. Your inquiry raises two questions:

1. Is Section 4(b)(4) of the National Wildlife Refuge System Administration Act (the Refuge Act), which references cooperative agreements only with State fish and wildlife agencies, an exclusive authority that serves to prohibit (pursuant to Section 403(k) of the Tribal Self-Governance Act of 1994) the type of participation (management of full programs) sought by the Confederated Salish and Kootenai Tribes (CSKT) at the National Bison Range Complex (NBRC) and which the Service has previously agreed the tribes could perform?

2. Does the enactment of the National Wildlife Refuge System Improvement Act of 1997 (the Improvement Act) modify any aspect of the Solicitor's Office opinions issued on May 8, 1995, that provided general guidance with respect to implementation of the Tribal Self-Governance Act of 1994, as it relates to the National Wildlife Refuge System?

Section 4(b)(4) of the Refuge Act specifically authorizes the Service "to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." "Cooperative agreement" is a term of art defined in 31 U.S.C. § 6305: In pertinent part, it is "the legal instrument reflecting a relationship between the United States Government and a [recipient] when . . . the principal purpose of the relationship is to transfer a thing of value to the [recipient] to carry out a public purpose of support or stimulation authorized by a law of the United States instead of acquiring . . . property or services for the direct benefit or use of the United States Government . . ." *Id.*, (emphasis added). Section 4(b)(4) provides for cooperative agreements for the management of programs on a refuge exclusively with State fish and wildlife

agencies. At the same time, the Section does not prohibit the Service from entering into cooperative partnerships in general, and does not prohibit the Service from entering into AFAs with self-governance tribes for management of programs on a refuge.

The Secretary of the Interior has numerous broad cooperative authorities in the management of fish and wildlife and their habitat. For example, the Fish and Wildlife Coordination Act, 16 U.S.C. § 661 et seq., authorizes the Secretary to “provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat” The Fish and Wildlife Act of 1956, 16 U.S.C. § 742f et seq., provides the Secretary almost open-ended authority to “take such steps as may be required for the development, advancement, management, conservation, and protection of fish and wildlife resources”

An AFA per se is not a cooperative agreement as referred to in section 4(b)(4) of the Refuge Act, or as defined in 31 U.S.C. § 6305; rather, it is a legal instrument authorized under the Tribal Self-Governance Act, of which the underlying policy is “to permanently establish and implement tribal self-governance” Tribal Self-Governance Act of 1994, Pub. L. No. 103-413, Title II, § 203, 108 Stat. 4271. An AFA allows tribes to administer, i.e., manage, programs “which are of special geographic, historical, or cultural significance” to them and which would otherwise be “administered by the Secretary of the Interior.”¹ 25 U.S.C. § 458cc(c).

The broad authorities cited above grant the Secretary the ability to enter into agreements for management of programs on refuges with entities other than States. This view is buttressed by the positions taken by the Department of Justice in its brief in the recent litigation involving the NBRC, in which it stated, “[A]greements for management of programs at a refuge are not limited to state fish and wildlife agencies.” According to the Government’s brief:

[T]he Chairman and Ranking Member of the House Committee on Natural Resources stated in a letter to the Secretary of the Interior on May 15, 2007, in support of further negotiations with the CSKT, that partnerships with Tribes should be viewed no differently than partnerships with State governments, particularly in this case:

Working with Tribal governments in the same manner under the authorization of the Tribal Self-Governance Act should not be

¹It is important to point out here that the “management of programs” delegated to tribes under AFAs pursuant to the Tribal Self-Governance Act cannot include, and therefore, as used in this opinion, does not refer to those aspects of administering a national wildlife refuge that involve inherently federal functions which constitutionally can only be performed by a federal official. *See* 25 U.S.C. § 458cc(k). Since the enactment of the Tribal Self-Governance Act in 1994, the Solicitor’s Office has consistently advised that AFAs may not allow tribes to assume management functions that involve decisions that can only be made by a federal official. This same limitation applies equally to cooperative agreements with States under section 4(b)(4) of the Refuge Act—such agreements may not allow a State fish and wildlife agency to make inherently federal decisions or perform inherently federal functions in the “management of programs” at a national wildlife refuge.

viewed any differently than partnering with State governments especially in this instance where the [CSKT] owns the land on which the ancillary facilities of the ... National Bison Range Complex [the Ninepipe and Pablo National Wildlife Refuges] are located.

In addition, conservation partnerships with Tribes are allowed by Executive Order and by statute. Executive Order 12996 of March 25, 1996, 61 Fed. Reg. 13647, provides that, in furtherance of the Refuge Act, among other wildlife protection laws, one guiding principle is that “[c]onservation partnerships with ... **Tribes** . . . can make significant contributions to the growth and management of the Refuge System.” Executive Orders are ordinarily “accorded the force and effect of a statute.”

Moreover, although the Refuge Act allows the Secretary to enter into cooperative agreements with States, it does not preclude similar arrangements with others. In other words, it does not limit the Secretary’s authority The statute does not indicate that the Secretary may only enter into cooperative partnerships with States. . . . [T]he Agency’s interpretation of other statutes as providing ample authority for the AFA with the CSKT is a reasonable one and represents a reasonable policy choice for the Department of Interior to make. The AFA represents a reasonable balancing of the statutory goals of both the Refuge Act and the Tribal Self-Governance Act, as well as the Executive Order, and a harmonious reading of all three [is] what the Secretary is required to do.²

We agree with the Department of Justice’s reasoning as shown above, supporting the Secretary’s authority to enter into management programs on refuges with entities other than States.

The disclaimer found at Section 403(k) of the Tribal Self-Governance Act of 1994 does not preclude the Secretary from entering into AFAs with self-governance tribes for management of refuge programs. It provides:

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) [for non-BIA programs] 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).

² Federal Defendants’ Memorandum in Support of their Cross-Motions for Summary Judgment and Oppositions to Plaintiffs’ Motions for Summary Judgment at 13-15, *Reed v. Salazar*, 744 F. Supp. 2d 98 (D.D.C. 2010) (Nos. 08-2117 and 09-640) (citations omitted; emphasis supplied by DOJ).

This disclaimer sets forth two exceptions: Section 403 is not intended to expand or alter existing statutory authorities to authorize an agreement for non-BIA programs (1) with respect to inherently federal functions; or (2) where the statute establishing the existing program does not authorize the type of participation sought by the tribes. The Solicitor's Office has previously worked with you on the CSKT AFA and we are in agreement that the programs, services, functions and activities which you have previously agreed to include in the predecessor AFAs are not inherently federal. Thus, the only question raised at this time is the interpretation of the second exception, "where the statute establishing the existing program does not authorize the type of participation sought by the tribes."

This exception was addressed in the memorandum dated May 8, 1995, from Solicitor John Leshy, which also included as an attachment a memorandum from Associate Solicitor Robert Baum. As explained in the Leshy memorandum, this exception is inapplicable to the Refuge Act and similar generic statutes that vest general management responsibility in a particular agency. It applies only to "those statutes that specifically and affirmatively prevent delegation or compacting under Self-Governance certain functions that would otherwise be compactible"; for example, more specific programs like state-federal wildlife revenue sharing, or specific functions like law enforcement.

The Leshy memorandum bases this conclusion on four factors: (1) the broader reading, that the exception referred to generic statutes, would render superfluous the other exception in the disclaimer—inherently federal functions; (2) the proviso in the disclaimer that tribes "need not be identified in an authorizing statute in order for a program or element of a program" to be compactible suggests that Congress "did not want breadth of scope or lack of specificity in a statute by itself to create a blanket exclusion from compactibility"; (3) the legislative history shows that Senator John McCain, a principal sponsor of the Tribal Self-Governance Act, explained this exception by citing two relatively discrete programs—the Federal Aid in Fish Restoration Act and the Federal Aid in Wildlife Restoration Act—rather than something as generic as Refuge administration; and (4) the Supreme Court has long recognized broad authority in federal agencies to contract for the assistance of others in the performance of their responsibilities.

The Baum memorandum provides more specific guidance as to the meaning of the disclaimer, which is that "general management of refuges and parks can only be compacted with self-governance tribes (a) to the extent that such functions are not inherently federal, and (b) the 'type of participation sought,' either the role the tribe intends to play in administering the activity or the authority under law for particular units or officers of government to carry out the particular activity involved, is not precluded by the underlying organic authorities of FWS and NPS." (Emphasis in original)

The Baum memorandum does provide an example where the second exception would apply—Coordination Areas. These are "areas that have been withdrawn from the public domain or have been acquired and made available to a state by a cooperative agreement [citing the Fish and Wildlife Coordination Act]. . . . Thus, these areas would not be available for compact because

the statute is not sufficiently broad to include Indian tribes within those who may carry out this specific activity.”

As the Leshy memorandum states, the “better reading of Section 403(k) is as a caution that the Secretary may neither divest inherently federal functions by compact, nor be disabled from compacting other functions so long as *no specific statute prevents such compacting*.” (Emphasis added.) While the Baum memorandum may in retrospect be somewhat ambiguous in several respects, we see nothing in it that is inconsistent with the Leshy memorandum or suggests that a self-governance tribe is actually precluded from entering into an AFA for management of refuge programs. In any event, a Coordination Area would not be available to a self-governance tribe while its management is being undertaken by a separate entity. Nor do we read Section 4(b)(4) as precluding the Service from utilizing the cooperative agreement authority referenced in the Baum memorandum. We see nothing in the subsequent enactment of the Improvement Act that changes the advice provided in these two memorandums concerning implementation of the Tribal Self-Governance Act within the Refuge System.

Conclusion:

The Secretary is specifically authorized under a provision of the Refuge Act to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on wildlife refuges. Although that specific provision of the Refuge Act does not authorize the Secretary to enter such cooperative agreements with tribes, under the Tribal Self-Governance Act and his broad cooperative authorities, the Secretary may enter into AFAs with tribes for the management of refuge programs, so long as they do not involve the transfer of inherently federal functions or administrative functions that are statutorily prohibited from such transfer.

From: [Dean Rundle](#)
To: [Rick Coleman](#)
Subject: Draft CATEX
Date: 11/05/2010 10:57 AM
Attachments: [CATEX.NBR.11.5.10.doc](#)

Rick: Draft CATEX statement is attached for your review. Do you want me to send this to Sharon Brenna for review as well - and tell her about our conf. call yesterday?

I'll do up an EAM as well, but that won't take a couple minutes. Section 7 in process, but I won't have that before next week.

Dean



CATEX.NBR.11.5.10.doc

DRAFT

CATEGORICAL EXCLUSION

Partnerships/Contracting with the Confederated Salish and Kootenai Tribes to conduct operations and maintenance at the National Bison Range Complex Lake and Sanders Counties, Montana

Objective:

In accordance with the National Wildlife Refuge System Administration Act (NWRSA), the U. S. Fish and Wildlife Service (Service) will conduct operations and maintenance activities at units of the National Bison Range Complex (NBRC) by working in partnership with the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT). The Service and CSKT will enter into an agreement whereby personnel employed by, or assigned to, the CSKT Natural Resource Department will perform all or portions of the work necessary to accomplish the NBRC's biological/habitat program, fire program, visitor services program and maintenance program. The Service and CSKT will work in partnership under a legal agreement that may be: an Annual Funding Agreement (AFA) authorized by the Tribal Self-Governance Act of 1994; a Cooperative Agreement authorized by the Fish and Wildlife Coordination Act of 1956, as amended; through an agreement whereby CSKT employees may be assigned to work at NBRC under provisions of the Inter-governmental Personnel Act, or other agreement, authorized by law, whereby the Service would transfer funds to the CSKT and CSKT would perform work designated by the Service at NBRC. Although the Service and CSKT may enter into an agreement that authorizes the CSKT to manage programs at the NBRC, the Service, in any agreement entered, will retain final management authority over all decisions necessary to administer and manage NBRC, and no inherently federal work will be assigned to the CSKT under any agreement.

The proposed action is the establishment of an agreement, between the Service and the CSKT. This Categorical Exclusion applies only to the Service's action of entering an agreement with CSKT, and does not apply to any specific program, project, or work activity of the NBRC.

Background

The NBRC includes four (4) units of the National Wildlife Refuge System (NWRS) that are all located within the external boundary of the Flathead Reservation: the National Bison Range; Pablo NWR, Nine-pipe NWR, and the Northwest Montana Wetland Management District (WMD)– Lake County.

The National Bison Range (NBR) is approximately 18,800 acres in size and was established by an act of Congress on May 23, 1908, primarily for the preservation of the American Bison. Nine-pipe NWR includes approximately 4,028 and Pablo NWR includes approximately 2,474 acres. Both Pablo and Nine-pipe NWRs were established by Executive Order in 1921, and are “overlay” refuges on lands owned by the CSKT. The Northwest Montana WMD – Lake County includes approximately 3,228 acres of fee title (Service owned) Waterfowl Production Areas, and approximately 4,336 acres of private land encumbered by Service conservation easements. The establishment authorities and purposes of these NWRs units are found in the Refuge Purposes Database, at <http://www.fws.gov> which is incorporated herein by reference.

Since passage of the Tribal Self-Governance Act of 1994, the CSKT has sought to be involved in the operations and management of NBRC through a self-governance AFA. The Service and CSKT entered into two prior AFA’s. The first, for FY 2005 - 2006 was terminated by the Service in December 2006. The second AFA for FY 2009 – 2011 was rescinded by a court order from the U.S. District Court for the District of Columbia in September, 2010.

The first, 2005 - 2006 AFA failed for a variety of reasons. The Director’s memo that terminated the agreement cited CSKT performance deficiencies and misconduct by CSKT employees resulting an unsafe, hostile work environment. During that AFA, the NBRC Refuge Manager reported poor performance by CSKT of a significant number of the tasks assigned to CSKT, safety violations by CSKT employees, and many difficulties with implementing the AFA. The CSKT disagreed with the Service’s assessments of their performance and provided reports that rebutted the Service’s allegations and conclusions, and that held the Service responsible for many of the alleged failures. The CSKT felt that the Service wanted the AFA to fail and looked for ways to make the CSKT look bad. Service employees filed a grievance against the Service for allowing a hostile work environment to exist at NBRC. Some Service employees reported they were harassed by some CSKT employees.

During negotiations for the second (2009 – 2011) AFA, the Service and CSKT made very significant changes to the AFA. Those changes in the agreement, and new commitment by leadership of both parties to achieve a successful partnership, resulted in greatly improved performance in FY 2009 and 2010. Establishment of a Refuge Leadership Team empowered to resolve disputes at the field level, requirements and commitments by both parties to provide a healthy workplace, a new dispute resolution process, monthly reports to CSKT and Service leadership, quarterly briefings of the CSKT Tribal Council by the Refuge Manager, and CSKT execution and supervision of their NBRC work through their existing and highly professional Natural Resources Department, were all features of the 2009 – 2011 AFA that were absent in the 2005 – 2006 agreement. NBRC operations and maintenance under the 2009 – 2011 AFA were not perfect, but they were well within the range of quality of performance observed throughout the NWRs on units staffed solely by Service employees. Throughout FY 2009 and FY 2010, there were no disputes elevated above the field level, and no instances of reported harassment of Service or CSKT employees by employees of the other party. Although there were

several on-the-job accidents and injuries that occurred during the 2009 – 2011 AFA, the recordable accident rate at NBRC was within the range that occurred on other Region 6 refuges and below the rates recorded in other Regions of the Service. There were no significant problems related to health and safety of employees, the public or wildlife at NBRC during the FY 2009 – 2011 AFA.

The CSKT has very strong historical, cultural, and geographic ties to the refuges of the NBRC. All NWRS Units administered in the NBRC lie within the external boundaries of the Flathead Reservation, established under provisions of the 1855 Hellgate Treaty between the United States and the Bitterroot Salish, Pend Orielle, and Kootenai tribes that comprise the CSKT. Pablo and Nine-pipe NWRs are overlay refuges on lands owned by the CSKT. The National Bison Range itself was acquired directly from the Tribe, and was the first land within the Flathead Reservation to be removed from tribal trust status. The federal acquisition of the Bison Range was later ruled, in federal court, to have been an unconstitutional taking. Besides their ties to the lands of the NBRC, the tribal members have a long cultural and spiritual association with bison. Indeed, the bison at NBR descend primarily from bison calves that were rescued and cared for by a Pend Orielle man in the 1880's when the species was near extinction, and before the federal government began to take any conservation action for the species.

The ultimate goal of the Service is to reestablish a self-governance AFA with the CSKT at NBRC, as authorized by the Tribal Self-Governance Act of 1994. This Categorical Exclusion covers such an AFA, and also any other kinds of agreements that may be entered as interim steps to achieving the goal of a new AFA.

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Under any agreement entered by the Service and CSKT for operations and maintenance at NBRC, CSKT may perform work in the following areas:

1. Biological Program
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3. Maintenance Program
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This work may involve management of those individual programs, management of approved projects, and management of CSKT employees, CSKT volunteers and CSKT contractors. CSKT may provide management assistance to the Refuge Manager, including making staff recommendations in all refuge program areas for final decision by the Refuge Manager.

Under any agreement, the Service retains responsibility for all work at NBRC not specifically assigned to CSKT, and final management and administrative authority over all programs, projects, and work activities at the NBRC.

Under any agreement entered, the CSKT and its employees will be held to the same performance standards, will be provided the same resources, and will comply with the

same legal and policy requirements that would apply to the work if it was being performed by Service employees.

Benefits

Conducting operations and maintenance at NBRC through partnership agreements or contracts between the Service and CSKT will further implement the Native American Policy of the Service.

Partnerships and/or contracts involving CSKT employees in the operations and maintenance of the NBRC will allow the CSKT to participate in Service programs to which the CSKT and its people have strong historical, cultural, and geographic ties.

The CSKT can provide highly motivated and well-qualified employees to perform work that is not inherently federal at the NBRC, thereby providing exceptional assistance help the Service achieve its mission, goals, and objectives for NBRC.

The proposed action also supports the policy of the United States regarding government to government relationships between the United State and sovereign Indian Nations.

Analysis of Potential Extraordinary Circumstances

516 DM 2 and 516 DM 8 list groups of actions, in all bureaus of the Department of the Interior and in the Service, respectively, that would have no significant effect on the quality of the human environment and, for which, in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required. Those actions are Categorical Exclusions (CX). If any of the extraordinary circumstances, listed in 516 DM 2, App 2 apply, then the CX may not be used and further environmental documents must be prepared for compliance with the National Environmental Policy Act of 1969 (NEPA).

Following is an analysis of the potential extraordinary circumstances as they relate to the proposed action:

Does the proposed action:

1. Have significant adverse effects on public health and safety?
 - A. **No, using CSKT employees, through an agreement does not have any anticipated adverse effects on public health and safety. During the 2005 – 2006 AFA, the Refuge Manager reported deficiencies in CSKT work, including: “several of the highest priority Activities, such as those that influence public health and long-term maintenance of vehicles and heavy equipment were not completed in a satisfactory manner”. Although there were performance problems with individual CSKT employees under the 2005 – 2006 AFA, the CSKT and Service dealt effectively with those**

issues in negotiating and implementing the 2009 – 2011 AFA. CSKT employees at NBRC in the latter AFA all complied with Service-mandated safety policy requirements for safety training and certification. There is no evidence that the human health and safety environment at NBRC during FY 2009 and FY 2010 was any different than at any other NWR in Region 6. During that time period, two Region-wide safety stand-downs were implemented in Region 6, neither was the result of incidents or problems at NBRC. Based on the performance of both CSKT and Service employees at NBRC during the FY 2009 – 2011 AFA, the proposed action does not result in an extraordinary circumstance related to public health and safety.

2. Have significant adverse affects on such natural resources and unique geographic characteristics as historic or cultural resources; park or refuge lands; wilderness areas; wild and scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas under Federal ownership or jurisdiction?

A. No. Several of the unique types of resources listed above occur at NBRC. Those include refuge lands, cultural resources, wetlands, and migratory birds. The proposed action will have no significant adverse effects on any of these lands or resources. The CSKT Natural Resources Department employs well-qualified people with a breadth of experience successfully protecting and managing wetlands, cultural resources, wildlife, water, and wilderness areas on CSKT lands. During the 2009 – 2011 AFA, the CSKT established education requirements for their positions at NBRC that met, and in some cases, exceeded qualification requirements for federal employees. Since the proposed action is only about who does work at NBRC, not about what work is done, and CSKT hires employees who would all meet or exceed federal standards for those positions, there is no reason to anticipate that implementing the proposed action would have any adverse effects on these resources.

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (NEPA Section 102(2)(E))?

A. No. The Service's involvement with the CSKT at the NBRC has been controversial, but the controversy is not about environmental effects. The environmental effects of operations and maintenance activities at NBRC will be the same regardless of who does the work. The Service administers and manages NBRC to achieve the NWRs mission established by Congress in the NWRsAA, and the establishment

purposes of the individual NWRs units that comprise NBRC, and goals and objectives established for those units by the Service in compliance with laws, regulations and Service policy. Implementing the proposed action will convey no final refuge management decision-making authority to CSKT, and CSKT employees will not be tasked to do inherently federal work. Hence the use of available resources at NBRC will be the same, regardless of the whether people performing the work are Service or CSKT employees.

4. Have highly controversial environmental effects or involve unique or unknown environmental risks?

A. No. The proposed action will have no bearing on the environmental effects of the operations and maintenance of the NBRC. The proposed action only impacts who does what work at NBRC, not about what work gets done.

5. Have a precedent for further action or represent a decision in principle about future actions with potentially significant environmental effects.

A. No. Implementing the proposed action does not establish any new precedent. The proposed action involves exercise of existing authorities provided by Congress for the Service to accomplish work through agreements with Indian Tribes. The decision whether or not to accomplish work through such an agreement is not anticipated to have any effect on soil, water, wildlife, air quality, habitat or other significant components of the human environment.

6. Have a direct relationship to other actions with individually insignificant by cumulatively significant environmental effects.

A. No. the proposed action is not directly related to other actions.

7. Have significant adverse effects on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau or office, the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, or a consulting party under 36 CFR 800?

A. No. Presently, the Regional Cultural Resources officer has identified seven (7) sites that may be National Register eligible on the National Bison Range. None of these sites has a consensus determination, and none are listed. All seven sites on NBR are treated as “eligible”. No National Register listed or eligible sites are presently known to exist at Pablo or Nine-pipe NWRs or on the NW Montana WMD – Lake County. The proposed action would have no adverse effects on any

currently identified or currently unidentified historic places because under the proposed action, any CSKT employees working at NBRC are held to the same requirements to protect historic sites and cultural resources as Service employees working at NBRC. It is possible that the proposed action could actually enhance protection of cultural and historic sites within the NBRC by providing a closer working relationship and cooperation between the Service and the CSKT government and people who have a heightened awareness and strong commitment to protect the tribes' cultural heritage.

8. Have significant adverse effects on the species listed, or proposed to be listed on the List of Endangered or Threatened Species, or have significant adverse effects on designated Critical Habitat for these species.

A. No. The Service has determined through and Intra-Service Section 7 Consultation process that the proposed action will have No Affect on listed species or critical habitat. (Note Section 7 in progress, not final on 11/5/10, anticipate ES concurrence with No Affect)

9. Have the possibility of violating a Federal law, or a State, local or tribal law or requirement proposed for the protection of the environment.

A. No. The proposed action will not violate any Federal, State, local or tribal environmental law. The proposed action is to use existing authority, provided by Congress to involve the CSKT in operations and maintenance at NBRC, under provisions of existing law.

10. Have the possibility of disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?

A. No, the proposed action will not have adverse effects on low income or minority populations.

11. Have the possibility to limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly affect the physical integrity of such sacred sites (Executive Order 13007).

A. No. The proposed action will not affect the Service's compliance with the requirements of E. O. 13007.

12. Have the possibility to significantly contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)?

A. No. The proposed action will not contribute to the introduction, continued existence or spread of noxious weeds or other non-native invasive species. The NBRC does have a significant invasive species problem. Numerous invasive weed species are prevalent on all units of NBRC. These refuges exist in the context of a landscape that has extensive invasive species problems, and the issue is a cross-jurisdictional one that affects not only the refuges, but also other federal, state, tribal, and private property in the Mission Valley, and throughout western Montana. Under the proposed action, CSKT employees would likely be involved in work including invasive species surveys and mapping and application of integrated pest management techniques, including herbicide application and release and monitoring of approved biological control agents. Under the proposed action, CSKT employees are also likely to be involved in preparing a variety of plans, proposals, and reports related to invasive species management for approval by the Refuge Manager. Under the 2009 – 2011 AFA, CSKT employees performed many of these tasks in a fully satisfactory manner, and all CSKT employees performing these tasks had to be fully qualified for their duties and achieved the same level of training and certification required of Service employees who perform these tasks at NBRC and other units of NWRs. Indeed, the Service and CSKT have implemented a challenge cost share agreement for landscape level work to educate area residents about invasive species management issues throughout the landscape surrounding NBRC. Because the proposed action would require the CSKT to continue to operate under the same legal requirements and policy guidelines as Service employees, there is no reason to anticipate that performance of invasive species work by CSKT employees significantly contribute spread, existence or introduction of invasive species to NBRC.

Estimated Cost.

Depending on the type and duration of the agreement entered and the extent of work the CSKT may perform at NBRC, the annual cost of the proposed action would range between \$300,000.00 and \$1,500,000.00. The vast majority of these costs are not additive, but simply represent that portion of the NBRC Operations and Maintenance budget that would be transferred to the CSKT to accomplish work, instead of being spent directly by the Service. The proposed action can include an agreement whereby the Service would potentially pay the CSKT indirect costs, and in that case there would be an additive cost estimated not to exceed \$115,000.00 annually.

Recommendation:

The proposed action will have no significant adverse effect on the quality of the human environment. The proposed action of entering an agreement with the CSKT for CSKT employees to perform operations and maintenance work, including management of programs, and of their employees, qualifies as a Categorical Exclusion under the following Departmental Categorical Exclusions, found at 516 DM 2, Appendix 1:

1.1 Personnel actions and investigations and personnel services contracts;

1.3 Routine financial transactions including such things as salaries and expenses procurement contracts (in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties;

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g. limited in size and magnitude or short-term effects).

Additionally, the work that the CSKT would perform as a result of the proposed action is also a Categorical Exclusion under Department Categorical Exclusion:

1.6 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping) study, research, and monitoring activities; and

is a Categorical Exclusion under the Service-specific Categorical Exclusions listed at 516 DM 8.5:

B.(1). Research, inventory and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem;

B.(2). The operation and maintenance and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use and have no or negligible environmental effects on-site or in the vicinity of the site;

B.(3). The construction of new or the addition of, small structures or improvements, including structures or improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included:

- (a) Installation of fences.
- (b) The construction of small water control structures.
- (c) The planting of seeds or seedlings and other minor revegetation actions.
- (d) The construction of small berms or dikes.
- (e) The development of limited access for routine maintenance and management purposes.

B.(4). The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.

B.(5). Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Service procedures.

It is recommended that the Service implement the proposed action.

Assistant Regional Director
National Wildlife Refuge System, Region 6

Date

DRAFT


From: [Dean Rundle](#)
To: [Rick Coleman](#)
Subject: Re: Draft CATEX
Date: 11/05/2010 11:30 AM
Attachments: [CATEX.NBR.11.5.10.doc](#)

Rick: appreciate approval of the draft. Sharon is reviewing. Recommend not signing until we hear from IG and Section 7 is complete.

I am going to try to go up and visit with Tribal Council on Tuesday.

Dean

▼ [Rick Coleman/R6/FWS/DOI](#)

**Rick
Coleman/R6/FWS/DOI** To Dean Rundle/R6/FWS/DOI@FWS
cc
11/05/2010 11:29 AM Subject Re: Draft CATEX 

I have reviewed and approve this draft CATEX.

Thanks

Rick

Rick Coleman

ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

▼ [Dean Rundle/R6/FWS/DOI](#)

**Dean
Rundle/R6/FWS/DOI** To Rick Coleman/R6/FWS/DOI@FWS
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11/05/2010 10:57 AM Subject Draft CATEX

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This work may involve management of those individual programs, management of approved projects, and management of CSKT employees, CSKT volunteers and CSKT contractors. CSKT may provide management assistance to the Refuge Manager, including making staff recommendations in all refuge program areas for final decision by the Refuge Manager.

Under any agreement, the Service retains responsibility for all work at NBRC not specifically assigned to CSKT, and final management and administrative authority over all programs, projects, and work activities at the NBRC.

Under any agreement entered, the CSKT and its employees will be held to the same performance standards, will be provided the same resources, and will comply with the

same legal and policy requirements that would apply to the work if it was being performed by Service employees.

Benefits

Conducting operations and maintenance at NBRC through partnership agreements or contracts between the Service and CSKT will further implement the Native American Policy of the Service.

Partnerships and/or contracts involving CSKT employees in the operations and maintenance of the NBRC will allow the CSKT to participate in Service programs to which the CSKT and its people have strong historical, cultural, and geographic ties.

The CSKT can provide highly motivated and well-qualified employees to perform work that is not inherently federal at the NBRC, thereby providing exceptional assistance help the Service achieve its mission, goals, and objectives for NBRC.

The proposed action also supports the policy of the United States regarding government to government relationships between the United State and sovereign Indian Nations.

Analysis of Potential Extraordinary Circumstances

516 DM 2 and 516 DM 8 list groups of actions, in all bureaus of the Department of the Interior and in the Service, respectively, that would have no significant effect on the quality of the human environment and, for which, in the absence of extraordinary circumstances, neither an environmental assessment nor an environmental impact statement is required. Those actions are Categorical Exclusions (CX). If any of the extraordinary circumstances, listed in 516 DM 2, App 2 apply, then the CX may not be used and further environmental documents must be prepared for compliance with the National Environmental Policy Act of 1969 (NEPA).

Following is an analysis of the potential extraordinary circumstances as they relate to the proposed action:

Does the proposed action:

1. Have significant adverse effects on public health and safety?
 - A. **No, using CSKT employees, through an agreement does not have any anticipated adverse effects on public health and safety. During the 2005 – 2006 AFA, the Refuge Manager reported deficiencies in CSKT work, including: “several of the highest priority Activities, such as those that influence public health and long-term maintenance of vehicles and heavy equipment were not completed in a satisfactory manner”. Although there were performance problems with individual CSKT employees under the 2005 – 2006 AFA, the CSKT and Service dealt effectively with those**

issues in negotiating and implementing the 2009 – 2011 AFA. CSKT employees at NBRC in the latter AFA all complied with Service-mandated safety policy requirements for safety training and certification. There is no evidence that the human health and safety environment at NBRC during FY 2009 and FY 2010 was any different than at any other NWR in Region 6. During that time period, two Region-wide safety stand-downs were implemented in Region 6, neither was the result of incidents or problems at NBRC. Based on the performance of both CSKT and Service employees at NBRC during the FY 2009 – 2011 AFA, the proposed action does not result in an extraordinary circumstance related to public health and safety.

2. Have significant adverse affects on such natural resources and unique geographic characteristics as historic or cultural resources; park or refuge lands; wilderness areas; wild and scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds (Executive Order 13186); and other ecologically significant or critical areas under Federal ownership or jurisdiction?

A. No. Several of the unique types of resources listed above occur at NBRC. Those include refuge lands, cultural resources, wetlands, and migratory birds. The proposed action will have no significant adverse effects on any of these lands or resources. The CSKT Natural Resources Department employs well-qualified people with a breadth of experience successfully protecting and managing wetlands, cultural resources, wildlife, water, and wilderness areas on CSKT lands. During the 2009 – 2011 AFA, the CSKT established education requirements for their positions at NBRC that met, and in some cases, exceeded qualification requirements for federal employees. Since the proposed action is only about who does work at NBRC, not about what work is done, and CSKT hires employees who would all meet or exceed federal standards for those positions, there is no reason to anticipate that implementing the proposed action would have any adverse effects on these resources.

3. Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources (NEPA Section 102(2)(E))?

A. No. The Service's involvement with the CSKT at the NBRC has been controversial, but the controversy is not about environmental effects. The environmental effects of operations and maintenance activities at NBRC will be the same regardless of who does the work. The Service administers and manages NBRC to achieve the NWRs mission established by Congress in the NWRsAA, and the establishment

purposes of the individual NWRs units that comprise NBRC, and goals and objectives established for those units by the Service in compliance with laws, regulations and Service policy. Implementing the proposed action will convey no final refuge management decision-making authority to CSKT, and CSKT employees will not be tasked to do inherently federal work. Hence the use of available resources at NBRC will be the same, regardless of the whether people performing the work are Service or CSKT employees.

4. Have highly controversial environmental effects or involve unique or unknown environmental risks?

A. No. The proposed action will have no bearing on the environmental effects of the operations and maintenance of the NBRC. The proposed action only impacts who does what work at NBRC, not about what work gets done.

5. Have a precedent for further action or represent a decision in principle about future actions with potentially significant environmental effects.

A. No. Implementing the proposed action does not establish any new precedent. The proposed action involves exercise of existing authorities provided by Congress for the Service to accomplish work through agreements with Indian Tribes. The decision whether or not to accomplish work through such an agreement is not anticipated to have any effect on soil, water, wildlife, air quality, habitat or other significant components of the human environment.

6. Have a direct relationship to other actions with individually insignificant by cumulatively significant environmental effects.

A. No. the proposed action is not directly related to other actions.

7. Have significant adverse effects on properties listed or eligible for listing on the National Register of Historic Places as determined by either the bureau or office, the State Historic Preservation Officer, the Tribal Historic Preservation Officer, the Advisory Council on Historic Preservation, or a consulting party under 36 CFR 800?

A. No. Presently, the Regional Cultural Resources officer has identified seven (7) sites that may be National Register eligible on the National Bison Range. None of these sites has a consensus determination, and none are listed. All seven sites on NBR are treated as “eligible”. No National Register listed or eligible sites are presently known to exist at Pablo or Nine-pipe NWRs or on the NW Montana WMD – Lake County. The proposed action would have no adverse effects on any

currently identified or currently unidentified historic places because under the proposed action, any CSKT employees working at NBRC are held to the same requirements to protect historic sites and cultural resources as Service employees working at NBRC. It is possible that the proposed action could actually enhance protection of cultural and historic sites within the NBRC by providing a closer working relationship and cooperation between the Service and the CSKT government and people who have a heightened awareness and strong commitment to protect the tribes' cultural heritage.

8. Have significant adverse effects on the species listed, or proposed to be listed on the List of Endangered or Threatened Species, or have significant adverse effects on designated Critical Habitat for these species.

A. No. The Service has determined through and Intra-Service Section 7 Consultation process that the proposed action will have No Affect on listed species or critical habitat. (Note Section 7 in progress, not final on 11/5/10, anticipate ES concurrence with No Affect)

9. Have the possibility of violating a Federal law, or a State, local or tribal law or requirement proposed for the protection of the environment.

A. No. The proposed action will not violate any Federal, State, local or tribal environmental law. The proposed action is to use existing authority, provided by Congress to involve the CSKT in operations and maintenance at NBRC, under provisions of existing law.

10. Have the possibility of disproportionately high and adverse effect on low income or minority populations (Executive Order 12898)?

A. No, the proposed action will not have adverse effects on low income or minority populations.

11. Have the possibility to limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly affect the physical integrity of such sacred sites (Executive Order 13007).

A. No. The proposed action will not affect the Service's compliance with the requirements of E. O. 13007.

12. Have the possibility to significantly contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112)?

A. No. The proposed action will not contribute to the introduction, continued existence or spread of noxious weeds or other non-native invasive species. The NBRC does have a significant invasive species problem. Numerous invasive weed species are prevalent on all units of NBRC. These refuges exist in the context of a landscape that has extensive invasive species problems, and the issue is a cross-jurisdictional one that affects not only the refuges, but also other federal, state, tribal, and private property in the Mission Valley, and throughout western Montana. Under the proposed action, CSKT employees would likely be involved in work including invasive species surveys and mapping and application of integrated pest management techniques, including herbicide application and release and monitoring of approved biological control agents. Under the proposed action, CSKT employees are also likely to be involved in preparing a variety of plans, proposals, and reports related to invasive species management for approval by the Refuge Manager. Under the 2009 – 2011 AFA, CSKT employees performed many of these tasks in a fully satisfactory manner, and all CSKT employees performing these tasks had to be fully qualified for their duties and achieved the same level of training and certification required of Service employees who perform these tasks at NBRC and other units of NWRs. Indeed, the Service and CSKT have implemented a challenge cost share agreement for landscape level work to educate area residents about invasive species management issues throughout the landscape surrounding NBRC. Because the proposed action would require the CSKT to continue to operate under the same legal requirements and policy guidelines as Service employees, there is no reason to anticipate that performance of invasive species work by CSKT employees significantly contribute spread, existence or introduction of invasive species to NBRC.

Estimated Cost.

Depending on the type and duration of the agreement entered and the extent of work the CSKT may perform at NBRC, the annual cost of the proposed action would range between \$300,000.00 and \$1,500,000.00. The vast majority of these costs are not additive, but simply represent that portion of the NBRC Operations and Maintenance budget that would be transferred to the CSKT to accomplish work, instead of being spent directly by the Service. The proposed action can include an agreement whereby the Service would potentially pay the CSKT indirect costs, and in that case there would be an additive cost estimated not to exceed \$115,000.00 annually.

Recommendation:

The proposed action will have no significant adverse effect on the quality of the human environment. The proposed action of entering an agreement with the CSKT for CSKT employees to perform operations and maintenance work, including management of programs, and of their employees, qualifies as a Categorical Exclusion under the following Departmental Categorical Exclusions, found at 516 DM 2, Appendix 1:

1.1 Personnel actions and investigations and personnel services contracts;

1.3 Routine financial transactions including such things as salaries and expenses procurement contracts (in accordance with applicable procedures and Executive Orders for sustainable or green procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties;

1.7 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (e.g. limited in size and magnitude or short-term effects).

Additionally, the work that the CSKT would perform as a result of the proposed action is also a Categorical Exclusion under Department Categorical Exclusion:

1.6 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping) study, research, and monitoring activities; and

is a Categorical Exclusion under the Service-specific Categorical Exclusions listed at 516 DM 8.5:

B.(1). Research, inventory and information collection activities directly related to the conservation of fish and wildlife resources which involve negligible animal mortality or habitat destruction, no introduction of contaminants, or no introduction of organisms not indigenous to the affected ecosystem;

B.(2). The operation and maintenance and management of existing facilities and routine recurring management activities and improvements, including renovations and replacements which result in no or only minor changes in the use and have no or negligible environmental effects on-site or in the vicinity of the site;

B.(3). The construction of new or the addition of, small structures or improvements, including structures or improvements for the restoration of wetland, riparian, instream, or native habitats, which result in no or only minor changes in the use of the affected local area. The following are examples of activities that may be included:

- (a) Installation of fences.
- (b) The construction of small water control structures.
- (c) The planting of seeds or seedlings and other minor revegetation actions.
- (d) The construction of small berms or dikes.
- (e) The development of limited access for routine maintenance and management purposes.

B.(4). The use of prescribed burning for habitat improvement purposes, when conducted in accordance with local and State ordinances and laws.

B.(5). Fire management activities, including prevention and restoration measures, when conducted in accordance with Departmental and Service procedures.

It is recommended that the Service implement the proposed action.

Assistant Regional Director
National Wildlife Refuge System, Region 6

Date

DRAFT

From: [Gregory Siekaniec](#)
To: [Stephen Guertin](#); [Noreen Walsh](#)
Cc: [Dean Rundle](#); [Rick Coleman](#)
Subject: Annual Funding Agreement
Date: 02/01/2011 02:16 PM

Hi Steve/Noreen,

We have a meeting request from Councilman Steele of the Confederated Salish and Kootenai Tribes (CSKT) to discuss the National Bison Range AFA and temporary hiring for this spring. Please provide an updated brief on the issue. Please indicate how you anticipate meeting the spring hiring need for the Bison Range. Also, knowing your preference for completing the next AFA will help the discussions as well. As you recently pointed out DAS Lyder voiced concern about completing an EA for a contract matter that is categorically excluded and has provisions for exceptional circumstances being addressed. I know recent discussions have centered around the idea that controversy may influence the use of either a cat ex or EA but concern is mounting that we need to advance the process.

The meeting request is for as early as next Wednesday morning. Please provide the brief no later than COB Tuesday 8 February. Sorry for the short time frame but the request came in just this afternoon.

greg

From: [Marla Trollan](#)
To: [Matt Hogan](#)
Cc: [Will Meeks](#)
Subject: Bison AFA Summary Document
Date: Wednesday, July 23, 2014 8:13:44 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Bison AFA two pager-FINAL.docx](#)
Importance: High

Matt—Betsy asked for a summary document of the NBR AFA controversy. I've attached a final version for your review...I'd like to send this to her this morning per her request. Please let me know if you have any concerns.

Thanks,
-Marla

Marla Trollan
Assistant Regional Director
External Affairs
U.S. Fish and Wildlife Service
Mountain-Prairie Region
303-236-4510 / 720-648-2542
<http://www.fws.gov/mountain-prairie/>



National Bison Range Annual Funding Agreement

OVERVIEW

As part of its Tribal trust responsibilities, the U.S. Fish and Wildlife Service (Service) has developed an Environmental Assessment (EA) to analyze the proposed action for an Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT). This proposed action would allow CSKT to manage and implement the visitor services, biology, maintenance, and fire programs on the National Bison Range Complex (refuge complex). The units included in this proposal are the National Bison Range, Pablo National Wildlife Refuge, Ninepipe National Wildlife Refuge, and nine waterfowl production areas; all of which are within the boundaries of the Flathead Indian Reservation in Lake and Sanders counties in Montana.

The CSKT requested negotiations for this AFA under the authority of Title IV, Section 403(c) of the Indian Self Determination and Education Assistance Act, as amended. This is the third attempt at a negotiated agreement with CSKT in 10 years. A previous attempt was litigated by Public Employees for Environmental Responsibility (PEER).

REASON FOR CONTROVERSY

In the proposed action (alternative B), the Service would retain three of the 11 positions responsible for managing the refuge complex, including the refuge manager, deputy refuge manager, and law enforcement officer. The remaining positions would be transferred to CSKT, which is the cause of the current controversy.

Current permanent Service employees would be requested to sign a voluntary Intergovernmental Personnel Act (IPA) agreement, assigning them to work for CSKT. If these affected employees choose not to sign these agreements, that position and funding would be transferred to CSKT for recruitment.

In addition, CSKT would receive funding for recruitment of up to six seasonal employees and a GS-11 (equivalent) wildlife refuge specialist. The individual occupying this new position would be supervised by the manager of the CSKT Fish, Wildlife, Recreation and Conservation Program. They would receive day-to-day direction from the refuge manager and would be responsible for supervising all permanent and temporary CSKT and IPA Service staff.

A July 22 PEER news release referenced leaked draft comments from employees early in the process when employees were understandably concerned about the proposed option. Later comments from employees were more benign. The comments featured in PEER's news release included: "We are very concerned about making any comments individually....We worry about retaliation both by the Service and the Tribes." PEER claimed employees are frustrated at being shut out of the negotiations on an AFA that they supposedly believe will:

- Create an Unworkable Structure: "This proposed agreement is almost exactly like the one in 2008 and the fundamentals of that agreement didn't work – even though this document says it worked well."

- Ignore Resource Management Realities: “There is no analysis on refuge operations. The EA does not analyze how the changes in staff will affect the resource.”
- Encourage Ruinous Turnover: The short term and uncertain nature of these jobs make it hard to hire “experienced staff” from the CSKT. “In fact, several employees, particularly in leadership positions, had no affiliation with the Tribes.”

RECOMMENDED ACTION

Respond to query using the following talking point:

“We received and responded to PEER’s request under the Freedom of Information Act for documents related to the Annual Funding Agreement between the U.S. Fish and Wildlife Service and the Confederated Salish Kootenai Tribes. Because we are planning to open up a comment period later this month July (2014) on the draft environmental assessment for a proposed annual funding agreement between the Service and the Tribes that may allow for Tribal management and implementation of the biological, maintenance, public use, and fire programs on the National Bison Range, it would be inappropriate for us to comment on the proposed annual funding agreement until after the public comment period has closed and we have addressed the comments received from the public.”

ADDITIONAL BACKGROUND:

We do not yet have a publication date for the EA, but we believe we are on track to meet the NOA-driven August 1 deadline. The Mountain-Prairie Region Refuge staff briefed Steve Guertin on the NOA on July 21 and we are now waiting for the Department’s approval. If they approve it by July 25, and we expect they will, we will meet the deadline and will have a publication date in approximately two weeks. At that point, we will issue our news release, open the public comment period, and otherwise follow the communications plan.

From: josephmazzoni@sbcglobal.net
To: noreen_walsh@fws.gov
Subject: Bison Range EA
Date: Saturday, August 09, 2014 6:35:17 PM

I am still waiting to receive a hard copy of the EA, as promised by Laura King at the Bison Range. I hope you folks will provide us with an extension to the comment period. You're not leaving us much time to review a draft EA that took the Service two years to develop!

Joe Mazzoni

From: Dean_Rundle@fws.gov
To: Jorge_Silva-banuelos@ios.doi.gov
Cc: Jeff_King@fws.gov; Matt_Hogan@fws.gov
Subject: Briefing paper meeting with CSKT on 10/17
Date: Thursday, October 11, 2012 4:42:22 PM
Attachments: [BP.NBR.AFA.10.11.12.doc](#)

Jorge: Attached is the briefing paper you requested in preparation for our meeting with CSKT Tribal Council in Pablo next week.

Dean Rundle
Refuge Supervisor
303/236-4306

(See attached file: BP.NBR.AFA.10.11.12.doc)

INFORMATION MEMORANDUM FOR THE ASSISTANT SECRETARY

FROM: Matt Hogan, Assistant Regional Director NWRS/PFW, Region 6 FWS

SUBJECT: National Bison Range Annual Funding Agreement

I. Summary: Region 6 and the Confederated Salish and Kootenai Tribes (CSKT) completed government-to-government negotiations for a new Annual Funding Agreement (AFA) for CSKT self-governance participation at the National Bison Range (NBR) Complex in March 2012. Following meetings between Region 6, Rocky Mountain Regional Solicitor, and CSKT, it was decided to prepare a robust Environmental Assessment (EA) to provide National Environmental Policy Act (NEPA) compliance for the draft AFA.

II. Status:

- A public scoping period for the EA was provided in May – June, 2012. Substantive written scoping comments were received from 16 individuals and organizations.
- Region 6 staff are began drafting the EA in July, 2012. NBR staff are preparing Chapter 3 – Affected Environment; the Refuge Supervisor is drafting Chapters 1 (Introduction/Purpose and Need for Action, 2 (Issues), and 4 (Alternatives). Region 6 has contracted with a private firm to prepare Chapter 5 (Environmental Affects). First drafts of Chapters 1 and 4 are substantially complete and are under internal review among Service and SOL staff.
- CSKT legal staff provided significant written input for consideration in the draft EA on August 24.
- A formal Solicitor's Opinion has been requested by Region 6, based on one of the comments received during public scoping.

III. Timeline:

- First drafts of Chapters 1, 2, and 4, for internal review are scheduled for completion on October 26.
- The First draft of Chapter 3, for internal review is scheduled for completion on November 12.
- R6 plans to turn over draft Chapters 1, 2, 3, and 4 to the contractor by November 30. The contractor estimates four weeks to review those chapters and prepare Chapter 5 by the end of December
- Draft EA should be ready for public review and comment in early-mid January, 2013 for a 30 day public comment period.
- If a FONSI is signed in the 2d Qtr, FY 13, followed by the required 90 day report to Congress, an AFA could be implemented beginning in the 4th Qtr, FY 13. This is 90 days later than initially planned. If the Regional Director decides an EIS is necessary, that will delay an AFA for at least another year.

IV. Issues of Concern: At this time the primary issue of concern is the formal Solicitor's Opinion requested on July 3. CSKT agrees that we cannot issue a draft EA for public review and comment prior to receipt of that opinion.

Prepared by: Dean Rundle, Refuge Supervisor, (303) 236-4306
Date: October 11, 2012

From: [Noreen Walsh](#)
To: [Cynthia Martinez](#); [Jim Kurth](#); [Rowan Gould](#); [Steve Guertin](#); [Dan Ashe](#)
Cc: [Will Meeks](#); [Matt Hogan](#)
Subject: briefing paper on CSKT visit tomorrow
Date: Monday, January 27, 2014 2:09:11 PM
Attachments: [AFA EA Note to Reviewers FINAL 1-27-14.docx](#)
[Director briefing current AFA EA status January 2014 FINAL 1-27-14.doc](#)

In anticipation of the CSKT meeting tomorrow, 1230 pm eastern time, here is an update on the status of our negotiations on the AFA.

This will be roused in DTS also.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

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From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Monday, January 27, 2014 11:49 AM
To: Noreen Walsh
Cc: Matt Hogan
Subject: BP/NTR

Here they both are.

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)

Note to Reviewers

This folder contains a briefing paper for the Director which describes the status of the NEPA process and Environmental Assessment needed to evaluate a proposed Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT). This proposed agreement would allow CSKT to manage the visitor service, biology, and maintenance programs on the National Bison Range Complex, under the authority of the Tribal Self Governance Act. Through this EA process, the Service has developed three other alternatives to this negotiated agreement in addition to the No Action (current management) alternative. The EA team is currently working on the environmental consequences section with a contractor and plans to have a decision reached later this fiscal year.

Anticipated questions and concerns include:

- The schedule has been modified in the past due to contracting issues, furlough, and workload. CSKT is concerned that the amended timeline may indicate a change in the our position to enter into the Negotiated AFA.
- CSKT has recently asked us to add the 2008 AFA as an alternative in the EA. This alternative would replace the proposed GS-11 equivalent wildlife refuge specialist position with a GS-12 equivalent co-equal deputy manager position. This alternative would also transfer all operational funding to the tribe. During government-to-government negotiations, both CSKT and the Service agreed that these items would not be included in any AFAs in the future, due to operational challenges and risk of litigation. The co-equal deputy position risks potentially violating the Game Range Act (i.e., prohibiting co-management of refuges) and both the Service and CSKT recognized the challenges of removing all control of the operational funding from the refuge manager. After receiving this request from CSKT, the EA Team conferred with our DOI solicitors who concurred that there is no legal reason to include the 2008 AFA as an alternative. The Service has developed a range of 'reasonable alternatives' to the negotiated AFA in compliance with CEQ regulations (1502.14(a)). The Service has agreed to put the 2008 AFA in the EA as an alternative considered but eliminated from detailed study describing the agreements made during the government-to-government negotiations.
- CSKT has asked that they be permitted to review the draft document now, rather than waiting for the 30-day internal review scheduled for April. On the advice of our DOI solicitors it would be inappropriate to include them in the development of the draft EA, given that they are the proponents of the action. This will increase the risk of litigation. The DOI solicitors have shared these concerns with the CSKT's attorney.
- Regional Leadership, including the RD and ARD-NWRS, have met with the CSKT expressing our intent of a successfully negotiated agreement and continued partnership. Both have met with CSKT Council and plans are currently underway with CSKT attorney to meet regularly with them through the final stages of the planning effort.

INFORMATION MEMORANDUM FOR THE DIRECTOR

FROM: Noreen Walsh, Regional Director (R6)

SUBJECT: National Bison Range Annual Funding Agreement - Status of NEPA

I. Summary: In March 2012, the Service and the Confederated Salish and Kootenai Tribes (CSKT) completed government-to-government negotiations for a proposed Annual Funding Agreement (AFA) that would allow CSKT to manage the biology, visitor services, and maintenance programs on the National Bison Range Complex. The Service has had two prior agreements with CSKT, one was terminated in December 2006 and the other was rescinded by the courts in September 2010. To evaluate this negotiated agreement and comply with the 2010 court ruling on the National Environmental Policy Act (NEPA), the Service decided to prepare an Environmental Assessment (EA). The Notice of Intent to start the EA process was released in May 2012 through Montana statewide media. During this scoping process, the public was provided the draft agreement and asked to comment and offer other alternatives. After reviewing the public comments and conducting internal scoping, the EA team developed three additional alternatives. The Service hired a contractor to complete the environmental consequences analysis, which is currently being developed.

II. Current Status/Schedule:

- Following a two-day workshop in mid-December, the contractor began drafting the environmental consequences chapter. A first draft of the chapter is scheduled to be completed by the end of February.
- DOI Solicitors and EA team will review consequences analysis chapter in early March. The contractor will provide the final environmental consequences chapter later the same month.
- The remaining four chapters have been completed and are being reviewed and edited for the 30 day internal review scheduled to begin in April. The CSKT will be included in the internal review. The EA will be revised based on substantive comments and released to the public soon thereafter for a 30 day review.
- The Regional Director will select the preferred alternative after reviewing the final EA and public comments and sign a FONSI or recommend we proceed to an EIS. Thereafter there is a required 90 day report to Congress.
- An AFA could be implemented in the beginning of FY15. If an EIS is warranted, that will delay an AFA for at least another year.

II. Issues of Concern

- CSKT recently asked the Service add the 2008 AFA as an alternative in the EA. During government-to-government negotiations, both CSKT and the Service agreed that some of the items included in the 2008 would not be included in future AFAs, due to operational challenges and risk of litigation; therefore, it was never included as an alternative. The EA team is considering the 2008 AFA in the EA as an "alternative considered but eliminated from detailed study" explaining the agreements made during the 2012 government-to-government negotiations.
- CSKT has asked to review the draft document now, rather than waiting for the 30-day internal review scheduled for this spring. On the advice of our DOI solicitor's it would be inappropriate to include them in the development of the draft EA, given that they are the proponents of the action. This will increase the risk of litigation.

Prepared by: Will Meeks; (303) 236-4303, Toni Griffin, Laura King

Date: January 27, 2014

From: [Noreen Walsh](#)
To: [Dan Ashe](#)
Subject: Comment period on NBR AFA EA
Date: Monday, September 08, 2014 12:44:59 PM

Dan,

I didn't hear anything back from you last week as to whether you ended up talking with Ron, so as you and I discussed we are planning to stick to the date of 9/18 to close the comment period (and that includes a 2 week extension from the original date).

I will phone Ron sometime this week to let him know and I will send a brief letter back to him formalizing that decision.

I did have a chance to speak with Jim last week and let him know the path we are on.

Noreen

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

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From: [Noreen Walsh](#)
To: [Ren Lohofener](#)
Cc: [Matt Hogan](#)
Subject: CSKT DRAFT AFA and EA
Date: Monday, June 16, 2014 10:12:45 AM
Attachments: [NBR-AFA-DRAFT-EA_04-25-14_lowres.pdf](#)

Ren,

We just closed an INTERNAL comment period (including review by the Tribe) and we anticipate we are about 30 days out from publishing the NOA for the public to comment on this. So if you could keep this internal to FWS for now, we will also send you a copy of what goes out to the public in a month.

Hope it's helpful, call if questions.

Noreen

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

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From: Griffin, Toni [mailto:toni_griffin@fws.gov]
Sent: Monday, June 16, 2014 9:56 AM
To: Noreen Walsh
Cc: Will Meeks
Subject: Re: CSKT AFA

Good Morning Noreen,

An electronic copy of the National Bison Range Draft Environmental Assessment for a Draft AFA is attached. The Draft AFA is included within the EA as Appendix A. Please let me know if there is anything else you need.

Thank you,
Toni

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

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
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Contents

<i>Summary</i>	5
<i>Abbreviations</i>	7
CHAPTER 1—Purpose and Need for Action	9
CHAPTER 2—Decision to Be Made	13
CHAPTER 3—Background	15
3.1 The National Bison Range Complex	16
3.2 The Confederated Salish and Kootenai Tribes	21
3.3 The National Wildlife Refuge System	21
3.4 National Bison Range Complex Purposes	22
3.5 The Self-Governance Policy of the United States	23
3.6 The Self-Governance Act and Annual Funding Agreements	24
CHAPTER 4—Public Involvement	31
4.1 Public Scoping	31
4.2 Issues Identified During Scoping	31
CHAPTER 5—Proposed Action and Alternatives	33
5.1 Elements Common to Alternatives Considered for Further Analysis	33
5.2 Alternative A—No Action	34
5.3 Alternative B—Draft AFA (Proposed Action)	38
5.4 Alternative C—AFA for Fire and Visitor Programs	42
5.5 Alternative D—AFA Same as Alternative C plus Incremental Addition of More CSKT Staff in All Programs	44
5.6 Alternative E—AFA Same as Alternative D plus District Programs with Combined Service and CSKT Staff in All Programs	47
5.7 Alternatives Considered but Eliminated from Further Analysis	51
CHAPTER 6—Affected Environment	53
6.1 Physical Environment	54
6.2 Habitat Management	56
6.3 Wildlife Management	61
6.4 Threatened and Endangered Species	67
6.5 Special Management Areas	68
6.6 Research, Inventory, and Monitoring	68
6.7 Visitor Services	70
6.8 Cultural Resources	73
6.9 Operations	77
6.10 Socioeconomics	79

CHAPTER 7—Environmental Consequences of the Proposed Action and Alternatives	85
7.1 Analysis Approach	86
7.2 Habitat Management	87
7.3 Wildlife Management	88
7.4 Research, Inventory, and Monitoring	89
7.5 Visitor Services	90
7.6 Cultural Resources	90
7.7 Operations	91
7.8 Socioeconomics	92
7.9 Summary of Environmental Consequences	94
7.10 Cumulative Effects	95
 CHAPTER 8—Agency Coordination	 97
Appendix A, Draft Annual Funding Agreement	99
Appendix B, Federal Register Notice	139
 <i>Bibliography</i>	 145
 FIGURES	
1. Map of the National Bison Range Complex within the boundary of the Flathead Indian Reservation, Montana	10
2. Base map of the National Bison Range, Montana	17
3. Base map of the Ninepipe National Wildlife Refuge, Montana	19
4. Base map of the Pablo National Wildlife Refuge, Montana	20
5. Organizational staff chart for alternative A (no action)	35
6. Organizational staff chart for alternative B, the draft AFA (proposed action)	40
7. Organizational staff chart for alternative C, AFA for fire and visitor programs	43
8. Organizational staff chart for alternative D, AFA same as alternative C with incremental addition of more CSKT staff	46
9. Organizational staff chart for alternative E, AFA same as alternative D plus district programs with combined Service and CSKT staff in all programs	49
 TABLES	
1. Management units of the National Bison Range Complex, Montana	53
2. List of invasive plant species identified on the National Bison Range Complex, Montana, as of 2012	58
3. The species and estimated numbers populations of other big game animals on the National Bison Range, Montana, in 2012	65
4. Additional cost estimates for each alternative when compared to current conditions	92
5. Alternative employment and annual labor income estimates	93
6. Summary of environmental consequences	94

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.

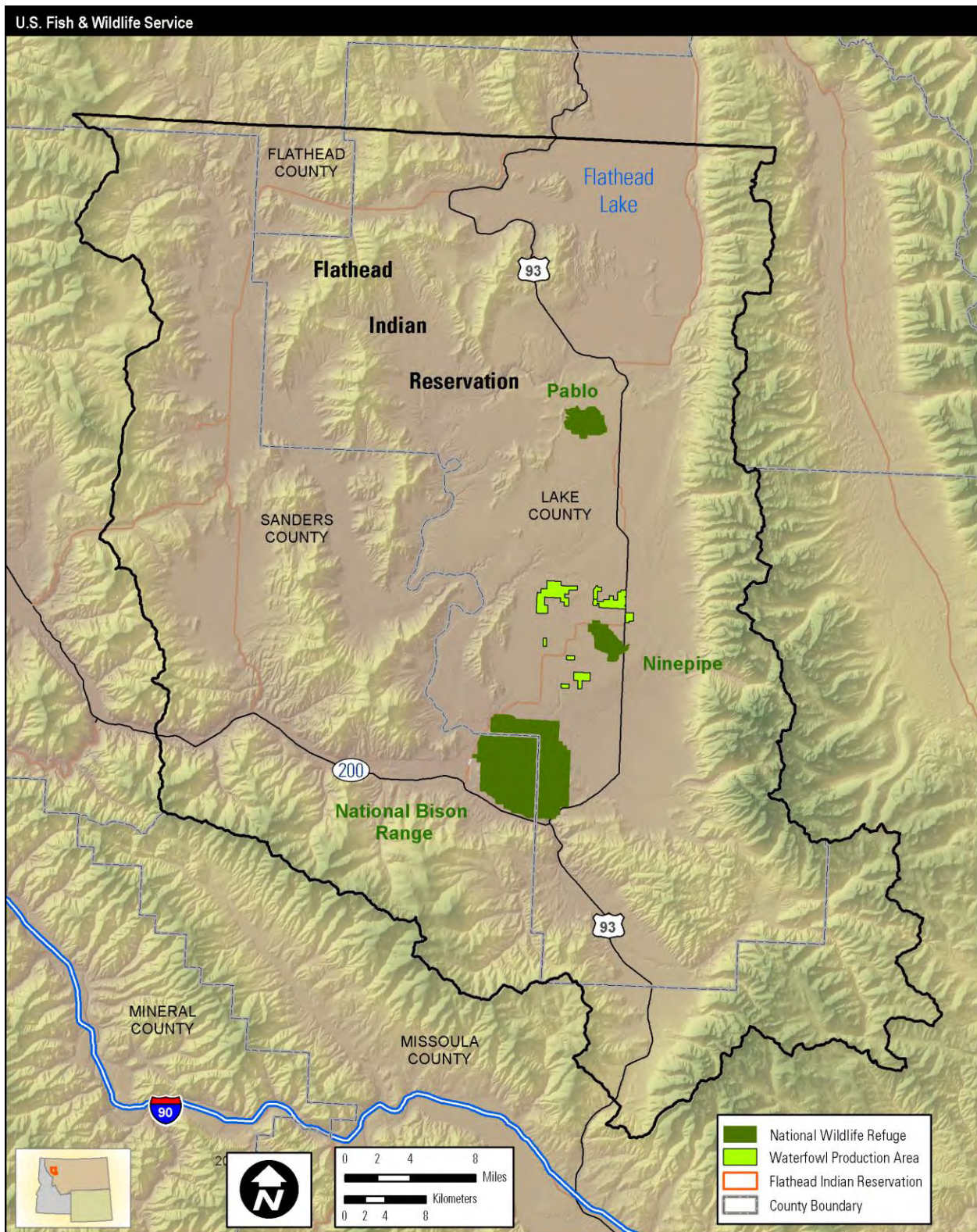


Figure 1. Map of the National Bison Range Complex within the boundary of the Flathead Indian Reservation, Montana.

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. Totalling 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.

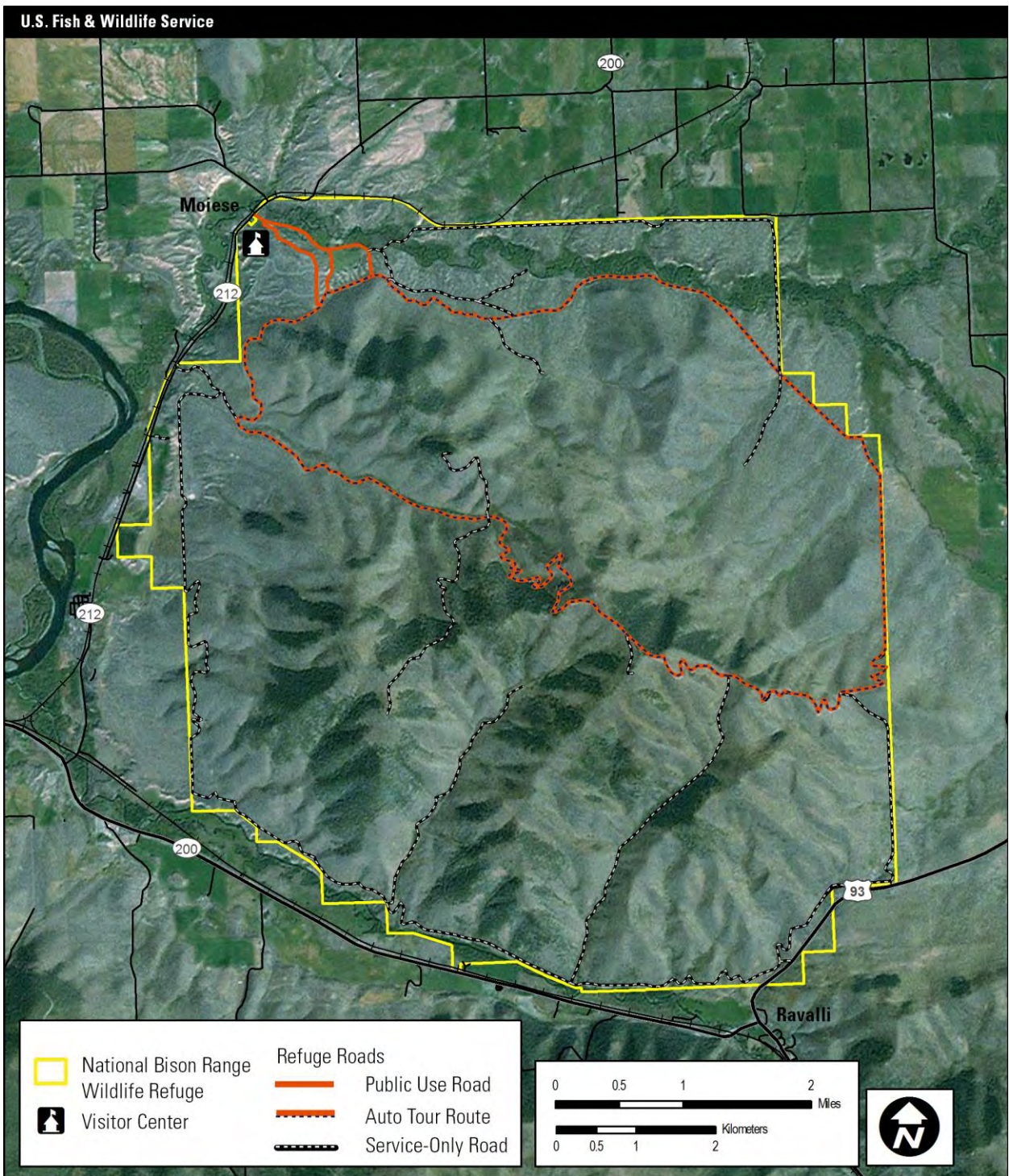


Figure 2. Base map of the National Bison Range, Montana.

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.

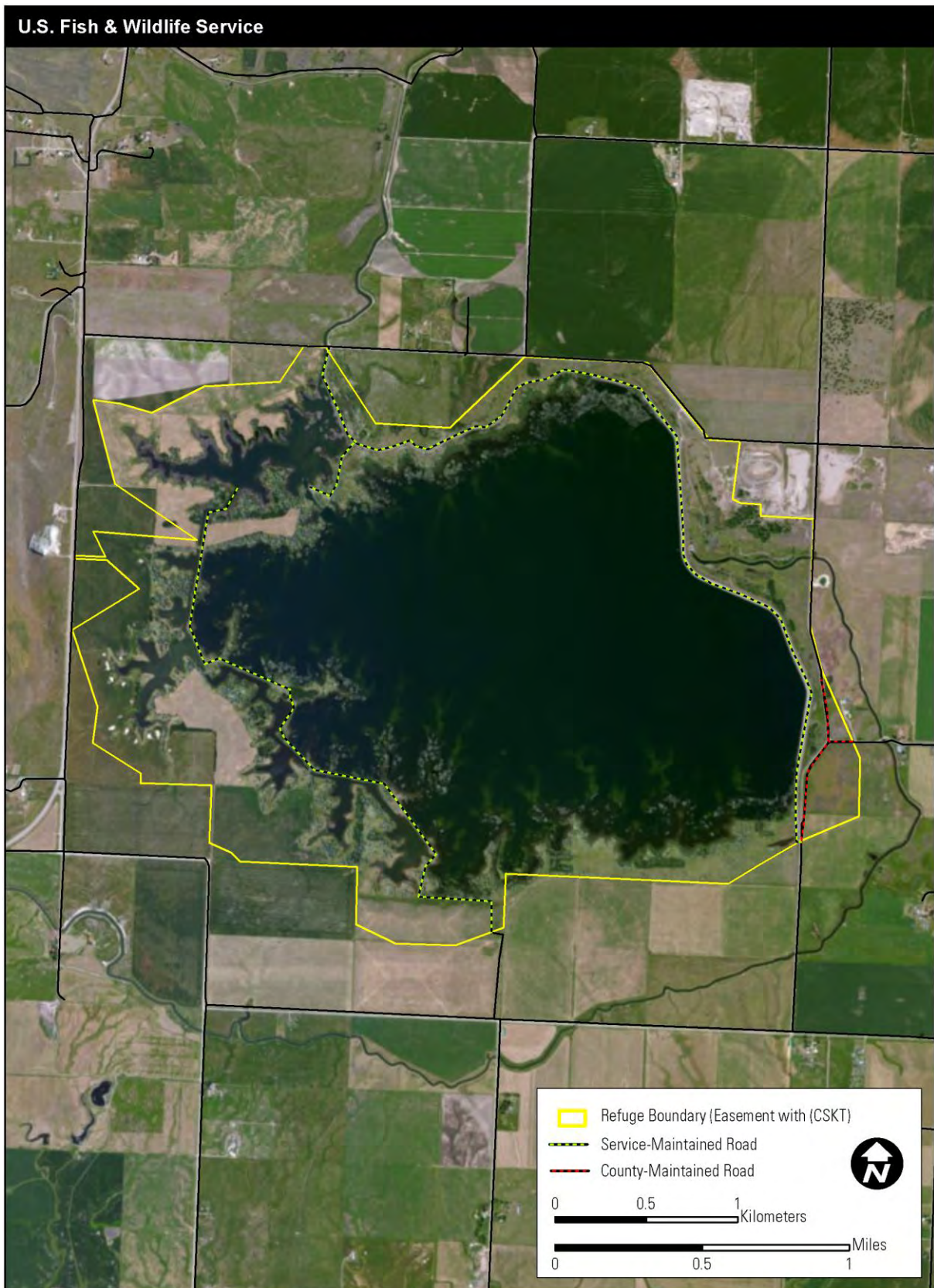


Figure 4. Base map of the Pablo National Wildlife Refuge, Montana.

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.

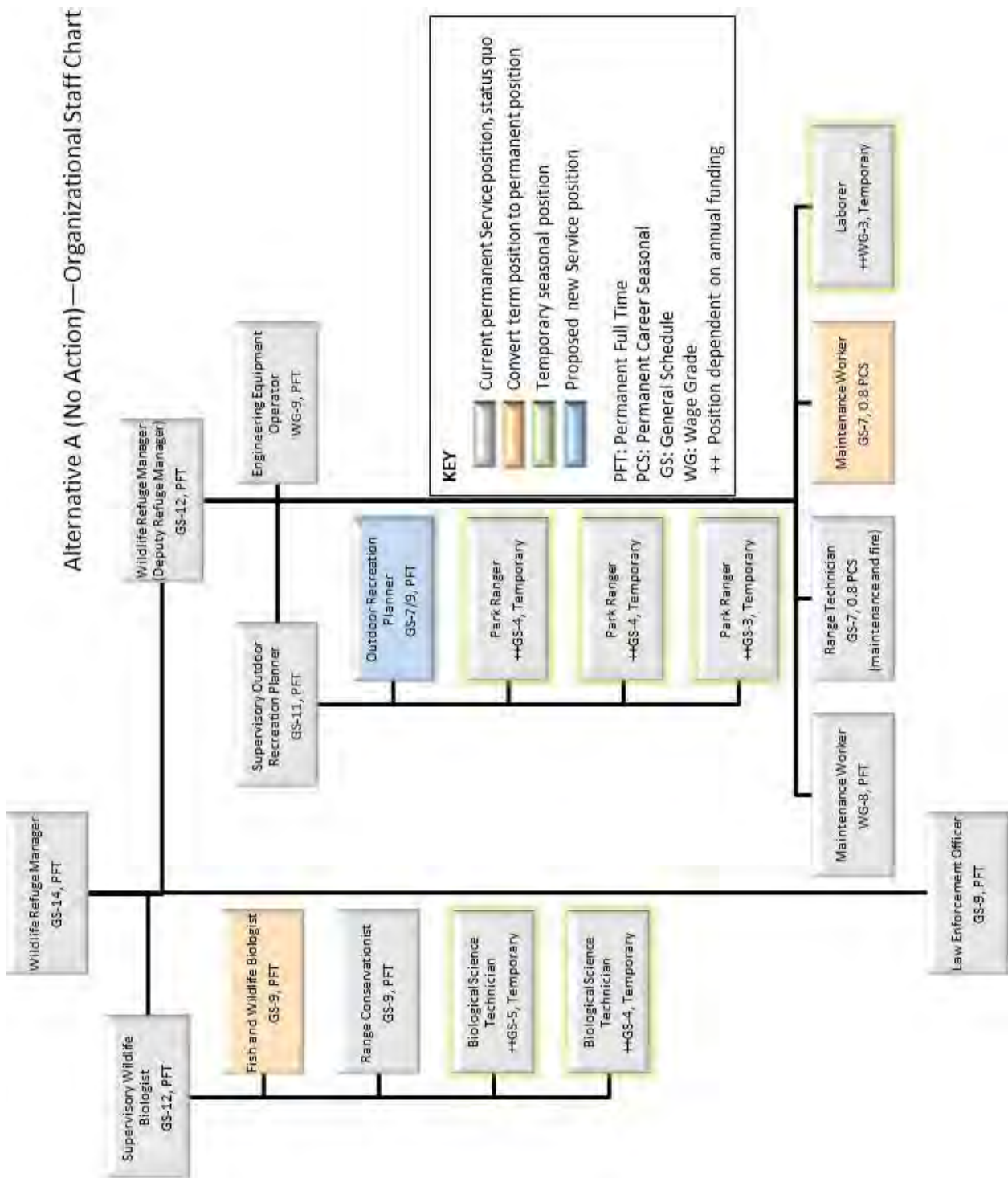


Figure 5. Organizational staff chart for alternative A (no action).

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.

Alternative B (Proposed Action)—Organizational Staff Chart

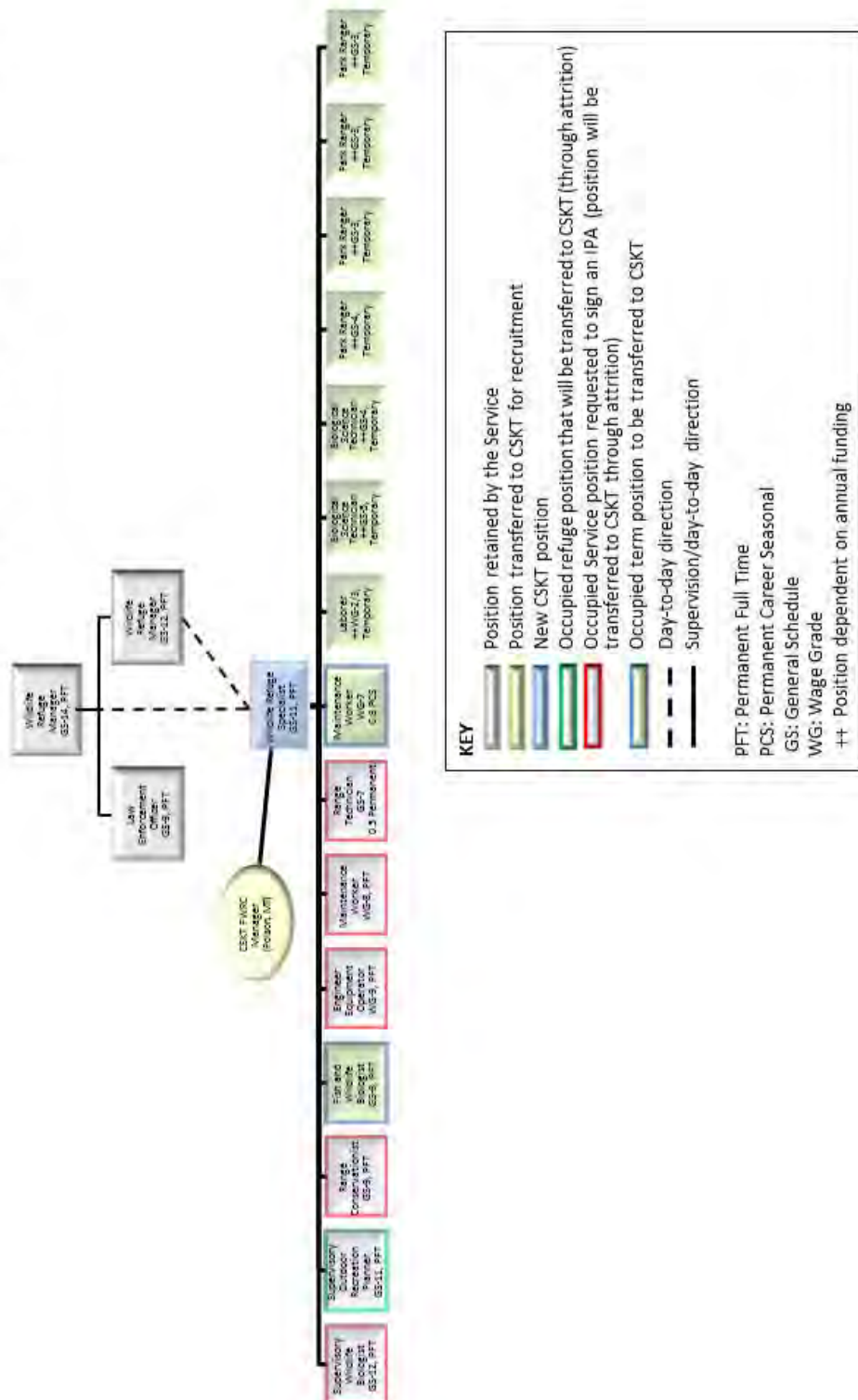


Figure 6. Organizational staff chart for alternative B, the draft AFA (proposed action).

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.

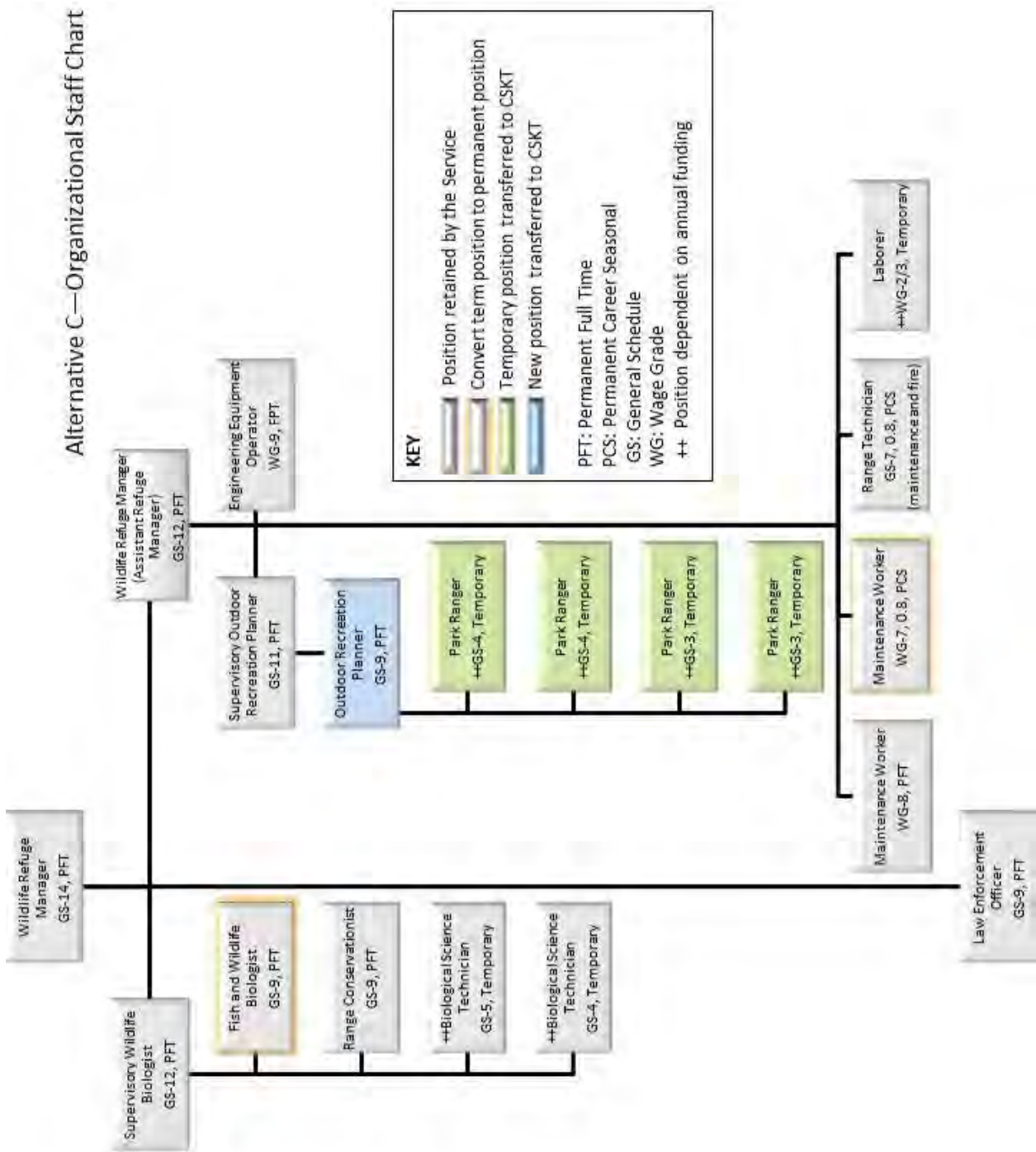


Figure 7. Organizational staff chart for alternative C, AFA for fire and visitor programs.

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.

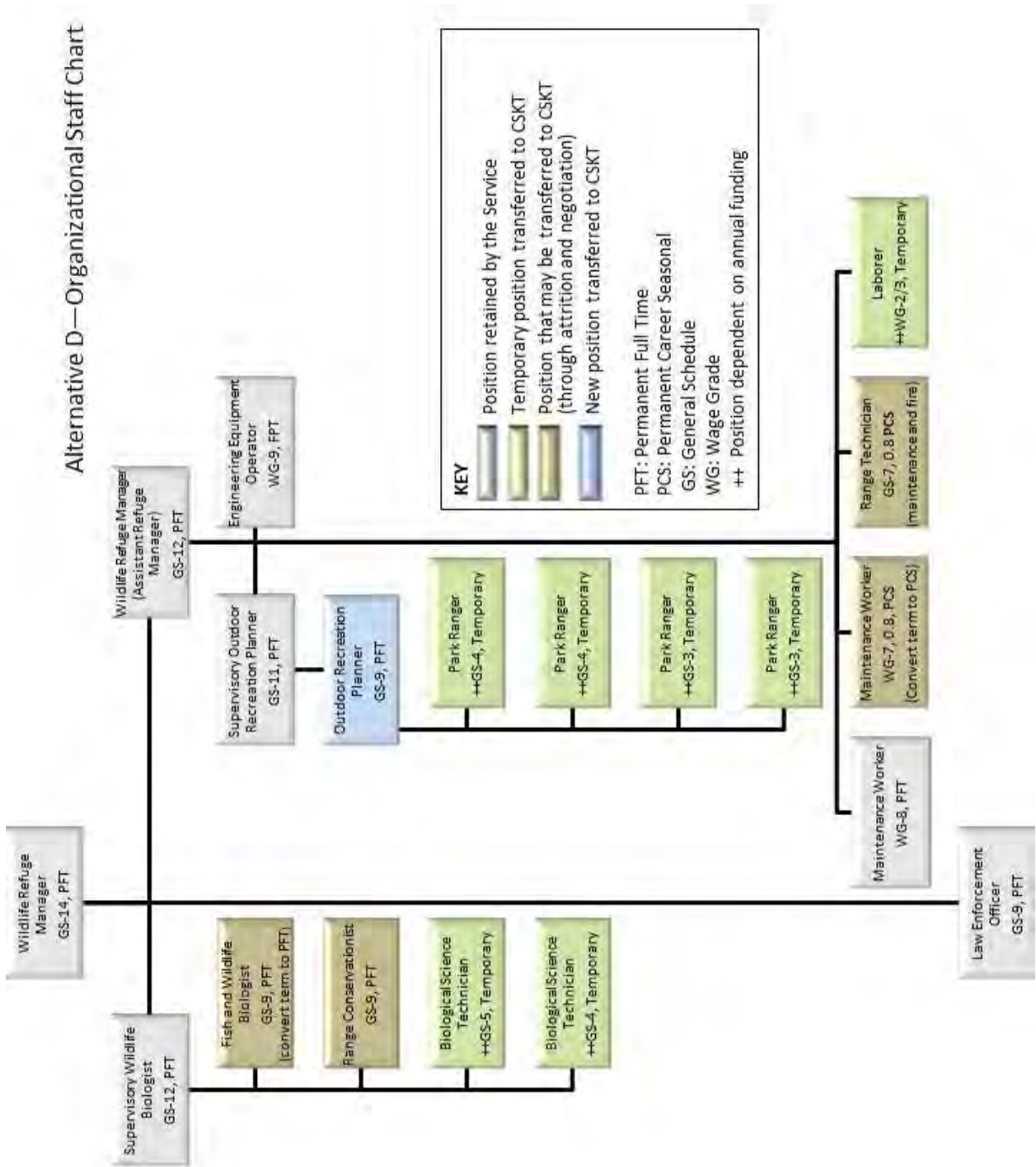


Figure 8. Organizational staff chart for alternative D, AFA same as alternative C with incremental addition of more CSKT staff.

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.

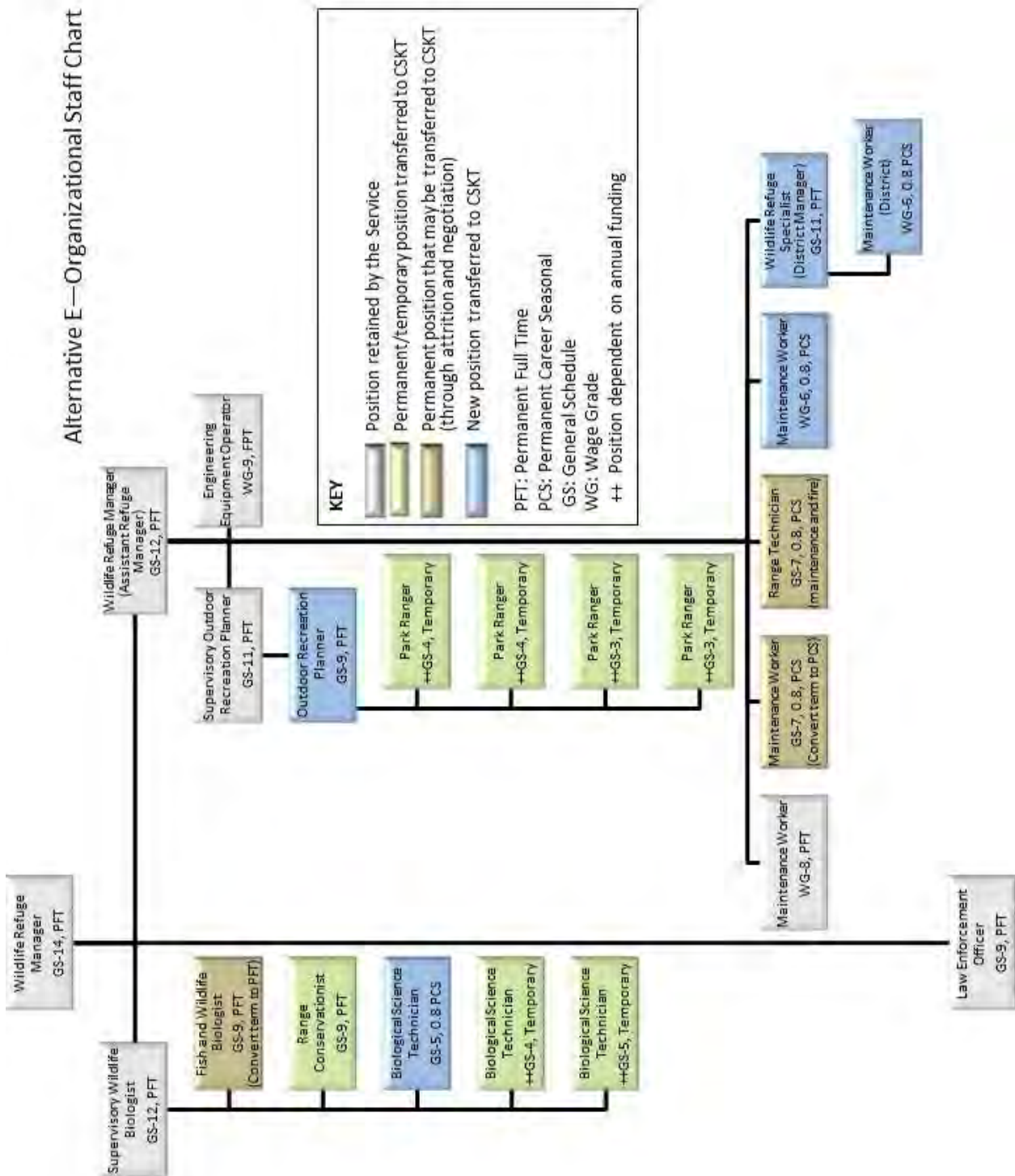


Figure 9. Organizational staff chart for alternative E, AFA same as alternative D plus district programs with combined Service and CSKT staff in all programs.

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.

<i>Unit name</i>	<i>Unit type</i>	<i>Acres</i>	<i>Ownership</i>	<i>County</i>
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 PM₁₀ (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.

<i>Documented in more than 10 years</i>		<i>Documented in less than 10 years</i>	
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.

<i>Species</i>	<i>Estimated current population</i>
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 CSKT’s 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.

<i>Alternative</i>	<i>Added salary cost including benefits</i>	<i>Indirect cost</i>	<i>Total estimated added cost</i>
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

<i>Employment, labor income</i>	<i>Alternative A</i>	<i>Alternative B</i>	<i>Alternative C</i>	<i>Alternative D</i>	<i>Alternative E</i>
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.

<i>Resource topic</i>	<i>Alternative A</i>	<i>Alternative B</i>	<i>Alternative C</i>	<i>Alternative D</i>	<i>Alternative E</i>
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 (Missoulain 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 (“NWRSA”), 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

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 1 of 38



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,

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT¹ w/tech corrections as of 4/12/12 Page 3 of 38



including the NWRSA, 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.

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 5 of 38



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;

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 7 of 38



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.

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 9 of 38



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(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

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 24 of 38



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 be 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. §§ 450l(b) and

450l(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 NWRSA (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
Chairman, CSKT Tribal Council

Date

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 37 of 38



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

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 38 of 38

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) 208-7588.

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 Athabaskan 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 Athabaskan 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 (ONRR) 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 FOGFMA section 202 cooperative agreement, as this is the term contained in FOGFMA 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. Aniakchak 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. Quinalt 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; 9:45 am]

BILLING CODE 4310-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2012-N199;
FXES11130100000C2-123-FF01 E00000]

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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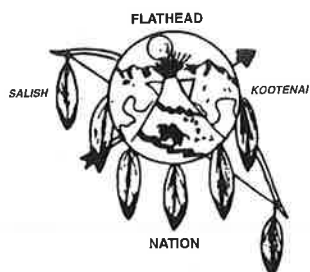
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A People of Vision

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

May 18, 2011

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

TRIBAL COUNCIL MEMBERS:

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Reuben A. Mathias
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Terry L. Pitts
James Steele Jr.

Via facsimile no.: (202) 208-6817

original to follow via express delivery

Dear Director Gould,

During our first negotiation meeting this year for a new Annual Funding Agreement (AFA) for National Bison Range Complex programs, we learned that the U.S. Fish & Wildlife Service (Service) has resumed work on drafting a Service policy for the negotiation of AFA's under the Tribal Self-Governance Act.

This draft policy is already affecting our negotiations with the Service. For this reason, as well as the policy's impact on future negotiations, the Department's action has tribal implications and I would like to know the Service's plans for consultations with tribes regarding further development of the policy.

It is not clear to me whether the draft AFA policy would be adopted by the Service as a stand-alone policy, as a policy incorporated into the Service Manual, or enacted as federal regulations similar to the Interior AFA negotiation policies found in 25 C.F.R. Part 1000, Subparts F and G. If the Service intends to enact the draft policy as federal regulations, or has not ruled out that option, please advise.

Regardless of the form the draft policy may take, we hope that the Service embraces the consultation directives contained in Executive Order No. 13175 (November 6, 2000) ("Consultation and Coordination With Indian Tribal Governments") and the November 5, 2009 Presidential Memorandum on Tribal Consultation. To the extent the Service's draft AFA policy is in the "initial planning stage" or "proposal development stage", as described in the Interior Department's Draft Tribal Consultation Policy,¹ I am requesting tribal consultation in accordance with Section VIII.A of that Draft Tribal Consultation Policy.

¹ As attached to Secretary Ken Salazar's January 14, 2011 letter to Tribal leaders.

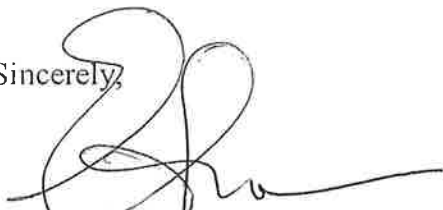
Mr. Rowan Gould
May 16, 2011
Page 2

If the Service has submitted to the Office of Management and Budget any plan regarding implementation of Executive Order No. 13175, per the direction in the November 5, 2009 Presidential Memorandum, please provide me a copy of that plan.

We appreciate the Service's stated commitment, as set forth in the Service's Native American Policy, to entering into agreements under the Indian Self-Determination and Education Assistance Act. On behalf of the Confederated Salish & Kootenai Tribes, I look forward to working with the Service on any further policies impacting Self-Governance opportunities.

As Tribal Council Member James Steele, Jr. shared with you last August in Washington, D.C., our relationship with the Service regarding the National Bison Range Complex has greatly improved over the last few years. It is my understanding that you have also been pleased with the partnership we had under our last AFA. We are interested in maintaining, and further strengthening, this relationship and are therefore concerned about the draft AFA policy's potential impacts on our partnership at the NBRC. Thank you for your time and consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to be "E.T. Moran", written over the word "Sincerely,".

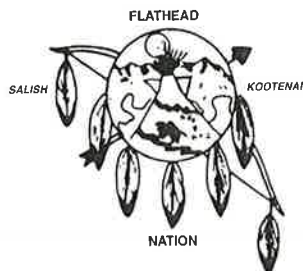
E.T. "Bud" Moran, Chairman
Tribal Council

cc: Dan Ashe
Greg Siekaniec
Stephen Guertin
Rick Coleman
Dean Rundle
Jeff King
Patrick Durham
Sharee Freeman

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MAY 24 2011

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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

Mr. Dan Ashe
September 19, 2011
Page 2

plain language of the National Wildlife Refuge System Administration Act (NWRSA), 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 NWRSA 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 NWRSA [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 NWRSA. This xenophobic approach to Refuge management runs counter to not only the NWRSA, 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.

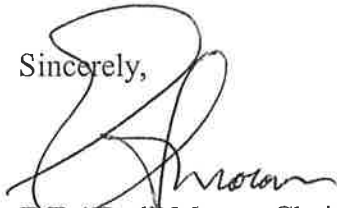
The BGA letter asserts that an alleged lack of public involvement became the primary basis for last year’s federal district court decision rescinding the FY 2009-11 NBRC AFA. As a preliminary matter, the court made clear that it was rescinding the agreement solely because it held that FWS had not adequately 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.

Mr. Dan Ashe
September 19, 2011
Page 3

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).

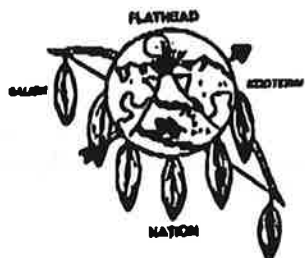
We look forward to returning to this productive partnership. In the meantime, we appreciate this opportunity to respond to the recent BGA letter and we appreciate your, and the Service's, ongoing support.

Sincerely,

A handwritten signature in black ink, appearing to read "E.T. Moran", written over the word "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
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March 21, 2011

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Terry L. Pitts
James Steele Jr.

Mr. Stephen Guertin
Mr. Dean Rundle
Mountain-Prairie Region
U.S. Fish & Wildlife Service
134 Union Blvd.
Lakewood, CO 80228

Via facsimile nos.: (303) 236-8295
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original to follow by U.S. mail

Dear Mr. Guertin and Mr. Rundle,

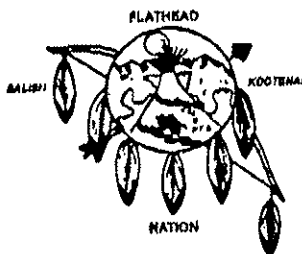
Following up on our November 10, 2010 letter requesting negotiations for a new Tribal Self-Governance agreement regarding the National Bison Range Complex (NBRC), and following subsequent discussions with Interior officials, this letter is to notify you that the Tribal Council has designated Council Member James Steele, Jr., as our lead negotiator.

We look forward to continuing our partnership at the NBRC. We will contact you to schedule an initial negotiation meeting. Please advise if we can provide any additional information at this point.

Sincerely,

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

From: Jeff King <Jeff_King@fws.gov>
To: Dean Rundle/R6/FWS/DOI
Subject: cskt letter
Date: Thursday, January 20, 2011 10:33:40 AM
Attachments: [cskt letter 1-19-2011.pdf](#)



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

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
(406) 275-2700
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www.cskt.org



A People of Vision

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.

January 19, 2011

Mr. Stephen Guertin, 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

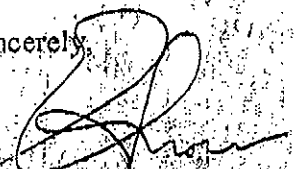
Dear Mr. Guertin,

On December 17, 2010, I met with Deputy Assistant Secretary Jane Lyder, FWS Assistant Director Gregory Siekaniec, and other federal officials to discuss the National Bison Range Complex (NBRC). Towards the end of that meeting, Ms. Lyder had indicated that they wanted to have discussions with FWS' Denver officials before CSKT resumed our discussions with your offices. It is my understanding that those discussions have now taken place.

Following up on a November discussion between Dean Rundle and Brian Upton, one of our tribal attorneys, I would like to request a meeting to talk about next steps regarding the NBRC. We are willing to travel to Denver to meet.

As the NBRC work season is quickly approaching, we would be interested in scheduling a meeting at your earliest convenience. Thank you for your consideration of this request.

Sincerely,


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

cc: Jane Lyder
Gregory Siekaniec
Rick Coleman
Dean Rundle
Jeff King



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



OCT 25 2011

E. T. "Bud" Moran, Chairman
Tribal Council
Confederated Salish and Kootenai Tribes of the Flathead Nation
P. O. Box 278
Pablo, Montana 59885

Dear Chairman Moran:

Thank you for your letter of September 19, 2011. I share your desire for, and commitment to a strong and productive partnership between the U.S. Fish and Wildlife Service (Service) and the Confederated Salish and Kootenai Tribes (CSKT) at the National Bison Range Complex (NBRC).

I appreciate your perspective on various statements made by Blue Goose Alliance President Ron Fowler in his letter to me of July 25, 2011. Service Directors are recipients of many communications regarding the NBRC, from a variety of passionate stakeholders with differing opinions and values.

Several things are clear. The Service has responsibilities under both the National Wildlife Refuge System Administration Act, as amended, and the Tribal Self-Governance Act. While Congress did not provide guidance on how we are to execute those laws in combination, they are not mutually exclusive. We can and will implement both laws to the best of our abilities. I am committed to working in partnership and consultation with the CSKT and other tribes on many issues, including Self-Governance agreements.

I appreciate your statements acknowledging the Service's responsibility for management and administration of the NBRC. I agree that the mandate of the Game Range Act does not preclude the Service from involving tribes or states, through a variety of authorized partnership agreements or contracts, in refuge system operations and maintenance and management of discreet programs on refuges.

Our negotiations for a new Annual Funding Agreement (AFA) for the NBRC continue to make progress. I am aware of the unresolved issue of indirect costs and I support the Region 6 position offering indirect costs of \$5,000. per permanent FTE contracted. In our current budget situation, it is difficult to support agreements that are not cost-neutral for the Service. It is my hope that we can soon resolve the remaining issues, submit a new AFA for public review and comment through an Environmental Assessment process, and renew our on-the-ground partnership at NBRC.

Sincerely,

Hannibal Bolton
ACTING DIRECTOR

From: Dean_Rundle@fws.gov
To: Matt_Hogan@fws.gov
Cc: Jeff_King@fws.gov; thomas_roffe@fws.gov
Subject: Download on CSKT meeting with DOI Officials
Date: Wednesday, October 17, 2012 4:09:01 PM

Jeff and I just got back from Pablo and wanted to pass along information from the Rachel Jacobson meeting with CSKT Tribal Council and Staff.

Meeting lasted 3 hours from 0900 to 1200. For CSKT, attendees included Chairman Joe Durglo (he was present the first half of the meeting), Tribal Council members Steve Lozar, Lloyd Irvin and Louis Gray; Tribal Attorneys Brian Upton and John Harrison, and CSKT Nat. Resources Staff: Rick Jensen, Tom McDonanld and Dale Becker. For DOI we had Rachel Jacobson (now has a new title something something to the Deputy Secretary), Dion Killsbeck an attorney with AS Indian Affairs, Jorge Silva-Banuelos, Ira Newbreast with BIA and the BIA Regional Wildlife Biologist - name missed, and me and Jeff.

Rachel opened with the discussion that the Gov. had been "relentless" in his request to move YOT bison to NBR. She characterized the Secretary's order of May 11 as more "exploratory, conceptual, and aspirational" in terms of finding a solution to the Yellowstone bison issues and that DOI agreed with the long-term goal of finding suitable federal land for wide-ranging, brucella-free, Yellowstone Bison.

CSKT made clear that their primary concern was getting back to NBR under an AFA and do not want the Yellowstone Bison to interfere with that. We provided an update on our progress on the AFA/EA and timeline and discussed issues related to the EA. Tribe is anxious to move forward, but willing to take time to "do it right", as long as they are sure of DOI/FWS progress and commitment to move forward with new AFA as soon as possible.

Key point - Rachel Jacobson wants to personally review the draft EA before public comment, and asked me to send her draft chapters for personal review - thats a new one.

Moving to Yellowstone bison, Councilman Lozar expressed concern that the Governor did not talk to CKST before approaching DOI re. YOT bison to NBR. He likened the initial proposal to replace NBR bison with YOT bison last Nov. to the two times the tribes were "kicked off" the NBR. He was not happy with the level of consultation with MT or DOI before today, felt the Council had been kept in the dark, but was very appreciative that DOI was there today to share and listen to the CSKT.

Tom McDonald expressed the tribe's disappointment that no one from NPS was at the meeting, informed Rachel they have issues with the Park, especially the Park's rules that Tribal hunters exercising treaty rights could not retrieve bison they shot if those bison ran back across the Yellowstone NP boundary before expiring. The Tribes' primary goal is to protect and exercise their treaty rights to hunt Yellowstone Bison and they want DOI to work to make more hunting opportunities available by expanding the areas outside the Park where bison are tolerated, increase the Park's bison herd size objectives from 3000 to a much larger number and expressed great concern about NPS plans to trap and slaughter more bison this year, instead of allowing those animals to migrate and be available for tribal member treaty right hunting. Rachel said they had a whole agenda for another meeting with NPS.

Rachel and Jorge made important statements that were very welcome to Jeff and I. They told the CSKT that any YOT bison coming to NBR would have to "pass" the Service's health testing and genetic criteria - they would have to have unique genotypes to benefit the metapopulation. Rachel said there would be no more than 30 calves and probably fewer than 30, that they would have to be Service property under Service management and integrated into the NBR herd in order for the move to be a NEPA CATEX. She acknowledged that the Governor wanted segregation and no breeding of YOT cows by NBR bulls, but did not indicate we were agreeing to that. She said the Service's protocols for acceptance were supported by DOI. She said the Gov. has his timeline and is anxious, but that DOI/FWS would not adjust our health and genetic testing process to meet his timeline - "our process will take whatever time it takes".

Jorge said the next steps were to get results of the health/genetic testing and that DOI would share that information with CSKT - "we will consult with you at every step".

Rachel also said the AFA and YOT bison issues were unrelated, separate tract issues. I reminded Jorge that if we go to extensive NEPA on a YOT move (such as would be required for a segregated "feed lot" YOT herd), there would be simple workload issues that would spill onto the AFA, and that if we have to go through an EA for a YOT bison move, that would likely get some public confused. CSKT said they were very concerned that if the Service got in NEPA trouble over a YOT move, that might taint the courts regarding our NEPA for the AFA. Rachel said that even if we have a CATEX for accepting YOT calves, that we could still do a public involvement process - meetings, etc, and the CSKT said that would be a good idea.

BIA requested Tribal input to the report due the Secretary on Dec. 1, NLT Nov. 15.

That's the gist of it. The tribal council was happy, DOI seemed happy. Jeff and I left the meeting feeling much much better that DOI is not to agree to do something that we cannot

justify as a legitimate part of metapopulation management.

Rachel told Jeff she had a call with the Gov. at 3:00 p.m. today and that he might just say "never mind".

Dean

From: [King, Jeff](#)
To: [Will Meeks](#); [Noreen Walsh](#)
Subject: Draft AFA
Date: Tuesday, June 04, 2013 7:30:15 AM
Attachments: [FY 13-16 AFA Draft 4-12-12 tech corrections draft.doc](#)

Will and Noreen,

Attached is the draft AFA that we will discuss on Thursday.

Thanks,

jk

Jeff King, Project Leader

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



**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 (“NWRSA”), 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 NWRSA, 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 NWRSA. 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. §§ 450l(b), 450l(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:



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- 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 be 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. §§ 450l(b) and 450l(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 NWRSA (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
Chairman, CSKT Tribal Council

Date



UNITED STATES DEPARTMENT OF THE INTERIOR, BY:

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

Date

_____, Assistant Secretary
for Fish, Wildlife and Parks

Date

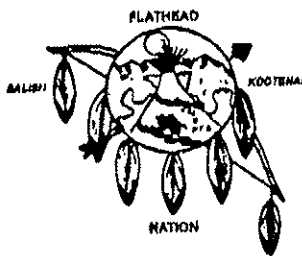
Mike Black, Director, Bureau of Indian Affairs

Date

From: [Robert Fields](#)
To: Noreen_walsh@fws.gov
Cc: Will_meeks@fws.gov
Subject: Draft EA for a Draft Annual Funding Agreement, National Bison Range Complex
Date: Sunday, August 10, 2014 3:21:48 PM

This is to ask you to extend the comment period on this document to 60 days from the 30 days review period. Thirty days is simply not enough time to adequately review this document, especially with the Labor Day holiday in the timeframe. Some of us have been following this AFA process for several years and now that the public finally has an opportunity to comment on the AFA we would like a little more time. Thank you for your consideration

Robert C. Fields
Retired Refuge Manager



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

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION

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A People of Vision

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.

January 19, 2011

Mr. Stephen Guertin, 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

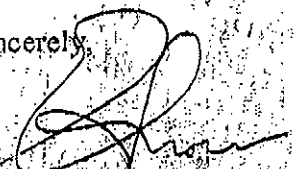
Dear Mr. Guertin,

On December 17, 2010, I met with Deputy Assistant Secretary Jane Lyder, FWS Assistant Director Gregory Siekaniec, and other federal officials to discuss the National Bison Range Complex (NBRC). Towards the end of that meeting, Ms. Lyder had indicated that they wanted to have discussions with FWS' Denver officials before CSKT resumed our discussions with your offices. It is my understanding that those discussions have now taken place.

Following up on a November discussion between Dean Rundle and Brian Upton, one of our tribal attorneys, I would like to request a meeting to talk about next steps regarding the NBRC. We are willing to travel to Denver to meet.

As the NBRC work season is quickly approaching, we would be interested in scheduling a meeting at your earliest convenience. Thank you for your consideration of this request.

Sincerely,


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

cc: Jane Lyder
Gregory Siekaniec
Rick Coleman
Dean Rundle
Jeff King

Jeff King/R6/FWS/DOI
01/20/2011 10:33 AM

To Dean Rundle/R6/FWS/DOI
cc
bcc
Subject cskt letter



cskt letter 1-19-2011.pdf

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

Calendar Entry

Appointment

☒ Notify me



☐ Mark Private

☐ Pencil In

Subject

AFA mtg with RD

Where

Location

When

Starts

Thu 11/04/2010

02:45 PM

Ends

Thu 11/04/2010

03:45 PM

1 hour

☐ Specify a different time zone

Categorize

Description

Calendar Entry

Appointment

☒ Notify me

☐ Mark Private



☐ Pencil In

Subject

Meet with Dean Rundle and Jeff King re Nat'l Bison Range

Where

Location

When

Starts

Wed 03/02/2011

11:00 AM

Ends

Wed 03/02/2011

03:00 PM

4 hours

☐ Specify a different time zone

Categorize

Description

From: Matt Kales
To: Debbie_Schreiner@fws.gov
Cc: Stephen_Guertin@fws.gov; Noreen_Walsh@fws.gov; Leith_Edgar@fws.gov; Rick_Coleman@fws.gov; Bud_Oliveira@fws.gov; Tina_Dobrinisky@fws.gov; Michael_Thabault@fws.gov; Julie_Lyke@fws.gov; Hugh_Morrison@fws.gov; Bill_Berg@fws.gov; Jeff_King@fws.gov; Shawn_Sartorius@fws.gov; Meg_Estep@fws.gov; Chris_Servheen@fws.gov; Ed_Bangs@fws.gov; Seth_Willey@fws.gov; Matthew_Huggler@fws.gov
Subject: Final R6 BP package for Dan's confirmation hearing
Date: Wednesday, December 08, 2010 1:33:58 PM
Attachments: [R6.CMR.NWR.cabins.doc](#)
[R6.CMR.NWR.CCP.doc](#)
[R6.CMR.water_issues.docx](#)
[R6.NBR.AFA.doc](#)
[R6.grizz.Yellowstone-NCDE.docx](#)
[R6.GrSG.status.doc](#)
[R6.NRM.wolf.doc](#)
[R6.wolverine.12-month.finding.docx](#)

Debbie,

Please see attached the subject materials, which have been revised per the RD's earlier comments and are ready for uploading to DTS (deadline: COB today). I have included the routing info below; please let me know if you have questions/need more information.

Many thanks to the programs and their folks for the quality work; these are strong products and will serve the Director-nominee well in the confirmation process.

Matt"Any new briefing papers must be cleared through the appropriate Assistant Director or Regional Director and uploaded - individually - in DTS and routed to AEA-CLA."

(Please note all of these BPs represent updates to existing items, with the exception of the CMR water brief, which is new.)



R6.grizz.Yellowstone-NCDE.docx <>



R6.GrSG.status.doc <>



R6.NRM.wolf.doc <>



R6.wolverine.12-month.finding.docx <>

Matt Kales, Assistant Regional Director (Acting)

Office of External Affairs

U.S. Fish and Wildlife Service, Mountain-Prairie Region

(303) 236-4576

fws.gov/mountain-prairie

Twitter: <http://twitter.com/USFWSMtnPrairie>

Facebook: <http://www.facebook.com/USFWSMountainPrairie>

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: Jeff_King@fws.gov
To: Matt_Hogan@fws.gov
Subject: Fw: CSKT Consultation Meeting - Oct 17 Final Agenda
Date: Friday, October 12, 2012 11:35:04 AM
Attachments: [CSKT Meeting Agenda_2012.10.17.docx](#)

Matt. Didn't see u on the list.
Jk
Sent from Jeff's BlackBerry

From: "Silva-Banuelos, Jorge G" [Jorge_Silva-banuelos@ios.doi.gov]
Sent: 10/12/2012 12:07 PM AST
To: "brianu@cskt.org" <brianu@cskt.org>; Dan Wenk; David Hallac; Jeff King; Dean Rundle; "Killsback, Dion K" <Dion_Killsback@ios.doi.gov>; "Laverdure, Del" <Del_Laverdure@ios.doi.gov>; "Hanley, Jacquelynn (Kallie)" <Kallie.Hanley@bia.gov>; Stephen Doherty
Cc: Noreen Walsh; Bert Frost
Subject: CSKT Consultation Meeting - Oct 17 Final Agenda

Hello all –

Please find attached the final agenda for the upcoming consultation meeting in Pablo, MT. Please let me know if you have any questions.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | (202.208.6211 (direct)

jorge@ios.doi.gov

(See attached file: CSKT Meeting Agenda_2012.10.17.docx)



Consultation Meeting with Confederated Salish and Kootenai Tribes Wednesday, October 17, 2012, 9:00 am

Agenda

1. Welcome, Invocation (CSKT), Introductions of all attendees
2. The Annual Funding Agreement - Status, timeline, issues of concern
3. General discussion on the status of the Secretary's Bison Directive and any new developments
4. Discussion of possible relocation of Yellowstone—origin quarantine bison to the National Bison Range (NBR)
 - a) Current status of quarantine bison at Turner Green Ranch
 - b) Key considerations that are being evaluated
 - a. Genetics
 - b. Health
 - c. NEPA Compliance
 - d. Logistics (roundup, management, agreements)
 - c) Issues, Concerns, and Opportunities
5. Discussion of the possibility of relocation of Yellowstone bison to the CSKT reservation lands outside of the National Bison Range. Is there interest, what are the constraints/opportunities?
6. National Park Service tribal consultation on disposition of surplus bison
7. Status of Wind River Reservation's request for Yellowstone bison
8. Next steps
9. Adjourn (Rachel Jacobson has a flight departing Missoula at 2:35 pm)

From: [Will Meeks](#)
To: [Matt Hogan](#); [Noreen Walsh](#)
Subject: FW: CSKT Meeting in DC (Wed, March 20th)
Date: Monday, March 18, 2013 5:31:50 PM
Attachments: [BP NBR AFA EA 3 18 2013.dr.a.doc](#)

Matt,

Here's a BP that included the timeline that Jorge references below.

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

From: Matt Hogan [mailto:matt_hogan@fws.gov]
Sent: Monday, March 18, 2013 11:57 AM
To: Will Meeks
Subject: FW: CSKT Meeting in DC (Wed, March 20th)

See below....can you update the memo accordingly.

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Monday, March 18, 2013 10:59 AM
To: jorge_silva-banuelos@ios.doi.gov; Dean_Rundle@fws.gov
Cc: Rachel_Jacobson@ios.doi.gov; matt_hogan@fws.gov; will_meeks@fws.gov
Subject: Re: CSKT Meeting in DC (Wed, March 20th)

Thanks Jorge, I will get something back to you this week.
Noreen

From: Silva-Banuelos, Jorge [mailto:jorge_silva-banuelos@ios.doi.gov]
Sent: Monday, March 18, 2013 09:08 AM
To: Noreen Walsh <noreen_walsh@fws.gov>; Dean Rundle <dean_rundle@fws.gov>
Cc: Jacobson, Rachel L <Rachel_Jacobson@ios.doi.gov>
Subject: CSKT Meeting in DC (Wed, March 20th)

Hi Noreen and Dean:

CSKT Chairman Joe Durgalo has set up a meeting with the Assistant Secretary for Indian Affairs this Wednesday, and Rachel and I were just invited to attend. The folks over at AS/IA assume bison and the AFA will come up.

I think we have enough info with respect to bison, but I could use some help to provide Rachel with an update on where things stand with the AFA.

I've attached the last briefing memo that you all provided us back in October for our trip. Is the timeline listed in this memo still on schedule? Did SOL get back to you with the opinion

you requested back in July?

Thanks for your help.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish and Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | 📞 202.208.6211 (direct)

jorge@ios.doi.gov

INFORMATION MEMORANDUM FOR THE ACTING ASSISTANT SECRETARY

FROM: Noreen Walsh, Regional Director, Region 6 FWS

SUBJECT: National Bison Range Annual Funding Agreement

I. Summary: In March 2012, Region 6 and the Confederated Salish and Kootenai Tribes (CSKT) completed government-to-government negotiations for a new Annual Funding Agreement (AFA) for CSKT self-governance participation at the National Bison Range (NBR) Complex. To evaluate the negotiated agreement and comply with the National Environmental Policy Act (NEPA), it was decided to prepare a robust Environmental Assessment (EA) to evaluate the draft AFA and other viable alternatives for entering into a partnership with CSKT.

II. Status:

- Public scoping for the EA was initiated in May 2012 and ended in June 2012. Sixteen substantive scoping comments were received from individuals and organizations.
- Based on a scoping comment, a formal Solicitor's Opinion was requested in July, 2012. The written opinion was received in December, 2012 and was shared with CSKT.
- CSKT was provided all scoping comments; CSKT legal staff provided written responses.
- An EA team (refuge and regional staff) began drafting the EA in July 2012. In addition to the negotiated AFA and the No Action alternative, the EA team developed and is considering 3 other AFA alternatives. Region 6 contracted with a NEPA consulting firm, to prepare the Environmental Consequences chapter.
- CSKT provided comments on portions of the draft EA that characterizes the tribe, their history, and treaty. On advice of the Office of the Rocky Mountain Regional Solicitor (SOL), the complete draft AFA will be shared with CSKT after completion of the Environmental Consequences by the contractor and prior to public release.

III. Timeline:

- First drafts of Chapters 1 through 4, including purposes and need, issues, and alternatives, have been provided to the SOL for review prior to conducting impact analysis.
- The EA team plans to provide these draft chapters to the contractor by April 29. The contractor estimates the impact analysis should take no more than two months (the end of June).
- A draft EA should be ready in late July 2013 for a 30 day public review and comment period.
- If a FONSI is signed in the 4th Qtr, FY 13, followed by the required 90 day report to Congress, an AFA could be implemented beginning in the 2nd Qtr, FY 14. If the Regional Director decides an EIS is necessary that will delay an AFA for at least another year.
- CSKT Tribal Council was briefed on January 29, 2013 regarding the extended timeline.

IV. Issues of Concern: The solicitor review of the current draft chapters could generate additional questions and require revision of draft chapters prior to sending them to the contractor.

Prepared by: Dean Rundle, Refuge Supervisor, (303) 236-4306
Date: March 18, 2013

From: [Will Meeks](#)
To: [Matt Hogan](#)
Subject: FW: Dale's Comments attached
Date: Friday, August 15, 2014 3:05:28 PM
Attachments: [Dale NBR COMMENTS.docx](#)

I know Noreen has been most involved. I thought you'd like to see this since it's from Dale.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: King, Laura [mailto:laura_king@fws.gov]
Sent: Friday, August 15, 2014 2:30 PM
To: Will Meeks; Toni Griffin; Leith Edgar
Subject: Fwd: Dale's Comments attached

Comment from our former Director Dale Hall.

Laura

Laura King, Refuge Program Specialist
U.S. Fish and Wildlife Service, Division of Refuge Planning
58355 Bison Range Rd.
Moiese, MT 59824
phone, 406-644-2211, ext. 210
fax, 406-644-2661

----- Forwarded message -----

From: Danno, Mary <mary_danno@fws.gov>
Date: Tue, Aug 12, 2014 at 2:18 PM
Subject: Dale's Comments attached
To: Brendan Moynahan <brendan_moynahan@fws.gov>, Laura King <laura_king@fws.gov>, Jeff King <jeff_king@fws.gov>

Mary Danno
Education Specialist
Division of Education Outreach

National Conservation Training Center

Detailed to:

National Bison Range

Moiese, Montana

406-644-2211, ext. 207

August 12, 2014

U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, Colorado 80225-0486

RE: FWS/R6/NWRS/PL
NBR 5.0 CCP
MAILSTOP 60130

Dear Sir or Madam:

I write with reluctance to clarify and correct the description of events that led to the termination of the 2005 Annual Funding Agreement (AFA) as described on pages 25-27 of the Draft Environmental Assessment (EA), released for comment in August, 2014. Employees of the U.S. Fish and Wildlife Service (Service) stationed at the National Bison Range National Wildlife Refuge (NBR), as well as the Regional Director and Service employees in the Denver Regional Office, in my opinion performed amiably and were committed to seeing a cooperative management effort at NBR between the Service and CSKT accomplished. I believe this because, as the Director of the Service at the time, I had numerous conversations with NBR employees and Service Regional leadership during 2006. My belief remains that we were all committed to creating a new and productive relationship with our Tribal neighbors and partners.

Unfortunately, over aggression and hostility by a certain member of Tribal government towards the NBR Refuge Manager and staff reached a point of unacceptability when the Tribal leader was hostile towards and verbally threatened the Refuge manager when the Manager was doing his assigned duty to oversee all activities on the Refuge, as required by the National Wildlife Refuge Improvement Act. When I was informed of this (final) incident by the Regional Director, we jointly concluded that these hostile conditions were unacceptable for Service employees and the Regional Director was instructed to terminate the extended AFA. It was immediately terminated and Tribal employees were asked to leave the Refuge. The extension of the AFA was not allowed to "draw down".

I am saddened that the events occurred as they did, and I am disappointed that the Service elected to diminish the integrity of the Refuge employees that suffered disrespect and hostility by omitting many of the facts in the EA. I truly believe that the only way people can learn to live and work together is to openly recognize that good people on both sides of the issue turned their heads and allowed inappropriate behavior to go unchecked for too long. Good people in the Tribes and good people in the Service felt embarrassment, and that is truly unfortunate. However, if we are to grow in understanding and cooperation, historical facts cannot be swept away in the name of political correctness.

My written communications regarding this issue are part of the Administrative Record and I respectfully request that truth and accuracy be reported in the EA. I believe the partnership became stronger

following our actions to terminate the AFA, and my hope is that it continues to grow today. If reluctance to recognize all facts associated with this history continues, then I recommend that any discussion regarding the 2005 AFA simply state that performance and behavioral issues led to its termination and the re-institution of negotiations. Thank you for allowing me to provide comments on behalf of the active Service employees involved at the time. They deserve no less.

Sincerely,

//Signed H Dale Hall//

H. Dale Hall
Director, U.S. Fish and Wildlife Service (Retired)
727 Evans View Lane
Collierville, TN 38017

From: Bud Oliveira <Bud_Oliveira@fws.gov>
To: Dean Rundle/R6/FWS/DOI; Jeff King/R6/FWS/DOI@FWS; Rick Coleman/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
Date: Thursday, December 09, 2010 7:41:08 AM
Attachments: [24004.pdf](#)

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 -----

	To	Bud_Oliveira@fws.gov, Desiree_Patterson@fws.gov, Ella_Denmon@fws.gov, Ellie_Arden@fws.gov, Tina_Dobrinsky@fws.gov
	cc	
desiree_patterson@fws.gov 12/09/2010 07:31 AM	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: 11/10/2010 Received Date: 11/16/2010 Due Date: Action Office: FWS Signature Level: AA Doc Source: 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

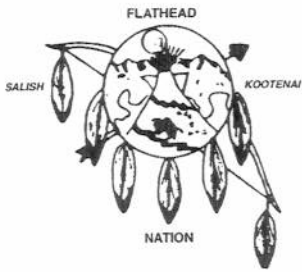
Status Tracking:

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

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

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.

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

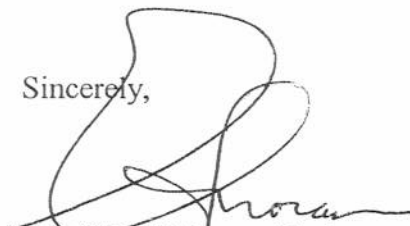
Mr. Rowan Gould
November 10, 2010
Page 2

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

EXECUTIVE SECRETARIAT
OFFICE OF THE

2010 NOV 16 PM 2:25

RECEIVED

494660

From: [Marvin Plenert](#)
To: [will meeks](#); [noreen_walsh@fws.gov](#); [matt_hogan@fws.gov](#); [jim_kurth](#)
Subject: Fw: FWS needs to extend the comment period to 90 days.
Date: Tuesday, August 12, 2014 9:27:56 AM
Attachments: [NBR NWR Draft AFA EA Dear Reader Ltr.pdf](#)

Hope you all have a chance to read this, as it expresses the sentiments of a lot of current and former FWS employees.

On Monday, August 11, 2014 11:44 PM, Susan Reneau <bluemountain@montana.com> wrote:

Dear Laura and Will,

Thank you for sending the PDF and hard copy of the “Draft Environmental Assessment for a Draft Annual Funding Agreement of the National Bison Range Complex.” Due to the comprehensive changes to the basic operations and management of the National Bison Range Complex, a national wildlife refuge that is a part of a federal land system established by President Theodore Roosevelt and the U.S. Congress, and the fact that this document requires time to properly digest it, I respectfully demand that a 90 day extension be granted to make comments so the deadline would be November 3, 2014.

I received the hard copy of this 160-page document two days ago and the deadline currently ends on September 4, 2014, which is less than three weeks from now.

The proposals contained in the “Draft Environmental Assessment for a Draft Annual Funding Agreement at the National Bison Range Complex” by the CSKT that were written by CSKT lawyers to gratify the CSKT and not protect the National Bison Range Complex as a part of the National Wildlife Refuge System means that this document negatively impacts ALL national wildlife refuges and other federal land systems.

It is altogether fitting that the 90-day extension be granted immediately for all detailed comments to be made.

The CSKT was granted unprecedented access to the financial and operational aspects of the National Bison Range Complex for the last four years after the CSKT workers were removed from the NBRC because of violations of federal law and by a federal judge. There has been no public involvement so it is further fitting that the public be given time to digest the impact of their demands in the document you have sent me.

Jeff King wrote the original document that I understand was gutted by the lawyers and lobbyists of the CSKT. He spent countless hours and weeks, maybe months, following the letter of the federal law as it relates to the

funding and management of a national wildlife refuge and his writings were ignored to cater to the CSKT's desires even though the CSKT workers were twice removed from the National Bison Range Complex during previous AFAs because of poor work behavior and lack of knowledge of the National Wildlife Refuge System and the workings of the National Bison Range Complex.

I look forward to fully digest this document and commenting upon it in as much detail as I can but I must have more time, as must other members of the general public that up until now have been excluded from the process even though all Americans are "owners" of the National Bison Range Complex as taxpayers and citizens.

In the spirit of Theodore Roosevelt, Ding Darling, John Lacey, Aldo Leopold, Horace Albright, Madison Grant and the many dedicated men of the late 19th century and early 20th century that established all federal land systems and state game and fish agencies, I say, the wildlife and its habitat cannot speak, so we must and you and others in the U.S. Fish and Wildlife Service that are obligated to uphold federal law that protects the National Wildlife Refuge System must listen to American citizens that care enough to write to you.

Gifford Pinchot, friend of Theodore Roosevelt and first U.S. Forest Service chief, coined the word "conservation," and it is in his spirit that I dedicate my efforts to preserve the National Wildlife Refuge System, National Park System, National Forest System, and all other federal land systems in the U.S. Department of Interior and the U.S. Department of Agriculture.

All Americans will benefit from this effort.

Sincerely,

Susan Campbell Reneau

Author, ***Colorado's Biggest Bucks and Bulls***, First, Second and Third Editions

And 21 other books on wildlife and wildlife conservation

From: King, Laura [mailto:laura_king@fws.gov]
Sent: Wednesday, August 06, 2014 1:50 PM
To: undisclosed-recipients:
Subject: NBR AFA EA released for public comment

I am writing to let you know that the Environmental Assessment for the proposed Annual Funding Agreement with the Confederated Salish and Kootenai Tribes has been released for a 30-day public review. You are being contacted since you previously provided comments related to this proposal or requested to be notified when it would be available for public review.

The [document](#) and accompanying [Notice of Availability](#) can be downloaded from the [National Bison Range Complex website](#). If requested, you will also be receiving a hard copy of this document in the mail sometime this week.

The deadline for comments is September 4, 2014.

Comments can be submitted via email to bisonrange@fws.gov or by mailing to: National Bison Range, Attn: Laura King, 58355 Bison Range Rd., Moiese, MT 59824. I have attached a 'Dear Reader' describing how to submit comments.

If you receive any requests for a hard copy of this document, please send them to me via this email address and I'd be happy to mail out a copy. I will just need a name and mailing address. Feel free to share the links to these files with anyone who is interested.

We appreciate your continued interest in this project and we really look forward to seeing everyone's thoughts about this document and proposal.

Laura

Laura King, Refuge Program Specialist

U.S. Fish and Wildlife Service, Division of Refuge Planning
58355 Bison Range Rd.
Moiese, MT 59824
phone, 406-644-2211, ext. 210
fax, 406-644-2661

"If no one is willing to follow you, are you still a leader?"



United States Department of the Interior

FISH AND WILDLIFE SERVICE Mountain-Prairie Region



IN REPLY REFER TO:
FWS/R6/NWRS/PL
NBR 5.0 CCP
MAILSTOP 60130

MAILING ADDRESS:
P.O. Box 25486, DFC
Denver, Colorado 80225-0486

STREET LOCATION:
134 Union Boulevard
Lakewood, Colorado 80228-1807

Dear Reader:

AUG 05 2014

We, the U.S. Fish and Wildlife Service (Service), are providing you with a public review copy of the Environmental Assessment (EA) that was prepared to analyze the proposed action for an Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT). This proposed action, identified as alternative B in the EA, would allow CSKT to manage and implement the visitor services, biology, maintenance, and fire programs on the National Bison Range Complex (refuge complex). The units included in this proposal are the National Bison Range, Pablo National Wildlife Refuge, Ninepipe National Wildlife Refuge, and 9 waterfowl production areas. All of these units are within the boundaries of the Flathead Indian Reservation and are located both in Lake and Sanders counties in Montana. The headquarters office for the refuge complex is located in Moiese, Montana, approximately 40 miles north of Missoula.

The proposed action can be found in section 5.3 and appendix A of the attached EA. This draft AFA alternative, negotiated between the Service and CSKT, was provided to the public as part of the scoping process when this EA process began in May of 2012. In addition to the proposed action, the Service developed and analyzed three other AFA alternatives (alternative C through E) along with the No Action alternative (alternative A).

The Service is asking you to comment on the proposed action and the other alternatives (chapter 5), including the analysis that was conducted. To provide written comments you can mail them to the National Bison Range, 58355 Bison Range Road, Moiese, Montana 59824 or email them to bisonrange@fws.gov no later than September 3, 2014. Please be as specific as you can, referencing page number or sections that you are commenting on, if possible.

After this public review the Regional Director will be provided all public comments, including those from CSKT. She will consider these along with the effects of all the alternatives. Following this review, the Regional Director will select a preferred alternative, which would become the Service's AFA proposal. In considering the consequences, the Regional Director will determine if the preferred alternative could have a significant impact. 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 (FONSI). If the Regional Director finds a significant impact would occur, she could modify or mitigate the alternative or direct staff to prepare an environmental impact statement.

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 alternative and associated components as an AFA. To receive additional information about the EA, please contact Leith Edgar, External Affairs, 303-236-4588 or Jeff King, Project Leader, at (406) 644-2211, ext. 204. This document can also be downloaded from the refuge complex website, www.fws.gov/bisonrange. Thank you for taking the time to comment.

Sincerely,

Acting 

William Meeks
Assistant Regional Director
Mountain-Prairie Region
National Wildlife Refuge System

From: [Noreen Walsh](#)
To: [Matt Hogan](#); [Dean Rundle](#); [Stephen Torbit \(Stephen Torbit/R6/FWS/DOI\)](#); [Rupert, Jeff](#); [Cynthia Martinez](#); [Jeff King](#)
Subject: FW: ltr-jacobson.bison conservation
Date: Monday, November 19, 2012 4:12:45 PM
Attachments: [ltr-jacobson.bison conservation.pdf](#)

Letter to ASFWP expressing appreciation for her commitment that discussions about Yellowstone bison and NBR are separate from and will not jeopardize the AFA negotiations.

Noreen

From: Jacobson, Rachel L [mailto:Rachel_Jacobson@ios.doi.gov]
Sent: Monday, November 19, 2012 3:08 PM
To: Guertin, Stephen; Walsh, Noreen; Williams, Martha
Subject: FW: ltr-jacobson.bison conservation

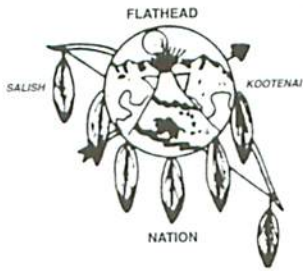
From: Jennifer Trahan [mailto:jennifert@cslt.org]
Sent: Thursday, November 15, 2012 4:06 PM
To: Jacobson, Rachel L
Cc: Silva-Banuelos, Jorge G; Doherty, Stephen; KILLSBACK, Dion K; New Breast, Ira; Rundle, Dean; King, Jeff; Gust, Jarvis
Subject: ltr-jacobson.bison conservation

Good Afternoon,

Please see attached letter and distribute accordingly.

Thank you,

Jennifer Trahan
Tribal Council Support
PO Box 278
Pablo, MT 59855
(406) 675-2700, ext. 1211
jennifert@cslt.org



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

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

November 15, 2012

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

Ms. Rachel Jacobson, Assistant Secretary for Fish, Wildlife and Parks
U.S. Department of the Interior
1849 C St., NW
Washington, D.C. 20240

Via electronic mail: rachel_jacobson@ios.doi.gov original to follow via express mail

Dear Assistant Secretary Jacobson,

I want to thank you and the federal delegation for coming to Pablo last month to update us about Secretary Salazar's bison conservation initiative, as well as Governor Schweitzer's proposal for relocation of quarantined Yellowstone bison. We appreciate your solicitation of CSKT's views, and we especially appreciated hearing from you that the Interior Department considers the proposed National Bison Range Complex (NBRC) Annual Funding Agreement and the proposed relocation of quarantined Yellowstone bison to be completely separate issues. As you know, this reflects CSKT's view as well, and we appreciate your assurances that the Department does not anticipate any actions that would jeopardize our ability to continue to jointly move forward towards re-establishing a Self-Governance partnership at the NBRC. We have understood this to be a consensus position since the time you and Governor Schweitzer had visited the Tribal Council here in Pablo last March, and we have appreciated the federal and State recognition of CSKT's views.

We look forward to continued work with you and the Department on the NBRC AFA, as well as to further updates on the status of Secretary Salazar's bison conservation initiative. Please do not hesitate to contact me if you have any further questions or would like any additional information.

Ms. Rachel Jacobson
November 15, 2012
Page 2

Sincerely,



Joe Durglo, Chairman
Tribal Council

cc (*via electronic mail*):

Jorge Silva-Bañuelos
Dion KILLSBACK
Steve Doherty
Dean Rundle
Ira New Breast
Jeff King
Jarvis Gust

From: [Gregory Siekaniec](#)
To: [Dean Rundle](#)
Subject: Fw: meeting request from Salish and Kootenai Tribes re: National Bison Range
Date: 02/01/2011 03:24 PM

Dean,

As you can see from the request there are specific items they would like to address.

Your thoughts on how to answer would be great if it can go in a brief. Otherwise, we should discuss ahead of the meeting. It might be a good idea to have a phone conference ahead of the meeting anyway.

Greg

From: "George Waters" [george@georgewaters.com]
Sent: 02/01/2011 03:10 PM EST
To: <will_shafroth@ios.doi.gov>; Gregory Siekaniec
Cc: Roslyn Sellars; <Fatima_Ahmad@ios.doi.gov>
Subject: meeting request from Salish and Kootenai Tribes re: National Bison Range

Messrs. Shafroth and Siekanic – next week Councilman James Steele, Jr., of the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation in Montana will be in town and was hoping to schedule a meeting with you gentlemen to continue our coordination on the next steps in dealing with the National Bison Range. While we greatly appreciated the last meeting and thought the FWS and the CSKT were of one mind there seems to be various matters still somewhat up in the air, i.e., alternative methods of temporary staffing that are under consideration and specific steps needed to get a new Annual Funding Agreement in place including aspects of environmental compliance that must be undertaken to ensure the next AFA is bullet proof and can withstand any legal challenges.

We have a number of meetings next week but wondered if any of the following time slots might work for you?

Wednesday we are open at 11:00 am, 12 noon or 12:30pm

Thursday we are open all morning (9am to 12 noon) and at 2:30pm or anytime thereafter.

Tribal Attorney Brian Upton will either fly in for this meeting or would appreciate being able to participate via speaker phone.

Thank you.

*George Waters, President
George Waters Consulting Service
235 Massachusetts Ave., NE
Suite 300
Washington, DC 20002*

(202) 544-3044

(202) 544-3155 fax

george@georgewaters.com

From: [Matt Hogan](#)
To: [Noreen Walsh](#)
Subject: FW: National Bison Range Funding Agreement
Date: Tuesday, August 26, 2014 2:42:49 PM
Attachments: [National Bison Range ltr.pdf](#)

FYI....AFWA asking for 75 day extension

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, August 26, 2014 1:47 PM
To: Matt Hogan
Subject: Fwd: National Bison Range Funding Agreement

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

Begin forwarded message:

From: "King, Laura" <laura_king@fws.gov>
Date: August 26, 2014 at 1:03:29 PM MDT
To: Will Meeks <will_meeks@fws.gov>, Toni Griffin <toni_griffin@fws.gov>
Subject: Fwd: National Bison Range Funding Agreement

A request for a 75 day extension from AFWA. I have not responded to them.

Laura

Laura King, Refuge Program Specialist

U.S. Fish and Wildlife Service, Division of Refuge Planning
58355 Bison Range Rd.
Moiese, MT 59824
phone, 406-644-2211, ext. 210
fax, 406-644-2661

----- Forwarded message -----

From: **BisonRange, FW6** <bisonrange@fws.gov>
Date: Tue, Aug 26, 2014 at 12:39 PM
Subject: Fwd: National Bison Range Funding Agreement
To: Laura King <laura_king@fws.gov>, Jeff King <jeff_king@fws.gov>, Brendan Moynahan <brendan_moynahan@fws.gov>

National Bison Range
58355 Bison Range Rd
Moiese, MT 59824
406-644-2211 extension 207

Check out our website at www.fws.gov/refuge/national_bison_range

----- Forwarded message -----

From: **Angela Rivas Nelson** <Arnelson@fishwildlife.org>
Date: Tue, Aug 26, 2014 at 11:53 AM
Subject: National Bison Range Funding Agreement
To: "bisonrange@fws.gov" <bisonrange@fws.gov>

Please see the attached letter from the Association of Fish and Wildlife Agencies regarding the above-named subject.

Thank you.



Angela Rivas Nelson
Executive Assistant
Association of Fish & Wildlife Agencies
444 North Capitol Street, NW, Suite 725
Washington, DC 20001
Telephone 202-624-5852 / Fax 202-624-7891
Email: arnelson@fishwildlife.org

104th AFWA Annual Meeting

Sunday, September 21 through Thursday, September 25, 2014

Hyatt Regency St. Louis at The Arch

St. Louis, Missouri

<http://www.afwaannualmeeting.org/>



The voice of fish and wildlife agencies

Hall of the States
444 North Capitol Street, NW
Suite 725 • Washington, D.C. 20001
Phone: 202-624-7890
Fax: 202-624-7891
E-mail: info@fishwildlife.org
www.fishwildlife.org

August 26, 2014

VIA EMAIL AND U.S. MAIL

Ms. Laura King
Planning Division
National Bison Range Complex
Fish and Wildlife Service
U.S. Department of the Interior
58355 Bison Range Road
Moiese, MT 59824
bisonrange@fws.gov

RE: FWS/R6/NWS/PL
NBR 5.0 CCP
MAILSTOP 60130

Dear Ms. King:

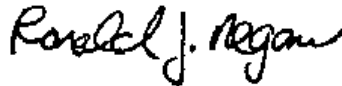
The Association of Fish and Wildlife Agencies (AFWA) would like to request an extension of the comment period for the proposed action outlined in the draft environmental assessment (EA) on the Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (Tribes) to manage aspects of the National Bison Range (NBR). The U.S. Fish and Wildlife Service (FWS) published notice in the Federal Register on August 5, 2014 (79 Fed. Reg. 45452), that the proposed action and EA were available for comment, and that the comment period would close on September 4, 2014. Since this is an issue of potentially large import for AFWA's state agency members and AFWA's annual meeting is not until late September, AFWA respectfully requests that FWS extend the comment period to 75 days, which would close the period on October 19, 2014. An extension would allow AFWA to discuss the issue with its members at its annual meeting and, if discussion warrants, to provide comments to FWS on the proposed action.

The proposed action carries potentially large import for AFWA's state agency members for several reasons. First, AFWA's members have a public trust duty to manage fish and wildlife resources that are not under federal or tribal jurisdiction. In addition, AFWA's members manage fish and wildlife on many federal lands. Many federal lands, including refuges, are open to hunting and fishing, which the state agencies regulate and from which they derive license revenues. Changes in management authority on refuges necessarily impact state management efforts and also revenues with which state agencies are funded. Also, were the Tribes to manage the NBR, whether States would retain the ability to offer input into management decisions is unknown. Second, fish and wildlife on the refuges belong to all Americans, and whether Tribal management of the NBR would compromise all Americans' access to these resources is also unknown. AFWA needs additional time to confer with its members on these impacts.

Third, FWS is considering this proposed action at the same time Congress is considering legislation that would fundamentally change what federal programs can be designated to tribes through AFAs. AFWA needs additional time to discuss the AFAs with its members in the larger context of that proposed legislation. Finally, AFWA understands that in the past, FWS terminated an AFA covering management of the NBR with the Tribes, and AFWA needs time to educate its members on that history so that they can receive a fuller understanding of the impacts of this particular proposed action.

For these reasons, AFWA asks FWS to please extend the comment period. If you have any questions regarding AFWA's request, AFWA will be happy to answer them. Please contact Jen Mock Schaeffer at jenmock@fishwildlife.org or (202) 624-1402 with questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Regan". The signature is written in a cursive, slightly stylized font.

Ronald J. Regan
Executive Director

From: [Noreen Walsh](#)
To: [Dan Ashe](#)
Subject: FW: National Bison Range Funding Agreement
Date: Wednesday, August 27, 2014 8:25:12 AM
Attachments: [National Bison Range ltr.pdf](#)

Hi Dan,

FYI: This morning I spoke to Ron and expressed my surprise and significant disappointment that, despite our emphasis on communication and trust building at our Sapelo retreat, he found it necessary to sign and send the attached letter without anyone from AFWA or any state picking up the phone to speak with me about the issue first.

There are additional related issues we can discuss if you would like but I won't take up all your time in this email.

Thanks,

Noreen

From: Matt Hogan [mailto:Matt_Hogan@fws.gov]
Sent: Tuesday, August 26, 2014 2:43 PM
To: Noreen Walsh
Subject: FW: National Bison Range Funding Agreement

FYI....AFWA asking for 75 day extension

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Tuesday, August 26, 2014 1:47 PM
To: Matt Hogan
Subject: Fwd: National Bison Range Funding Agreement

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

Begin forwarded message:

From: "King, Laura" <laura_king@fws.gov>
Date: August 26, 2014 at 1:03:29 PM MDT
To: Will Meeks <will_meeks@fws.gov>, Toni Griffin <toni_griffin@fws.gov>
Subject: Fwd: National Bison Range Funding Agreement

A request for a 75 day extension from AFWA. I have not responded to them.

Laura

Laura King, Refuge Program Specialist

U.S. Fish and Wildlife Service, Division of Refuge Planning
58355 Bison Range Rd.
Moiese, MT 59824
phone, 406-644-2211, ext. 210
fax, 406-644-2661

----- Forwarded message -----

From: **BisonRange, FW6** <bisonrange@fws.gov>
Date: Tue, Aug 26, 2014 at 12:39 PM
Subject: Fwd: National Bison Range Funding Agreement
To: Laura King <laura_king@fws.gov>, Jeff King <jeff_king@fws.gov>, Brendan Moynahan <brendan_moynahan@fws.gov>

National Bison Range
58355 Bison Range Rd
Moiese, MT 59824
406-644-2211 extension 207

Check out our website at www.fws.gov/refuge/national_bison_range

----- Forwarded message -----

From: **Angela Rivas Nelson** <Arnelson@fishwildlife.org>
Date: Tue, Aug 26, 2014 at 11:53 AM
Subject: National Bison Range Funding Agreement
To: "bisonrange@fws.gov" <bisonrange@fws.gov>

Please see the attached letter from the Association of Fish and Wildlife Agencies regarding the above-named subject.

Thank you.



Angela Rivas Nelson
Executive Assistant
Association of Fish & Wildlife Agencies
444 North Capitol Street, NW, Suite 725
Washington, DC 20001
Telephone 202-624-5852 / Fax 202-624-7891
Email: arnelson@fishwildlife.org

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www.fishwildlife.org

August 26, 2014

VIA EMAIL AND U.S. MAIL

Ms. Laura King
Planning Division
National Bison Range Complex
Fish and Wildlife Service
U.S. Department of the Interior
58355 Bison Range Road
Moiese, MT 59824
bisonrange@fws.gov

RE: FWS/R6/NWS/PL
NBR 5.0 CCP
MAILSTOP 60130

Dear Ms. King:

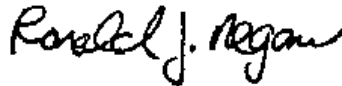
The Association of Fish and Wildlife Agencies (AFWA) would like to request an extension of the comment period for the proposed action outlined in the draft environmental assessment (EA) on the Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (Tribes) to manage aspects of the National Bison Range (NBR). The U.S. Fish and Wildlife Service (FWS) published notice in the Federal Register on August 5, 2014 (79 Fed. Reg. 45452), that the proposed action and EA were available for comment, and that the comment period would close on September 4, 2014. Since this is an issue of potentially large import for AFWA's state agency members and AFWA's annual meeting is not until late September, AFWA respectfully requests that FWS extend the comment period to 75 days, which would close the period on October 19, 2014. An extension would allow AFWA to discuss the issue with its members at its annual meeting and, if discussion warrants, to provide comments to FWS on the proposed action.

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For these reasons, AFWA asks FWS to please extend the comment period. If you have any questions regarding AFWA's request, AFWA will be happy to answer them. Please contact Jen Mock Schaeffer at jenmock@fishwildlife.org or (202) 624-1402 with questions. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Ronald J. Regan". The signature is written in a cursive, slightly stylized font.

Ronald J. Regan
Executive Director

From: [Matt Hogan](#)
To: [Noreen Walsh](#)
Subject: FW: National Bison Range
Date: Monday, August 04, 2014 10:12:37 AM
Attachments: [073014 REVISED NBR AFA Outreach.docx](#)
Importance: High

FYI....will be available shortly.....had a 10 am call with Wildlife Society on diversity.

From: Marla Trollan [mailto:Marla_Trollan@fws.gov]
Sent: Monday, August 04, 2014 10:10 AM
To: Matt Hogan; Will Meeks
Subject: FW: National Bison Range
Importance: High

Guys, we are ready for rollout today...it's in the Reading Room today.

Let me know if you have any final concerns.

From: Leith Edgar [mailto:leith_edgar@fws.gov]
Sent: Monday, August 04, 2014 9:57 AM
To: Marla Trollan; John Bryan
Subject: FW: National Bison Range

FYI--

Hi April, Jeff and Nedra,

Wanted to let you know that the attached comms plan will be put into action early next week. The issue is very FWS specific, but given that it involves bison (tangentially in the form of management of the National Bison Range) and a Native American Tribe I wanted you all to be aware.

Note that the news release and FAQs are embedded in the plan

Please let me know if you have any questions,

Best,

G

Gavin G. Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel: 703-358-2649
Cell: 703-346-9123

gavin_shire@fws.gov



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: July 30, 2014



1. What Action is being taken? Please explain in no more than three sentences.

(Additional background information may be included in a separate appendix)

The U.S. Fish and Wildlife Service (Service) has developed an Environmental Assessment (EA) to analyze the proposed action for an Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT). This proposed action would allow CSKT to manage and implement the visitor services, biology, maintenance, and fire programs on the National Bison Range Complex (refuge complex). The units included in this proposal are the National Bison Range, Pablo National Wildlife Refuge, Ninepipe National Wildlife Refuge, and nine waterfowl production areas; all of which are within the boundaries of the Flathead Indian Reservation in Lake and Sanders counties in Montana.

2. What is the proposed date to announce this action? Why has that date been selected?

(Please note whether this date is mandatory, or whether we have flexibility)

The Notice of Availability of the Draft EA is expected to be published in the *Federal Register* on August 5, 2014.

3. What are our communications goals? (Please list no more than four)

- Accurately inform the public, media and affected members of the Montana Congressional Delegation about the purpose, status and content of the draft EA.
- Work with media contacts to ensure the document is widely distributed via print, radio, Web, and social media platforms.
- Encourage the public to provide comments on the draft document.
- Explain to Mountain-Prairie Refuge employees why the proposed action is being considered given the Service's statutory and Tribal trust responsibilities.

4. Key Audiences:

1. USFWS Headquarters and DOI
2. Montana Congressional Delegation
3. Confederated Salish and Kootenai Tribes, Pablo, MT
4. Montana Fish, Wildlife & Parks
5. National Interest Groups: National Wildlife Refuge Association, National Wildlife Federation, Blue Goose Alliance, PEER, National Audubon Society, American Bison Society, Native American Fish and Wildlife Society, Cooperative Alliance for Refuge Enhancement, Association of Fish and Wildlife Agencies, The Wildlife Society, The Nature Conservancy, Defenders of Wildlife, Ducks Unlimited, Wildlife Management Institute
6. Montana Media
7. Public

5. Key Messages:

- The AFA was developed by the Service to fulfill its desire to enter into an expanded partnership agreement with the CSKT under the authority of the Tribal Self-Governance Act of 1994 that would allow the Tribes to take part in the refuge programs that are of special



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: July 30, 2014



geographic, historical, or cultural significance.

- The Service's proposed action is consistent with its commitment to adhere to its Tribal trust responsibilities to the CSKT and all Federally recognized Tribes.
- Public involvement in reviewing and commenting on the EA is essential for the Regional Director to make her decision and develop a successful AFA agreement with CSKT.
- Five alternatives, including a No Action Alternative (Alternative A) were described, compared, and assessed.
- All comments should be provided to the Service during the public review period to enable us to analyze and respond to the comments at one time and to use this input in the selection of the final decision on the AFA proposal.
- Comments should be specific, addressing merits of the alternatives and adequacy of the environmental analysis.

6. What is the strategy (or strategies) we plan to use to reach target audiences?

Our Congressional strategy is aimed at informing key committee staff and staff for affected members (see Montana Congressional Delegation identified in the audience) before making the announcement public. We also plan to notify interested conservation groups identified in the audience, particularly those that commented during scoping. In addition, we will contact statewide media outlets via distribution of the news release through email, web posting & social media.

7. What are the tactics we plan to employ in support of these strategies? What is the implementation timeline for these tactics?

Target Date	Activity	Responsible	Date Completed
May 23, 2014	NOA is finalized & sent to Washington for approval.	Refuge Planning	5-6-14
June 13, 2014	Response to PEER FOIA due	Refuge Planning	6-13-14
After June 13, 2014	Respond to media queries generated by PEER FOIA using prepared statement	Refuge Planning & R6 EA	No media queries received.
August 4, 2014	NOA is published in Federal Register Reading Room & draft EA is available to the public	Refuge Planning	
10 a.m. August 4, 2014	News Release sent to Congressional & partner contacts, including CSKT & MTFWP	R6 CLA John Bryan / R6 Refuges Toni Griffin & Refuge leadership	
11 a.m. August	News Release distributed to	R6 EA / R6	



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: July 30, 2014



4, 2014	Montana media list, posted on National Bison Range Complex homepage & shared on social media platforms (Note: it will be posted under Press Releases, but NOT as a Top Story)	Poster & Refuge Planning Leith Edgar or Ryan Moehring / Kate Miyamoto & Refuge Planning	
Following week	After-action review of communications planning & implementation	R6 EA	

8. Which communications tools are needed to support these strategies and tactics? (Be as specific as possible about the products identified and who will produce them)

Tool	Responsible Party	Status
News Release	Refuge Planning	Complete
FAQs for release	R6 EA & Refuge Planning	Complete
Contingency FAQs for use, if necessary (respond to inquiries)	R6 EA & Refuge Planning	Complete
PEER Contingency Statement	R6 EA & Refuge Planning	Complete

9. Who are the primary points of contact for this action?

Subject Matter Expert: Jeff King, 406-644-2211, ext. 210, jeff_king@fws.gov

Media Coordinator: Leith Edgar; 303-236-4588; leith_edgar@fws.gov
(backup = Ryan Moehring; 303-236-0345; ryan_moehring@fws.gov)

Appendix I – Congressional Contacts

Delegation Contacts

MEMBER FORMAL TITLE	FIRST NAME	LAST NAME	STAFF EMAIL
Senator	Jon	Tester	dayna_swanson@tester.senate.gov
Senator	John	Walsh	spencer_gray@walsh.senate.gov



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: July 30, 2014



Senator	John	Walsh	kirby_campbell-rierson@walsh.senate.gov
Representative	Steve	Daines	jessica.flint@mail.house.gov
Representative	Steve	Daines	jessica.flint@mail.house.gov
Representative	Steve	Daines	jessica.flint@mail.house.gov

Committee Contacts

Appendix II – News Release NEWS RELEASE

U.S. FISH AND WILDLIFE SERVICE
Mountain-Prairie Region
134 Union Boulevard
Lakewood, Colorado 80228

U.S. Fish and Wildlife Service Releases Draft Environmental Assessment for Proposed Annual Funding Agreement with Confederated Salish and Kootenai Tribes

Contacts: Leith Edgar, 303.236.4588; leith_edgar@fws.gov



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: July 30, 2014



Jeff King, 406-644-2211, ext. 210, jeff_king@fws.gov

The U.S. Fish and Wildlife Service (Service) today announced publication of the draft Environmental Assessment (EA) for a proposed Annual Funding Agreement (AFA) that would allow the Confederated Salish and Kootenai Tribes (CSKT) to manage and implement the biological, maintenance, public use, and fire management programs on the National Bison Range Complex (refuge complex).

The EA addresses those units located within the boundaries of the Flathead Indian Reservation; specifically the National Bison Range, Ninepipe and Pablo National Wildlife Refuges, and nine waterfowl production areas. All of these units are within Lake and Sanders counties in Montana.

The CSKT requested negotiations for an AFA in November 2010 under the authority of the Indian Self Determination and Education Assistance Act, as amended. The Service then developed the draft AFA to explore a more full partnership agreement with CSKT that would allow the Tribes to take part in the refuge programs that are of special geographic, historical, or cultural significance.

Now, the Service has prepared the EA to evaluate the environmental consequences of the proposed agreement, in compliance with the National Environmental Policy Act. In addition to this proposed agreement, the Service also developed and analyzed four other AFA alternatives for the public's consideration and comment. Each AFA alternative would allow CSKT to manage or assist with programs, services, functions, and activities on the refuge complex to various degrees for a term of five years.

Comments on the draft EA from members of the public will be welcomed by the Service during a 30-day public review period.

"We always think that it's important to involve stakeholders in the process of deciding how to best manage our shared natural resources, in this case the locally- and nationally-known National Bison Range," said Will Meeks, Mountain-Prairie Region assistant regional director for Refuges. "Both citizens and Tribal members with an opinion on how the National Bison Range will be managed are invited to comment on the draft environmental assessment during the thirty-day comment period."

The document can be downloaded from the refuge complex's website: www.fws.gov/bisonrange. Comments should be specific and reference the relevant document section where possible. Comments may be submitted by email to bisonrange@fws.gov or mailed to National Bison Range, 58355 Bison Range Rd., Moiese, MT 59824. All comments must be emailed or postmarked by September 3, 2014.

For more information please contact:

Jeff King



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: July 30, 2014



National Bison Range
U.S. Fish and Wildlife Service
58355 Bison Range Road
Moiese, MT 59824406-644-2211, ext. 210

The U.S. Fish and Wildlife Service works with others to conserve, protect, and enhance fish, wildlife, plants, and their habitats for the continuing benefit of the American people. For more information, visit www.fws.gov, or connect with us through any of these social media channels:



- FWS -

Appendix III – Frequently Asked Questions (FAQs)

EXTERNAL:

1. Why did the Service prepare the draft Environmental Assessment (EA)?

The Service prepared the draft EA to evaluate the draft Annual Funding Agreement (AFA) with the CSKT developed by the Service under the Self-Governance Act. As part of the EA process under the National Environmental Policy Act (NEPA), the Service developed and analyzed four 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 refuge complex to various degrees for a term of five years.

2. Why is the draft AFA considered appropriate for the Service to consider as a management option for the National Bison Range complex?

The AFA was developed by the Service to fulfill its desire to enter into an expanded partnership agreement with the CSKT under the authority of the Tribal Self-Governance Act of 1994 (Self-Governance Act) that would allow the Tribes to take part in the refuge programs that are of special geographic, historical, or cultural significance. An AFA is needed to carry out the Tribe's desire for tribal involvement in activities on the refuge complex under the Self-Governance Act.

3. Why is the Service considering adoption of the AFA?

Pursuant to its Tribal-trust responsibilities, the Service would like to forge a productive and long-term partnership with the CSKT at the National Bison Range Complex (refuge



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: *July 30, 2014*



complex) in Montana that would allow the Tribes to take part in refuge programs that are of special geographic, historical, or cultural significance.

4. What is an Environmental Assessment?

The National Environmental Policy Act of 1969 sets up procedural requirements for all Federal Government agencies to analyze the environmental impacts of a Federal action. NEPA's procedural requirements apply to all Federal agencies in the executive branch.

An EA is a concise public document, prepared in compliance with the National Environmental Policy Act, that briefly discusses the purpose and need for an action and alternatives to such action and that provides sufficient evidence and analysis of effects to determine whether to prepare an environmental impact statement or finding of no significant impact (40 CFR 1508.9).

5. What types of impacts were studied in the EA?

The EA examined a number of environmental and social impacts, including the following:

- Physical Environment including soils, climate, and air quality
- Biological Resources including habitat management, habitat resources, and wildlife management.
- Visitor Services including wildlife observation and photography, interpretation, environmental education, and other uses
- Refuge Operations including the number and type of staff positions proposed.
- Cultural Resources
- Socioeconomic Conditions
- Cumulative Impacts

6. Who prepared the CCP and EA?

A team composed of Service personnel from both the refuge complex and the regional office. In addition, the Service hired a contractor to assist with the environmental analysis.

7. Who makes the decision on whether to proceed with the AFA?

The Regional Director of the Mountain-Prairie Region of the Service will decide whether to proceed with an AFA with the Tribes and, if so, to what degree.

8. What will happen if the decision is made to proceed with the AFA?



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: *July 30, 2014*



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.

9. Where is the National Bison Range located?

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 (CSKT).

INTERNAL

Note: the following are for use in the event the below information is requested by media; these should not be posted online.

10. How many employees could be affected by the Service's proposed action?

Five.

11. If the Service's proposed action is decided upon, how would Service employees and the CSKT work together on the Refuge complex?

If the Service's proposed AFA is adopted, five Service employees would be impacted. No employee would lose their federal status. Each employee would have the option to sign an Inter-governmental Personnel Agreement whereby the employee would remain a Service employee, though the employee would be assigned to the CSKT for the purposes of day-to-day duties. If a transfer to the CSKT is not desirable to the employee, we will work together to find the most appropriate outcome for the employee and the Service based on high-priority needs.

Appendix IV – Background Information

Introduction

The U.S. Fish and Wildlife Service (Service) has developed an Environmental Assessment (EA) to analyze the proposed action for an Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT). The CSKT requested negotiations for this AFA under the authority of Title IV, section 403(c) of the Indian Self Determination and Education Assistance Act, as amended. This proposed action would allow CSKT to manage and implement the visitor services, biology, maintenance, and fire programs on the National Bison Range Complex (refuge complex). This is the third attempt at a negotiated agreement with CSKT in 10 years. In addition to this proposed agreement, the Service also developed and analyzed three other AFA alternatives for the public's consideration and comment.



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: *July 30, 2014*



Basic Facts

The units included in this proposal are the National Bison Range, Pablo National Wildlife Refuge, Ninepipe National Wildlife Refuge, and 9 waterfowl production areas; all of which are within the boundaries of the Flathead Indian Reservation in Lake and Sanders counties in Montana. The Service owns the lands within the boundaries of the National Bison Range and the waterfowl production areas. Ninepipe and Pablo refuges are tribal trust lands encumbered by a Service refuge easement acquired from CSKT in 1948 allowing the Service to manage these lands and waters as part of the National Wildlife Refuge System.

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, some of which are managed for conservation purposes.

The refuge complex is best known for the bison herd that roams the Bison Range as well as bighorn sheep, elk, and black bears. 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. Refuge complex lands and waters are important corridors for birds, fish, and other wildlife. The refuge complex is of great value to waterfowl and shorebirds, as well as other migrating water-dependent bird species, because of the diversity of wetland and upland habitats that provide for the diverse life cycle needs of these species. The refuge complex has large, intact areas of native prairie that provide habitat for grassland birds that are one of the most imperiled groups of migratory birds nationwide.

In the proposed action (alternative B), the Service would retain three of the 11 positions responsible for managing the refuge complex, including the refuge manager, deputy refuge manager, and law enforcement officer. The remaining positions would be transferred to CSKT. Current permanent Service employees would be requested to sign a voluntary Intergovernmental Personnel Act (IPA) agreement, assigning them to work for CSKT. If these affected employees choose not to sign these agreements, that position and funding would be transferred to CSKT for recruitment. In addition, CSKT will receive funding for recruitment of up to 6 seasonal employees and a GS-11 (equivalent) wildlife refuge specialist. The individual occupying this new position would be supervised by the manager of the CSKT Fish, Wildlife, Recreation and Conservation Program. They would receive day to day direction from the refuge manager and would be responsible for supervising all permanent and temporary CSKT and IPA Service staff. The remaining three alternatives (C through E) are variations on this AFA proposal.

-FWS-



TARGETED COMMUNICATIONS STRATEGY

Proposed AFA, National Bison Range Complex, Montana

DTS #:

Version #:

Date: *July 30, 2014*



Appendix V – PEER Contingency Statement

Note: For use in the event of a request for comment on a likely forthcoming PEER news release containing the documents PEER requested under the Freedom of Information Act. R6 Refuges fulfilled the request prior to June 13. A PEER news release may follow thereafter. This statement is for use in the event a reporter contacts the Service for comment on a PEER news release.

“We received and responded to PEER’s request under the Freedom of Information Act for documents related to the Annual Funding Agreement between the U.S. Fish and Wildlife Service and the Confederated Salish Kootenai Tribes. Because we are planning to open up a comment period in August on the draft environmental assessment for a proposed annual funding agreement between the Service and the Tribes that may allow for Tribal management and implementation of the biological, maintenance, public use, and fire programs on the National Bison Range, it would be inappropriate for us to comment on the proposed annual funding agreement until after the public comment period has closed and we have addressed the comments received from the public.”

-FWS-

From: [Marvin Plenert](#)
To: noreen_walsh@fws.gov; matt_hogan@fws.gov
Subject: Fw: The reason the National Bison Range is so important to EVERYONE, not just the region
Date: Wednesday, August 20, 2014 10:30:16 AM

On , Marvin Plenert <marvplenert@yahoo.com> wrote:

Thought all of you should see this e-mail that Susan Reneau sent the FWS regarding the NBRC and the dealings with the CSKT. Apparently she was told by the Washington Refuge Chief that the AFA proposed at the NBRC is not considered to be precedence setting, for the National Wildlife Refuge System. Still no response to our request for a 30 day extension of the comment period.

On Wednesday, August 20, 2014 6:43 AM, Susan Reneau <bluemountain@montana.com> wrote:

Dear Dan Ashe, Jim Kurth, Cynthia Martinez, and Will Meeks - to name only a few at the U.S. Fish and Wildlife Service,

The Confederated Salish and Kootenai Tribes (CSKT), a sovereign government that can operate independently of the U.S. government and its agencies and independently of the U.S. taxpayer, were allowed four years to examine all financial and staff details about the operation and management of one of our nation's first national wildlife refuges. Twice the CSKT workers were removed from the National Bison Range and a federal judge in 2010 ruled that the previous Annual Funding Agreement violated NEPA and federal laws. The first AFA with the CSKT contract workers was removed by Dale Hall and others in the USFWS because the chairman of the CSKT, James Steele, and other CSKT workers physically and verbally ATTACKED federal workers. That is a felony to attack any federal worker, I think, but because James Steele was a part of a sovereign government independent of the U.S. federal government, nothing was done to arrest him and bring him up on federal charges. Thankfully, Dale Hall and others in the USFWS did the right thing and removed all CSKT workers from the National Bison Range Complex but then a second AFA was forced upon the federal workers of the NBRC in 2008 in secret negotiations between some USFWS administrators not stationed at the NBRC and CSKT lawyers, led by Brian Upton, an excellent lawyer and non CSKT American.

The U.S. Fish and Wildlife Service is only allowing the public less than one month to make comments on the proposal to turn the National Bison Range Complex over to a special interest group that is a sovereign nation that does not have to listen to the citizens of the United States or any agency of the United States and does not need to follow ANY U.S. federal laws that U.S. Fish and Wildlife Service employees are required to follow.

As I told Cynthia yesterday and have told all of you over the years that I've engaged in this issue, the public and press are being excluded from the process when it is the public that is the most impacted. You cannot use the Indian Self Determination Act to trump all other federal laws that are in place to protect and enhance all federal public lands but in this case especially the National Wildlife Refuge System. You as the keepers of our National Wildlife Refuge System cannot ignore other federal laws, including the Civil Service System of hiring of qualified federal workers to please the lawyers, politicians and lobbyists of one special interest group of Americans that govern a sovereign government independent of ALL federal laws.

The CSKT can do what they want with one of the nation's first national wildlife refuges that was created by an Act of Congress in 1908 and paid for by all taxpayers, especially hunters and fishermen, who raised the money to buy the land TWICE from the CSKT and to purchase a core group of wild bison to start the National Bison Range herd. This herd is the purest genetic group of wild bison from the wild bison of the 1800s that were saved from extinction by hunters, namely Theodore Roosevelt and his band of friends at the Boone and Crockett Club - all hunters who recognized that without protection and federal laws to follow our expansive natural resources would be destroyed.

This National Bison Range proposal for third Annual Funding Agreement issued about two weeks ago was written by lawyers for the CSKT that gives the CSKT control of the money to operate this national wildlife refuge and the ability to hire and fire staff, outside the Civil Service System that makes sure qualified workers care for a national wildlife refuge within a system. Any of you in this email that are federal employees hired under the Civil Service System are negatively impacted by the precedence established by this proposed AFA by the CSKT.

I am disturbed that anyone in your circle of USFWS administrators think that the National Bison Range proposal by the CSKT in this Draft Environmental Assessment for a third AFA with the CSKT is only a Region 5 issue and not a national issue. The proposal by the CSKT to take over **inherently federal positions**, tasks and money from the USFWS and thus the taxpayers and sportsmen of the United States of America is absolutely NATIONAL, not regional, and this proposal will impact all operations and management of our National Wildlife Refuge System for the rest of its existence.

Why is the case of the National Bison Range so important to hunters and fishermen who pay the most for the help of all wildlife? Because the CSKT will set a precedence for other sovereign Indian governments to take over all national wildlife refuges, all national parks and all other federal land systems, including our national forests, that give access to all Americans and visitors to our public lands for recreation and management of wildlife and its habitat.

The entire National Wildlife Refuge System and National Park System hangs in the balance. The Indian governments argue that they are the rightful owners of all our federal public lands because their ancestors walked these lands before other

Americans came to North America. In reality, the U.S. Congress paid Indian governments for various lands to establish various national wildlife refuges, national parks and other federal public lands, as they did with other landowners. If an Indian tribe did not have ownership rights federal lands were established under a certain agency for management. In the case of the CSKT, the members of this small tribe (about 4,000 registered members) received payments for the land that became the National Bison Range in 1908 and again in 1971 at fair market value. I found the newspaper articles and documents confirming what was paid. The land of the National Bison Range is completely surrounded by private ranches and landowners, not the CSKT reservation as is claimed by the CSKT.

Our public lands allow us to harvest game, mine treasures such as timber, gold, and other precious metals, graze cattle and sheep and use our public lands for the habitat enhancement to make sure our wildlife never disappears as it almost did in the early 1900s but was saved thanks to hunters led by Theodore Roosevelt and his band of friends of the Boone and Crockett Club. No other nation of humans in the world has such access granted to everyone for the balanced use of our natural resources and ALL Americans, not a special interest group of Americans of any kind, should have exclusive access to its management and financing when the rest of us are paying for it.

I wear an antique silver bison necklace around my neck every day as a prayer that our National Wildlife Refuge System and all federal land systems are not destroyed by the proposal of the CSKT, called an Annual Funding Agreement. I wear this silver bison as a prayer for the protection of ALL federal workers, including you, and for ALL federal lands.

I would engage in this issue regardless of where I lived. Right now I happen to live close to the National Bison Range but for many years I was a Capitol Hill reporter in Washington, D.C. and before that a reporter in California. The National Bison Range issue is a NATIONAL issue, not a local or regional issue, as it impacts the federal laws governing federal lands and its employees like YOU.

In the spirit of Theodore Roosevelt, Ding Darling, Horace Albright, George Bird Grinnell, Aldo Leopold and all other hunters that in the late 1800s and early 1900s established all federal land systems and state game and fish agencies to permanently preserve our wildlife and natural resource heritage for all future generations. I say, the wildlife and its habitat cannot speak so I must and we as hunters and fishermen must speak up.

Susan Campbell Reneau
of Blue Mountain, Montana

Author of 22 books on big-game hunting
Business Development Officer, Outdoor Trails Media
Hunter of birds and big-game
Mother of three human hunters and two Labrador Retriever hunters

5425 Skyway Drive
Missoula, Montana 59804

www.coloradosbiggestbucksandbulls.com

From: [Gould, Rowan](#)
To: [Stephen Guertin](#); [Jim Kurth](#); [Dan Ashe](#)
Subject: Fwd: AFA Issue
Date: Tuesday, August 26, 2014 8:21:04 AM
Attachments: [CATG GovtoGovTribalConsul May12014.pdf](#)

Here's what has everyone stirred up - CATG stated they want an AFA to cover everything (minus law enforcement) at the Flats and at Arctic.

----- Forwarded message -----

From: **Mitch King** <mitchking@archerytrade.org>
Date: Mon, Aug 25, 2014 at 8:50 PM
Subject: AFA Issue
To: "Gould, Rowan" <r_w_gould@fws.gov>

Rowan,

I know you are probably tired of hearing about this, but I wanted to provide you with the basis for the rumors that I've been hearing about AFAs and Arctic. Attached is a document from CATG. You will see #7 on page 4 speaks directly to AFAs and Arctic NWR.

While I know a lot of folks want to isolate the AFA on NBR and suggest that there is no connection to other refuges, but I fear any decision that the FWS makes on NBR will be precedent setting and deserves a very close look by the agency.

Thanks and see you at AFWA.

Mitch

J. Mitch King
Director of Government Relations
Archery Trade Association

5405 Favorite Gulch Rd.

Helena, MT 59602

mitchking@archerytrade.org

303.585.0377

LIFE – If it isn't fun, you're doing it wrong!

From: [John Baughman](#)
To: [Hogan, Matt](#)
Subject: Fwd: Attached Blue Goose Alliance Comments from 2009 that list federal laws violated by the AFA, which apply even more to the third AFA at the NBRC.
Date: Tuesday, August 26, 2014 4:50:21 PM
Attachments: [Attached Blue Goose Alliance Comments from 2009 that list federal laws \(5.46 MB\).msg](#)

How can you piss off such a nice lady?

--- the forwarded message follows ---

From: [Susan Reneau](mailto:Susan.Reneau@montana.com)
To: bluemountain@montana.com
Subject: Attached Blue Goose Alliance Comments from 2009 that list federal laws violated by the AFA, which apply even more to the third AFA at the NBRC.
Date: Tuesday, August 26, 2014 11:15:34 AM
Attachments: [Blue Goose Alliance 2009 complaint about second AFA at National Bison Range.pdf](#)
[NBR third AFA for 2012-2016.pdf](#)
[a - NBRC from all refuge managers in FWS.pdf](#)

FYI as one of my conservation heroes.

Theodore Roosevelt expects great things from you and so do I.

A short comment from you to will.meeks@fws.gov; jim.kurth@fws.gov; dan.ashe@fws.gov; Noreen.walsh@fws.gov, and matt.hogan@fws.gov is in order by September 18, 2014 on this issue that goes to the heart of preserving the National Wildlife Refuge System that Theodore Roosevelt and his friends put into place in 1903 during his presidency.

I asked you to send email comments in the past so I ask you again right now.

Susan Campbell Reneau

Author and editor of 22 books on hunting, wildlife conservation and western history

Hunter and mother of three human hunters and two Labrador retriever hunters

From: Susan Reneau [mailto:bluemountain@montana.com]
Sent: Tuesday, August 26, 2014 10:39 AM
To: 'Will Meeks'; 'Jim Kurth'; 'Dan_Ashe@fws.gov'; 'Cynthia Martinez'; 'Matt Hogan'; 'Noreen Walsh'
Cc: 'Jeff King'; 'Mike Blenden'; 'King, Laura'
Subject: Attached Blue Goose Alliance Comments from 2009 that list federal laws violated by the AFA, which apply even more to the third AFA at the NBRC.

U.S. Fish and Wildlife Service:

In case some of you who are new to administration at the U.S. Fish and Wildlife Service have not seen the 2009 response by the Blue Goose Alliance to the second AFA, I attach that for your to read and study. In this response, the BGA lists the many federal laws that are violated with the second AFA at the NBRC, which is less intrusive than the third AFA that has just been released for comment through Sept. 18, 2014.

I combined my previous attachments to make sure you read and see all of them together.

The Blue Goose Alliance is made up of top level U.S. Fish and Wildlife Service employees that are active-duty or retired that deeply care about the

health and welfare of the National Wildlife Refuge System. They are all volunteers and dedicate themselves to the preservation of the National Wildlife Refuge System, just in case you don't know anything about them.

I am sharing this excellent summary with the press and my conservation heroes, too.

In the spirit of Theodore Roosevelt, Ding Darling and the flying blue goose, I say, the wildlife and its habitat cannot speak, so I must and you as the keepers of the National Wildlife Refuge System must.

Susan Campbell Reneau

From: Susan Reneau [<mailto:bluemountain@montana.com>]

Sent: Tuesday, August 26, 2014 10:05 AM

To: 'Will Meeks'; 'Jim Kurth'; 'Dan_Ashe@fws.gov'; 'Cynthia Martinez'; 'Matt Hogan'; 'Noreen Walsh'

Cc: 'Jeff King'; 'Mike Blenden'; 'King, Laura'

Subject: Public Comment Period for National Bison Range Complex Environmental Assessment (EA) to be extended to 9/18

U.S. Fish and Wildlife Service Officials:

You as top leaders in the U.S. Fish and Wildlife Service are obligated to enforce all federal laws in protection and enhancement of the National Wildlife Refuge System and this proposal of a third AFA by the CSKT thumbs its nose at many levels of federal laws you as employees of the taxpayers of America are obligated to enforce.

I remind the media and citizens interested in this tragic case that the National Bison Range Complex is not a state or local park or a nice little piece of property to be turned over to anyone wishing to take it over. It is a NATIONAL wildlife refuge that belongs to ALL Americans, not just one special interest group. What happens at the National Wildlife Refuge Complex will impact ALL national wildlife refuges and all federal land systems if the third AFA is allowed to be put into place as a precedence for the management and funding of all federal land systems. That's why the tragic case at the National Bison Range Complex has a national implication.

As I have said before, it is an absolute outrage that the Confederated Salish and Kootenai Tribes (CSKT) sovereign government has had complete and unprecedented access to ALL aspects of the financial, personnel, and task aspects of the National Bison Range Complex – a NATIONAL wildlife refuge – for the past four years with exclusion by the press and general public, especially the public that cares the most about the National Wildlife Refuge System. The general public and press has only six weeks now to formulate comments without the access to documents that the CSKT has had for the last four years.

I do not fault the CSKT. You as the administrators and some political appointees of the U.S. Fish and Wildlife Service and the U.S. Dept. of Interior have allowed the CSKT to do this. The CSKT is only doing what they are allowed to do by YOU.

You have abdicated your duties to uphold ALL federal laws by allowing a special interest group and sovereign government not beholden to ANY taxpayer or ANY federal workers to take over a NATIONAL wildlife refuge, which is what this third AFA does.

I further remind all of you that TWICE the CSKT has been removed from the National Bison Range Complex for the previous two Annual Funding Agreements and you need to examine why that happened because it goes to the heart of the problems associated with such an intrusive and illegal Annual Funding Agreement that violates many levels of federal law and insults many levels of federal workers that are dedicated to the betterment of the entire National Wildlife Refuge System, but especially the National Bison Range Complex.

I call your attention to very courageous refuge managers that wrote a letter in 2004 detailing why any AFA is intrusive and disruptive to the entire National Wildlife Refuge System. What they predicted in 2004 came true for the first and second AFAs at the National Bison Range Complex. The process forced upon qualified USFWS federal employees at the NBRC has also impacted employment practices and management throughout the system as well as negatively impacting the career opportunities of many USFWS federal workers on many employment levels.

I will certainly submit my comments about the third AFA at the NBRC by Sept. 18 and I encourage all my conservation heroes to submit comments about the impact of this third AFA to the entire National Wildlife Refuge System, but I am utterly disgusted that federal laws on the books since 1903 have been ignored by modern U.S. Fish and Wildlife Service and U.S. Dept. of Interior officials. I remind you, in case you forget, that when the National Wildlife Refuge System was first established by an Act of Congress and signed into law by then-President Theodore Roosevelt in the early 1900s for all Americans and visitors to America to enjoy. The Indian Self Determination and Education Act did not exist and this act was voted by Congress and signed into law to enhance, not destroy, the National Wildlife Refuge System.

The entire proposal, written by the CSKT, for the third Annual Funding Agreement at the National Bison Range Complex violates hiring practices required in the Civil Service Act where qualified federal workers from around the country can apply for any position within the National Wildlife Refuge System and be graded based upon their experience, education, and knowledge – not by the sovereign government they support. Furthermore,

the National Wildlife Refuge Act and the Range Management Act were written to protect the overall operation of the National Wildlife Refuge System from special interest groups, individuals, sovereign governments, local and state governments and any other organization or individual since the national refuges within the National Wildlife Refuge System are NATIONAL and within a SYSTEM.

You as the well-paid federal government officials in charge of enforcing ALL federal laws that pertain to the National Wildlife Refuge System are not allowed to pick and choose which federal laws you will follow and which you will ignore. As I have said many times before, the Indian Self Determination and Education Act was not created to destroy the inner workings of the National Wildlife Refuge System or allow inherently federal positions and tasks to be given away to sovereign governments, private contractors, individuals outside the Civil Service System or other organizations. I would object to my own husband, a certified wildlife biologist, to receive a position at the National Bison Range Complex because he is not with the Civil Service System.

The Indian Self Determination and Education Act was created to give opportunities to Native Americans to become involved in certain and limited aspects of the National Wildlife Refuge System since their ancestors were a part of our nation long before our nation was a nation. You are ignoring all other federal laws to allow one special interest group, namely a sovereign government, to dominate the operations of a NATIONAL wildlife refuge, namely the National Wildlife Refuge Complex, and to turn your backs on competent federal workers, including CSKT members and relatives at the NBRC that are federal workers, that deserve to do their jobs as part of the National Wildlife Refuge System.

I again express dismay that the CSKT has been given by you, not the CSKT, four years of complete access and federal workers throughout the process, including CSKT members stationed at the National Bison Range Complex, have been insulted and ignored throughout the process that excludes the experts from the USFWS that know the most about the management and financial balance at the National Bison Range Complex. Furthermore, those federal workers care about the National Wildlife Refuge System as a whole.

In the spirit of Theodore Roosevelt, Ding Darling, Horace Albright, Aldo Leopold, Madison Grant, George Bird Grinnell and the men of the late 1800s and early 1900s that established the National Wildlife Refuge System, National Park System, National Forest System and all federal land systems plus state game and fish agencies, I say, the wildlife and its habitat cannot speak so I must and I will and YOU as the employees of the taxpayers of America are obligated to do the same.

Susan Campbell Reneau

Author and editor of 22 books on wildlife, wildlife conservation and western

history

Hunter and mother of three human hunters and two Labrador retriever hunters

719-661-4037

From: Will Meeks [mailto:Will_Meeks@fws.gov]

Sent: Tuesday, August 26, 2014 8:57 AM

To: Susan Reneau; Marvin Plenert; w.c.reffalt@comcast.net; rfowler@bluegoosealliance.org; bd643@yahoo.com; josephmazzoni@sbcglobal.net

Cc: Jeff King; Mike Blenden

Subject: Public Comment Period for NBR EA to be extended to 9/18

I have been in contact with you regarding the public comment period for the NBR EA over the past couple of weeks. Yesterday (8/25) the Regional Director decided to extend the comment period to 9/18 and the Federal Register extension notification is being routed for signature currently. Once all surnames have been obtained it will post in the Federal Register making it official.

Thank you.

Will Meeks

U.S. Fish and Wildlife Service, Region 6

ARD-NWRS and PFW

303-236-4303 (w)

720-541-0310 (c)

**United States District Court
for the District of Columbia**

BLUE GOOSE ALLIANCE,)
10 Circle S Road)
Edgewood, New Mexico 87015)
and)
DON REDFEARN)
907 Parkview Drive)
Tallahassee, FL 32311-1245)
and)
EVELYN REDFEARN)
907 Parkview Drive)
Tallahassee, FL 32311-1245)
and)
WILLIAM C. REFFALT)
1050 Matador Dr. SE)
Albuquerque, NM 87123-4223)
and)
CHRISTINE ENRIGHT-REFFALT)
1050 Matador Dr. SE)
Albuquerque, NM 87123-4223)
Plaintiffs,)
v.)
KEN SALAZAR,)
in his official capacity as)
Secretary of the Interior)
Department of the Interior)
1849 C Street, N.W.)
Washington, D.C. 20240,)
and)
ROWAN GOULD,)
in his official capacity as)
Acting Director of the)
U.S. Fish and Wildlife Service)
1849 C Street, N.W.)
Washington, D.C. 20240,)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this action for declaratory and injunctive relief to require Defendants, the Secretary of the United States Department of the Interior (“Secretary”) and the Director of the United States Fish and Wildlife Service (“Director”) to: a) terminate implementation of and operations under the *Fiscal Years 2009-2011 Funding Agreement Between the United States Department of the Interior, Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation* (“2008 AFA”) for operation and management of the National Bison Range Complex (“NBRC”), a unit of the National Wildlife Refuge System located in Moiese, Montana; and b) retrieve any unspent funds already made available to the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation (“CSKT”) under the 2008 AFA.

2. This action concerns issues similar to the issues raised in *Nathaniel P. Reed, et al., v. Salazar*, Civil Action No. 08-2117 (CKK) filed in this Court on or about December 12, 2008.

3. Plaintiffs bring this action to challenge the Defendants’ decision to approve and implement the 2008 AFA. The 2008 AFA violates the National Wildlife Refuge System Administration Act of 1966, as amended (“Refuge Act”), 16 U.S.C. §§ 668dd-668ee, the Indian Self-Determination and Education Assistance Act (“ISDEAA”), 25 U.S.C. §§ 450-450-n, as amended by the Tribal Self-Governance Act, 25 U.S.C. §§ 458aa-hh, and the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

4. Plaintiffs also challenge the Defendants’ decision to approve and implement the 2008 AFA because the Defendants failed to comply with the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321-4347, and the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, in connection with their approval of the 2008 AFA.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. §§ 2201-2202, 28 U.S.C. § 1361, and the Administrative Procedure Act, 5 U.S.C. §§ 701-706, and may issue a declaratory judgment and further relief pursuant to 28 U.S.C. §§ 2201, 2202. The United States has waived sovereign immunity with respect to the claims set forth herein in 5 U.S.C. § 702 and 16 U.S.C. § 1536.

6. This Court may award costs to Plaintiffs pursuant to 28 U.S.C. § 2412(a) and may award attorneys' fees and expenses to Plaintiffs pursuant to 28 U.S.C. § 2412(d).

7. Venue is properly vested in this Court under 28 U.S.C. § 1391(e) and 5 U.S.C. § 703.

PARTIES

8. Plaintiff Blue Goose Alliance ("Blue Goose") is a non-profit organization headquartered in Edgewood, New Mexico. It is a national organization whose members reside throughout the United States. As stated in the bylaws, "[t]he purpose of the organization is to educate the American public to the opportunities afforded by the National Wildlife Refuge System and to alert the public to the organizational and physical needs of the System. The Alliance is dedicated to (1) elevating the stature of the national wildlife refuges and the Refuge System, (2) strengthening the integrity of the Refuge System, and (3) promoting the establishment of the National Wildlife Refuge Service as a separate agency within the U.S. Department of the Interior, thereby better enabling the System to conserve wildlife and wildlands and to offer the public educational and recreational opportunities which are compatible with the primary purposes of the refuges and the System." Blue Goose promotes, by means of public education, outreach, and reasoned advocacy, coordinated and integrated management of the Refuge System in order to ensure the biological integrity, diversity, and environmental health of wildlife, plants, and habitats within the Refuge System. The Refuge System is America's only

federal land conservation system devoted primarily to the conservation of native fish, wildlife, plants and their respective habitats. Refuges are found in all states and territories of the United States. Blue Goose, through its members, visits the various refuges, including the NBRC, engages in dialogue with field employees of the U.S. Fish and Wildlife Service (“FWS” or “Service”) responsible on a day-to-day basis for operating and managing the Refuge System about problems and issues related to specific refuges, and provides information by means of written comments and recommendations to FWS staff at the local, regional and headquarters level concerning the planning and management of the Refuge System as a whole and concerning specific refuges, including the NBRC. Through its “Issues Coordinator,” Blue Goose establishes contacts on issues selected by Blue Goose as matters of concern. The Issues Coordinator also sends official comments and recommendations to the Refuge managers, administrators, and other non-governmental organizations to leverage Blue Goose’s influence.

9. On June 1, 2007, Blue Goose sent a letter to Representative Nick J. Rahall II, Chairman of the House of Representatives Committee for Natural Resources, calling for a congressional hearing and an investigation by the General Accountability Office into the U.S. Department of the Interior’s decision to enter into an annual funding agreement in 2005 with the CSKT concerning the management of the NBRC. In connection with that funding agreement, Blue Goose also submitted comments in 2004 to the FWS voicing opposition to the then proposed annual funding agreement. Also in December 2007 and on March 17, 2008, Blue Goose submitted comments opposing the approval of the then-proposed 2008 AFA to the Assistant Secretary for Fish, Wildlife and Parks for the U.S. Department of the Interior (“DOI”), who was leading efforts to negotiate a new annual funding agreement.

10. Blue Goose's members include former FWS employees who have served at various refuges, including the NBRC, and other individuals who have been and are active volunteers at refuges across the country, including members of refuge "Friends Groups" who actively assist management at specific refuges. Many are active wildlife watchers and photographers who have an interest in studying, observing and preserving in their natural habitat the various animals and plants found at the refuges within the Refuge System.

11. The interest of Blue Goose members in having the Refuge System placed in an agency whose sole mission is the administration of the Refuge System and similar assets, and the interest of the members of the Blue Goose in having the NBRC managed as part of an integrated system in order to ensure preservation throughout the Refuge System of the flora and fauna found at the NBRC, including in particular the bison and all ESA-protected species, have been and will continue to be harmed by the implementation of the 2008 AFA. These interests are harmed because the 2008 AFA permits the CSKT to manage various activities at the NBRC in a manner inconsistent with the management of the Refuge System as a whole and in a manner that adversely affects the conservation of the fauna and flora within the NBRC and the preservation of their respective habitats.

12. Plaintiff Don Redfearn began his career with the Service in 1950 at the Bitter Lake National Wildlife Refuge in New Mexico. Subsequently, he was transferred to the Bear River Migratory Bird Refuge in Utah. From March 1958 to April 1960, he worked as the Assistant Refuge Manager at the Monte Vista National Wildlife Refuge in Colorado, and from April 1960 to July 1961, he worked as the Assistant Refuge Manager at the Wichita Mountains Wildlife Refuge in Oklahoma. From July 1961 to January 1963, he was the Refuge Manager at the Ouray National Wildlife Refuge in Utah. From January 1963 to February 1966, Mr. Redfearn worked

in the FWS Regional Office in Albuquerque, New Mexico, where he served as the Regional Refuge Master Planner and then as the Assistant Regional Refuge Supervisor. From February 1966 to June 1977, Mr. Redfearn was the Refuge Manager at the National Elk Refuge. From June 1977 until his retirement in October 1982, he served in Anchorage, Alaska, as the Regional Supervisor of all of the National Wildlife Refuges in Alaska. During his career, Mr. Redfearn managed and/or supervised 31 National Wildlife Refuges and prepared or worked on master plans for seven National Wildlife Refuges.

13. Mr. Redfearn, in his personal capacity, has visited more than 100 National Wildlife Refuges and has served as a resident volunteer on four major National Wildlife Refuges: Togiak National Wildlife Refuge in Alaska, the Arctic National Wildlife Refuge in Alaska, the Midway Atoll National Wildlife Refuge, and the Bosque del Apache National Wildlife Refuge in New Mexico. He has visited the National Bison Range Complex several times beginning in 1967 and most recently in May 2008, for the occasion that marked the centennial of the founding of the refuge. He intends to return to the NBRC in the near future.

14. Mr. Redfearn is a founding member of Blue Goose and has served as its President since 2006. In his personal capacity, he wrote letters to the Secretary in 2004 opposing negotiations for the first annual funding agreement with the CSKT related to the management of the NBRC, which was executed in 2005. The Service cancelled negotiations for renewing that agreement in December 2006. During the negotiations for a new agreement, he wrote numerous letters, on behalf of Blue Goose, to the Secretary, the Director, and members of Congress opposing any annual funding agreement with the CSKT for the NBRC. He also met with the Assistant Secretary and the Director to express Blue Goose's opposition to the agreement that became the 2008 AFA.

15. Mr. Redfearn wholeheartedly supports the mission of Blue Goose. Notwithstanding his retirement from the Service, he remains a vigorous advocate for the conservation of wildlife and its habitat, and believes that the Refuge System must be managed as a system, rather than as a loosely affiliated group of refuges, in order to preserve habitat and conserve the flora and fauna that use that habitat. Implementation of the 2008 AFA will harm Mr. Redfearn's personal interest in the conservation of wildlife and wildlife habitat, including the bison and other species at the NBRC. He is concerned that the implementation of the 2008 AFA will result in the same poor management as the previous annual funding agreement, which included the CSKT's failure to comply with the Service's bison management standards, failure to meet the Service's wildlife monitoring reporting standards and protocols, and failure to complete biological study plans and submission of inadequate and unsupported biological reports. Mr. Redfearn believes such poor management significantly impairs the functioning of the NBRC. In addition, implementation of the 2008 AFA harms Mr. Redfearn's interest in the management of the Refuge System as an integrated wildlife management system, rather than a conglomeration of discrete units. The implementation of the 2008 AFA will remove the NBRC from the coordinated management of the Refuge System generally and the coordinated management of the Service bison herds.

16. Plaintiff William Reffalt began his career with the Service in 1960, working at five National Wildlife Refuges from 1960 to 1969. He then served in the FWS Albuquerque Regional Office as a fish and wildlife biologist and as Regional Refuge Biologist. In 1973, he was transferred to the FWS Refuge Division in Washington, D.C., where he worked on, among other things, issues related to refuges, parks, wilderness areas, and wild and scenic rivers in Alaska. Subsequently, Mr. Reffalt became a Special Assistant to the Director of the Service and the principal Service officer on the Departmental task force addressing issues relating to

designation of additional acreage within Alaska Conservation System Units. In that capacity, Mr. Reffalt supervised a staff responsible at the Washington level for implementing FWS responsibilities to assist transfer of lands, including refuge lands, to Alaska Natives under the 1971 Alaska Native Claims Settlement Act. In addition, Mr. Reffalt's office supported the Department's efforts to study federal lands in Alaska and make recommendations for additions to the National Wildlife Refuge System, the Park System, the Wild and Scenic River System, and the Wilderness System in Alaska. His duties included development of proposals, supervising the completion of 28 environmental impact statements describing the proposals and likely impacts from designations, and briefing decision makers in the DOI, the Office of Management and Budget, the Council on Environmental Quality, and the White House. He also presented information briefings for the authorizing Congressional Committees and testified many times on the official recommendations from 1974-1979. Mr. Reffalt assisted in the planning for and accompanied numerous Congressional visits to Alaska and overflights of proposed areas along with visits to major cities and Native Villages across Alaska. In 1980, he was appointed Chief of Refuge Management, and in 1982 was appointed Chief of Wildlife Management. In 1984, Mr. Reffalt accepted a position as the Director of National Wildlife Refuge Programs with The Wilderness Society. While at The Wilderness Society, he worked on all aspects of the Refuge System, from management policies and annual appropriations to land acquisition and new refuge establishment, and helped influence numerous pieces of legislation concerning the Refuge System.

17. Mr. Reffalt retired in 1999. Since his retirement, Mr. Reffalt has been involved in Blue Goose activities. Mr. Reffalt is one of the Blue Goose founding members and currently serves as Vice President and on the Board of Directors. Mr. Reffalt has visited numerous

refuges. Since 2006, Mr. Reffalt has visited over 50 refuges in the western United States and about 24 others in the South and Southeast. He revisits refuges to observe the wildlife in different seasons, habitat conditions, and operations of the refuge in question. He has visited the NBRC three times since 2002 to gather historical information, photograph the panoply of animals within the NBRC, and, as part of the work of Blue Goose, to defend the NBRC from the destructive agreement between the DOI and the CSKT regarding management of the NBRC. During the recent centennial celebration at the NBRC, he volunteered for two weeks and assisted with operations and management activities including bird surveys, operation of the Visitor's Center, and writing a new refuge leaflet on the history of the NBRC. He intends to return to the NBRC in the near future.

18. As evidenced by his lengthy career related to Refuge System issues, and his post-retirement activities, Mr. Reffalt has a deep and longstanding interest in the conservation of wildlife and wildlife habitat, including the bison and other species at the NBRC. He also has a special interest in the conservation of the American bison. In his personal capacity, he has conducted studies and research focused on several species found at the NBRC. Implementation of the 2008 AFA harms Mr. Reffalt's personal interest in the conservation of wildlife and wildlife habitat, including the bison and other species at the NBRC. He is concerned that the implementation of the 2008 AFA will result in the same poor management as the previous annual funding agreement, including the CSKT's failure to comply with the Service's bison management standards, failure to meet the Service's wildlife monitoring reporting standards and protocols, failure to complete biological study plans, and submission of inadequate and unsupported biological reports.

19. Based on his many years of working on wildlife conservation issues, Mr. Reffalt believes that in order to assure the preservation of the species and their habitat that the Refuge System was set up to protect, it must be managed as an integrated system. In addition, Mr. Reffalt believes the Service's bison herds, which are found at several refuges, need to be managed in a coordinated and integrated manner. Mr. Reffalt is concerned that the 2008 AFA significantly impairs the ability of the Service to manage the bison in that manner. The 2008 AFA harms Mr. Reffalt's personal interest in the management of the Refuge System as an integrated wildlife management system by removing the NBRC from the coordinated management of the Refuge System under the control of a single authority. The 2008 AFA is contrary to Mr. Reffalt's interests in having the NBRC managed in conjunction with other refuges where bison and the other NBRC-resident species are found.

20. Mr. Reffalt has submitted Freedom of Information Act requests to the DOI in order to obtain information about the implementation of the CSKT annual funding agreement that became effective in March 2005. His requests sought information about the costs of implementing that annual funding agreement and the investigation by the Service of the grievances filed by Service employees relating to the CSKT's actions at NBRC. Mr. Reffalt often relies on the responses to Freedom of Information Act requests to obtain information about the management of, and operations at, the NBRC. Mr. Reffalt's interest in obtaining information regarding operations at the NBRC is impaired by the provision in the 2008 AFA that declares that documents created by the CSKT relating to its activities under the 2008 AFA are not subject to the Freedom of Information Act.

21. Plaintiff Christine Enright-Reffalt, who is known professionally as "Christine Enright," will be referred to hereinafter as "Ms. Enright" or "Enright." Ms. Enright began her

career with the Service in 1971 at the Aransas National Wildlife Refuge in Texas where she developed a new public use program for the 90,000-acre migratory bird refuge and worked on a major planning document. She was transferred in 1973 to the Wichita Mountains Wildlife Refuge in Oklahoma, where she assisted in the development of an innovative upgrade of the public use program for the 57,000-acre refuge established for the restoration of the American bison. From 1974 to 1980, she was Refuge Manager in the FWS Division of Refuges in Washington, D.C., assigned to the Alaska Native Claims Act Office in support of the efforts of the DOI and the Service to implement the Alaska Native Claims Settlement Act and, ultimately, to develop and legislatively support proposals for new national wildlife refuges, national parks, wild and scenic rivers, wilderness, and other conservation areas in Alaska. From 1980 to 1988, Ms. Enright served as Special Project Staff for the Assistant Director for Refuges and Wildlife, working directly for the Assistant Director in support of the Service's Divisions of Realty and Migratory Birds. In that position, she first completed the work necessary to finish the Alaska responsibilities, including completion of maps and legal descriptions for all refuge areas established in the Alaska National Interest Lands Conservation Act of 1980, Pub. L. No. 96-487, 94 Stat. 231 ("ANILCA") for the Congress, the DOI, and the Service. In addition, for the Service, she compiled the legislative history for the Act and its implementation responsibilities. She also developed a land acquisition priority system for the Service as requested by the Congress and she developed a National Wildlife Management Atlas to assist acquisition and management of refuge system units. And in connection with her Migratory Bird responsibilities, she prepared a draft environmental impact statement detailing a Service proposal for, and likely impacts from, requiring migratory bird hunters to use a non-toxic alternative instead of continuing the use of toxic lead shot. In 1988, she became a General Biologist responsible for

Section 7 consultation with the Division of Endangered Species, a position she held until her retirement in 1999.

22. During retirement, Ms. Enright became involved in the founding of Blue Goose and has actively supported its work since its incorporation in 2000. She has attended most of Blue Goose's annual meetings and currently serves on its Board of Directors. She has assisted in writing numerous position papers and comments on behalf of Blue Goose on a variety of proposals and issues affecting the Refuge System. Ms. Enright has visited more than 50 national wildlife refuges in the western United States since retiring, including visits to the NBRC in 2002 and 2008. In 2002, she assisted in the gathering of historical information on the other refuges in the area. During a second visit in 2008 for the NBRC's Centennial Celebration, she volunteered at the Refuge Visitor's Center. She intends to return to the NBRC in the near future.

23. Ms. Enright shares Mr. Reffalt's and Mr. Redfearn's personal interest in the conservation of wildlife and wildlife habitat, including the bison and other species at the NBRC, as evidenced by her lengthy career related to Refuge System issues and her involvement with bison conservation - an interest that is threatened by the 2008 AFA. Ms. Enright is concerned that the implementation of the current AFA will result in the same poor management as the previous AFA, including the CSKT's failure to comply with the Service's bison management standards, failure to meet the Service's wildlife monitoring reporting standards and protocols, and failure to complete biological study plans and submission of inadequate and unsupported biological reports. In addition, Ms. Enright has a personal interest in the management of the Refuge System as an integrated wildlife management system, which is adversely affected by removing the NBRC from the coordinated management of the Refuge System as a whole. The 2008 AFA is contrary to, and thus harms Ms. Enright's interest in maintaining the purpose of the

Refuge System, i.e., to manage each refuge, including the NBRC, in conjunction with other refuges in order to conserve the wildlife and wildlife habitat found within the Refuge System.

24. Plaintiff Evelyn Redfearn has had an interest in, and involvement with, the Refuge System for 59 years. For 14 years, her primary residence was on national wildlife refuges: two years on the Monte Vista National Wildlife Refuge in Colorado, one year on the Wichita Mountains National Wildlife Refuge in Oklahoma, which has a resident herd of bison, and 11 years on the National Elk Refuge in Wyoming, which has a wintering herd of bison. Ms. Redfearn also has volunteered at a number of National Wildlife Refuges. In 1979, she spent two weeks in the wilderness of the Arctic National Wildlife Refuge in Alaska serving as temporary field assistant to a graduate student conducting a study of dall sheep. For three months in 1991, she served as a resident volunteer at the Arctic National Wildlife Refuge manning the Visitor Center. In 1996 and 1997, Ms. Redfearn spent four months as resident volunteer at Bosque del Apache National Wildlife Refuge in New Mexico, with a temporary assignment to the Cabeza Prieta National Wildlife Refuge in Arizona. In 1997, she was a resident volunteer for three months at the Midway Atoll National Wildlife Refuge on Midway Atoll, an insular possession of the United States.

25. Ms. Redfearn has visited refuges in every region and in almost every state. Beginning in 1967, she visited the NBRC on several occasions. Her most recent visit was in May 2008, when she attended the Centennial Observance held at the refuge. She intends to return to the NBRC in the near future. She is a founding member of Blue Goose, serving as the organization's first Secretary, and is currently on the Board of Directors. On behalf of Blue Goose, and as a private citizen, she has consistently worked to prevent the 2008 AFA from becoming effective.

26. Ms. Redfearn's efforts related to the Refuge System reflect her personal interest in conservation of wildlife and wildlife habitat within the National Wildlife Refuges, an interest that is threatened by the 2008 AFA. She is concerned that the implementation of the 2008 AFA will lead to the same results as the previous AFA, including the CSKT's failure to comply with the Service's bison management standards, failure to meet the Service's wildlife monitoring reporting standards and protocols, failure to complete biological study plans, and submission of inadequate and unsupported biological reports. Ms. Redfearn's membership in Blue Goose reflects her interest in the management of the Refuge System as an integrated whole under the control of a single entity, which is harmed by the 2008 AFA and the transfer of management of the NBRC to an entity outside the Service.

27. Defendant Ken Salazar, who is being sued in his official capacity, is the Secretary of the U.S. Department of the Interior and, thus, is the official ultimately responsible for the approval of the 2008 AFA and for the Department's compliance with federal law.

28. Defendant Rowan Gould, who also is being sued in his official capacity, is the Acting Director of the U.S. Fish and Wildlife Service. His predecessor was a signatory to the 2008 AFA. The National Wildlife Refuge System Administration Act, as amended, empowers the FWS to manage the National Wildlife Refuge System.

FACTS

The National Bison Range Complex

29. The NBRC includes the 1) National Bison Range; 2) the Ninepipe National Wildlife Refuge; 3) the Pablo National Wildlife Refuge; and 4) the Northwest Montana Wetland Management District in Lake County, Montana. The NBRC is comprised of approximately 32,865 acres and is located within the boundaries of the State of Montana.

30. Prior to the 1880s, the number of bison in the United States exceeded 10 million animals. The National Bison Range, which currently contains approximately 18,799 acres, was established in 1908 and is one of the oldest wildlife refuges in the nation. It was the nation's first wildlife conservation area established at the direction of Congress and acquired completely with funds appropriated by Congress. Using bison purchased and donated to the federal government, the federal government has protected and fostered the once nearly extinct American bison for 100 years. The National Bison Range is home to 350 to 500 bison. The National Bison Range is one of four national wildlife refuges in the Refuge System devoted primarily to the bison. The National Bison Range's work continues to be vital to the future of the bison as a healthy native species that is genetically pure or with a very low hybridization. Its extensive acreage of native prairie, forests, wetlands and streams also provide habitat for elk, deer, pronghorn antelope, bighorn sheep, black bear, coyote, ground squirrels and other mammals. The National Bison Range also supports over 200 species of birds, including eagles, hawks, meadowlarks, bluebirds, ducks, and geese. Facilities at the National Bison Range include a Visitor Center, walking trails, auto tour roads, and a picnic area.

31. The Ninepipe National Wildlife Refuge was established on June 25, 1921, by Executive Order No. 3503 to function as a refuge and breeding ground for migratory and native birds. The refuge, which currently comprises approximately 4,027 acres, supports migratory waterfowl, including Canada geese and great blue herons, and other bird species, as well as mammals and sport fish. Grizzly bears also have been known to forage on the refuge.

32. The Pablo National Wildlife Refuge was established by Executive Order No. 3504 on June 25, 1921, to function as a refuge and breeding ground for migratory and native birds. The refuge, which currently comprises approximately 2,473 acres, supports migratory waterfowl,

such as mallards, and other bird species, including bald eagles, as well as mammals and sport fish. The main feature of the refuge is a reservoir that contains about 1,850 acre-feet of water at full pool level.

33. The Northwest Montana Wetland Management District in Lake County and Flathead County contains thirteen Waterfowl Production Areas (comprised of Waterfowl Production Areas in Lake County totaling approximately 7,564 acres and Waterfowl Production Areas in Flathead County totaling approximately 5,218 acres), and a Conservation Easement Program that includes 6,300 acres. The Waterfowl Production Areas are not contiguous. Waterfowl Production Areas preserve wetlands and grasslands critical to waterfowl and other wildlife. These protected areas provide breeding and nesting habitat. The Waterfowl Production Areas are managed primarily to preserve habitat for migratory birds. These areas support many species of waterfowl, such as Canada geese, mallards and American widgeon, other bird species, such as savannah sparrows, meadowlarks, hawks, song sparrows and peregrine falcons, and small mammals, such as minks, muskrats and badgers. The Waterfowl Production Areas in Lake County are managed by National Bison Range personnel.

34. As noted in the *Wildland Fire Management Plan for National Bison Range Complex, Moiese, Montana*, dated October 31, 2001, the NBRC is home to a number of species listed under the ESA as threatened or endangered, including but not limited to, the grizzly bear, the gray wolf, the Canada lynx, and the bull trout. www.fws.gov/fire/fmp/region6/montana/. In addition, pursuant to the ESA, bull trout critical habitat has been designated within the NBRC.

35. The NBRC is home to a number of species listed as threatened or endangered species under the ESA, including, but not limited to, the grizzly bear, the gray wolf, the Canada lynx,

and the bull trout. In addition, pursuant to the ESA, bull trout critical habitat has been designated within the NBRC.

36. Grizzly bears have been observed at the Ninepipe National Wildlife Refuge, the National Bison Range, and in the Lake County Waterfowl Production Areas, which are part of the NBRC. Wolves also have been observed on occasion at the National Bison Range, the Lake County Waterfowl Production Areas, and the Ninepipe National Wildlife Refuge. Bull trout are in the Jocko River on the National Bison Range, and in Flathead Lake near the Flathead Waterfowl Protection Area. *Id.* at 15. The threatened Canada lynx also may be found on the NBRC.

37. Genetic testing of individual animals within many of the federally-managed bison herds demonstrates that many, if not most, of the federally-managed herds exhibit evidence of domestic cow introgression. The Service has identified the evidence of domestic cow introgression as a serious issue. A department level working group – the Bison Conservation and Management Working Group – has been established to address this issue and other issues related to the conservation of the bison. The Service is taking steps to address this issue by managing herds found in several refuges, *including the herd within the NBRC*, as a single population. The DOI is considering whether the National Park Service should manage the bison herds under its jurisdiction in a similar manner. In order to sustain a viable population of bison under federal management, herds must be managed so as to ensure long-term heterozygosity. The Service has documented the genetic profiles for all of its herds, including the prevalence and site of introgressed loci, allelic diversity, and frequency of private alleles. Managing individual herds in a coordinated manner in order to ensure genetic heterozygosity, and thus species viability, is an element or component of the management of the Refuge System, including the NBRC.

38. The National Bison Range herd is a very healthy herd containing unique alleles not found in other herds managed by the federal Government. Therefore, the National Bison Range herd is vital to the Service's coordinated bison management program. The Service has decided to manage the National Bison Range herd and at least three so-called satellite herds as a single population. The three other herds are located in Colorado, Iowa and North Dakota. Management of several herds as a single population requires a carefully planned and coordinated breeding program, consistent high quality DNA and disease testing, microchip tagging, and unified recordkeeping on each animal throughout its life. Management of the National Bison Range herd by experienced FWS employees is critical to the long term success of the coordinated bison management program, and is essential for the long-term viability of the America bison.

The Prior AFA

39. On March 15, 2005, a prior annual funding agreement ("2005 AFA") between the Service and the CSKT became effective. The 2005 AFA expired on December 6, 2006, and was not extended.

40. On September 19, 2006, seven FWS employees at the NBRC filed an informal grievance with the FWS Deputy Regional Director, alleging that a hostile work environment had existed at the NBRC since the commencement of the 2005 AFA.

41. In response to the grievance, the FWS conducted an investigation. In a December 6, 2006 letter to the FWS Director, the FWS Regional Director, Jerry Mitch King, recommended, based on his concerns about the treatment of FWS employees and the visiting public, and performance deficiencies on the part of CSKT, that the 2005 AFA be terminated. Mr. King also opined that because tribal laws differed from federal laws and regulations and the CSKT did not operate under the same policies and procedures as the FWS, "it will be almost impossible for

management to be in compliance with our legal mandates and directives with respect to the management of the NBR; and even more impossible for the Service to impose Federal policies and procedures on the CSKT.”

42. By letter dated December 11, 2006, from the FWS Regional Director to the CSKT Tribal Chairman, the 2005 AFA was cancelled by the FWS for inadequate performance, including, but not limited to, failure to comply with FWS bison management standards; failure to meet FWS wildlife monitoring reporting standards and protocols; failure to complete biological study plans and submission of inadequate and unsupported biological reports; failure to timely and properly maintain vehicles, equipment and property; and for creation of a work environment characterized by harassing, offensive, intimidating and oppressive behavior on the part of employees of the CSKT. The FWS also found that the CSKT had created unsafe conditions for employees and the public and failed to maintain buildings in compliance with safety and health standards. The termination letter also stated that the CSKT’s performance had prevented the FWS from meeting its responsibilities at the NBRC under the National Wildlife Refuge System Administration Act and other applicable laws and regulations.

43. On or about December 29, 2006, the DOI announced its intention to enter into a new AFA with the CSKT for the NBRC. Negotiations culminated in the agreement challenged here.

The 2008 AFA

44. On June 19, 2008, representatives of the DOI and the FWS signed the 2008 AFA with the CSKT. The 2008 AFA, which covers fiscal years 2009-2011, became effective no later than January 1, 2009, and expires on September 30, 2011. Both the 2005 AFA and the 2008 AFA involve the management of operations at the NBRC, a unit of the Refuge System.

45. The CSKT is comprised of the Bitterroot Salish, the Pend d'Oreille, and the Kootenai Tribes. Members of the CSKT reside within the Flathead Reservation, which is located in northwest Montana. The CSKT are governed by a Tribal Council.

46. The 2008 AFA provides funding for the CSKT to manage certain programs, and perform certain services, functions and activities at the NBRC that, prior to the 2005 AFA and the 2008 AFA, were being managed and performed by FWS employees. Base funding for the AFA is to be provided annually. AFA Sec. 13.A., E.2. Under the terms of the 2008 AFA, at the beginning of the fiscal year the Service pays the CSKT the requisite funds to carry out the activities and functions assigned to the CSKT. AFA Sec. 13.E.2., Attachment B. The Service may transfer additional funds to the CSKT as warranted. AFA Sec. 13.E.2.b. The AFA provides that in the event of retrocession by the CSKT or reassumption by the Service of any activity covered by the AFA, the CSKT is to return to the Service any funds the CSKT has not expended on such activity or activities. AFA Sec. 17.A., B., C.

47. The 2008 AFA provides that the CSKT will perform "Activities" at the NBRC in five areas: 1) management, 2) biological program (including habitat management), 3) fire program, 4) maintenance program, and 5) visitor services program (phased in over two years). AFA Sec. 6.A. "Activity" is defined by the 2008 AFA as "a program, service, function, activity or portion thereof." AFA Sec. 4.

48. The 2008 AFA provides that activities not explicitly covered by the agreement are retained by the federal Government, but may be included in subsequent AFAs. AFA Sec. 6.C. The 2008 AFA expressly assigns only the Law Enforcement Program to the FWS. AFA Sec. 7.C.3.b.i.

49. Under the terms of the 2008 AFA, the only positions to be retained by the FWS are the Refuge Manager position and a Deputy Refuge Manager position. The 2008 AFA calls for the CSKT to designate a Deputy Refuge Manager, a Lead Biologist, and an Administrative Support Assistant. AFA Sec. 6.A.1; Sec. 7.C.1.

50. Under the 2008 AFA, the Refuge Manager retains the responsibility and authority for directing and controlling the operations at the NBRC, subject to the dispute resolution procedures set forth in Section 19 of the 2008 AFA. AFA Sec. 7.B. In addition, the following decisions that are expressly reserved in Section 7.B. of the agreement to the Refuge Manager also are subject to the dispute resolution provisions set forth in the agreement: setting work priorities; approval of uses of the NBRC by third parties; signature authority for Appropriate Use Determinations, Compatibility Determinations, and Special Use Permits; expenditure of federal funds *not* transferred to the CSKT; supervision of FWS personnel performing activities retained by the FWS; establishment and modification of certain regulations for public use; final field level approval of environmental compliance documents and refuge management plans; final field level approval of emergency operations documents, Wildland Fire Situation Analysis and Wildland Fire Cost Share Agreements; and final field-level approval of implementation of any actions concerning security issues. AFA Sec. 7.B.1-10.

51. Under the terms of the 2008 AFA, the Service Deputy Refuge Manager supervises and conducts the Law Enforcement Program, supervises any subordinate Service employees not assigned to the CSKT, and performs specific duties negotiated with the Refuge Leadership Team. AFA Sec. 7.C.3.b. The Service Deputy Refuge Manager also is a senior staff advisor to the Refuge Manager. AFA Sec. 7.C.1.

52. Subject to the final authority of the Refuge Manager, which in turn is subject to the dispute resolution provisions in Section 19, the CSKT “will manage the Activities performed by the CSKT.” AFA Sec. 7.A. The CSKT Deputy Refuge Manager is a “senior staff advisor to the Refuge Manager” and is to “provide substantive input to management decision-making at NBRC.” AFA Sec. 7.C.1.

53. The CSKT Deputy Refuge Manager alternates with the Service Deputy Refuge Manager in serving as Acting Refuge Manager in the absence or unavailability of the Refuge Manager. AFA Sec. 7.C.2. The Acting Refuge Manager is authorized to exercise all authorities assigned to the Refuge Manager, except those specifically reserved to the Refuge Manager in Section 7.B. of the 2008 AFA. AFA Sec. 7.C.2.

54. The CSKT Deputy Refuge Manager is to direct the day-to-day work of employees and volunteers in the programs assigned to the CSKT under the 2008 AFA, including federal employees assigned to the CSKT under the Intergovernmental Personnel Act. AFA Sec. 7.C.3.a. The 2008 AFA provides that, in the absence of the CSKT Deputy Refuge Manager, a CSKT-designated official will provide day-to-day direction to employees and volunteers assigned to activities under the direction of the CSKT. AFA Sec. 7.C.2.

55. The CSKT may redesign the activities assigned to it and may reallocate funding between activities with the prior written approval of, and subject to, any conditions imposed by the Refuge Manager. AFA Sec. 9.B. The decision of the Refuge Manager not to approve a request by the CSKT to redesign activities or reallocate funding with regard to the activities assigned to it is subject to the dispute resolution and appeal procedures provided in Section 19 of the 2008 AFA.

56. The Refuge Leadership Team, which is comprised of the Refuge Manager, the Service Deputy Refuge Manager, the CSKT Deputy Refuge Manager and the CSKT Lead Biologist, determines the allocation of most of the duties between the CSKT Deputy Refuge Manager and the Service Deputy Refuge Manager, which in turn are set forth in the Annual Work Plan. The Refuge Leadership Team also writes the Annual Work Plan for each fiscal year, conducts short-term planning, and, subject to the dispute resolution process in Section 19, resolves concerns raised by the FWS or the CSKT. AFA Sec. 7. D.2 and 3.

57. The Refuge Management Leadership Team and the CSKT Tribal Council, per the 2008 AFA, must meet at least quarterly to discuss the performance of the Service and the CSKT under the 2008 AFA. AFA Sec. 7.C.3; Sec. 7.D.5.

58. The 2008 AFA describes the arrangement between the CSKT and the Defendants as a “management partnership.” AFA Sec. 7 C.1. The 2008 AFA states that the CSKT and the DOI “will collaborate in the management of the NBRC through the Refuge Leadership Team.” AFA Sec. 7.D.

59. Compliance with federal environmental laws and requirements is to be jointly shared by the FWS and the CSKT. The Refuge Leadership Team is to identify activities that will require documentation and processes under NEPA, the National Historic Preservation Act, and other cultural resource laws and regulations. The parties are directed to work together to implement the required processes under those authorities. AFA Sec. 9.C.

60. If the Refuge Leadership Team cannot reach consensus on any matter under its jurisdiction, the decision of the Refuge Manager will prevail, subject to the right of the CSKT Deputy Refuge Manager to invoke the dispute resolution procedures in Section 19 of the 2008 AFA. AFA Sec. 7.D.6.

61. The Annual Work Plan for each fiscal year is to be “jointly . . . develop[ed]” by the FWS and the CSKT through the work of the Refuge Leadership Team. The Annual Work Plan is to include *all* activities on the Refuge (including those to be performed by CSKT and those to be retained by the FWS), describe the work to be accomplished in the following fiscal year, establish priorities, project completion dates and quality requirements for work, and assign responsibilities between CSKT employees and FWS employees for accomplishing work. AFA Sec. 7.E.

62. The AFA represents “significant change in operation and maintenance of the NBRC.” AFA Sec. 7.E.1. New CSKT employees will be assigned to the NBRC at the time the AFA is implemented. AFA Sec. 7.E.1. The initial Annual Work Plan will be “limited in scope,” and “will include only the basic, fundamental Activities necessary to provide for biological integrity of the NBRC, ensure maintenance of critical infrastructure and equipment, and provide basic visitor services.” AFA Sec. 7.E.4.a. The 2008 AFA observes that significant staff training and orientation, and development of work protocols will be required at the beginning of the arrangement between the Service and the CSKT. AFA Sec. 7.E.4.a.

63. The dispute resolution process set forth in Section 19 of the 2008 AFA includes four levels of review. First, disputes are to be considered by the Refuge Leadership Team. AFA Sec. 19.A.1 and 2. If the Refuge Leadership Team cannot reach consensus, the Refuge Manager is the decision-maker. If the decision of the Refuge Manager is unacceptable to the CSKT, the CSKT Deputy Refuge Manager may elevate the dispute to the second level. At that level, the Refuge Supervisor and the head of the CSKT Natural Resources Department attempt to resolve the dispute. AFA Sec. 19.A.3. If they are unable to reach consensus, the Refuge Supervisor’s decision will prevail, but the head of the CSKT Natural Resources Department may elevate the

dispute to the third level. AFA Sec. 19.A.3. At that level, the Tribal Council and the FWS Regional Director attempt to resolve the dispute. At this level, mediation may be invoked by either party. If consensus cannot be reached, either without mediation or after mediation, the FWS Regional Director is the decision-maker. If the Tribal Council does not agree with the FWS Regional Director, it may elevate the dispute to the fourth level, which is an appeal to the DOI Senior Management Team. The DOI Senior Management Team is comprised of the Deputy Secretary, the Associate Deputy Secretary, the Assistant Secretary for Fish, Wildlife and Parks, the Assistant Secretary for Indian Affairs, the Director of the U.S. Fish and Wildlife Service, the Director of the Bureau of Indian Affairs, and the Associate Solicitor for General Law. AFA Sec. 4; AFA Sec. 19.A.4. The decision of the DOI Senior Management Team may be appealed to the Interior Board of Contract Appeals.

64. Without going through any of the levels of review within the DOI, or after they are completed, the CSKT may appeal disputes under the 2008 AFA to the Interior Board of Contract Appeals and then to court. AFA Sec. 19.B, referencing 25 C.F.R. Part 1000, Subpart R and 25 U.S.C. § 450m-1.

65. The CSKT's performance under the AFA is to be jointly evaluated by the CSKT and the FWS. The CSKT has the right to jointly draft and approve its own evaluation. If there are disagreements about the CSKT's performance, the assessment report is to include the views of both parties. AFA Sec. 11.A.2.

66. The Annual Narrative Report for each fiscal year to be submitted to the FWS Refuge Supervisor is to be prepared by the Refuge Leadership Team. AFA Sec. 11.B. Any other report or evaluation concerning the AFA, as well as periodic status reports to be submitted to FWS's

Regional Office, must also be produced jointly and include both Parties' positions. AFA Sec. 11.C. and D.

67. The 2008 AFA provides that any comments about the CSKT's performance by any third party be promptly provided in writing to the CSKT Deputy Refuge Manager in accordance with disclosure policies under the Freedom of Information Act and the Privacy Act. The Service is prohibited from taking any action regarding the CSKT's performance on the basis of any such comment if it did not comply with this requirement. AFA Sec. 11.A.3.a.

68. Section 10 of the 2008 AFA exempts records of the CSKT related to its activities on the NBRC from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, "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"

APPLICABLE LAW

National Wildlife Refuge System Administration Act

69. The National Wildlife Refuge System Administration Act ("Refuge Act"), 16 U.S.C. §§ 668dd-668ee, was originally enacted in 1966. The 1966 enactment consolidated various federal authorities for managing areas devoted to fish and wildlife preservation that were administered by the DOI. The Refuge Act was amended in 1976 by Public Law No. 94-223, 90 Stat. 199, after Congress expressed concern that the Service, which was jointly administering four game ranges with the DOI's Bureau of Land Management, would, by Secretarial Order, lose joint administrative authority over three of the ranges. The administration of the three ranges would be transferred solely to the Bureau of Land Management. The 1976 amendments, *inter alia*, prohibited the transfer or other disposition of land within the Refuge System without Congressional authorization, and declared that all lands within the Refuge System were to be

administered by the DOI only through the Service. According to the House Report accompanying the bill, the purpose of the prohibition is to preclude joint administration of the Refuge System or portions thereof by the FWS and any other agencies, and to preclude transfer of administration of individual refuges to other agencies. H. Rept. No. 94-335 (1975). In 1997, Congress amended the Refuge Act again when it passed the National Wildlife System Improvement Act of 1997, Pub. L. No. 105-57, 111 Stat. 252, which is considered the organic act for the Refuge System. In the House Report accompanying the legislation, Congress stated that “National Wildlife Refuges are often important components of the ecosystems in which they are located . . . [n]onetheless, they cannot fulfill the mission set forth in this Section unless they are consistently directed and managed as a national system.” H. Rep. No. 105-106, at 8. The 1997 enactment, *inter alia*, articulated guiding principles for management of the Refuge System; mandated a long-term comprehensive conservation plan for each refuge or related complex of refuges; clarified the process for determining the compatibility of uses at refuges; and authorized the Secretary to enter into cooperative agreements with State fish and wildlife agencies for the management of programs on refuges, subject to the standards established by, and the overall management oversight of, the Director of the Service. Pub. L. No. 105-57, 111 Stat. 1252.

70. The mission of the Refuge System is “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.” 16 U.S.C. § 668dd(a)(2).

**Indian Self-Determination and Education Assistance Act
and Tribal Self-Governance Act of 1994**

71. In 1975, Congress enacted the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 458aa-hh. The Indian Self-Determination and Education Assistance Act, as

originally enacted, was intended to assure “maximum Indian participation in the direction of educational as well as other Federal services to Indian communities” 25 U.S.C. § 459a(a), by permitting an “orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services.” 25 U.S.C. § 450a(b). It provided for contracts or cooperative agreements with recognized Indian tribes to perform programs, functions, services or activities that had been administered by the Federal Government for the benefit of Indians. 25 U.S.C. § 450f(a)(l).

72. In 1994, Congress amended the Indian Self-Determination and Education Assistance Act when it passed the Tribal Self-Governance Act of 1994. Pub. L. No. 103-413, 108 Stat. 4250. Among other things, the Tribal Self-Governance Act authorized the Secretary to enter into annual funding agreements (so called AFAs) with certain tribes with respect to programs, services, functions and activities administered by DOI agencies other than the Bureau of Indian Affairs. The Tribal Self-Governance Act authorized the Secretary to enter into such agreements to transfer the control and management of specific programs, services, functions or activities that are of special geographic, historical, or cultural significance to the participating tribe. 25 U.S.C. § 458cc(c).

73. The Tribal Self-Governance Act expressly prohibits the Secretary from entering into an agreement “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” 25 U.S.C. § 458cc(k).

National Environmental Policy Act

74. NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1. The statute requires federal agencies to identify and consider the environmental impacts

of proposed federal actions, and obligates federal agencies to consider alternatives, as well as measures that could avoid or reduce adverse impacts, *before* taking action to assist or approve a proposed action or project that may significantly affect the environment.

75. For any proposed major federal action that may significantly affect the quality of the human environment, NEPA requires “a detailed statement” that fully analyzes “the environmental impact of the proposed action” and its alternatives. 42 U.S.C. § 4332 (2)(C); 40 C.F.R. § 1502.14. This mandate is intended to inject environmental considerations into the federal agency’s decision-making process, to inform the public and to ensure all that the agency took a “hard look” at environmental concerns *prior* to making a decision to proceed. The environmental impact statement (“EIS”) serves as a means of assessing environmental impact, rather than justifying decisions already made. 40 C.F.R. § 1502.2(g).

76. An EIS must contain a statement of the “underlying purpose and need to which the agency is responding in proposing the alternatives” to be studied in the EIS. 40 C.F.R. § 1502.13.

77. The alternatives analysis “is the heart of the environmental impact statement,” and NEPA requires federal agencies to “[r]igorously explore and objectively evaluate all reasonable alternatives,” including “the alternative of no action,” and “[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.” 40 C.F.R. § 1502.14. A properly conducted alternatives evaluation is linked to the evaluation of environmental consequences and therefore is inherently flawed by any failure to adequately consider the environmental consequences of a proposed action. An agency must use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the environment.

78. As part of its duty to present a full and fair discussion of significant environmental impacts, an agency must include consideration not only of those impacts that may be directly attributable to the proposed action, but also indirect and cumulative impacts as well. 40 C.F.R. § 1502.16; *see also* 40 C.F.R. §§ 1508.7, 1508.8, 1508.27. Indirect impacts are those caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Cumulative impacts are the impacts on the environment which result from the incremental impact of a project when added to other past, present and reasonably foreseeable future action, regardless of what agency (either federal or non-federal) or person undertakes such other actions.

79. The NEPA process requires the agency to determine whether the action is one that normally requires an EIS. 40 C.F.R. § 1501.4(a)(1). An agency action that does not normally require either an Environmental Assessment (“EA”) or an EIS is subject to a categorical exclusion. 40 C.F.R. § 1501.4(a)(2). “Categorical exclusion” is defined as “a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations.” 40 C.F.R. § 1508.4. If an agency chooses not to prepare an EIS and does not invoke a categorical exclusion, the agency is required to prepare an EA to determine whether an EIS is necessary. 40 C.F.R. § 1501.4(b). If the agency concludes, based on the EA, that an EIS is not required, it must prepare a finding of no significant impact (“FONSI”) which explains the agency’s reasons for its decision. 40 C.F.R. § 1501.4(e).

The Endangered Species Act

80. The ESA was enacted in 1973 to “provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species.” 16 U.S.C. § 1531(a)(1), (b).

81. The ESA requires the Secretary to take a number of steps to identify and protect threatened and endangered species. The Secretary has, in turn, delegated responsibility for administering the ESA to the Service. 50 C.F.R. § 402.01(b).

82. Section 4 of the ESA, 16 U.S.C. § 1533, requires the Service to list species of wildlife or plants endangered or threatened with extinction. The regulations governing such listings, and the list of species themselves, are found at 50 C.F.R. Part 17.

83. The Service has listed several species found at the NBRC as endangered species or threatened species, including the grizzly bear and the bull trout.

84. Section 4 of the ESA requires the Service to “concurrently” designate “critical habitat” for the listed species when it lists a species as either threatened or endangered. 16 U.S.C. § 1533(b)(6)(C). The ESA defines “critical habitat” as areas that are either: (1) occupied by the species and have physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection, or (2) not currently occupied by the species but “essential for the conservation of the species.” 16 U.S.C. § 1532(5)(A)(I).

85. Section 7 of the ESA imposes conservation and consultation obligations on federal agencies with respect to listed species. 16 U.S.C. § 1536(a).

86. Under Section 7(a)(2) of the ESA, a federal agency must “insure,” through “consultation,” that a contemplated agency action “is not likely to jeopardize the continued

existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat of such species.” 16 U.S.C. § 1536(a)(2).

87. A Biological Assessment “evaluates the potential effects of the action” on listed species and critical habitat, and determines “whether such species or habitat are likely to be adversely affected by the action.” 50 C.F.R. § 402.12.

88. If the action agency determines that the contemplated agency action “may effect listed species or critical habitat,” the agency must enter into “formal consultation” with the Service, unless, based on informal consultation or a Biological Assessment performed by the action agency, the Service determines that the proposed action will not adversely affect any listed species or critical habitat. 50 C.F.R. § 402.14. Formal consultation requires the Service to issue a Biological Opinion “detailing how the agency action affects the species or its critical habitat.” 16 U.S.C. § 1536(b)(3)(A).

89. If the contemplated agency action is likely to jeopardize the continued existence of a listed species, or destroy or adversely modify critical habitat, the Service must issue a Biological Opinion that sets forth reasonable and prudent alternatives to be undertaken in order to avoid such results. 50 C.F.R. § 402.14(h)(3).

90. If the Service determines that the contemplated agency action is not likely to jeopardize the continued existence of a listed species and is not likely to destroy or adversely modify critical habitat, the Service will issue a “no jeopardy” Biological Opinion. A no jeopardy Biological Opinion is to be accompanied by an incidental take statement, in which the Service specifies the amount of incidental taking of the species that is permitted, and sets forth “reasonable and prudent measures” for minimizing such taking. 50 C.F.R. § 402.14(i).

91. In formulating the Biological Opinion and identifying any reasonable and prudent alternatives to the contemplated agency action, the Service is required to use “the best scientific and commercial data available.” 50 C.F.R. § 402.14(g)(8).

92. The Service has issued its Endangered Species Consultation Handbook, Procedures for Conducting Consultation and Conference Activities under Section 7 of the Endangered Species Act (March 1998) which sets forth, *inter alia*, the intra-Service process for compliance with Section 7 of the ESA.

93. When the Service is the action agency, as is the case with respect to the 2008 AFA approval and implementation, the Project Leader is responsible for determining if listed species and/or critical habitat is present in the action area. If, as is the case with respect to the NBRC, listed species are present, the Project Leader must determine if the proposed action is likely to adversely affect the listed species.

94. If the action may adversely affect a listed species or critical habitat, the Project Leader must request formal consultation or a formal conference with the appropriate Ecological Services Office. At the conclusion of the consultation or conference, the appropriate Ecological Services Office issues a Biological Opinion or Conference Report which, upon approval, ends the consultation process.

The Administrative Procedure Act 5

95. The Administrative Procedure Act (“APA”), U.S.C. §§ 553-559, 701-706, provides for judicial review of agency actions, such as those at issue here. A reviewing court shall hold unlawful and set aside agency actions, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2)(A).

CLAIMS FOR RELIEF

COUNT I VIOLATION OF THE NATIONAL WILDLIFE REFUGE SYSTEM ADMINISTRATION ACT

96. The Plaintiffs repeat and reallege Paragraphs 1 - 95.

97. The National Wildlife Refuge System Administration Act, as amended, declares that the Refuge System shall be administered by the Secretary through the Service.

98. The 2008 AFA transfers management of certain programs at the NBRC to the CSKT during the term of the 2008 AFA. The 2008 AFA transfers responsibility for managing the biological program, including habitat management, the fire program, and the maintenance program to the CSKT. This transfer results in joint management of the NBRC, in violation of the National Wildlife Refuge System Administration Act.

99. By virtue of Section 10 of the 2008 AFA, records created by CSKT related to its activities on the NBRC are deemed non-federal agency records and, thus, are expressly exempted from disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. If the Service was managing the NBRC, all records relating to the operations at the NBRC, whether created by CSKT or the Service, would be federal agency records for purposes of FOIA. This provision relating to non-disclosure of CSKT records is further evidence that the 2008 AFA transfers management of the NBRC to the CSKT. Thus, the 2008 AFA violates the National Wildlife Refuge System Administration Act.

100. All decisions of the Refuge Manager and all decisions of the Refuge Leadership Team are subject to challenge by the CSKT through the dispute resolution process set forth in Section 19 of the 2008 AFA. Thus, at a minimum, decision-making authority regarding the operation and management of the NBRC is shared with the CSKT – a violation of the National Wildlife Refuge System Administration Act.

101. Under the 2008 AFA, all decisions of the Refuge Manager and all decisions of the Refuge Leadership Team may be challenged and resolved by senior DOI officials or, ultimately, in federal court. Thus, the NBRC is not managed or administered solely by the Service, as required by the National Wildlife Refuge System Administration Act.

102. The 2008 AFA empowers the CSKT to administer and manage the NBRC, and thus, violates the National Wildlife Refuge System Administration Act's prohibition on the administration of the Refuge System or its components by entities other than the Service. Therefore, the respective decisions of the Secretary and the Director to approve and enter into the 2008 AFA are not in accordance with law.

COUNT II VIOLATION OF THE TRIBAL SELF GOVERNANCE ACT

103. Plaintiffs repeat and reallege Paragraphs 1 - 102.

104. The Tribal Self-Governance Act prohibits the Secretary from entering into agreements to transfer management, administration or control of programs, services, functions and activities to tribes if the function is inherently federal.

105. As stated by Congress, the mission of the Refuge System is to conserve native fish and wildlife for the benefit of current and future generations of Americans. Congress also has declared that each refuge shall be managed to fulfill the mission of the Refuge System, as well as the specific purpose for which that refuge was established. 16 U.S.C. § 668dd(a)(3).

106. To that end, Congress directs the Secretary to plan and direct the continued growth of the Refuge System in a manner that is best designed to accomplish the mission of the Refuge System. 16 U.S.C. § 668dd(a)(4).

107. Managing the Refuge System or any part of it is an inherently federal function.

108. All decisions by the Refuge Manager and the Refuge Leadership Team relating to activities that the 2008 AFA authorizes the CSKT to perform are subject to the dispute resolution provisions in Section 19 of the 2008 AFA.

109. Per Section 7A of the 2008 AFA, the CSKT manages the biological program and the fire program at the NBRC.

110. Pursuant to the 2008 AFA, the CSKT has been assigned functions that are inherently federal. Therefore, the 2008 AFA violates the Tribal Self Governance Act.

COUNT III VIOLATION OF THE TRIBAL SELF GOVERNANCE ACT

111. The Plaintiffs repeat and reallege Paragraphs 1 - 110.

112. Disputes between the CSKT and the Service regarding the day-to-day management of the flora and fauna at the NBRC, including, without limitation, management of the bison and management of listed species, are subject to the dispute resolution provisions of the 2008 AFA.

113. By virtue of the dispute resolution process in the 2008 AFA, the NBRC is jointly administered by the CSKT and the Service.

114. The 2008 AFA transfers to the CSKT functions that are reserved to the Secretary and the Service by Congress in the National Wildlife Refuge System Administration Act, as amended. The Tribal Self-Governance Act precludes the Secretary from entering into an agreement with a tribe that purports to transfer to that tribe a function or activity that another federal law precludes the tribe from undertaking. The approval of 2008 AFA is an impermissible act by the Secretary and the Service and, therefore, is not in accordance with law.

COUNT IV VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

115. Plaintiffs repeat and reallege Paragraphs 1 - 114.

116. Congress did not exempt the decisions approving, or the implementation of, annual funding agreements entered into pursuant to the Tribal Self-Governance Act from the National Environmental Policy Act when it enacted the National Wildlife Refuge System Administration Act, as amended, or the Tribal Self-Governance Act.

117. The decision of the DOI to enter into the 2008 AFA is a final agency action.

118. The approval of the 2008 AFA is, for purposes of NEPA, a major federal action. The implementation of the 2008 AFA is, for purposes of NEPA, a major federal action.

119. The approval of the 2008 AFA significantly affects the quality of the human environment within the Refuge System generally and the NBRC in particular. The implementation of the 2008 AFA significantly affects the quality of the human environment within the Refuge System generally and the NBRC in particular.

120. Neither the DOI nor the Service has identified any categorical exclusion under NEPA that applies to the decision to approve or sign the 2008 AFA.

121. Neither the DOI nor the Service has identified any categorical exclusion under NEPA that applies to the implementation of the 2008 AFA.

122. No NEPA categorical exclusion promulgated or issued by the DOI or the Service applies to the decision to approve or to sign the 2008 AFA.

123. No NEPA categorical exclusion promulgated or issued by the DOI or the Service applies to the implementation of the 2008 AFA.

124. Neither the Service, the CSKT, nor any other entity or person performed an environmental assessment or an environmental impact statement to assess the effect of the approval and/or implementation of the 2008 AFA on the species found at the NBRC.

125. Neither the Service, the CSKT nor any other entity or person performed an environmental assessment or an environmental impact statement to assess the effect of the approval and/or implementation of the 2008 AFA on the environment, and in particular on the NBRC.

126. Neither the Service, the CSKT, nor any other entity or person conducted an environmental assessment or an environmental impact statement to assess the effect of the transfer of responsibility to run the biological program to the CSKT on the Service's coordinated management of the bison herds under its jurisdiction prior to the execution of the 2008 AFA.

127. Neither the Service, the CSKT, nor any other entity or person conducted an environmental assessment or an environmental impact statement to assess the effect of having an inexperienced CSKT staff responsible for running the biological program, the fire program or the maintenance program on the wildlife and the habitat within the NBRC.

128. Neither the Service, the CSKT, nor any other entity or person conducted an environmental assessment or an environmental impact statement to assess the effect of the implementation of a "limited" Annual Work Plan on the wildlife and their habitat within the NBRC.

129. Given the performance of the CSKT under the 2005 AFA, it was arbitrary and capricious for neither the Secretary nor the Service to undertake an environmental assessment or an environmental impact statement to assess the effect of the implementation of the 2008 AFA on: a) the ability of the Service to fulfill its statutory duties under the National Wildlife Refuge System Administration Act; b) the conservation of species found at the NBRC; and c) the Service's coordinated management of bison herds.

COUNT V
VIOLATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

130. The Plaintiffs repeat and reallege Paragraphs 1 - 129.

131. The failure of the Secretary and the Service to undertake, directly or indirectly, an environmental assessment or an environmental impact statement prior to the implementation of the 2008 AFA is a violation of NEPA and, thus, is “not in accordance with the law.”

COUNT VI
VIOLATION OF THE ENDANGERED SPECIES ACT

132. Plaintiffs repeat and reallege Paragraphs 1 - 131.

133. The FWS is the agency within the DOI that has been delegated the responsibility for implementing the ESA.

134. Pursuant to Section 11(g) of the ESA, 16 U.S.C. § 1540(g), by letter dated January 5, 2009, Plaintiffs gave written notice to the FWS of its failure to perform certain nondiscretionary duties under Section 7 of the ESA. 16 U.S.C. § 1536.

135. Section 7 of the ESA imposes an obligation on federal agencies, including the Service, to “utilize their authorities in furtherance of the purpose of this chapter by carrying out programs for the conservation of listed species.” 16 U.S.C. § 1536. The ESA defines “conserve” to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which activities such as research, census, habitat acquisition and maintenance, propagation, live trapping and transplantation are no longer necessary.

136. Unless otherwise exempt, Section 7 also requires each federal agency, including the Service, in consultation with the Secretary, to ensure that any action authorized or funded by such agency is not likely to jeopardize the continued existence of any endangered species or

threatened species, or to result in the destruction or adverse modification of critical habitat for such species.

137. An action is likely to jeopardize the continued existence of a species if it reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the world by reducing the reproduction, numbers, or distribution of that species. An action destroys or adversely modifies critical habitat if it produces a direct or indirect alteration that appreciably diminishes the value of the critical habitat for the survival and recovery of a listed species. 50 CFR § 402.02

138. Upon information and belief, the Service has made no attempt to determine if the approval and/or implementation of the 2008 AFA would likely jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of the critical habitat located within the NBRC.

139. The 2008 AFA sets forth 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 at the NBRC. The approval of the 2008 AFA is an “action” for purposes of the ESA and the regulations promulgated thereunder. The implementation of the 2008 AFA is an “action” for purposes of the ESA and the regulations promulgated thereunder.

140. Upon information and belief, neither the Service, the CSKT, nor any other entity or person undertook a biological assessment to evaluate the potential effects of the approval of the 2008 AFA on listed species found at the NBRC and/or to determine if any such species is likely to be adversely affected by the approval of the 2008 AFA. Upon information and belief, neither the Service, the CSKT, nor any other entity or person undertook a biological assessment

to evaluate the potential effects of the implementation of the 2008 AFA on listed species found at the NBRC, and/or to determine if any such species is likely to be adversely affected by the implementation of the 2008 AFA.

141. Upon information and belief, none of the federal signatories to the 2008 AFA participated in Section 7 consultation with respect to the listed species or any critical habitat located within the NBRC in connection with the decision-making process that resulted in the approval of the 2008 AFA by the federal Government.

142. Upon information and belief, the Service did not engage in the informal consultation process set forth in the regulations promulgated under the ESA and the Service's own guidance with respect to the approval and/or implementation of the 2008 AFA and the effect on the listed species and/or critical habitat found at the NBRC.

143. Upon information and belief, the Service did not engage in formal consultation under the ESA with respect the approval and/or implementation of the 2008 AFA and the effect of the approval and/or implementation of the 2008 AFA on the listed species at the NBRC and/or the critical habitat located within the NBRC.

144. The failure of the Defendants to determine if the approval and/or implementation of the 2008 AFA would likely adversely affect one or more of the listed species found at the NBRC, or any critical habitat located within the NBRC, is a violation of the ESA. Thus, the approval of the 2008 AFA was not in accordance with law.

145. The failure of the Service to determine if the approval and/or implementation of the 2008 AFA would likely jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of critical habitat, is a violation of the ESA. Thus, the approval of the 2008 AFA was not done in accordance with law.

COUNT VII
VIOLATION OF THE ENDANGERED SPECIES ACT

146. Plaintiffs repeat and reallege Paragraphs 1 - 145.

147. Given the performance of the CSKT under the 2005 AFA, it was arbitrary and capricious for the Secretary and the Service not to determine if the approval and/or implementation of the 2008 AFA would likely jeopardize the continued existence of any listed species, or result in the destruction or adverse modification of critical habitat, is a violation of the ESA.

COUNT VIII
VIOLATION OF THE FREEDOM OF INFORMATION ACT

148. Plaintiffs repeat and reallege Paragraphs 1 - 147.

149. The CSKT performs functions and activities at the NBRC pursuant to the 2008 AFA that previously were performed by the Service. The CSKT performs functions and activities at the NBRC pursuant to the 2008 AFA that, but for the 2008 AFA, would be performed by the Service. Notwithstanding the 2008 AFA, the NBRC remains a component of the Refuge System. Therefore, the CSKT is a contractor of the Service for purposes of Section 552(f)(2)(B) of the Freedom of Information Act.

150. The Service, as a constituent agency of the DOI, has an obligation to make information concerning its operations and activities available to the public pursuant to the Freedom of Information Act. Per the National Wildlife Refuge System Administration Act, the Service is responsible for administering and managing the Refuge System, including the NBRC. Information, that is not otherwise exempt from disclosure pursuant to the Freedom of Information Act, relating to the management of the Refuge System and its constituent elements must be available for disclosure to the public pursuant to the Freedom of Information Act.

151. Section 10.D of the 2008 AFA exempts records created by the CSKT in connection with its performance of activities under the AFA from the Freedom of Information Act, 5 U.S.C. § 552, with the limited exception of “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 Interior.”

152. Section 10.D of the 2008 Act violates the Freedom of Information Act. Therefore, the approval of the 2008 AFA by the Defendants is not in accordance with law.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court enter a judgment in favor of Plaintiffs and against Defendants as follows:

1. A declaration that the 2008 AFA permits the CSKT to jointly administer and manage the NBRC.

2. A declaration that the 2008 AFA authorizes the CSKT to undertake activities and functions that are inherently federal.

3. A declaration that the Defendants’ approval of the 2008 AFA violates the National Wildlife Refuge System Administration Act and the Tribal Self-Governance Act.

4. A declaration that the Defendants’ approval of the 2008 AFA was arbitrary, capricious, and otherwise not in accordance with law.

5. A declaration that the approval of the 2008 AFA is a major federal action that may significantly affect the environment, and thus, the Defendants violated NEPA when they failed to undertake an environmental assessment or an environmental impact statement prior to approving the 2008 AFA.

6. A declaration that the Defendants violated Section 7 of the ESA when they failed to determine, prior to the approval of the 2008 AFA, if the approval and/or implementation of the 2008 AFA would likely jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the critical habitat found within the NBRC.

7. A declaration that Section 10.D of the 2008 AFA violates the Freedom of Information Act.

8. An order vacating, setting aside and rescinding the Defendants' approval of the 2008 AFA.

9. An order enjoining the Defendants from implementing the 2008 AFA and from transferring any additional funds to the CSKT pursuant to the 2008 AFA.

10. An order enjoining the Defendants from approving any annual funding agreement with the CSKT relating to the NBRC until the Defendants comply with the ESA and NEPA.

11. An order that the Plaintiffs recover their costs, including reasonable attorneys' fees, incurred in connection with the above-captioned action, as provided for under the Endangered Species Act, 16 U.S.C. §1540(g)(4), and the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and other applicable law; and

12. Such other and further relief as the Court may deem just and proper and in the public interest.

April ____, 2009

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Sheila Jones", written over a horizontal line.

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**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 (“NWRSA”), 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 NWRSA, 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. §§ 450l(b), 450l(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:



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- 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 be 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. §§ 450l(b) and 450l(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 NWRSA (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
Chairman, CSKT Tribal Council

Date



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



United States Department of the Interior

FISH AND WILDLIFE SERVICE



October 8, 2004

IN REPLY REFER TO

Memorandum

To: Refuge Manager, National Bison Range Complex

From: Managers, National Wildlife Refuge System and National Fish Hatcheries (See Attached List)

Subject: Draft Fiscal Year 2005 Annual Funding Agreement Between FWS and CSKT

Our respective offices are included in the Department of the Interior's 2004 annual list of programs that may be eligible for inclusion in annual funding agreements to be negotiated with self-governance Tribes. Since future negotiations for these types of agreements could be affected by an agreement reached between the Department of the Interior and the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT), we believe it is appropriate for us to provide our input on the draft annual funding agreement for the National Bison Range Complex. We offer these observations not as part of the public comment process, but in the spirit of maintaining effective communication, coordination, and system-wide consistency in the management of America's National Wildlife Refuge System and National Fish Hatcheries, as provided for by law.

We found the current draft agreement to be very vague. No dollar amount is identified; Attachment B does not provide adequate information for review and/or comment. The number of National Wildlife Refuge System employees impacted by the use of IPAs and RIFs is not identified. The agreement makes certain government equipment, materials, and supplies (including Real Property) available to CSKT for performing the work, but nothing specific is identified. (Except that, any horse owned by the United States is apparently part of that available property.) Attachments C and D are not available for review or comment. CSKT liaisons are not identified. Some of the activity descriptions (Attachment A) are so imprecise that it is difficult to understand exactly what CSKT will be doing for the Service. If these descriptions remain unclear it will be problematic to monitor and evaluate CSKT's performance. For example, one of the activities listed under the biological program is, *"In August and September, coordinate and conduct waterfowl banding in the physical area covered by this AFA."* There is no discussion of species to be targeted, numbers of birds to be banded, techniques to be used, State and Federal permit requirements, salvage of banding casualties, acceptable mortality rates, etc.

For the most part, timelines are not identified for completion of the activities. There is just a general statement under each activity, *"As specified in this AFA and discussed by the Refuge*

Manager and the Coordinator at weekly meetings, or as otherwise agreed upon by the Refuge Manager and the Coordinator.” We found that this draft agreement is so indistinct, it is not possible to determine: 1) exactly what CSKT will be doing for the Refuges; 2) how much CSKT will be paid to do it; 3) how CSKT’s performance will be measured; 4) how many National Wildlife Refuge System employees will be impacted; or 5) how to provide meaningful and constructive comments. We suggest postponing the review period until a more complete and comprehensible draft is developed.

One of the five activities covered under the draft AFA is “Management.” Although this section is mostly about CSKT’s management of their employees and volunteers, the use of the term management is misleading and could be confused with our inherently Federal responsibility to manage this Nation’s National Wildlife Refuges for the benefit of present and future generations of Americans. (As a sidebar, we do not believe the Service should be paying contractors to manage their own employees.) In fact, we believe the draft agreement needs to be thoroughly evaluated from the perspective of ensuring that the U.S. Fish and Wildlife Service is not contracting any functions which are inherently Federal [as prohibited by section 403(k) of the Tribal Self-Governance Act, 25 U.S.C. § 458cc (k)].

We believe certain functions outlined in the draft represent inherently Federal functions. For example, it appears that CSKT will have ultimate control over Federal records and databases (Section 13. C. and Attachment A, B.); will be collecting, controlling, and accounting for Federal monies (Attachment A, E.); and will be directing and controlling Federal employees [see Section 5 (B) of the Federal Activities Inventory Reform Act of 1998]. Certainly the management recommendations that CSKT employees will be providing to the Refuge Manager (and the small Federal staff) on environmental education, fire management, grazing, habitat management, and the use of herbicides and pesticides are extensive.

Managers necessarily rely heavily on the recommendations of their staffs when making discretionary management decisions. So even though the draft states repeatedly that the Refuge Manager will have “*final responsibility and authority*,” CSKT will have a great deal of influence over management decisions that affect Federal public lands within the National Wildlife Refuge System -- without the input of other interested parties. We do not believe that this was the Congressional intent of extending the Indian Self-Determination and Education Assistance Act to non-BIA Department of the Interior agencies. The cumulative effect of the activities that are to be performed by CSKT goes far beyond providing routine services. Some of the activities that will be provided by CSKT require a thorough knowledge of the laws and policies of the National Wildlife Refuge System. The extensive recommendations and value judgments made by CSKT will in effect bind the U.S. Fish and Wildlife Service to a course of action. We believe, at a minimum, National Wildlife Refuge System employees with expertise in each of the major program fields need to be retained by the Service to validate or refute recommendations made by CSKT (or any other outside source).

There is a striking lack of information on budgets, costs, and personnel actions associated with this annual funding agreement. There are also other management issues that need to be addressed more clearly in the draft. For example, the safety and liability aspects of using a sovereign Tribe to accomplish hazardous work (fire management, bison round-ups, use of

herbicides and pesticides, etc.) are not clear. It is also unclear how the Refuge's extensive use of volunteers will be affected by this agreement. And finally, it is not apparent to us how this agreement will benefit the National Bison Range Complex and/or the National Wildlife Refuge System.

Although the draft AFA states that, "*The FWS will not provide the CSKT any funds or other consideration to pay for indirect costs . . .*" there is a provision in the draft for subsequent AFA's to include indirect or contract support costs. To ensure consistency within the National Wildlife Refuge System, we believe the issue of "allowable indirect costs" (25 CFR 1000.137) the Service will include in annual funding agreements for 403(c) programs needs to be reviewed, discussed, and resolved by Service leaders at the national level. The U.S. Fish and Wildlife Service, and all government programs, has been placed under increasing financial scrutiny (KPMG audits, OMB reviews, GAO and OIG reports, etc.) to ensure that public monies are spent wisely. We as an agency should ensure that annual funding agreements with Tribal Governments are held to the same level of accountability that we apply to all of our other programs. [We also note, the draft agreement indicates CSKT will be paid for the "*management, oversight, planning, reporting, and the supervision of CSKT Employees, CSKT Contractors, and CSKT Volunteers*" (Attachment A. Section 2). Are these not "indirect costs associated with performing the Activities covered by this FY 2005 AFA"?]

As a minor point, "Operational Standards" are defined in the draft as, "*a requirement of a law, regulation, written policy, approved written plan, or published FWS standard, whether or not existing on the date of execution of this AFA, that governs the performance of an Activity, and which the FWS would have to meet if the FWS itself performed the Activity.*" Under Section 8, CSKT is required to perform each Activity in compliance with all applicable Operational Standards. Although we fully support this concept, as written, the draft would require CSKT employees to take safety and administrative training FWS employees are required to take by policy (e.g., Basic Watercraft and Aircraft Safety, EEO/Diversity, Ethics, First Aid/CPR, Information Technology Security, Hazard Communication, numerous National Wildland Fire Training Courses, New Employee Orientation, Sexual Harassment, Supervisory Training . . .). This would certainly complicate implementation of the agreement. We doubt that the intent of this provision was to require this level of compliance with our operational standards, but whatever the case, the requirement needs to be clarified.

From our years of experience and perspectives as managers of National Wildlife Refuges and National Fish Hatcheries, the agreement as written is too broad and comprehensive and lacks the specificity needed to make it work, or to even support a meaningful review. Throughout the agreement, the Refuge Manager clearly remains responsible and accountable for all Refuge operations. However, the agreement does not ensure that the Manager has the authority to accomplish the Refuge mission. If the responsibility is there, which it clearly is, the authority must also be ensured. **No Refuge Manager, no matter how skilled, could successfully implement this agreement as it is written.**

The National Wildlife Refuge System has had many successes in establishing and maintaining government-to-government relationships with Native American organizations and tribes, and we fully endorse Region 6's efforts to work more closely with Tribal Governments in the

management of America's National Wildlife Refuges. Many of us are working on Refuges that have strong positive partnerships with local Tribes. However, we firmly believe that any annual funding agreements under the Tribal Self-Governance Act with Native American tribes for work on National Wildlife Refuges or National Fish Hatcheries should: 1) add value to the program, 2) have specific performance standards and ensure fiscal accountability, 3) be accomplished in a sound and competent manner, 4) be cost effective to the U.S. Fish and Wildlife Service and the American public, and 5) exclude inherently Federal functions and "programs where the statute establishing the program does not authorize the participation sought by the Tribe." As currently written, it is not clear that the draft annual funding agreement with CSKT meets any of these five criteria.

cc: Assistant Secretary for Fish and Wildlife and Parks
Deputy Assistant Secretary for Fish and Wildlife and Parks
Director, U.S. Fish and Wildlife Service
Chief, National Wildlife Refuge System
Regional Director, Region 6

(List of managers who developed and endorsed this memorandum)

Margaret Anderson, Refuge Manager, Agassiz NWR
Greg Siekaniec, Refuge Manager, Alaska Maritime NWR
Daryle Lons, Refuge Manager, Alaska Peninsula and Becharof NWR Complex
Richard Voss, Refuge Manager, Arctic NWR
Eric T. Nelson, Refuge Manager, Humboldt Bay NWR Complex
Bill Schaff, Refuge Manager, Innoko NWR
Rick Poetter, Refuge Manager, Izembek NWR
Merry Maxwell, Acting Refuge Manager, Kanuti NWR
Robin West, Refuge Manager, Kenai NWR
Leslie Kerr, Refuge Manager, Kodiak NWR
Dianna Ellis, Refuge Manager, Kootenai NWR
Mike Spindler, Refuge Manager/Pilot, Koyukuk and Nowitna NWR Complex
Mary Stefanski, Refuge Manager, Mille Lacs and Rice Lake NWRs
Jean Takekawa, Refuge Manager, Nisqually NWR Complex
Roy Lowe, Project Leader, Oregon Coast National Wildlife Refuge Complex
Paul Hayduk, Project Leader, Quinault National Fish Hatchery
Lee Anne Ayres, Refuge Manager, Selawik NWR
Craig Heflebower, Acting Refuge Manager, Sequoyah and Ozark Plateau NWR Complex
Edward Merritt, Refuge Manager, Tetlin NWR
Paul Liedberg, Refuge Manager, Togiak NWR
Kevin Ryan, Refuge Manager, Washington Maritime NWR Complex
Mike Rearden, Refuge Manager, Yukon Delta NWR
Ted Heuer, Refuge Manager, Yukon Flats NWR

From: [Nye, Brandon](#)
To: [Matt Hogan](#); [Debbie Schreiner](#)
Cc: [Will Meeks](#)
Subject: Fwd: Edits or Changes to IAFR000004
Date: Wednesday, July 03, 2013 10:57:43 AM

Matt,

With regard to the Federal Register notice for our digital surnames, we are inserting the edits correcting false data in the notice into the comments of our digital surname. We are taking our lead from HQ and stating explicitly that the "surname is based on the edits provided."

Brandon A Nye
Travel Specialist
Mountain-Prairie Region
National Wildlife Refuge System
134 Union Blvd, Suite 300
Lakewood, Colorado 80228
(303) 236-8131

----- Forwarded message -----

From: **Nikki Randolph** <nikki_randolph@fws.gov>
Date: Wed, Jul 3, 2013 at 8:39 AM
Subject: Re: Edits or Changes to IAFR000004
To: brandon_nye@fws.gov, donnise_hancock@fws.gov
Cc: Will_Meeks@fws.gov, noreen_walsh@fws.gov, Dean_Rundle@fws.gov

Upload your comments to that package and on monday I will coordinate with the directors office and bia that our surnames are conditional based on our edits

From: Nye, Brandon [mailto:brandon_nye@fws.gov]
Sent: Wednesday, July 03, 2013 06:30 AM
To: Donnise Hancock <donnise_hancock@fws.gov>; Nikki Randolph <nikki_randolph@fws.gov>
Cc: Will Meeks <Will_Meeks@fws.gov>; Noreen Walsh <noreen_walsh@fws.gov>; Dean Rundle <Dean_Rundle@fws.gov>
Subject: Edits or Changes to IAFR000004

Donnise/Nikki,

This came through for surnaming and our program have two concerns about the FR as it is currently written. I did not see a draft of this included in the package from the Department. Can you assist us or is this outside the Service's reach?

1. On page 4 it says the Service has two AFA in effect in FY 14, and we do not yet have an AFA for NBR with CSKT, and it is also my understanding that the Yukon Flats AFA with Council of Athabaskan Nations has lapsed and has not been renewed by Region 7.

2. On page 16, Tamarac NWR is erroneously listed as Wisconsin, and it is in MN.

VR

Brandon A Nye
Travel Specialist
Mountain-Prairie Region
National Wildlife Refuge System
134 Union Blvd, Suite 300
Lakewood, Colorado 80228
(303) 236-8131

From: [Will Meeks](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#)
Subject: Fwd: letters
Date: Tuesday, November 19, 2013 1:12:18 PM
Attachments: [CSKT-Meeks ltr 11-14-13.pdf](#)
[CSKT-Walsh ltr 11-14-13.pdf](#)

FYI

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

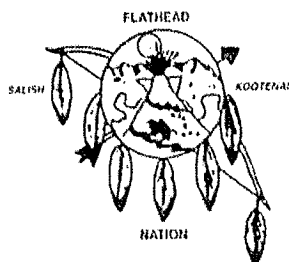
Begin forwarded message:

From: Brian Upton <brianu@cslt.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



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

November 14, 2013

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

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.

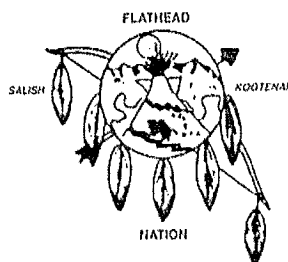
Our Tribal Council convenes on Tuesday and Thursday of each week. Please advise whether you would be able to meet with the Council on either Tuesday, December 17th or Thursday, December 19th.

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



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November 14, 2013

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

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

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

From: [Washburn, Kevin](#)
To: [Dan Ashe](#)
Cc: [Lawrence Roberts](#); [Sarah Harris](#)
Subject: Fwd: Meeting next week?
Date: Thursday, January 23, 2014 9:31:32 AM

Ratana, Ann and/or Matthew – Ron Trahan is the newly elected Chairman of the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation in Montana. He will be in DC next week to testify in the Senate. While here he was hoping to meet Kevin, Larry, Mike and Bryan, to introduce himself and give an update on where things stand with the negotiations with the Fish and Wildlife Service for the CSKT to play a management role at the National Bison Range, a USFWS Refuge that Teddy Roosevelt decided to pluck down smack in the middle of the Flathead Reservation! This has been - and hopefully will be again - the largest Self Governance Annual Funding Agreement (AFA) for a DOI non-BIA project ever. There is quite a story of how this has been an on-again, off-again AFA. Right now the CSKT and FWS are negotiating to reinstate it but the local FWS office in Denver is going so slow, and suddenly moving the goal posts, that elected officials at CSKT are getting more than frustrated. I am trying to set up a meeting with FWS leaders as well but this may need a push from the BIA and/or the Secretary.

I will include Kevin, Larry, Mike and Bryan Rice as cc's on this so they have the benefit of this explanation. The Chairman will be accompanied by in house attorney Brian Upton and me.

He is available next Tuesday (all day) or Wednesday morning. Can we set something up? Thank you all. Stay warm!

*George Waters, President
George Waters Consulting Service
505 Capitol Court., NE
Suite 200
Washington, DC 20002
(202) 544-3044
(202) 544-3155 fax
george@georgewaters.com*

From: [Rundle, Dean](#)
To: [Noreen Walsh](#)
Cc: [Will Meeks](#); [Debbie Schreiner](#)
Subject: Fwd: Monday call
Date: Friday, September 06, 2013 2:03:29 PM

Noreen: Message from Brian Upton forwarded, confirming time for you to call Chairman Durglo and the number to call. Brian also informed me by phone that the Chairman might ask him (Brian) to sit in on the call.

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

----- Forwarded message -----
From: **Brian Upton** <brianu@cstk.org>
Date: Fri, Sep 6, 2013 at 1:27 PM
Subject: Monday call
To: Dean <Dean.Rundle@fws.gov>

Dean,
I touched base with Chairman Durglo and a phone call at 2:00 Montana time (1:00pm Pacific time) on Monday works for him. The number the Regional Director should call is 406.675.2700, x1007.

BU

From: [Will Meeks](#)
To: [Noreen Walsh](#); [Matt Hogan](#)
Subject: Fwd: National Bison Range EA
Date: Monday, August 11, 2014 10:48:36 AM

Noreen,

I will call Marvin.

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

Begin forwarded message:

From: Marvin Plenert <marvplenert@yahoo.com>
Date: August 11, 2014 at 10:46:22 AM MDT
To: "noreen_walsh@fws.gov" <noreen_walsh@fws.gov>, "matt_hogan@fws.gov" <matt_hogan@fws.gov>, will meeks <will_meeks@fws.gov>
Subject: National Bison Range EA
Reply-To: Marvin Plenert <marvplenert@yahoo.com>

Regional Director Walsh:

I am writing to request an extension of the comment period of the NBRC EA for the draft AFA with the CSKT for another 30 days to at least October 4, 2014, in that the Judge's ruling was rendered four years ago, and it took the FWS two years to issue a notice that an EA would be released to comply with the courts ruling. It then took the FWS another two years before the EA was released for public comment. Therefore, I believe a 30 day comment is unreasonable for the above reasons, plus many folks including FWS employees are just plain busy with vacations, etc. during August. I have telephoned your office as well as Will Meeks numerous times and have only gotten recordings from both that no one is available. Thought for a minute that it may be Saturday, but it was after all Friday. I still would appreciate a return of my call. Please consider the change of the comment period to 60 days, as I know many of folks who are planning to comment would appreciate it as well.

Marvin L Plenert

From: [Elizabeth Stevens](#)
To: [Dan Ashe](#); [Rowan Gould](#); [Stephen Guertin](#); [Jim Kurth](#); [Cynthia Martinez](#); [Jeff Underwood](#); [Mike Weimer](#); [Christine Eustis](#) ("Christine Eustis" <christine_eustis@fws.gov>); [Betsy Hildebrandt](#); [Sabrina Chandler](#)
Cc: [Nikki Randolph](#)
Subject: Fwd: Publication of Federal Register Notice
Date: Thursday, January 31, 2013 12:34:03 AM
Attachments: [1-23-13 Programs Eligible for Inclusion FY 2013.pdf](#)

FYI - suggest this be distributed to Directorate ...

Sent from my iPad

Begin forwarded message:

From: "Reinfeld, Kenneth" <kenneth.reinfeld@bia.gov>
To: Parker Patricia <Pat_Parker@nps.gov>, Ronald Emery <ronald_emery@nps.gov>, Kelly Titensor <ktitensor@usbr.gov>, Marks Adrienne <AMARKS@usbr.gov>, Conway Shirley <shirley.conway@onrr.gov>, Elizabeth Stevens <elizabeth_stevens@fws.gov>, Pat Durham <Pat_Durham@fws.gov>, Jerry Cordova <Jerry_Cordova@blm.gov>, Jerry Cordova <jjcordov@blm.gov>, Frazier Lee <Lee_Frazier@ost.doi.gov>, Fordham Monique <mfordham@usgs.gov>, Kaye Cook <kcook@usgs.gov>
Cc: Freeman Sharee <Sharee.Freeman@bia.gov>
Subject: Publication of Federal Register Notice

ALL (*A*t *L*ong *L*ast),

Attached is a file for your information and use which contains the 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 signed by Secretary Salazar and published in the Federal Register/Volume 78, No. 15/Pages 4861 to 4865/Wednesday, January 23, 2013/Notices. Please do not hesitate to contact me if you have any questions or need further information.

Ken Reinfeld
Office of Self-Governance
1951 Constitution Avenue, N.W., Room 355-H
Washington, D.C. 20240
Phone: (202) 208-5734
Fax: (202) 219-1404
Cell: (202) 821-7107
E-Mail: Kenneth.Reinfeld@bia.gov

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 (ONRR) 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. Alcheyay 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. Quinalt 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.

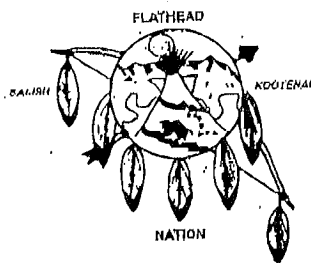
In 2007 we developed a draft recovery plan (Draft) for the Columbia Basin pygmy rabbit in coordination with the Columbia Basin Pygmy Rabbit Recovery Team, which included representatives from two U.S. Department of the Interior bureaus (Fish and Wildlife Service and Bureau of Land Management), one U.S. 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

From: [Debbie Schreiner](#)
To: [Noreen Walsh](#); [Matt Hogan](#)
Subject: Letter from Chairman Durglo, CSKT
Date: Wednesday, August 28, 2013 10:45:04 AM
Attachments: [Development of EA for New Self-Governance Agreement at National Bison Range.pdf](#)

I will put this into DTS for Refuges to prepare a response.

Debbie Schreiner
Executive Assistant
Mountain-Prairie Region
(303) 236-7920
debbie_schreiner@fws.gov



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

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION

P.O. BOX 278
Pablo, Montana 59855
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A People of Vision

TRIBAL COUNCIL MEMBERS

Joe Durglo - Chairman
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Reuben A. Mathias - Secretary
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Lloyd D. Irvine
Steve Lozar
Jim Malatare
James Bing Matt
Terry Pitts

August 27, 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,

On behalf of the Tribal Council, I appreciated your meeting with us here in Pablo last May. We understand that there have recently been some new developments regarding the development of the environmental assessment (EA) for a new Tribal Self-Governance agreement at the National Bison Range Complex (NBRC). In order to facilitate dialogue, I would like to request a meeting with you. We would appreciate the inclusion at the meeting of those FWS officials who are involved with NBRC negotiations and EA development.

I will have my staff follow up with your office regarding scheduling a meeting, but I would appreciate your response to this letter at your earliest convenience.

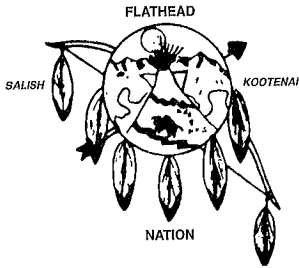
Sincerely,

Joe Durglo, Chairman
Tribal Council

cc: Dean Rundle
Jeff King

From: [Debbie Schreiner](#)
To: [Noreen Walsh](#); [Will Meeks](#); [Matt Hogan](#)
Subject: Letter from Joe Durglo - AFA
Date: Friday, November 22, 2013 10:48:35 AM
Attachments: [CSKT Letter Bison Range AFA.pdf](#)

Will – I think this is the letter you inquired about. It arrived today. I will route via DTS for a response.



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Pend d' Oreilles
and Kootenai Tribes

November 14, 2013

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

TRIBAL COUNCIL MEMBERS:

Joe Durglo - Chairman
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Lloyd D. Irvine
Steve Lozar
Jim Malatare
James Bing Matt
Terry Pitts

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

From: [Thomas Irwin](#)
Date: Thursday, October 27, 2011 11:03:55 AM
Attachments: [20111027080434281.pdf](#)

Dan, please consider meeting with representatives of the Blue Goose regarding the National Bison Range.

Special best wishes, Nathaniel Reed

Office of Nathaniel P. Reed
P.O. Box 1213
Hobe Sound, FL 33475
(772)546-2666 Fax (772)546-5019
NEW EMAIL: npreed33455@gmail.com
<http://nathanielpreed.blogspot.com/> - 20111027080434281.pdf

Nathaniel Reed

From: <bga1don@aol.com>
 Date: Monday, October 24, 2011 6:10 PM
 To: <rflowler64@verizon.net>; <w.c.reffalt@comcast.net>
 Cc: <npreed33455@gmail.com>
 Subject: Fwd: Letter from Dan Ashe re NBR

Ron & Bill - Nat Reed has responded to my message of September 26, 2011. He asks that it be forwarded to you. You will note he suggests a meeting with Dan. Bill and I have been involved in this matter for more years than Dan, or you Ron. Nat knows that, and I suspect that is why he contacted me initially. I appreciate his doing so, and I am in complete accord with his hope that this situation can be concluded in some fashion short of more litigation. I stand ready to help in any way possible.

Don

-----Original Message-----

From: Nathaniel Reed <npreed33455@gmail.com>
 To: bga1don <bga1don@aol.com>
 Sent: Mon, Oct 24, 2011 12:02 pm
 Subject: Re: Letter from Dan Ashe re NBR

Date: October 24, 2011
 To: Don Redfeam
 From: Nathaniel Reed

Don, please copy both Ron Fowler and Bill Reffalt with my reply

Don, I have known the Ashe family for 34 years. Dan's father was a key contact for our office during my tenure as Assistant Secretary. I have known and respected Dan since he began his career within the Service. Regrettably, the Senate has "held" the appointment of an assistant secretary and there is a vacuum in the department that is difficult to penetrate. An effective assistant secretary could be very useful in settling the ongoing dispute.

Ken Salazar is a superb human being and a Secretary of Interior who could leave a permanent mark on American conservation even with a hostile Congress and the problems of a deep recession. I doubt if he is aware of this dispute, as his "bag" is full up. There are very few members of his staff that have an interest in solving issues that you face and so you must rely on your staff and the member of the Solicitor's office.

My comments on each of your appraisals are as follows:

- 1) No disagreement. We all would hope that the indigenous Native Americans could with personal discipline learn to be effective workers on the series of refuges that are included in the National Bison Range. The Service cannot tolerate disobedience or intimidation of NBR employees.
- 2) I am "surprised" that Director Ashe would permit an Environmental Assessment without public involvement. This would never have occurred on my watch. Frankly, I think it not only "unwise" but illegal. I cannot comment on the legal requirement for the preparation of a CCP for the NBR Complex of refuges and the requirement of a complete EIS. If that requirement is a legal decision that came out of the court case, then the Interior attorneys should notify Dan that the actions being taken will not survive another legal challenge and will infuriate the federal judge who ruled against the Service in the first place. Something is missing. Where are the Service's legal experts? Why have they allowed an AFA to be prepared with an EA rather than complying with the legal decision? I will attempt to follow up.
- 3) I cannot understand your objections to making a sincere effort to train and supervise the Native American tribal members who want to work under FWS supervision in managing the complex of refuges.
- 4) I regret that I do not understand the legal differences between "exclusively". I fail to grasp the legal differences quoted by Dan and rebutted by you. It is obvious to me that the National Wildlife Refuge Administration Act is predominate, but this again is a question for competent legal advice within the department or at the Department of Justice. No one should want a misunderstanding of roles and supremacy of management to cause another round of litigation.
- 5) Your points are well described. It is far preferable that the "playing field" of responsibilities be clearly spelled out including the overall responsibility of the refuge manager to hire and fire CSKT employees that are not performing as directed. I would think that it was the Service's "responsibility" to pay the employees, as they are working for the federal government and not CSKT.
- 6) I cannot speak for Dan and his difference of opinion: "once you enter into an AFA you are automatically subject the FWS to function under Indian Law." I reiterate: that is a judicial question that should be clearly explained by a competent member of the department's legal staff. Dan should request such an opinion. If there was an assistant secretary, that question would be resolved quickly.
- 7) I do not disagree that surrendering federal management authority to the CSKT would be a precedent that could haunt other refuges and even national parks.
- 8) Obviously, I am deeply concerned that decisions that have been made have "destroyed the career of many dedicated employees and interrupted cutting-edge research and management of the bison etc". Obviously, what is needed is an intensive review by the department's legal experts to answer the serious questions that you raise. I also believe in face to face discussions and would urge the leadership of the Blue Goose Alliance to request a formal meeting with Dan and his legal advisors to review your list of complaints. I would vastly prefer and agree on management than face and finance another round of legal action. If necessary, legal action is an option, but I prefer sitting and conversing in an effort to fully understand each other's firmly held positions.

The legal questions must be assigned to the department's solicitors.

I will make every effort to see if that assignment is affected.

Don, I am copying Dan with your letter and this reply.

My fidelity to the Service and the international importance of the National Refuge System cannot be challenged.

I look forward to finding a solution that will not only "work" for the CSKT but cannot threaten the mission or management inherently the responsibility of the USFWS on behalf of the American people.

Nathaniel

From: bga1don@aol.com
 Sent: Monday, September 26, 2011 3:34 PM
 To: npreed33455@gmail.com
 Cc: bluemountain@montana.com; rflowler@bluegoosealliance.org; w.c.reffalt@comcast.net
 Subject: Letter from Dan Ashe re NBR

Nat - I have attached a response to your note re your message from Dan Ashe and your message to

Nathaniel Reed

From: "William Reffalt" <w.c.reffalt@comcast.net>
Date: Monday, October 24, 2011 10:00 PM
To: <bga1don@aol.com>; <rfowler64@verizon.net>
Cc: <npreed33455@gmail.com>
Subject: RE: Letter from Dan Ashe re NBR
 Don, et al: I appreciate being included in these messages.

I do want at the outset to modify a couple of Don's points. I did not do so before because I didn't receive the messages until about a week after they were sent. Thus, I did not want to muddy the rolled waters, as it were.

The FWS did not do an EA for the second Funding Agreement (nor did they do one for the first AFA); they attempted to utilize a "categorical exclusion" that had been exercised for the first AFA. That first "CE" was not challenged. Our litigation, and PEER's, challenged NEPA compliance in the second AFA. The DC Court found the attempt to use that CE from AFA-1 was wholly inadequate and issued her injunction on that basis.

We do not know for certain just what FWS is doing at this time, except that they are "negotiating" a new AFA along the lines of the previous one (we assume it is based on AFA-2, but with modifications to satisfy the court).

Further, we believe that FWS is writing an Environmental Assessment that will be based on the new AFA. We have no idea of the time frame. The negotiations have been completely secret and hidden from all public review.

The Self Governance Act contains an important disclaimer clause that not only states clearly that no inherently federal programs, functions, services, or activities—or portions thereof—may be included in an AFA. It also has a clause that precludes an AFA from containing programs, functions, services or activities if the guiding legislation for the agency programs do not allow the type of participation sought by the qualified Native Tribes. We have objected both on the grounds that we believe some inherent federal work has been included, and on the basis that we believe the guiding refuge legislation (i.e. the NWRSA) does not permit joint management, or co-management as set forth in AFA-2 (our contention is that not only did the 1976 "Game Range Act" stop all joint management, both the previous joint management programs such as the game ranges, etc, and all future attempts to install joint management regimes in the Refuge System—but at the time the 1997 Refuge Improvement Act was passed, changes were made to the previous drafts (from Chairman Young's failed attempts) that specifically removed language that might have permitted "other entities" to assume some management of refuge programs. The Refuge Improvement Act passed after the Indian Self-Governance Act, and it passed with huge bi-partisan support (there was only one No vote in the HOR, and the Senate passed the bill by unanimous vote of all Senators present). Unfortunately, the DC Court did not address this portion of our complaint, among other matters.

Finally, the matter of employee supervision and control. In both AFA-1 and AFA-2 CSKT has insisted on full control of not only its employees, but some of the federal employees by means of requiring them to agree to an IPA assignment which places them under CSKT control. We have consistently objected to these procedures. Those federal employees unwilling or unable to agree to the IPA assignment to CSKT were either given very onerous alternative employment options, or had to resign. Under AFA-2, CSKT went even further and had a "Deputy Refuge Manager" (in title only as he did not have any of the required qualifications), and during some absences of the Project Leader, that Deputy was given management of the Refuge entirely. The on-staff Federal Deputy Refuge Manager was not permitted to supervise any of the CSKT employees.

With those adjustments in Don's explanations to Nathaniel Reed, I have no hesitation in saying that if a meeting with Director Ashe and his legal counsel can be arranged in which Dan commits to listening and accepting documentation and information differing from his viewpoints, then I am willing to attend. I would say that our meeting with Dan in San Diego was not satisfactory; during that meeting, Dan exhibited a strong pre-disposition on several fundamental matters and was unwilling to listen to alternative information that might modify his strongly held opinions. I do not wish to repeat that scenario.

Bill

From: bga1don@aol.com [mailto:bga1don@aol.com]
Sent: Monday, October 24, 2011 3:11 PM
To: rfowler64@verizon.net; w.c.reffalt@comcast.net
Cc: npreed33455@gmail.com
Subject: Fwd: Letter from Dan Ashe re NBR

Ron & Bill - Nat Reed has responded to my message of September 26, 2011. He asks that it be forwarded to you. You will note he suggests a meeting with Dan. Bill and I have been involved in this matter for more years than Dan, or you Ron. Nat knows that, and I suspect that is why he contacted me initially. I appreciate his doing so, and I am in complete accord with his hope that this situation can be concluded in some fashion short of more litigation. I stand ready to help in any way possible.

Don

-----Original Message-----

From: Nathaniel Reed <npreed33455@gmail.com>
To: bga1don <bga1don@aol.com>
Sent: Mon, Oct 24, 2011 12:02 pm
Subject: Re: Letter from Dan Ashe re NBR

Date: October 24, 2011
To: Don Redfeam
From: Nathaniel Reed

Don, please copy both Ron Fowler and Bill Reffalt with my reply

Don, I have known the Ashe family for 34 years. Dan's father was a key contact for our office during my tenure as Assistant Secretary. I have known and respected Dan since he began his career within the Service. Regrettably, the Senate has "held" the appointment of an assistant secretary and there is a vacuum in the department that is difficult to penetrate. An effective assistant secretary could be very useful in settling the ongoing dispute.

Ken Salazar is a superb human being and a Secretary of Interior who could leave a permanent mark on American conservation even with a hostile Congress and the problems of a deep recession. I doubt if he is aware of this dispute, as his "bag" is full up. There are very few members of his staff that have an interest in solving issues that you face and so you must rely on your staff and the member of the Solicitor's office.

My comments on each of your appraisals are as follows:

- 1) No disagreement. We all would hope that the indigenous Native Americans could with personal discipline learn to be effective workers on the series of refuges that are included in the National Bison Range. The Service cannot tolerate disobedience or intimidation of NBR employees.
- 2) I am "surprised" that Director Ashe would permit an Environmental Assessment without public involvement. This would never have occurred on my watch. Frankly, I think it not only "unwise" but illegal. I cannot comment on the legal requirement for the preparation of a CCP for the NBR Complex of refuges and the requirement of a complete EIS. If that requirement is a legal decision that came out of the court case, then the Interior attorneys should notify Dan that the actions being taken will not survive another legal challenge and will infuriate the federal judge who ruled against the Service in the first place. Something is missing. Where are the Service's legal experts? Why have they allowed an AFA to be prepared with an EA rather than complying with the legal decision? I will attempt to follow up.
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- 8) Obviously, I am deeply concerned that decisions that have been made have "destroyed the career of many dedicated employees and interrupted cutting-edge research and management of the bison etc". Obviously, what is needed is an intensive review by the department's legal experts to answer the serious questions that you raise. I also believe in face to face discussions and would urge the leadership of the Blue Goose Alliance to request a formal meeting with Dan and his legal advisors to review your list of complaints. I would vastly prefer and agreement on management than face and finance another round of legal action. If necessary, legal action is an option, but I prefer sitting and conversing in an effort to fully understand each other's firmly held positions.

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I will make every effort to see if that assignment is affected.

Don, I am copying Dan with your letter and this reply.

My fidelity to the Service and the international importance of the National Refuge System cannot be challenged.

I look forward to finding a solution that will not only "work" for the CSKT but cannot threaten the mission or management inherently the responsibility of the USFWS on behalf of the American people.

Nathaniel

From: bga1don@aol.com

Sent: Monday, September 26, 2011 3:34 PM

To: nreed33455@gmail.com

Cc: bluemountain@montana.com; rflowler@bluegoosealliance.org; y.c.reffalt@comcast.net

Subject: Letter from Dan Ashe re NBR

Nat - I have attached a response to your note re your message from Dan Ashe and your message to Secretary Salazar. I have also copied it below for ease in accessing my comments. I appreciate your concerns about what has, and is, happening at the National Bison Range. Further, thank you for keeping me apprised on your remarks.

Don

Nat:

Thank you for sending me a copy of Dan Ashe's letter assuring you that a new Annual Funding Agreement (AFA) with the CSKT will result in a strong partnership between the FWS and the CSKT employees working together, under the direction of the Refuge Manager, as the best way to continue managing the NBR to achieve purposes and mission of the National Wildlife Refuge System.

I have been hesitant in responding to you since Dan seems to have convinced you that an AFA is beneficial to the management of the National Bison Range Complex of refuges. I have been mulling over the history of what has occurred in the past 10 years, and find it difficult to accept those assurances at face value. That is particularly so since Dan's letter has prescribed a program for an AFA being presently negotiated. It appears from his comments that FWS is going down the same path that led to failure of the first AFA and ended in a Court decision that negated the second AFA.

I believe it is of utmost importance to apprise you of why I have concerns with what Dan has expressed to you about the intent of the FWS to continue involving the CSKT with management and maintenance of the NBR

- 1) - The first AFA in 2006 had to be summarily cancelled by the Regional Director due to a myriad of failures by the CSKT employees to perform, plus intimidation of NBR employees.
- 2) - Dan indicates they are preparing an Environmental Assessment. That was what was prepared for the second AFA (without public involvement), and was the featured reason for the Court order to terminate the second AFA. Actually, the FWS has been charged with preparing a Comprehensive Conservation Plan (CCP) for the NBR Complex of Refuges. Such a plan requires a more intensive Environmental Impact Statement (EIS) which requires an extensive planning process that would certainly put such actions as AFAs under the microscope as to what impacts such agreements would have on the future management of the NBR Complex of refuges. The Court case has cost the Refuge System hundreds of thousands of dollars (dollars that are sorely needed in the Refuge System).
- 3) - Another point Dan made to you is, "FWS cannot, and will not, assign management to CSKT, and that no inherent federal functions will be contracted to CSKT ... and further that the CSKT will work with us through their highly professional Natural Resources Department." When I was president of the BGA I pointed out to the then Tribal Chairman that the Tribe was to be lauded for what they have done for managing their natural resources, but what they do on their lands is far from the inherent federal responsibility involved in managing the NBR as a part of the system of National Wildlife Refuges.
- 4) - The point Dan made to you is any AFA will uphold the letter and the spirit of the National Wildlife Refuge Administration Act and the Native Self-Governance Act. He errs on the point that those two laws are not mutually exclusive. They are exclusive because the Self-Governance Act has a disclaimer for AFAs not applying to an inherent federal responsibility. In this instance a National Wildlife Refuge. The same applies to National Parks. Dan and a previous Secretary of Interior make the error of considering individual activities as non-inherent. That was one of the critical issues addressed by our lawyers in the complaint against the Secretary and the

10/25/2011

Director.

- 5) – Finally, as stated in the first paragraph of this message, Dan makes the point that a strong partnership with the Service and CSKT employees working together, under direction of the Refuge Manager is the best way to continue managing the NBR to achieve the purposes and mission of the National Wildlife Refuges. That statement raises all kinds of red flags with me, as I hope it might with you. What authority does the Refuge Manager have in directing CSKT employees if they are not federal employees? If CSKT is going to manage their employees, then that is assigning management responsibility to CSKT because they will want funding up front so they can pay their employees. Will the manager have the authority to fire a CSKT employee? If not, then the AFA is an instrument that is assigning management responsibility to CSKT.

This whole issue is fraught with mine fields. That is why the Government has issued policy guidance for what is considered inherent federal responsibility throughout all agencies. Further, and this is something I told Dan Ashe back in March – when you enter into an AFA you automatically subject the FWS to function under Indian Law. He doesn't believe that.

The foregoing applies to what was in Dan's letter to you. There are any number of other issues involved in this matter. I will forego those except to make the point that the NBR has been the epitome of how National Wildlife Refuges should function. Imposing dual management responsibilities under the guise of an AFA has destroyed the career of many dedicated employees and has interrupted cutting-edge research and management of the bison and other wildlife at the NBR for more than a century. The CSKT is on record that their mission is to have the lands and the responsibility for management of the Bison Range turned over to them. This entire issue is a tragedy that needs to end now. There is no mandate existing in any form that says it is legal or that it should continue. The implications of what has happened here bears the seeds that could destroy the National Wildlife Refuge System if allowed to continue and flourish.

As a former Secretary for Fish, Wildlife and Parks, how would you view such agreements as furthering the mission and responsibility of a wildlife refuge or a national park?

Nat, I am no longer an officer of the BGA. I am however, on the Board of Directors. The foregoing comments are my personal views based on the efforts of the CSKT to have the NBR turned over completely to the Tribe. I am going to copy Ron Fowler, President, and Bill Reffalt, Vice President of the Blue Goose Alliance with this message because of the implications of the FWS continuing to abrogate their responsibility in managing the NBR in accordance with the National Wildlife Refuge Administration Act.

Don

Nathaniel Reed

From: "Manley Fuller" <wildfed@gmail.com>
Date: Sunday, October 23, 2011 7:02 PM
To: "Nathaniel Reed" <npreed33455@gmail.com>; "Stuart (at home) Strahl" <moaddoctor@yahoo.com>; <kfordham@evergladesfoundation.org>

Subject: Fwd: Society of Environmental Journalists, Annual Conference - Miami

Franklin said he thought his presentation about the Preserve at Clyde Butcher's to the journalists went well. Essentially Mathew is arguing there should be no vehicular use in the Addition lands due to the Organic act and no hunting allowed because the last fwc deer survey had low deer counts for the area. Manley

----- Forwarded message -----

From: <LJMoller@aol.com>
Date: Oct 21, 2011 4:58 PM
Subject: Fwd: Society of Environmental Journalists, Annual Conference - Miami
To: <wildfed@gmail.com>, <CaptFrankAdams@aol.com>, <lylemccandless@aol.com>

FYI

From: matthew3222@YAHOO.COM
Reply-to: COMMONS-EVERGLADES@LISTS.SIERRACLUB.ORG
To: COMMONS-EVERGLADES@LISTS.SIERRACLUB.ORG
Sent: 10/20/2011 10:26:28 P.M. Central Daylight Time
Subj: Re: Society of Environmental Journalists, Annual Conference - Miami

Archives: <http://lists.sierraclub.org/archives/commons-everglades.html>

I figured no video Craig - just a bit of a joke. I had one of those debates with Pedro Ramos as well - when he was Asst. Superintendent of the preserve. It was during the NPS listening sessions that toured the country some years ago. And our debate was actually moderated by Brian Waidmann, Dirk Kempthorne's chief of staff when he was secretary of the interior.

The law says that resource protection comes first - and if there's any question as to impact - NPS should side with the natural resources over recreation. That's the NPS "precautionary principle". But in practice it tends to work out differently. This book by NPS historian Richard West Sellars is definitely worth a look - natural resource protection has always had a hard time in the national parks - including the period when NPS practically exterminated all wolves, coyotes, and mountain lions from NPS units out west because they were preying on the deer and elk that the tourists liked to see.

http://books.google.cl/books?id=4FG6HsjlcfoC&printsec=frontcover&hl=en&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false

--- On Thu, 10/20/11, Craig Pittman <craigtimes@GMAIL.COM> wrote:

From: Craig Pittman <craigtimes@GMAIL.COM>
Subject: Re: Society of Environmental Journalists, Annual Conference - Miami
To: COMMONS-EVERGLADES@LISTS.SIERRACLUB.ORG
Date: Thursday, October 20, 2011, 11:07 PM

Archives: <http://lists.sierraclub.org/archives/commons-everglades.html>

It was on board a bus rolling along the Tamiami Trail...so no.

Which is too bad, because the discussion got pretty heated & intense.

On Thu, Oct 20, 2011 at 10:20 PM, Matthew Schwartz <matthew3222@yahoo.com> wrote:

> Archives: <http://lists.sierraclub.org/archives/commons-everglades.html>

> -----

>

> Is there any video of the debate?

>

> --- On Thu, 10/20/11, Craig Pittman <craigtimes@GMAIL.COM> wrote:

>

> From: Craig Pittman <craigtimes@GMAIL.COM>

> Subject: Re: Society of Environmental Journalists, Annual Conference -
> Miami

> To: COMMONS-EVERGLADES@LISTS.SIERRACLUB.ORG

> Date: Thursday, October 20, 2011, 7:37 PM

>

> Archives: <http://lists.sierraclub.org/archives/commons-everglades.html>

> -----

>

> Joe took part in the tour I attended today. We stopped off first at the
> Tamiami Trail bridge construction site and talked to Interior Secty Ken
> Salazar, Fish and Wildlife Service director Dan Ashe and Col. Alfred
> Pantano
> of the Corps of Engineers. Then we drove over to Clyde Butcher's studio
> where three rangers from the National Park Service took us wading in the
> Big
> Cypress, and afterward we got a history lesson on BiCy from Franklin Adams.
> On the way back to Miami, we got to watch a pretty hot debate over ORV use
> in BiCy featuring Superintendent Pedro Ramos, NPCA's John Adornato and,
> sticking up for the hunters, Joe. This particular tour was organized by SEJ
> stalwart JoAnn Valenti (a Miami native) and "The Swamp" author Michael
> Grunwald.

>

> On Thu, Oct 20, 2011 at 7:26 PM, Robert Mooney <rhmooney3@hotmail.com>
> wrote:

>

> > Archives: <http://lists.sierraclub.org/archives/commons-everglades.html>

> > -----

> >

> >

> > Joe Browder helped -- for many months -- to develop this SEJ annual
> > conference.

> >

> > I am very impressed -- doesn't happen often -- with those involved in the
> > field trips.

> >

> > I have always been impressed by SEJ and its activities and awards.

> >

> >

> >

> > > Date: Thu, 20 Oct 2011 16:05:31 -0700

> > > From: peterar@BERKELEY.EDU

> > > Subject: Re: Society of Environmental Journalists, Annual Conference -
> > Miami

> > > To: COMMONS-EVERGLADES@LISTS.SIERRACLUB.ORG

>>>
>>> Archives: <http://lists.sierraclub.org/archives/commons-everglades.html>
>>> -----
>>>
>>> At 13:36 11/10/20, Jack Moller. wrote:
>>> >Some one is making more money of the destruction of Glades system. Why
>>> >not just go wade in the mud, walk the levee, walk the area and read
> the
>>> >documents they folks or other have produced over the last 50 years for
>> nothing?
>>> >Jack
>>>
>>> C'mon Jack,
>>>
>>> Don't you want to read what these journalists have to say about the
> "Big
>> Cleanup", after hearing from the Speakers ?
>>>
>>> Let's see if the journalists can predict the future, arouse the masses,
>> write about why all the documents of the past 50 years have come to
> naught.
>>>
>>> The mud isn't to be had by wading in it; those journalists will have to
>> fix their gaze straight ahead to find that.
>>>
>>> Go SoEJ ! Give 'em hell.
>>>
>>> Peter
>>>
>>> Tour Leaders:
>>> Cynthia Barnett, Senior Writer, Florida Trend Magazine; and Author,
>> Mirage:
>>> Florida and the Vanishing Water of the Eastern U.S. and Blue
> Revolution:
>>> Unmaking America's Water Crisis
>>> Neil Santaniello, Instructor, School of Communication & Multimedia
>> Studies,
>>> and Director, Scripps Howard Institute on the Environment, Florida
>> Atlantic
>>> University
>>>
>>> Speakers:
>>> Stuart Appelbaum, Deputy District Engineer, Everglades Restoration,
>>> Jacksonville District, U.S. Army Corps of Engineers
>>> Ernie Barnett, Director, Office of Everglades Policy and Coordination,
>> South
>>> Florida Water Management District
>>> Donald Fox, Biological Administrator, Florida Fish and Wildlife
>> Conservation
>>> Commission
>>> Paul Gray, Okeechobee Science Coordinator, Audubon of Florida
>>> David Guest, Managing Attorney, Florida Office, Earthjustice
>>> Melodie Naja, Water Quality Scientist, Everglades Foundation
>>> Judy Sanchez, Senior Director, Corporate Communications and Public
>> Affairs,
>>> U.S. Sugar Corporation
>>> Tom Teets, Federal Policy Chief, Office of Everglades Policy and
>> Coordination,
>>> South Florida Water Management District
>>> Malcolm "Bubba" Wade, Senior Vice President, Corporate Strategy and
>>> Business Development, U.S. Sugar Corporation

>>>
>>>
>>>
>>>
>>>>In a message dated 10/20/2011 3:21:39 P.M. Central Daylight Time,
>>>>rhmooney3@HOTMAIL.COM writes:
>>>>
>>>>3. Big Sugar, Big Cleanup, Big Lake: The Sugar Industry, the
> Everglades
>>>>Cleanup and Lake Okeechobee
>>>>(7:00 a.m. departure, \$35 fee, includes lunch and boat rental)
>>>> ...
>>>>
>>>>-----
>>>> Remember: Don't post copyrighted material without holder's permission.
>>>> _Brief_ excerpts, properly cited, _with_ related comments by poster
>>>> are assumed to satisfy "fair use" provision and are acceptable.
>>>>
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>>>>
>
>
>
> --
> Craig Pittman
> craigtimes@gmail.com
>
> PAVING PARADISE: FLORIDA'S VANISHING WETLANDS
> AND THE FAILURE OF NO NET LOSS
> by Craig Pittman and Matthew Waite:
> <http://www.pavingparadise.org>
>
> MANATEE INSANITY: INSIDE THE WAR OVER FLORIDA'S
> MOST FAMOUS ENDANGERED SPECIES
> by Craig Pittman
> <http://www.manateeinsanity.com/>
>
>-----
> Remember: Don't post copyrighted material without holder's permission.
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--
Craig Pittman
craigtimes@gmail.com

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AND THE FAILURE OF NO NET LOSS
by Craig Pittman and Matthew Waite:
<http://www.pavingparadise.org>

Nathaniel Reed

From: "Bishop Home" <bishopwright@bellsouth.net>
Date: Sunday, October 23, 2011 4:02 PM
To: "Wiley, Nick" <Nick.Wiley@MyFWC.com>
Cc: <Charlie_Pelizza@fws.gov>; "Mark Musaus" <Mark_Musaus@fws.gov>; "frank denninger" <gladesman@gmail.com>; "Nathaniel Reed" <npreed33455@gmail.com>; <newtoncook@bellsouth.net>; "Moller Jack" <LJMoller@aol.com>; <LyleMcCandless@aol.com>; "Fuller Manley" <wildfed@gmail.com>; <CaptFrankAdams@aol.com>; "Barbara Jean Powell" <BARJNPWLL@aol.com>; "David, Dennis" <dennis.david@myfwc.com>; <rhilsenbeck@tnc.org>; <usinfo@aol.com>; <lane.asaf@comcast.net>; <capital.ideas@att.net>; "FWCCommissioners" <commissioners@MyFWC.com>; <Jdbran7@aol.com>; <jorge.gutierrez@evergladescoordinatingcouncil.com>; <srecce@nrahq.org>; <nfreeman@safariclub.org>; <mcca2968@bellsouth.net>; <rich@paulbangerroofing.com>; <cmorehead@moodyjones.com>; "Collins, Chuck" <Chuck.Collins@MyFWC.com>; "David Hought" <doughton@refugeassociation.org>; <FriendsBullCreek@aol.com>; <hitchco@bellsouth.net>; <dlithgow@bellsouth.net>; <krimgeo@gmail.com>; <patstone1964@gmail.com>; <whorn@dc.bhb.com>; "Pedro Ramos" <pedro_ramos@nps.gov>
Subject: Re: BICY Wilderness and the position of the Asst Sec of Interior on this matter...

Charlie, Nick, and Staff

We're looking forward to working with your staff to build a more positive approach and change some history. We appreciate the attempt and were excited to see more efforts to provide more public hunting opportunities, particularly in south Florida.

The recreation community thanks you greatly for trying to change history and were more eager than ever to work with staff to do so and I believe it is important to all involved. However, the hunting community has been overlooked here in Florida whenever Federal land has been involved.

But you must remember because of history It's scarier than ever to let history continued and strongly support the NWR system and/or National Park System hunters we must/want to see them expand, but because of bad dealings and bad news we will not swept history under a rug and give up Central Florida. The opportunity that we have in south is so limited but yet the demand is high were it's seriously need.

Thank to Staff for trying to change the times of limited recreation opportunities History from the Heart Bishop

On Oct 23, 2011, at 10:37 AM, "Wiley, Nick" <Nick.Wiley@MyFWC.com> wrote:

> Thank you Charlie. We look forward to working with USFWS staff to expedite this process. We appreciate the good faith efforts to provide more public hunting opportunities, particularly in south Florida where such opportunities are in great demand yet seriously limited in many cases. FWC stands ready to help get this done. Nick

>
 > Nick Wiley

>
 > On Oct 23, 2011, at 10:29 AM,
 "Charlie_Pelizza@fws.gov" <mailto:Charlie_Pelizza@fws.gov>
 <Charlie_Pelizza@fws.gov" <mailto:Charlie_Pelizza@fws.gov>> wrote:

>
 >
 > All,

>
 > In addition, FWS and FWCC have been working to schedule site visits to Lake Wales Ridge NWR by the end of the month. Loxahatchie NWR has been in discussions with FWCC for the past year to open the refuge to alligator hunting and their hunt plan is almost complete. Both Loxahatchee and Florida Panther Refuges are also in the process of setting up meetings with FWCC to discuss hunting opportunities.

>
 > Charlie

>
 >
 >
 > From: "Musaus, Mark" [mark_musaus@fws.gov" <mailto:mark_musaus@fws.gov>]
 > Sent: 10/22/2011 07:43 PM CST
 > To: frank denninger <gladesman@gmail.com" <mailto:gladesman@gmail.com>>
 > Cc: Nathaniel Reed <npreed33455@gmail.com" <mailto:npreed33455@gmail.com>>;
 "newtoncook@bellsouth.net" <mailto:newtoncook@bellsouth.net>;
 "newtoncook@bellsouth.net" <mailto:newtoncook@bellsouth.net>; Moller Jack
 <LJMoller@aol.com" <mailto:LJMoller@aol.com>>;
 "LyleMcCandless@aol.com" <mailto:LyleMcCandless@aol.com>;
 <LyleMcCandless@aol.com" <mailto:LyleMcCandless@aol.com>>; Fuller Manley
 <wildfed@gmail.com" <mailto:wildfed@gmail.com>>;
 "CaptFrankAdams@aol.com" <mailto:CaptFrankAdams@aol.com>;
 <CaptFrankAdams@aol.com" <mailto:CaptFrankAdams@aol.com>>;
 "BARJNPWLL@aol.com" <mailto:BARJNPWLL@aol.com>;
 <barjnpwll@aol.com" <mailto:barjnpwll@aol.com>>;
 "dennis.david@myfwc.com" <mailto:dennis.david@myfwc.com>;
 <dennis.david@myfwc.com" <mailto:dennis.david@myfwc.com>>;
 "rhilsenbeck@tnc.org" <mailto:rhilsenbeck@tnc.org>;
 <rhilsenbeck@tnc.org" <mailto:rhilsenbeck@tnc.org>>;
 "usinfo@aol.com" <mailto:usinfo@aol.com>; <usinfo@aol.com" <mailto:usinfo@aol.com>>;
 "lane.asaf@comcast.net" <mailto:lane.asaf@comcast.net>;
 <lane.asaf@comcast.net" <mailto:lane.asaf@comcast.net>>;
 "capital.ideas@att.net" <mailto:capital.ideas@att.net>;
 <capital.ideas@att.net" <mailto:capital.ideas@att.net>>; Wiley Nick
 <Nick.Wiley@myfwc.com" <mailto:Nick.Wiley@myfwc.com>>;
 "commissioners@MyFWC.com" <mailto:commissioners@MyFWC.com>

Nathaniel Reed

From: "frank denninger" <gladesman@gmail.com>
Date: Saturday, October 22, 2011 2:31 PM
To: "Nathaniel Reed" <npreed33455@gmail.com>
Cc: <newtoncook@bellsouth.net>; "Moller Jack" <LJMoller@aol.com>; <LyleMcCandless@aol.com>; "Fuller Manley" <wildfed@gmail.com>; <CaptFrankAdams@aol.com>; "BARJNPWLL@aol.com" <barjnpwll@aol.com>; <dennis.david@myfwc.com>; "Musaus Mark" <Mark_Musaus@fws.gov>; <rhilsenbeck@tnc.org>; <usfinfo@aol.com>; <lane.asaf@comcast.net>; <capital.ideas@att.net>; "Wiley Nick" <Nick.Wiley@myfwc.com>; <commissioners@MyFWC.com>; <Commissioners@myfwc.com>; <bishopwright@bellsouth.net>; <Jdbran7@aol.com>; <jorge.gutierrez@evergladescoordinatingcouncil.com>; <SRecce@nrahq.org>; <nfreeman@safariclub.org>; <mcca2968@bellsouth.net>; <rich@paulbangerroofing.com>; <cmorehead@moodyjones.com>; <charlie_pelizza@fws.gov>; <Chuck.Collins@fwc.state.fl.us>; <doughton@refugeassociation.org>; <FriendsBullCreek@aol.com>; <hitchco@bellsouth.net>; <dlithgow@bellsouth.net>; <krimgo@gmail.com>; <patstone1964@gmail.com>; <whorn@dc.bhb.com>; <Pedro_Ramos@nps.gov>; "Adornato John" <jadornato@npca.org>; "Browder Joe" <jbb@dunlapbrowder.org>; "Fordham Kirk" <kirkfordham@gmail.com>
Subject: Re: Fw: Fwd: BICY Wilderness and the position of the Ass't Sec of Interior on this matter...

Mr. Reed,

With all due respect, I believe you knew what would happen currently in Big Cypress even back in the old days. You are an extremely intelligent person, otherwise you wouldn't have been in the position you were in at the time. I am sure you knew the potential repercussions of every weasel word and paragraph of the enabling act. I would think that is what good assistant secretary's get paid for. I wouldn't expect you to ever be critical of current or past NPS actions as I believe you could most eloquently justify all of them.

Mr Reed you say in his email-

...."They recognize the importance of not opposing hunting, as it could impact the larger issues of creating desperately needed national refuges along the Kissimmee and other areas within the upper Okeechobee watershed that will be open to sports hunting.... "

That is nothing more than a cheap political move by NPCA or anyone else with a similar claim regarding hunting from Orlando, Florida Southward. Off Road Vehicles are symbiotically related to most hunting here without doubt as well as being part of the cultural glue that sustains our Gladesmen culture. Opposing ORV use and saying one supports hunting still amounts to opposing hunting whether one cares to believe that or not. It is a fact that will not go away no matter how much the extremists want it to so that they can proceed to lie and fool the ignorant. We are not fooled in the least by any such any stunt now or in the future and that goes for the Everglades Headwaters Refuge and Conservation Area..

Also stated is -

....." They believe with honesty that large sections of the additional lands should be set aside as wilderness so a visitor can walk without the sound of a vehicle or the ruts of a tracked vehicle in one of the most unique parts of the BCNP. The ability to walk and enjoy the wonders of the great marsh-swamp-uplands of the additional lands is a major issue of NPCA's role as the major 'watch dog' of national park planning and usage. ".....

NPCA is no more honest than Al Capone was. The proof is Adornato's attack upon the ORV advisory committee's balance. NPCA used the balance (enviros vs orv visitors) plea to have him appointed after they removed his active lobbyist status to facilitate his original appointment a few years ago. Then he is recently not reappointed due to an Obama policy. So again NPCA brings up the balance issue to have him re-appointed. It works again and he is re-appointed. A rational person would think the balance problem is solved but NO NPCA is now suing due to the same imbalance they claimed existed without his representation on the committee. They are nothing more than environmental litigious thugs.

NPCA's Adornato is having little success with his trail obstructing arguments lately so IMO these folks are suing to overcome knowledgeable arguments he cannot overcome otherwise by presenting their junk interpretations to someone inexperienced with the old issues (e.g. a federal judge or magistrate). NPCA knows they always stand a chance with the uninformed as do some other environmental organizations.

Headwaters will be a repeat of this same old scam thus "Just Say No to Headwatwers" or one could say "Not One More Federal Acre in Florida". Personally I would not wish such a scam on an enemy much less a fellow Gladesman or Gladeswoman.

By the way folks I haven't seen any announcement of any Headwaters comment period extension at their web site EvergladesHeadwatersProposal@fws.gov

Has any of you noticed an acknowledgement of this rumor.

As of now IMO the deadline for Headwaters comments is Monday, October 24, 2011.

I would recommend folks do their comments regarding Headwaters by midnight Monday. Of course belief of a false promise would be a good excuse for not publicly commenting either to support or oppose. Possibly the choice for those fearful of political repercussions associated with the truth.

Sincerely,

Frank Denninger - Gladesman

On Fri, Oct 21, 2011 at 3:29 PM, Nathaniel Reed <npreed33455@gmail.com> wrote:

Date: October 21, 2011
From: Nathaniel Reed

Jack, I have spent hours with Pedro listening to his interpretation of his responsibilities as the Superintendent of the Big Cypress National Preserve. He was very knowledgeable about the importance that the hunting, fishing and 'traditional users' were to the creation and protection of the Big Cypress National Preserve.

He too has a copy of my well presented testimony.

I was not involved in the discussions following the addition of the Collier lands to the BCNP, but I supported their inclusion.

Nathaniel Reed

From: "Joe Browder" <jbb@dunlapbrowder.org>
Date: Friday, October 21, 2011 6:37 PM
To: "Nathaniel Reed" <npreed33455@gmail.com>
Subject: Re: Fw: Fwd: BICY Wilderness and the position of the Ass't Sec of Interior on this matter...
 Nat, thank you so much. NPCA is beyond hope, they are as determined to impose what they see as traditional National Park management values on Big Cypress as they were in their effort to prevent the Miccosukee from building new homes in the Miccosukee's right-of-way within Everglades National Park, which of course resulted in those lands along the Trail being stripped from Everglades National Park and becoming Miccosukee Reservation lands. Adornato told me yesterday that the hunters oppose the Headwaters plan anyway so there is nothing to lose if NPCA is making the hunters feel betrayed and angry.

My view, after being deeply engaged in discussions with the hunters, is that the hunters do have the political strength to get Florida to oppose Headwaters and kill everything we are working for in Kissimmee and Big Cypress, unless these immediate steps are taken...

Hunters are helped to see that NPCA is not the voice of the national environmental community on this issue, because other prominent national groups, in a public and highly visible way, express their opposition to NPCA's lawsuit, express their support for Pedro's offroad vehicle management plan and for the fairness and integrity of his planning process, express their support for the Preserve's broader and more inclusive strategy for encouraging continued traditional use of Preserve lands by hunters and Native Americans.

The rest of the community will lose this last opportunity to save more Everglades lands unless NPCA's philosophy and actions re Big Cypress are repudiated, BCNP's decisions applauded, and the hunters spoken of with respect for their willingness to work with BCNP to produce access regulations that respect the Preserve's other important obligations.

So... Audubon and WWF, TNC, NWF, Defenders, Sierra Club, can they or others be encouraged to quickly speak out? If this happens, the hunters will see that it is worth while to trust that USFWS and the national environmental community will stand up for the hunting rights and opportunities included in the new Refuge plans.

Thank you Nat... Joe

Joe Browder | Dunlap & Browder
 M 202 246-0846 | W 202 546-3720
 Sent from my Samsung Epic™ 4G

Nathaniel Reed <npreed33455@gmail.com> wrote:

>Date: October 21, 2011

>

>From: Nathaniel Reed

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>

>Jack, I have spent hours with Pedro listening to his interpretation of his responsibilities as the Superintendent of the Big Cypress National Preserve. He was very knowledgeable about the

From: [Thomas Irwin](#)
Date: Monday, September 19, 2011 10:19:51 AM
Attachments: [Ashe Ltr RE Bison Range 09-16-11.pdf](#)

Date: September 19, 2011
To: Secretary Ken Salazar
From: Nathaniel Reed

I am pleased to report to you that Dan Ashe called me and thoroughly discussed the confusion and rumors surrounding the management of the National Bison Range.

With pleasure I received assurance from Dan Ashe, Director of the USFWS, that the National Bison Range will continue to be a part of the National Wildlife Refuge system.

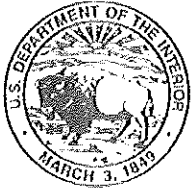
The deeply concerned members of the Blue Goose Society made up of the very best of the retired members of the refuge system will be relieved. Unquestionably the EIS will be of great interest to them, but I accept Director Ashe's word and the spirit of the attached letter.

I am personally delighted that this issue is behind the two of us, as I have great admiration of Dan. He will make a great director during what I am sure are going to be very rough times.

With special best wishes, Nathaniel Reed

cc: Dan Ashe

Office of Nathaniel P. Reed
P.O. Box 1213
Hobe Sound, FL 33475
(772)546-2666 Fax (772)546-5019
NEW EMAIL: npreed33455@gmail.com
<http://nathanielpreed.blogspot.com/> - Ashe Ltr RE Bison Range
09-16-11.pdf



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



SEP 16 2011

In Reply Refer To;
FWS/D/ 049519

Mr. Nathaniel P. Reed
P.O. Box 1213
Hobe Sound, Florida 33475

Nat

Dear Mr. Reed:

Thank you for our conversation today and your support and your interest in the National Bison Range (NBR). The U. S. Fish and Wildlife Service (Service) is currently negotiating with the Confederated Salish and Kootenai Tribes (CSKT) for a new Annual Funding Agreement (AFA) to involve the CSKT in the operations and maintenance of the National Bison Range and other units of the NBR Complex that lie within the Flathead Reservation. Before a new AFA is signed and reported to Congress, the Service will prepare an Environmental Assessment, and will seek public review and comment on the draft document.

The Service cannot and will not "turn over" management of NBR or any other Refuge to the CSKT or any other non-Service entity. Under any future AFA, NBR will remain a unit of the National Wildlife Refuge System, managed by the Service under direct guidance of the Service's on-site Refuge Manager. No inherently federal functions will be contracted to the CSKT. The CSKT has extremely strong cultural, historic, and geographic ties to the NBR and the NBR bison herd, and will work with us through its highly professional Natural Resources Department. Any future AFA will uphold both the letter and spirit of both the Refuge Administration Act, as amended, and the Tribal Self-Governance Act. These laws are not mutually exclusive. We are confident that a strong partnership, with Service and CSKT employees working together, under direction of the Refuge Manager, is the best way to continue managing the NBR to achieve the Refuge's purposes and the mission of the National Wildlife Refuge System.

Thanks again for your time today and continued interest in this issue. If you have any questions, please call me at 202-208-4545.

Sincerely,

Daniel M. Ashe
Director

From: Dean Rundle <Dean_Rundle@fws.gov>
To: Rick_Coleman@fws.gov
Cc: Jeff_King@fws.gov
Subject: Meeting next week
Date: Thursday, February 24, 2011 3:22:13 PM

Rick: I was on a call this morning with Dana Jacobson, Brian Upton, and Sharon Brenna. The consensus is, based primarily on guidance from John Most, the DOJ attorney who defended the NEPA charge in the recent lawsuits, that we will do an EA for any new AFA for NBR. All issues on how that should go were not agreed, but we do believe that we will need to negotiate a new AFA, and use a final unsigned draft of that as the preferred alternative for public comment. There'll also be a no action, and may be other alternatives - such as the 08 AFA.

I had a good discussion with Jeff this afternoon. He wants to come down to visit with us about the Regional position going into new negotiations - that CSKT will likely start in mid-March. Jeff wants to be sure that R6 has reviewed all options and he has some that we have not discussed yet amongst ourselves.

You're out this p.m., and I leave for Missoula in the morning. Tentatively, Jeff can come down next Wednesday, March 2 for a meeting. I'll be here that day, and according to Ellie, your calendar is open. I asked Ellie to pencil in 1:00 - 3:00 p.m. for you to meet with Jeff and I, and others to discuss options. May want to invite other Supvs., maybe Dave Lucas will be available, understand Bud is out.

Please let us know and make sure to copy Jeff, if that will work for you so he can make arrangements.

Jeff and I both feel a need to have a call with Greg Siekaniec, once we have the R6 ducks in a row. We still haven't heard anything from WO on the meeting that Greg and Jim Kurth had with CSKT on March 10. All we "know" is what is related by Brian Upton. 1st key question is - "Did Greg say, as Brian related, that what R6 wants to do is what we're going to do" and follow-up is - "when you said that were you just referring to the type of NEPA (CX vx. EA), or did you mean that on the substantive issues of a new AFA as well?"

Dean

From: [Rundle, Dean](#)
To: [Noreen Walsh](#); [Will Meeks](#); [Jeff King](#)
Subject: Meeting w/CSKT
Date: Friday, September 27, 2013 4:33:48 PM

Brian Upton just called back, CSKT has agreed to cancel the meeting scheduled for October 1. They would like to take the meeting date offered for Monday, October 7. Several Council members said they would rearrange for 10/7, Chairman Durglo not confirmed, but Brian will work with him on that over the weekend.

We agreed to cancel 10/1, and get back with Brian on the phone Monday morning to confirm time on 10/7 with the RD.

Jeff should cancel his flight on 9/30.

When I asked Norren for dates, I failed to recall that the NBR Roundup is Monday 10/7 and Tuesday 10/8. Jeff will need to be at Roundup and would not be able to attend a meeting here in the RO that day. We will have to discuss on Monday how that affects things.

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

From: Jeff King <Jeff_King@fws.gov>
To: Dean Rundle/R6/FWS/DOI; Rick Coleman/R6/FWS/DOI; Gregory Siekaniec/NWRS/R9/FWS/DOI
Subject: My thoughts
Date: Monday, February 07, 2011 6:09:36 PM
Attachments: [JKing NBR recommend.doc](#)

Dean, Rick and Greg,

Attached is some information I wanted to provide for our upcoming conference call regarding our past and future partnership with the CSKT.

jk

MEMO

TO: Dean Rundle, Rick Coleman, Greg Siekaniec
FROM: Jeff King
SUBJECT: Recommendation for future partnership with CSKT

In preparation for our conference call this week, I wanted to provide some history about the 2009 AFA I implemented and share my concerns about the recent CSKT Tribal Council vote to continue to pursue a similar agreement. There were some successes in the 2009 AFA; however, we were not without challenges both in effectively managing the refuge complex and in the public's perception. I was very open with the Tribal Council as to these issues and had planned to try and correct them during the 2012 renegotiations. However, since the judge has dismissed the other allegations brought by PEER and Blue Goose Alliance, without prejudice, I am not in support of entering into another robust AFA. I feel this will result in the Service being tied up in litigation for years impacting both our natural resources and the dedicated Service and CSKT staff.

I want to make it clear that I am fully supportive of a partnership with the CSKT; however, as the refuge manager, my first priority is to protect and manage the resource and ensure that the staff has a productive work environment. I feel strongly that if we continue to pursue these types of robust agreements we will put in place the same circumstances that have hindered my ability to carryout these responsibilities.

There are shortcomings to this type of agreement, beyond the continual litigation; particularly our inability to recruit and retain qualified staff, not only after these AFAs are rescinded, but during the implementation. For example, when we initiated the 2009 AFA, the CSKT recruited for a supervisory biologist position. The stigma of the previous failed AFA combined with the CSKT personnel regulations limiting work contracts to three years, with a renewal option, limited our applicant pool. Many of the more qualified biologists declined the position. The individual selected struggled with both our projects and supervision, which I felt resulted in the eventual resignation of both permanent CSKT biological technicians. This supervisory biologist also resigned in spring of 2010. The technician positions were re-filled but the lead biologist position was re-advertised twice and received only two applicants, neither of whom had the necessary experience. Were it not for the efforts of the remaining GS-9 equivalent CSKT biologist, it would have been difficult to complete any of our planned projects. For 6 years we have not had a consistent, experienced leader of our biological program. This has hindered our ability to effectively design and plan projects, including the preplanning needed for our upcoming CCP, which has been postponed for almost 8 years.

The CSKT was also given the positions and budget for the refuge's maintenance, visitor services, administration and fire programs. Thirteen of the 18 complex staff were CSKT employees. Only one, the non-supervisory wildlife biologist, had ever worked on a national wildlife refuge, specifically the National Bison Range. Although the CSKT employees brought skills and knowledge to these positions, each had to quickly learn the specifics of working on a national wildlife refuge and the unique procedures for safely

managing our bison herd. I was committed to make this partnership successful and build a quality program to enhance our resources and provide for the safety and enjoyment of our 200,000 visitors. During the 2009 AFA we provided CSKT staff with hundreds of hours of both Service required and job-specific training from pesticide applicator licenses to refuge management academy. On September 28, 2010, we abruptly lost all CSKT staff and with them this knowledge, training and abilities.

To resolve these issues and build a stronger and long term partnership with the CSKT, I recommend that the Service advertise the positions on the NBR complex and use OPM regulations to target CSKT members, spouses, and descendents. I would also use both SCEP and STEP to fill seasonal positions, working closely with the Salish Kootenai College. We could still develop an accompanying AFA for programs such as fire and any large scale construction and maintenance projects. I believe this combined proposal would allow us to properly manage the refuge resources and ensure that individuals with a connection to the CSKT are provided secure, long term positions which would support a consistent and even more influential CSKT partnership. I also believe this option will reduce, if not eliminate, any further opportunities for litigation.

From: [Steve Woodruff](#)
To: noreen_walsh@fws.gov
Subject: National Bison Range AFA comments from National Wildlife Federation
Date: Friday, August 22, 2014 12:22:07 PM
Attachments: [NBR DEA AFA Comments from NWF.pdf](#)

Dear Ms. Walsh:

The National Wildlife Federation would like to share with you the formal comments we have submitted in support of the proposed Annual Funding Agreement with the Confederated Salish and Kootenai Tribes to manage the National Bison Range Complex in Montana in partnership with the U.S. Fish and Wildlife Service. Our comments are attached.

The National Wildlife Federation is America's largest conservation organization and has over 4 million supporters and 47 state affiliates. NWF has a long history of involvement and interest with the Bison Range, the U.S. Fish and Wildlife Service, and the Confederated Salish and Kootenai Tribes. We are confident the proposed AFA will prove beneficial for all.

Sincerely,

Steve Woodruff

Senior Policy and Communications Manager
National Wildlife Federation
Northern Rockies & Pacific Regional Center
240 N. Higgins Ave.
Missoula, MT 59802
406-541-6733 (w) 406-531-5019 (m)
woodruffs@nwf.org



Protecting Wildlife for our children's future



August 19, 2014

National Bison Range
58355 Bison Range Road
Moiese, MT 59824

Via Mail and Email to bisonrange@fws.gov

RE: Environmental Assessment for a Draft Annual Funding Agreement, National Bison Range Complex

To whom it concerns,

Thank you for the opportunity to provide comments on the Environmental Assessment (EA) for an Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (Tribes) to manage the National Bison Range Complex (Bison Range) in partnership with the U.S. Fish and Wildlife Service (Service). 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 Tribes on numerous wildlife, habitat and environmental issues.

NWF strongly believes that a partnership between the Service and the Tribes, as described in Alternative B of the EA, should be formalized through a new self-governance AFA.

The EA makes clear the merits of the AFA, negotiated between the Tribes and the Federal government, under which the Tribes would contract much of the program work at the Bison Range, while the Service retains its Refuge Manager, Deputy Refuge Manager, and law enforcement personnel. Such arrangements are consistent with the National Wildlife Refuge System Administration Act (NWRSA) and are made possible by the Tribal Self-Governance Act of 1994. NWF has supported this partnership since it was originally proposed in 2004.

While the EA appropriately examines other alternatives, only Alternative B adequately incorporates the AFA negotiated between the Tribes and Federal government. The other alternatives do not sufficiently fulfill the intent of the Tribal Self-Governance Act – nor do the lesser alternatives adequately leverage the additive capabilities of the Tribes for the benefit of the Bison Range, its resources and its public users.

NWF recognizes that there are some differences between the proposed AFA and the one that was agreed to several years ago. Specifically, the Tribes have made concessions in regard to self-governance under the proposed alternative. The other alternatives would involve even further concessions, which NWF considers inequitable.

NWF's Northern Rockies, Prairies and Pacific Regional Center is located close to the Bison Range, NWF's Tribal Partnerships Program has a long working relationship with the Tribes, and NWF has familiarity with the issues and entities involved in the AFA. NWF's support for Alternative B is informed by long and extensive experience in matters involving the Bison Range and the Tribes. In May 2012, the Tribes received NWF's National Government Conservation Achievement Award for their outstanding commitment to preserving, protecting and restoring wildlife and habitat for future generations. The Tribes are 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 Tribes are highly qualified to partner with the Service to manage the Bison Range.

The Tribes' long history of managing wildlife and wild lands in partnership with local, state and Federal governments includes:

- Establishing a landmark agreement in 1990 between the Tribes and the State of Montana governing bird hunting and fishing on the Flathead Indian Reservation, thereby creating an effective partnership that has proved highly successful and beneficial.
- Establishing and successfully managing the nation's first tribal wilderness area, a 97,000-acre area in the Mission Mountains that includes a 10,000-acre Grizzly Bear Conservation Area.
- Obtaining "treatment as state" status under Section 106 of the Clean Water Act, ultimately leading to U.S. Environmental Protection Agency approval of water-quality classifications and standards for the Flathead Reservation.
- Undertaking a comprehensive program for the Jocko River Drainage – including restoration, land acquisition, fisheries management and public education – under a consent decree the Tribes finalized with the Atlantic Richfield Co. related to resource damages from historic mining in the Upper Clark Fork River Basin.
- Acquiring and managing over 11,000 acres of fish and wildlife habitat through the Tribal Wildlife Management Program.
- Establishing restoration programs for Trumpeter Swans, northern leopard frogs and peregrine falcons.
- Working in cooperation with State and Federal transportation authorities to create 41 fish and wildlife crossing structures as part of U.S. Highway 93 reconstruction.
- Acquiring over 4,600 acres of land, including 27 miles of streams and lake habitat to offset impacts to fisheries.

The Bison Range is an outstanding and important resource for all Americans, and the Tribes 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 Bison Range for future generations.

We believe that this partnership will produce numerous long-term benefits to the Tribes, the Service and all Americans. It will draw on the best abilities and resources of the Tribes and the Federal government to manage Bison Range resources and to better serve the people who use the resources. This partnership will also facilitate the achievement of Departmental and Congressional objectives for the National Wildlife Refuge System and Tribal Self-Governance programs.

The Tribes are 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. The bison has a very high level of cultural, historic and geographic significance to the Tribes, and all units of the Bison Range complex under consideration for an AFA are located within the Flathead Reservation. Many of the bison that roam the Bison Range are descendants of a herd originally saved by Tribal members in the late 19th century and which originated on the reservation.

We understand that the Tribal Self-Governance Act prohibits contracting to tribal governments of activities that are “inherently Federal.” 25 U.S.C. § 458cc(k). Contrary to the assertions of some opponents of this Tribal-Federal partnership, the NWRSA, as amended, specifically recognizes that Refuge program management is not “inherently Federal” because it explicitly authorizes non-Federal entities to manage such programs. 16 U.S.C. § 668dd(b)(4).

NWF fully supports the Tribes helping, as partners with the Service, to lead bison conservation and natural resource management within the borders of their reservation on the Bison Range. We look forward to working with the Service and Tribes to advance their partnership. If you have any questions, please contact us.

Sincerely,



Thomas France
Senior Director for Western Wildlife
Conservation
National Wildlife Federation
Northern Rockies, Prairies and Pacific
Regional Center
240 N. Higgins
Missoula, MT 59802
406-541-6706
france@nwf.org



Garrit Voggesser
National Director, Tribal Partnerships
National Wildlife Federation
2995 Baseline Rd., Suite 300
Boulder, CO 80303
303-441-5161
voggesser@nwf.org

August 21, 2014

U.S. Fish and Wildlife Service
P.O. Box 25486, DFC
Denver, Colorado 80225-0486

RE: FWS/R6/NWRS/PL
NBR 5.0 CCP
MAILSTOP 60130

Dear Sir or Madam:

I'm writing to correct an omission of facts in the Draft Environmental Assessment (EA), released for comment in August, 2014, related to the description of events that led to the termination of the 2005 Annual Funding Agreement (AFA) (pages 25-27). It is my opinion that these omissions are significant and relevant to the decisions the U.S. Fish and Wildlife Service (FWS) will be making regarding future AFAs at the National Bison Range National Wildlife Refuge (NBR). As written, the Draft EA leaves the reader to infer that the termination of the 2005 AFA was due exclusively to the performance related deficiencies identified in the Refuge Manager's evaluation (drafted in March and finalized in June 2006). I would advise you to carefully review the FWS administrative record relative to the actions taken by the agency in December 2006. That record includes documentation that clearly states that the primary reason for the termination of the 2005 AFA was the unacceptable workplace environment for FWS employees (including those working under Interagency Personnel Agreements (IPAs)). The FWS records show that these unacceptable conditions were characterized as harassment, intimidation and general oppressive behavior on the part of the employees and, to some extent the leadership of the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT).

Attached is a copy of the December 10, 2006 memo from the Director of the FWS to the Regional Director of the FWS. In that memo, Director Hall speaks strictly to the documentation provided by the Regional Director regarding the unacceptable workplace environment at the NBR and reiterates the long-standing Department Policy of "Zero Tolerance" for these types of actions. Director Hall makes no mention of performance in providing authorization for the termination of the AFA. Also attached is the December 11, 2006 letter from the FWS Regional Director to the Chairman of the Tribal Council of the CSKT. Section 3 of this letter clearly states that one of the two reasons for termination included an unacceptable workplace environment.

As Regional Director at time of this action, I was the person who made the recommendation to the Director to terminate the AFA and the person who signed the letter of termination to the Chairman. I can assure you that, while performance was an ongoing concern, the unacceptable workplace environment was the primary reason for my recommendation and final action. A complete review of FWS records will reveal that during the 6+ months between the performance review noted in the Draft EA and my December decision, allegations were filed by FWS employees relating to harassment and intimidation from CSKT employees and leadership. These allegations were confirmed in a follow-up investigation (by an independent investigator). In keeping with "Zero Tolerance" policy regarding workplace environment issues such as this, I took immediate action to restore an acceptable workplace environment for FWS employees and the visiting public.

As I stated earlier, documentation of the actions related to this decision is part of the administrative record and can be easily confirmed. I know of no subsequent investigations that dispel the facts as I have presented them here. This Draft EA should disclose a full and accurate summary of the reasons for the termination of the 2005 AFA, especially when the preferred alternative once again includes placing FWS employees under IPAs with the CSKT. While these historical facts may be uncomfortable or embarrassing for some, changing or ignoring them for whatever reason will preclude us from learning from our mistakes.

Sincerely,

A handwritten signature in black ink, appearing to read 'JMK' with a stylized flourish at the end.

J. Mitch King
Regional Director, U.S. Fish and Wildlife Service (Retired)
5405 Favorite Gulch Rd
Helena, MT 59602

From: [Mitch](#)
To: bisonrange@fws.gov
Cc: [Noreen Walsh](#)
Subject: NBR AFA Comments
Date: Thursday, August 21, 2014 8:03:41 AM
Attachments: [JMK NBR COMMENTS signed.docx](#)
[JMK NBR COMMENTS signed.pdf](#)
[NBR termination D. Hall memo Dec. 11, 2006.pdf](#)
[NBR termination memo to CSKT from Mitch King.pdf](#)

Please consider the attached comments (with attachments) on your Environmental Assessment for the proposed action for an Annual Funding Agreement with the Confederated Salish and Kootenai Tribes at the National Bison Range.

For your convenience, I am providing you with a Word and PDF version of my comments and will mail the original signed version today.

Thank you for your consideration.

J. MITCH KING

303.585.0377

5405 Favorite Gulch Rd.

Helena, MT 59602



IN REPLY REFER TO:

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Washington, D.C. 20240

December 10, 2006

MEMORANDUM

TO: Regional Director, Region 6, Denver, CO

FROM: Director *A. Dale Hall*

SUBJECT: National Bison Range National Wildlife Refuge

I have reviewed all information you submitted regarding your concerns about work completion and reliability of the Tribal contractor at the National Bison Range National Wildlife Refuge (NBR). In addition, concerns about Tribal employee and leadership behavior have also been discussed. For approximately 18 months, we have been managing the NBR under a cooperative agreement and Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT). I am very disturbed and disappointed by the documentation you have provided and, therefore, concur with your recommendation to terminate cooperative management with CSKT.

The Department of the Interior has a "Zero Tolerance" Policy regarding both sexual harassment and hostility in the workplace. First, I am personally committed to the enforcement of those policies. In addition, with the help and support from you and the other members of the Directorate, I have sent a clear message to our employees that they are our most valuable resource and deserve the respect they have faithfully earned. Second, professional work accomplishment is a very high priority. Finally, the laws regulating workplace behavior and hiring practices are clear and apply to all federal activities, including those where the Service contracts with sovereign nations. On a National Wildlife Refuge, all laws and policies apply.

I have spent my career, as I know you have, supporting cooperative working relationships with Tribal nations as true partners in natural resource conservation. However, the guiding principles of those relationships have always included trust and respect from both parties and commitment from leadership to the accomplishment of mutually agreed upon efforts.

Therefore, I concur with your recommendation to terminate the Annual Funding Agreement between the Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes at the National Bison Range National Wildlife Refuge. Please move expeditiously to provide written notice and cease further negotiations. Since, with our concurrence, CSKT has been continuing work without an AFA renewal, please provide

2

payment on a *pro-rated* basis to CSKT good through the date of your termination notification.

We must now move forward to assure our employees and the public that the NBR is being managed to NWR standards. Lessons learned from our very positive Alaska AFA will help guide us in future endeavors to partner with Tribal nations.



United States Department of the Interior

FISH AND WILDLIFE SERVICE Mountain-Prairie Region



IN REPLY REFER TO:

MAILING ADDRESS:

Post Office Box 25486
Denver Federal Center
Denver, Colorado 80225-0486

-STREET LOCATION:

134 Union Blvd.
Lakewood, Colorado 80228-1807

NWRS/NBR 1
Mail Stop 60130

December 11, 2006

VIA FACSIMILIE AND FEDERAL EXPRESS

James H. Steele, Jr.
Chairman
CSKT Tribal Council
P.O. Box 278
Pablo, Montana 59855

Re: National Bison Range Complex; Unavailability for Negotiations; Termination of Negotiations for FY 2007 AFA; Termination of Authority to Extend Performance Under Expired FY 2006 AFA

Dear Chairman Steele:

The U.S. Fish and Wildlife Service (Service or FWS) hereby notifies the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT) that, effective on the date of this letter:

1. The National Bison Range Complex (NBRC) is unavailable to the CSKT for negotiations concerning an annual funding agreement (AFA) under the Tribal Self-Governance Act; and
2. The Service is terminating negotiations with the CSKT for a Fiscal Year (FY) 2007 AFA between the Service and the CSKT for activities at the NBRC.

Also effective on the date of this letter, the Service is withdrawing the CSKT's authority to extend performance under the expired FY 2006 AFA between the Service and the CSKT for activities at the NBRC (FY 2006 AFA). The Service hereby reassumes all responsibility for performing all activities covered by the expired FY 2006 AFA.

Upon receipt of a facsimile copy of this letter, the CSKT must:

1. Immediately cease performing all activities at the NBRC under the expired FY 2006 AFA.

2. Initiate the return to the Service of all available property provided to the CSKT by the Service under the expired FY 2006 AFA, to be completed not later than 4:00 P.M., Mountain Standard Time, on December 12, 2006.
3. Initiate the withdrawal from the NBRC of all CSKT employees, contractors, and volunteers acting on behalf of the CSKT under the expired FY 2006 AFA, to be completed not later than 4:00 P.M., Mountain Standard Time, on December 12, 2006.

1. Background

On December 15, 2004, the Service and the CSKT entered into a FY 2006 AFA for activities at the NBRC. In April 2006, the Service and the CSKT began negotiations for a FY 2007 AFA for activities at the NBRC.

In the negotiations, the Service's position generally was that a FY 2007 AFA should be essentially the same as the FY 2006 AFA, with only those minor revisions needed to reflect what the Service and the CSKT learned in operating under the FY 2006 AFA. The CSKT's position generally was that the scope of work for a FY 2007 AFA should be significantly greater than for the FY 2006 AFA, and that under a FY 2007 AFA the CSKT should have significantly more management control of operations at the NBRC than it had under the FY 2006 AFA. While the Service and the CSKT reached agreement in principle on a number of relatively minor issues concerning a FY 2007 AFA, they remained at an impasse on the above two issues.

When it was evident that the negotiations for a FY 2007 AFA would not be completed prior to expiration of the FY 2006 AFA, the Service, on September 5, 2006, authorized the CSKT to extend performance of the FY 2006 AFA into FY 2007, beginning on October 1, 2006. The FY 2006 AFA expired on September 30, 2006. Since October 1, 2006, the CSKT has been performing at the NBRC under the expired FY 2006 AFA.

On October 4, 2006, the CSKT sent the Service a proposed FY 2007 AFA that substantially revised the FY 2006 AFA. Among other things, the revisions included a phased-in schedule for the CSKT to take over operation of the entire NBRC. The Service rejected the CSKT's proposed revisions as contrary to the Service's statutory mission and responsibilities at the NBRC, and the Service's consistent negotiating position.

The Service and the CSKT last met for formal negotiations concerning a FY 2007 AFA on May 31 to June 1, 2006. The negotiations reached a standstill when Service employees alleged mistreatment by the CSKT in connection with the CSKT's performance under the expired FY 2006 AFA. Those and other issues concerning the CSKT's initial and extended performance under the expired FY 2006 AFA have lead the Service to conclude that continuing to make the NBRC available for negotiations with the CSKT would be contrary to the Service's statutory mission and responsibilities at the NBRC.

2. Procedures

The Secretary of the Interior has promulgated regulations governing annual funding agreements under the Tribal Self-Governance Act amendments to the Indian Self-Determination Act (Tribal Self-Governance Regulations). 25 C.F.R. Part 1000.

Under the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.173(d)(2), "If [a] program is unavailable for negotiation, the bureau will give to the Tribe/Consortium a written explanation of why the program is unavailable for negotiation." This letter provides that written explanation of why the NBRC is unavailable to the CSKT for negotiation.

The Tribal Self-governance Regulations also provide for last and best offers in the event a bureau and a tribe do not reach agreement in negotiations for an available program. 25 C.F.R. § 1000.179. That regulation follows § 100.173, and therefore is premised on the availability of a program for negotiation. Since the NBRC is not available for negotiation, the provision of § 1000.179 for a last and best offer is not relevant to this notice. There is no available program as to which the Service or the CSKT could make a last and best offer. Nevertheless, this letter provides a written explanation equivalent to that required by § 1000.179(b).

The Service is not aware of any provision in the Tribal Self-Governance Regulations governing a bureau's termination of a tribe's authority to extend performance under an expired AFA.

Since October 1, 2006, the Service and the CSKT have been operating under the expired FY 2006 AFA. Section 16.D of the expired FY 2006 AFA provides:

To the extent the CSKT and the FWS are *not* negotiating a Subsequent AFA covering an Activity:

....

2. *Available Property.* On the last day of the term of this AFA, the CSKT will return to the FWS all Available Property provided by the FWS to the CSKT, and not needed by the CSKT to perform an Activity for which the FWS and the CSKT are negotiating or have executed a Subsequent AFA for the next fiscal year.

(Emphasis in original.) By this letter, the Service has made the NBRC unavailable for negotiation for a subsequent AFA, has terminated negotiations for a subsequent AFA, and has withdrawn the CSKT's authority to extend performance under the expired FY 2006 AFA. Accordingly, section 16.D of the AFA requires the CSKT to return to the Service all available property provided to the CSKT by the Service under the expired FY 2006 AFA, and to do so on the date of this letter. The CSKT must comply with that requirement by returning all available property to the Service not later than 4:00 P.M., Mountain Standard Time, on December 12, 2006.

3. *Statement of Reasons*

The Service's actions in this letter are based on the following deficiencies in the CSKT's initial and extended performance under the expired FY 2006 AFA:

A. Statutory Mission and Responsibilities

The CSKT's performance under the expired FY 2006 AFA has prevented the Service from meeting its responsibilities at the NBRC under the National Wildlife Refuge Administration Act and other applicable laws and regulations. That included CSKT employees and volunteers:

- Failing to comply with Service bison management standards, including herding bison into units with unsatisfactory fence conditions; herding bison while cows were giving birth during the calving season; feeding insufficient quantities of hay to bison being held for transport, notwithstanding service protocol and repeated reminders; not maintaining fences to standard, resulting in a serious loss of grazing management control, significant damage to interior fences, and the conditioning of bison to find and utilize weak locations for escape through fences.
- Failing to meet Service wildlife monitoring and reporting standards and protocols, including altering survey protocols without consulting with or approval from the Service.
- Failing to complete two calendar-year 2006 biological study plans, and submitting biological reports with subjective conclusions not supported by data or literature review.
- Failing to timely and properly maintain vehicles, equipment, and property, and process related documentation, including not following the pit toilet chemical protocol in the public use area; not filling root holes of downed and removed trees in the public use area; leaving buildings, vehicles, and fuel pumps unlocked, keys in unlocked vehicles, and tools unsecured in the backs of trucks; and unsatisfactorily maintaining the public auto tour route during the peak visitor season.
- Displaying commercial literature in the visitor center without prior approval from the Service.
- Repeatedly, inappropriately, and untruthfully telling the public that Service employees were the cause of delays during the annual bison roundup.
- Not following Service protocol for radio dispatch.

B. Workplace Environment

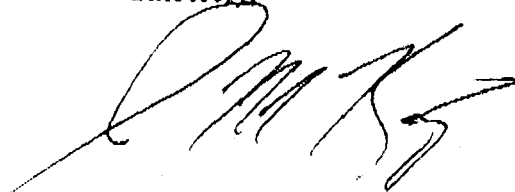
Under the expired FY 2006 AFA, the CSKT created an unacceptable workplace environment at the NBRC. That included CSKT employees and volunteers:

- Creating a work environment characterized by harassing, offensive, intimidating, and oppressive behavior on the part of employees of the CSKT, including obscenity, fighting words, and threats of violence and retaliation directed at employees of the Service.
- Creating unsafe conditions for employees of the Service and the CSKT, and for the public, by improperly using and operating equipment and vehicles, including failure to use personal protective equipment and allowing poorly trained, unlicensed, and otherwise unqualified employees to operate equipment and motor vehicles.
- Creating an unsafe environment for employees of the Service and the CSKT, and the public, by failing to properly maintain equipment and property, including not maintaining vehicles in safe operating condition, and not maintaining buildings in compliance with safety and health standards and to minimize property damage and loss.

4. Appeal

The Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R, prescribe the process a tribe may use to resolve disputes with the U.S. Department of the Interior arising before or after the execution of an AFA.

Sincerely,



J. Mitch King
Regional Director

cc: Director, USWFS
Brian Upton, Tribal Attorney

From: [Noreen Walsh](#)
To: [Dan Ashe](#)
Subject: NBR AFA EA and comment period
Date: Friday, September 05, 2014 11:00:47 AM

Good morning Dan,

Per our conversation, I'm not planning to extend the comment period beyond the two week extension already granted. Thus, the comment period will end before the AFWA meeting, on September 18. See below my further correspondence with Ron.

We'll proceed along those lines unless you indicate differently. I put a call in to Jim Kurth to bring him up to speed on where we are but have not yet reached him.

BTW, excellent LTE in NYT today.

Noreen

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Ron Regan [mailto:RRegan@fishwildlife.org]
Sent: Friday, September 05, 2014 6:09 AM
To: Noreen Walsh
Subject: Re: Tribal Policy Issue

Hi Noreen: Sorry for the delay in a response. We are contemplating relocating to new office space in 2015 and my week has been filled with realtor and Finance Committee meetings and decisions.

For clarification, yes, we originally raised the topic of the tribal self-governance legislation and the Chair agreed to that topic as an agenda item. Later, the Chair asked for more background and we provided him some additional comments about potential state concerns and raised the NBR as a new example that had emerged. That being said, our intended focus for the discussion will, in fact, be the legislation. We will not be seeking any formal action at this point — instead, raising the issue for informational purposes and noting that we will bring recommendations, if any, on the matter to the winter WHHCC meeting after due deliberation at our Annual Meeting in a couple of weeks.

Ron

From: Noreen Walsh <Noreen_Walsh@fws.gov>
Date: Wednesday, September 3, 2014 at 2:12 PM

To: Ron Regan <rregan@fishwildlife.org>

Subject: RE: Tribal Policy Issue

Hello Ron,

Yes, I was disappointed that this was not an issue that we could discuss first, before your letter. Particularly after our collective time together this summer at Sapelo Island, where I thought we all committed to working to strengthen our relationship through communication, and to always ask ourselves “have I talked to the other party about that” before taking action. I would have valued and appreciated a chance to discuss the issues with you or others before receiving a formal letter.

From my read, the letter is more than a request for an extension. It brings up issues that you are apparently considering, including concerns about state and federal authority to manage on national wildlife refuges and concerns about impacts to hunting and fishing.

Lastly, from our conversation I understood you to say that you asked for the NBR AFA to be on the WHHCC agenda, although I see below you indicate that what you have requested is the related topic of pending legislation on tribal self-governance?

Regards,

Noreen

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America’s most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Ron Regan [<mailto:RRegan@fishwildlife.org>]

Sent: Monday, September 01, 2014 10:21 AM

To: Noreen Walsh

Subject: Tribal Policy Issue

Hi Noreen:

Given that we haven’t been able to connect by phone, I thought I would share a couple of thoughts via email.

First, upon reflection (after your initial call), it is not clear to me what the root of your concern is — process (I didn’t call you first), content (paragraphs two and three of the letter), a combination of the two, or something else? I have read the letter again, and as I told you, it never occurred to me this might attract

your personal attention with such concern or disappointment. If it had, I hope I would, in fact, have called you. But, in sum, the letter is a request for additional time to review and discuss with state members the Tribal AFA for the National Bison Range and pending federal tribal self-governance legislation; both issues landed on our plates unexpectedly over the summer and we are still sorting through implications, hence the request for more time. I hasten to add that the Association apparently has, in the past (before my time in DC), been heavily engaged with such legislation and helped craft a “compromise” a number of years ago.

Regarding, the request for more time, I sensed some discomfort with an extension to October 19th. We could live with something shorter, perhaps October 4th. We mainly need time to manage through our Annual Meeting (September 21-24) in terms of discussion within committee(s) and crafting a formal response (if any).

Finally, I did suggest to the Chair of the Wildlife and Hunting Heritage Conservation Council that the tribal self-governance legislation might be a good topic for discussion at an upcoming meeting. Steve Guertin was present and did not raise concerns. It is on the agenda for the September meeting.

Thanks for considering this. I am around all week and call if you want to talk.

Best regards,

Ron

From: will_meeks@fws.gov (via [Google Drive](#))
To: noreen_walsh@fws.gov
Subject: NBR-AFA-DRAFT-EA_Final_Review.pdf (noreen_walsh@fws.gov)
Date: Sunday, July 27, 2014 2:18:41 PM

I've shared an item with you.

 [NBR-AFA-DRAFT-EA_Final_Review.pdf](#)

Google Drive: create, share, and keep all your stuff in one place.



Summary of Negotiation Meetings for Annual Funding Agreement Between U.S. Fish & Wildlife Service and the Confederated Salish & Kootenai Tribes for the National Bison Range Complex

April 13, 2011

Present for the U.S. Fish & Wildlife Service (FWS): Dean Rundle, Jeff King, Tim Miller
Present for the Confederated Salish & Kootenai Tribes (CSKT): James Steele, Jr., Clayton Matt, Rich Janssen, Tom McDonald, Tony Harwood, Ruth Swaney, Rob McDonald and Brian Upton

On the morning of Wednesday, April 13, 2011, the parties commenced negotiations for a successor AFA to the FY 2009-2011 AFA that had been rescinded by a federal district court due to NEPA noncompliance. The negotiation meeting was held at the conference room of the CSKT Tribal Health Clinic in Polson, Montana, on the Flathead Indian Reservation.

After opening statements by the lead negotiators for both parties (Tribal Council Member James Steele, Jr. and FWS Refuge Supervisor Dean Rundle), Mr. Rundle updated the CSKT negotiating team about the status of FWS' draft policy regarding Tribal Self-Governance Annual Funding Agreements (AFA). Dean also reported on the NBRC's staffing status.

The parties stated their mutual preference to negotiate on the basis of programs and budget rather than on the basis of FTE's.

Mr. Rundle outlined main objectives of FWS' negotiation platform, some of which involved: positions FWS would like to retain at the NBRC under a successor AFA; modifications to the dispute resolution process contained in the FY 2009-2011 AFA; addressing job qualifications for the NBRC's lead biologist in accordance with the recent OIG report recommendations; and discussing indirect costs. Other issues were discussed as well.

Mr. Upton went over main objectives of CSKT's negotiation platform, some of which involved: positions/responsibilities CSKT would like to contract under a successor AFA; clarification of carry-over funding; clarification of fire program issues; and dispute resolution modifications.

As part of the above discussions, the parties discussed program, legal, budgetary and litigation issues. Mr. Harwood discussed some of his concerns with respect to contracting the fire program.

Around 11:30am, the parties broke for caucusing and lunch. The negotiation meeting resumed at approximately 1:30pm.

The parties discussed various supervisory models for contracted programs. The parties also discussed the issue of Intergovernmental Personnel Act (IPA) assignments, and pros/cons of such assignments.

The parties reviewed federal regulations regarding negotiations, and agreed that formal protocols that had been used for prior, facilitated, AFA negotiations were not necessary for the current AFA negotiations.

Throughout today's negotiation meeting, there was discussion of what worked well under the FY 2009-2011 AFA, and what could be improved.

The parties agreed that Mr. Upton would prepare a written summary of the negotiation meetings which would be transmitted to the FWS team for review/concurrence or suggestions for additions, revisions, etc. The parties also had some preliminary discussion on how to respond to media requests concerning the negotiations.

Today's session ended with discussion of the schedule and topics for negotiations on the following day (April 14th). The parties discussed identification of a target date for concluding negotiations. The meeting adjourned at approximately 4:15pm.

April 14, 2011

Present for FWS: Dean Rundle, Jeff King, Tim Miller

Present for CSKT: James Steele, Jr., Clayton Matt, Rich Janssen, Tom McDonald, Jim K. Steele, Ruth Swaney, Rob McDonald and Brian Upton

Discussed requesting a Solicitor's Opinion regarding how the federal and tribal parties should comply with the dictates of Freedom of Information Act (FOIA) and Indian Self-Determination and Education Assistance Act (ISDEAA) statutes and regulations when responding to FOIA requests under an AFA.

Mr. Rundle indicated he would provide copies of the FWS negotiating platform for the Tribal Council's review/consideration.

Mr. King spoke about the federal-tribal partnership, his commitment to the relationship, and his general desire to improve parts of the AFA which he found to be administratively burdensome.

Mr. Upton offered to meet separately with Mr. King, Mr. McDonald and federal legal counsel to look at the provisions Mr. King would like to revise or revisit. The parties agreed to schedule a meeting for this review.

Mr. Rundle discussed a rough organizational outline of the FWS proposal for contracting under a new AFA. The parties discussed the proposal, various staff positions, and how they would relate to each other under the proposal, as well as programmatic issues/organization under the proposal. Discussion of Tribal Self-Governance goals vis-a-vis the FWS proposal.

Mr. Steele and Mr. McDonald offered responses and posed questions regarding the proposal.

Discussion also took place regarding IPA assignments, inherently federal functions, refuge evaluation processes, and Outdoor Recreation Planner duties.

Mr. McDonald raised the idea of instituting a training program specific to the NBRC. Mr. Rundle indicated he thought that could be accomplished and also raised the possibility of cooperative arrangements with Salish-Kootenai College.

Before adjourning the meeting, the parties agreed to try to conclude negotiations by June 30, 2011, but set an informal target date of trying to complete negotiations by June 1, 2011. The parties agreed that taking the time necessary to address all issues in a mutually satisfactory manner was the primary objective, so a hard-and-fast date of conclusion was not felt to be critical at this point.

Discussed potential dates for a second negotiation meeting. Mr. Steele proposed having either Mr. Rundle or Mr. King attend a briefing for the Tribal Council regarding FWS' proposal.

The negotiations meeting adjourned just after 2:00pm.

From: [Dean Rundle](#)
To: [Rick Coleman](#); [Bud Oliveira](#)
Subject: NEPA for new AFA
Date: 11/23/2010 12:28 PM

I called Brian Upton, just to touch base with him before going to New Orleans, and let him know that we haven't forgotten about them. I asked him if the CSKT had received any response from the Director's office to their letter of two weeks ago, and he said that he had not seen anything. I told him that the direction I was hearing from HQ was that the Acting Director and DOI want to move forward with a new AFA soon, but that we were waiting to see what OIG says before proceeding with any new NEPA CATEX. Brian said he thought that was wise.

Then he told me that he had a discussion with Barry Roth and Sharon Brenna last week, and the tribe is recommending to SOL that we should not use a CATEX for a new AFA, and that they want us to do an EA, with public input, prior to sending employees back to NBR under a new AFA. They understand that will take much longer, but want to minimize chances of a repeat of September 28. I think that's good news. They do want to do some interim step under a different authority and maybe a CATEX is ok for that - but they are talking to SOL about this. Seems odd that we haven't heard anything on the management side about doing an EA?

On a different note, Elizabeth Souheaver called and said they may not need me in the gulf until Dec. 9. So, I may be around next week after all. She's supposed to call back this afternoon to let me know.

dean

From: [Thomas Irwin <ken_salazar@ios.doi.gov>](mailto:ken_salazar@ios.doi.gov)
Subject: News tip to investigate
Date: Tuesday, April 03, 2012 11:42:39 PM

Dear Mr. Salazar and Mr. Ashe,

I understand from very reliable sources that the Confederated Salish and

Kootenai Tribes (CSKT), government of the Flathead Indian Reservation, met with Gov. Brian Schweitzer this afternoon at the CSKT Tribal Council to discuss the destruction of all wild bison at the National Bison Range and to transfer Yellowstone National Park wild bison to the National Bison Range with the CSKT managing the herd. I also understand the person who is coordinating with the CSKT at the U.S. Fish and Wildlife Service (federal agency over all U.S.

national wildlife refuges, including the National Bison Range) is talking right now to the CSKT Tribal Council and Gov. Schweitzer behind closed doors.

Problem with all this is that the National Bison Range herd is the last remnant of the Northern Plains wild bison and are almost genetically pure. To destroy this herd that has been cared for by the taxpayers of the U.S. since the

National Bison Range was founded in 1908 by Theodore Roosevelt and an Act of Congress would be a violation of federal law under the National Wildlife

Management Act and the National Range Act. It would also be a violation of NEPA.

The National Bison Range was bought and paid for by the taxpayers of the U.S.A. and was one of 52 original national wildlife refuges established by Congress and President Theodore Roosevelt. The National Bison Range is NOT property of the Flathead Indian Reservation and is NOT state or tribal land. It belongs to all Americans and is federal public land under the National Wildlife Refuge System.

A governor of any state should not have any say as to the management of a national wildlife refuge or its wildlife. The sole management responsibility lies with the federal civil service workers who are trained to care a national wildlife refuge or any federal land system such as the national forests or national parks.

The National Bison Range is mostly surrounded by private land owners and NOT the Flathead Indian Reservation.

A federal judge in 2010 ruled that NEPA was violated when the CSKT contract workers were placed there and that federal workers should be returned to the positions they lost when the CSKT was awarded a secretly negotiated Annual Funding Agreement (AFA). The CSKT workers were removed from the National Bison Range by federal court order in December 2010 and also in December 2006 because of poor performance and non compliance with standard federal management practices.

This latest activity at the National Bison Range is further evidence that the CSKT is dedicated to taking over all aspects of management and funding of one of America's oldest national wildlife refuges and to destroy the existing wild bison there that are historic remnants of the original Northern Plains wild bison.

This is a tragedy and has a grave impact on the management and funding of ALL national wildlife refuges, national parks and any other federal land system, regardless if it is under the U.S. Dept. of Interior or the U.S. Dept. of Agriculture.

In the spirit of Theodore Roosevelt, I say, the wildlife and its habitat cannot speak so I must.

Susan Campbell Reneau

406-251-5116

bluemountain@montana.com glenn

From: [Susan Reneau](#)
To: ["Will Meeks"](#); ["Jim Kurth"](#); [Dan.Ashe@fws.gov](#); ["Cynthia Martinez"](#); ["Matt Hogan"](#); ["Noreen Walsh"](#)
Cc: ["Jeff King"](#); ["Mike Blenden"](#); ["King, Laura"](#)
Subject: Public Comment Period for National Bison Range Complex Environmental Assessment (EA) to be extended to 9/18
Date: Tuesday, August 26, 2014 10:08:29 AM
Attachments: [a - NBRC from all refuge managers in FWS.pdf](#)
[NBR third AFA for 2012-2016.pdf](#)

U.S. Fish and Wildlife Service Officials:

You as top leaders in the U.S. Fish and Wildlife Service are obligated to enforce all federal laws in protection and enhancement of the National Wildlife Refuge System and this proposal of a third AFA by the CSKT thumbs its nose at many levels of federal laws you as employees of the taxpayers of America are obligated to enforce.

I remind the media and citizens interested in this tragic case that the National Bison Range Complex is not a state or local park or a nice little piece of property to be turned over to anyone wishing to take it over. It is a NATIONAL wildlife refuge that belongs to ALL Americans, not just one special interest group. What happens at the National Wildlife Refuge Complex will impact ALL national wildlife refuges and all federal land systems if the third AFA is allowed to be put into place as a precedence for the management and funding of all federal land systems. That's why the tragic case at the National Bison Range Complex has a national implication.

As I have said before, it is an absolute outrage that the Confederated Salish and Kootenai Tribes (CSKT) sovereign government has had complete and unprecedented access to ALL aspects of the financial, personnel, and task aspects of the National Bison Range Complex – a NATIONAL wildlife refuge – for the past four years with exclusion by the press and general public, especially the public that cares the most about the National Wildlife Refuge System. The general public and press has only six weeks now to formulate comments without the access to documents that the CSKT has had for the last four years.

I do not fault the CSKT. You as the administrators and some political appointees of the U.S. Fish and Wildlife Service and the U.S. Dept. of Interior have allowed the CSKT to do this. The CSKT is only doing what they are allowed to do by YOU.

You have abdicated your duties to uphold ALL federal laws by allowing a special interest group and sovereign government not beholden to ANY taxpayer or ANY federal workers to take over a NATIONAL wildlife refuge, which is what this third AFA does.

I further remind all of you that TWICE the CSKT has been removed from the National Bison Range Complex for the previous two Annual Funding

Agreements and you need to examine why that happened because it goes to the heart of the problems associated with such an intrusive and illegal Annual Funding Agreement that violates many levels of federal law and insults many levels of federal workers that are dedicated to the betterment of the entire National Wildlife Refuge System, but especially the National Bison Range Complex.

I call your attention to very courageous refuge managers that wrote a letter in 2004 detailing why any AFA is intrusive and disruptive to the entire National Wildlife Refuge System. What they predicted in 2004 came true for the first and second AFAs at the National Bison Range Complex. The process forced upon qualified USFWS federal employees at the NBRC has also impacted employment practices and management throughout the system as well as negatively impacting the career opportunities of many USFWS federal workers on many employment levels.

I will certainly submit my comments about the third AFA at the NBRC by Sept. 18 and I encourage all my conservation heroes to submit comments about the impact of this third AFA to the entire National Wildlife Refuge System, but I am utterly disgusted that federal laws on the books since 1903 have been ignored by modern U.S. Fish and Wildlife Service and U.S. Dept. of Interior officials. I remind you, in case you forget, that when the National Wildlife Refuge System was first established by an Act of Congress and signed into law by then-President Theodore Roosevelt in the early 1900s for all Americans and visitors to America to enjoy. The Indian Self Determination and Education Act did not exist and this act was voted by Congress and signed into law to enhance, not destroy, the National Wildlife Refuge System.

The entire proposal, written by the CSKT, for the third Annual Funding Agreement at the National Bison Range Complex violates hiring practices required in the Civil Service Act where qualified federal workers from around the country can apply for any position within the National Wildlife Refuge System and be graded based upon their experience, education, and knowledge – not by the sovereign government they support. Furthermore, the National Wildlife Refuge Act and the Range Management Act were written to protect the overall operation of the National Wildlife Refuge System from special interest groups, individuals, sovereign governments, local and state governments and any other organization or individual since the national refuges within the National Wildlife Refuge System are NATIONAL and within a SYSTEM.

You as the well-paid federal government officials in charge of enforcing ALL federal laws that pertain to the National Wildlife Refuge System are not allowed to pick and choose which federal laws you will follow and which you will ignore. As I have said many times before, the Indian Self Determination and Education Act was not created to destroy the inner workings of the National Wildlife Refuge System or allow inherently federal positions and

tasks to be given away to sovereign governments, private contractors, individuals outside the Civil Service System or other organizations. I would object to my own husband, a certified wildlife biologist, to receive a position at the National Bison Range Complex because he is not with the Civil Service System.

The Indian Self Determination and Education Act was created to give opportunities to Native Americans to become involved in certain and limited aspects of the National Wildlife Refuge System since their ancestors were a part of our nation long before our nation was a nation. You are ignoring all other federal laws to allow one special interest group, namely a sovereign government, to dominate the operations of a NATIONAL wildlife refuge, namely the National Wildlife Refuge Complex, and to turn your backs on competent federal workers, including CSKT members and relatives at the NBRC that are federal workers, that deserve to do their jobs as part of the National Wildlife Refuge System.

I again express dismay that the CSKT has been given by you, not the CSKT, four years of complete access and federal workers throughout the process, including CSKT members stationed at the National Bison Range Complex, have been insulted and ignored throughout the process that excludes the experts from the USFWS that know the most about the management and financial balance at the National Bison Range Complex. Furthermore, those federal workers care about the National Wildlife Refuge System as a whole.

In the spirit of Theodore Roosevelt, Ding Darling, Horace Albright, Aldo Leopold, Madison Grant, George Bird Grinnell and the men of the late 1800s and early 1900s that established the National Wildlife Refuge System, National Park System, National Forest System and all federal land systems plus state game and fish agencies, I say, the wildlife and its habitat cannot speak so I must and I will and YOU as the employees of the taxpayers of America are obligated to do the same.

Susan Campbell Reneau

Author and editor of 22 books on wildlife, wildlife conservation and western history

Hunter and mother of three human hunters and two Labrador retriever hunters

719-661-4037

From: Will Meeks [mailto:Will_Meeks@fws.gov]

Sent: Tuesday, August 26, 2014 8:57 AM

To: Susan Reneau; Marvin Plenert; w.c.reffalt@comcast.net; rfowler@bluegoosealliance.org; bd643@yahoo.com; josephmazzoni@sbcglobal.net

Cc: Jeff King; Mike Blenden

Subject: Public Comment Period for NBR EA to be extended to 9/18

I have been in contact with you regarding the public comment period for the NBR EA over the past couple of weeks. Yesterday (8/25) the Regional Director decided to extend the comment period to 9/18 and the Federal Register extension notification is being routed for signature currently. Once all surnames have been obtained it will post in the Federal Register making it official.

Thank you.

Will Meeks

U.S. Fish and Wildlife Service, Region 6

ARD-NWRS and PFW

303-236-4303 (w)

720-541-0310 (c)



United States Department of the Interior

FISH AND WILDLIFE SERVICE



October 8, 2004

IN REPLY REFER TO

Memorandum

To: Refuge Manager, National Bison Range Complex

From: Managers, National Wildlife Refuge System and National Fish Hatcheries (See Attached List)

Subject: Draft Fiscal Year 2005 Annual Funding Agreement Between FWS and CSKT

Our respective offices are included in the Department of the Interior's 2004 annual list of programs that may be eligible for inclusion in annual funding agreements to be negotiated with self-governance Tribes. Since future negotiations for these types of agreements could be affected by an agreement reached between the Department of the Interior and the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT), we believe it is appropriate for us to provide our input on the draft annual funding agreement for the National Bison Range Complex. We offer these observations not as part of the public comment process, but in the spirit of maintaining effective communication, coordination, and system-wide consistency in the management of America's National Wildlife Refuge System and National Fish Hatcheries, as provided for by law.

We found the current draft agreement to be very vague. No dollar amount is identified; Attachment B does not provide adequate information for review and/or comment. The number of National Wildlife Refuge System employees impacted by the use of IPAs and RIFs is not identified. The agreement makes certain government equipment, materials, and supplies (including Real Property) available to CSKT for performing the work, but nothing specific is identified. (Except that, any horse owned by the United States is apparently part of that available property.) Attachments C and D are not available for review or comment. CSKT liaisons are not identified. Some of the activity descriptions (Attachment A) are so imprecise that it is difficult to understand exactly what CSKT will be doing for the Service. If these descriptions remain unclear it will be problematic to monitor and evaluate CSKT's performance. For example, one of the activities listed under the biological program is, *"In August and September, coordinate and conduct waterfowl banding in the physical area covered by this AFA."* There is no discussion of species to be targeted, numbers of birds to be banded, techniques to be used, State and Federal permit requirements, salvage of banding casualties, acceptable mortality rates, etc.

For the most part, timelines are not identified for completion of the activities. There is just a general statement under each activity, *"As specified in this AFA and discussed by the Refuge*

Manager and the Coordinator at weekly meetings, or as otherwise agreed upon by the Refuge Manager and the Coordinator.” We found that this draft agreement is so indistinct, it is not possible to determine: 1) exactly what CSKT will be doing for the Refuges; 2) how much CSKT will be paid to do it; 3) how CSKT’s performance will be measured; 4) how many National Wildlife Refuge System employees will be impacted; or 5) how to provide meaningful and constructive comments. We suggest postponing the review period until a more complete and comprehensible draft is developed.

One of the five activities covered under the draft AFA is “Management.” Although this section is mostly about CSKT’s management of their employees and volunteers, the use of the term management is misleading and could be confused with our inherently Federal responsibility to manage this Nation’s National Wildlife Refuges for the benefit of present and future generations of Americans. (As a sidebar, we do not believe the Service should be paying contractors to manage their own employees.) In fact, we believe the draft agreement needs to be thoroughly evaluated from the perspective of ensuring that the U.S. Fish and Wildlife Service is not contracting any functions which are inherently Federal [as prohibited by section 403(k) of the Tribal Self-Governance Act, 25 U.S.C. § 458cc (k)].

We believe certain functions outlined in the draft represent inherently Federal functions. For example, it appears that CSKT will have ultimate control over Federal records and databases (Section 13. C. and Attachment A, B.); will be collecting, controlling, and accounting for Federal monies (Attachment A, E.); and will be directing and controlling Federal employees [see Section 5 (B) of the Federal Activities Inventory Reform Act of 1998]. Certainly the management recommendations that CSKT employees will be providing to the Refuge Manager (and the small Federal staff) on environmental education, fire management, grazing, habitat management, and the use of herbicides and pesticides are extensive.

Managers necessarily rely heavily on the recommendations of their staffs when making discretionary management decisions. So even though the draft states repeatedly that the Refuge Manager will have “*final responsibility and authority*,” CSKT will have a great deal of influence over management decisions that affect Federal public lands within the National Wildlife Refuge System -- without the input of other interested parties. We do not believe that this was the Congressional intent of extending the Indian Self-Determination and Education Assistance Act to non-BIA Department of the Interior agencies. The cumulative effect of the activities that are to be performed by CSKT goes far beyond providing routine services. Some of the activities that will be provided by CSKT require a thorough knowledge of the laws and policies of the National Wildlife Refuge System. The extensive recommendations and value judgments made by CSKT will in effect bind the U.S. Fish and Wildlife Service to a course of action. We believe, at a minimum, National Wildlife Refuge System employees with expertise in each of the major program fields need to be retained by the Service to validate or refute recommendations made by CSKT (or any other outside source).

There is a striking lack of information on budgets, costs, and personnel actions associated with this annual funding agreement. There are also other management issues that need to be addressed more clearly in the draft. For example, the safety and liability aspects of using a sovereign Tribe to accomplish hazardous work (fire management, bison round-ups, use of

herbicides and pesticides, etc.) are not clear. It is also unclear how the Refuge's extensive use of volunteers will be affected by this agreement. And finally, it is not apparent to us how this agreement will benefit the National Bison Range Complex and/or the National Wildlife Refuge System.

Although the draft AFA states that, "*The FWS will not provide the CSKT any funds or other consideration to pay for indirect costs . . .*" there is a provision in the draft for subsequent AFA's to include indirect or contract support costs. To ensure consistency within the National Wildlife Refuge System, we believe the issue of "allowable indirect costs" (25 CFR 1000.137) the Service will include in annual funding agreements for 403(c) programs needs to be reviewed, discussed, and resolved by Service leaders at the national level. The U.S. Fish and Wildlife Service, and all government programs, has been placed under increasing financial scrutiny (KPMG audits, OMB reviews, GAO and OIG reports, etc.) to ensure that public monies are spent wisely. We as an agency should ensure that annual funding agreements with Tribal Governments are held to the same level of accountability that we apply to all of our other programs. [We also note, the draft agreement indicates CSKT will be paid for the "*management, oversight, planning, reporting, and the supervision of CSKT Employees, CSKT Contractors, and CSKT Volunteers*" (Attachment A. Section 2). Are these not "indirect costs associated with performing the Activities covered by this FY 2005 AFA"?]

As a minor point, "Operational Standards" are defined in the draft as, "*a requirement of a law, regulation, written policy, approved written plan, or published FWS standard, whether or not existing on the date of execution of this AFA, that governs the performance of an Activity, and which the FWS would have to meet if the FWS itself performed the Activity.*" Under Section 8, CSKT is required to perform each Activity in compliance with all applicable Operational Standards. Although we fully support this concept, as written, the draft would require CSKT employees to take safety and administrative training FWS employees are required to take by policy (e.g., Basic Watercraft and Aircraft Safety, EEO/Diversity, Ethics, First Aid/CPR, Information Technology Security, Hazard Communication, numerous National Wildland Fire Training Courses, New Employee Orientation, Sexual Harassment, Supervisory Training . . .). This would certainly complicate implementation of the agreement. We doubt that the intent of this provision was to require this level of compliance with our operational standards, but whatever the case, the requirement needs to be clarified.

From our years of experience and perspectives as managers of National Wildlife Refuges and National Fish Hatcheries, the agreement as written is too broad and comprehensive and lacks the specificity needed to make it work, or to even support a meaningful review. Throughout the agreement, the Refuge Manager clearly remains responsible and accountable for all Refuge operations. However, the agreement does not ensure that the Manager has the authority to accomplish the Refuge mission. If the responsibility is there, which it clearly is, the authority must also be ensured. **No Refuge Manager, no matter how skilled, could successfully implement this agreement as it is written.**

The National Wildlife Refuge System has had many successes in establishing and maintaining government-to-government relationships with Native American organizations and tribes, and we fully endorse Region 6's efforts to work more closely with Tribal Governments in the

management of America's National Wildlife Refuges. Many of us are working on Refuges that have strong positive partnerships with local Tribes. However, we firmly believe that any annual funding agreements under the Tribal Self-Governance Act with Native American tribes for work on National Wildlife Refuges or National Fish Hatcheries should: 1) add value to the program, 2) have specific performance standards and ensure fiscal accountability, 3) be accomplished in a sound and competent manner, 4) be cost effective to the U.S. Fish and Wildlife Service and the American public, and 5) exclude inherently Federal functions and "programs where the statute establishing the program does not authorize the participation sought by the Tribe." As currently written, it is not clear that the draft annual funding agreement with CSKT meets any of these five criteria.

cc: Assistant Secretary for Fish and Wildlife and Parks
Deputy Assistant Secretary for Fish and Wildlife and Parks
Director, U.S. Fish and Wildlife Service
Chief, National Wildlife Refuge System
Regional Director, Region 6

(List of managers who developed and endorsed this memorandum)

Margaret Anderson, Refuge Manager, Agassiz NWR
Greg Siekaniec, Refuge Manager, Alaska Maritime NWR
Daryle Lons, Refuge Manager, Alaska Peninsula and Becharof NWR Complex
Richard Voss, Refuge Manager, Arctic NWR
Eric T. Nelson, Refuge Manager, Humboldt Bay NWR Complex
Bill Schaff, Refuge Manager, Innoko NWR
Rick Poetter, Refuge Manager, Izembek NWR
Merry Maxwell, Acting Refuge Manager, Kanuti NWR
Robin West, Refuge Manager, Kenai NWR
Leslie Kerr, Refuge Manager, Kodiak NWR
Dianna Ellis, Refuge Manager, Kootenai NWR
Mike Spindler, Refuge Manager/Pilot, Koyukuk and Nowitna NWR Complex
Mary Stefanski, Refuge Manager, Mille Lacs and Rice Lake NWRs
Jean Takekawa, Refuge Manager, Nisqually NWR Complex
Roy Lowe, Project Leader, Oregon Coast National Wildlife Refuge Complex
Paul Hayduk, Project Leader, Quinault National Fish Hatchery
Lee Anne Ayres, Refuge Manager, Selawik NWR
Craig Heflebower, Acting Refuge Manager, Sequoyah and Ozark Plateau NWR Complex
Edward Merritt, Refuge Manager, Tetlin NWR
Paul Liedberg, Refuge Manager, Togiak NWR
Kevin Ryan, Refuge Manager, Washington Maritime NWR Complex
Mike Rearden, Refuge Manager, Yukon Delta NWR
Ted Heuer, Refuge Manager, Yukon Flats NWR



**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 (“NWRSA”), 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 NWRSA, 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 NWRSA. 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. §§ 450l(b), 450l(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:



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- 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 be 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. §§ 450l(b) and 450l(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 NWRSA (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
Chairman, CSKT Tribal Council

Date



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: [Noreen Walsh](#)
To: [Sabrina Chandler](#)
Cc: [Rowan Gould](#); [Steve Guertin](#); [Dan Ashe](#); [Matt Hogan](#)
Subject: R6 Secretary's Report
Date: Tuesday, January 21, 2014 2:27:24 PM

National Bison Range Annual Funding Agreement (AFA) – The Service is working to finalize a new AFA with the Confederated Salish-Kootenai Tribe (CSKT) (the previous AFA was suspended as a result of litigation.) Currently, the Environmental Assessment (EA) for the AFA is underway with the goal of making it available to the public in the summer. The Council is unhappy with the speed of our progress, yet we continue to work to develop a successful relationship with the CSKT and have been engaging in regular communication with the Council on the status of our planning document. We anticipate the EA to generate substantial public interest, particularly from the groups that litigated the previous AFA.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

The Mountain-Prairie Region of the U. S. Fish and Wildlife Service: *We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: [Noreen Walsh](#)
To: [Sabrina Chandler](#)
Cc: [Rowan Gould](#); [Steve Guertin](#); [Dan Ashe](#); [Matt Hogan](#)
Subject: R6 Secretary's Report
Date: Monday, January 27, 2014 12:47:22 PM

Grassland Loss in the Prairie Pothole Region of the Great Plains – a Crisis in the Prairies: The FWS remains focused on addressing the crisis in the prairies. In FY13, the Service acquired over 97,000 acres in the Prairie Pothole Region using \$51M in federal funding. Since 1932, the Service has acquired over 4.6 million acres in the PPR, in both R6 and R3. The backlog of willing landowners in the PPR is extensive, and **we are currently holding 830 grassland easement cases, and 680 wetland easement cases from landowners waiting for funding.** Additionally, the FY14 Omnibus Appropriations Act directs \$8.65M to the Dakota Grasslands Conservation Area. We are well situated to fully utilize all funding sources (MB and LWCF) to acquire grassland and wetland easement acres in FY14. Habitat loss continues to rapidly expand throughout the Northern Great Plains, with statewide grassland loss estimates exceeding 110,000 acres annually in the Dakotas alone.

UPDATE: National Bison Range Annual Funding Agreement (AFA) –Representatives from the Confederated Salish and Kootenai Tribe (CSKT) are testifying at Congressional hearings regarding Tribal Self Governance during the week of January 27, 2014. During this time, they intend to meet with the Director-USFWS, Dan Ashe, including national and regional leadership to discuss the negotiated AFA. The NEPA compliance document is currently being drafted with internal review (including review by the Tribe) to occur in April, the draft proposed action is the agreement the CSKT and FWS negotiated in 2012.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

The Mountain-Prairie Region of the U. S. Fish and Wildlife Service: We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.

From: [Susan Reneau](#)
To: "Jim Kurth"; Dan_Ashe@fws.gov
Cc: will_meeks@fws.gov; "Noreen Walsh"; "Matt Hogan"
Subject: Ramifications of the third Annual Funding Agreement at the National Bison Range Complex
Date: Friday, August 22, 2014 10:26:36 PM
Attachments: [a - NBRC from all refuge managers in FWS.pdf](#)
[NBRC letter to extend deadline for comments to Nov. 3, 2014.docx](#)

Hi Jim and Dan and other U.S. Fish and Wildlife officials,

I hope you seriously consider the negative ramifications of such an Annual Funding Agreement written by the CSKT that twice have been removed from the National Bison Range Complex.

I know your Secretary of the Interior thinks highly of the CSKT but seems to ignore the negative behavior of CSKT contract workers from previous AFAs and the violation of federal law that the first, second third AFAs create. The previous two AFAs ended in disaster and demoralization of qualified federal workers stationed at the National Bison Range Complex, including USFWS workers that happened to be CSKT members. Thanks to those failed AFAs, no one in the U.S. Fish and Wildlife Service is eager to work at the National Bison Range Complex when in the past it was a plum assignment only awarded to the best professionals and technicians in the National Wildlife Refuge System.

The Indian Self Determination Act was never meant to overturn or replace other federal laws that were passed to protect the National Wildlife Refuge System and other federal land systems. These laws were passed long before the Indian Self Determination Act came into being.

What was said by many outstanding refuge managers in 2004 remains true today. Those courageous refuge managers were willing to write the attached letter to protect the integrity of the entire system. They knew that the AFA was a precedence that had negative ramifications for the entire National Wildlife Refuge System.

I met with Ms. Cynthia Martinez in your new offices outside Washington, D.C. as scheduled and delivered a letter to her that I also gave to her to give to you and Mr. Ashe. I am disturbed that she thinks that the National Bison Range Complex AFA is strictly a regional decision and that you and Mr. Ashe have nothing to do with the decision that will destroy the entire National Wildlife Refuge System.

Just in case you didn't see the letter yet due to your busy travel schedules, I've attached the letter I gave to Ms. Martinez this past Tuesday, Aug. 18, 2014.

You need to defend the federal laws you are hired to defend on behalf of the National Wildlife Refuge System that help wildlife and its habitat. That is your obligation.

Sincerely and in the spirit of Theodore Roosevelt, I say, the wildlife and its habitat cannot speak so I must and so must YOU.

Susan Campbell Reneau

-----Original Message-----

From: Jim Kurth [mailto:jim_kurth@fws.gov]
Sent: Thursday, August 14, 2014 8:47 PM
To: Susan Reneau
Subject: Re: Please have Ms. Martinez call me on my cell phone

I've asked Cynthia's executive assistant to reach out and schedule a time.

Sent from my iPhone

> On Aug 14, 2014, at 6:03 PM, Susan Reneau <bluemountain@montana.com> wrote:

>
> Hi Jim,
>
> I am in Washington, D.C. right now and would like to schedule a time to meet with Ms. Martinez
before I return to Missoula on Thursday afternoon of next week. I'm available tomorrow, Monday,
Tuesday and Wednesday.
>
> My cell phone is 719-661-4037.
>
> Susan Reneau
>
>
>
>

COLORADO'S BIGGEST BUCKS AND BULLS

5425 Skyway Drive
Missoula, Montana 59804-9254

(719) 661-4037 (cell & texting)

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bluemountain@montana.com

www.coloradosbiggestbucksandbulls.com



*John Phute's typical American Elk, B&C
World's Record from 1898 to 1998.*



*Steve Herndon's 306-2/8 point non-typical
mule deer from Norwood.*

August 14, 2014

Dear U.S. Fish and Wildlife Service and U.S. Department of Interior:

The National Wildlife Refuge System was begun by the U.S. Congress as elected by the citizens of the United States of America and signed into existence by President Theodore Roosevelt in 1903. One of the first national wildlife refuges to be established during his presidency was the National Bison Range Complex that was twice purchased from the Confederated Salish and Kootenai Tribes (CSKT) from taxpayer money and set aside as a refuge for big game, especially wild bison from the original herds of the northern plains. This refuge was established in 1908 and money collected throughout the nation paid for the core herd of bison. My great aunt who helped raise me was one of the school children that donated pennies, buffalo nickels and dimes to raise money for the establishment of the National Bison Range and its herd of wild bison.

So it is with great concern that I write to say that a third Annual Funding Agreement is proposed and comments are expected to be submitted by September 3, 2014. Four years the CSKT were allowed to review all aspects of the operation and funding of the NBRC without any public involvement yet the public is at this time only given 30 days to comment on a proposal that would turn most operations, tasks and duties as well as all financial management over to the CSKT, a sovereign government not obligated to communicate with the public about how they would operate this national wildlife refuge, thus setting a precedence as to how other national wildlife refuges and other federal lands under the U.S. Department of Interior would be operated if other sovereign Indian governments decided they, too, wanted to take over operations of all national wildlife refuges in Alaska and any one of the hundreds of national wildlife refuges close in territory to an Indian reservation or Indian "native" land.

I therefore respectfully demand as a member of the public and a citizen of the United States of America to allow the comment period to extend until November 3, 2014 so more detailed and thoughtful comments can be made from concerned citizens. I further request that the original Environmental Assessment written by NBRC Project Leader Jeff King also be released to the press and public so a comparison can be made of the original document and the document released for comment a few days ago.

In the spirit of Theodore Roosevelt, Ding Darling and the flying blue goose, I say, the wildlife and its habitat cannot speak so I must and I will and so must you as protectors of the National Wildlife Refuge System do the same by upholding ALL federal laws written, voted and signed into law by the representatives of all American citizens.

Susan Campbell Reneau



United States Department of the Interior

FISH AND WILDLIFE SERVICE



October 8, 2004

IN REPLY REFER TO

Memorandum

To: Refuge Manager, National Bison Range Complex

From: Managers, National Wildlife Refuge System and National Fish Hatcheries (See Attached List)

Subject: Draft Fiscal Year 2005 Annual Funding Agreement Between FWS and CSKT

Our respective offices are included in the Department of the Interior's 2004 annual list of programs that may be eligible for inclusion in annual funding agreements to be negotiated with self-governance Tribes. Since future negotiations for these types of agreements could be affected by an agreement reached between the Department of the Interior and the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT), we believe it is appropriate for us to provide our input on the draft annual funding agreement for the National Bison Range Complex. We offer these observations not as part of the public comment process, but in the spirit of maintaining effective communication, coordination, and system-wide consistency in the management of America's National Wildlife Refuge System and National Fish Hatcheries, as provided for by law.

We found the current draft agreement to be very vague. No dollar amount is identified; Attachment B does not provide adequate information for review and/or comment. The number of National Wildlife Refuge System employees impacted by the use of IPAs and RIFs is not identified. The agreement makes certain government equipment, materials, and supplies (including Real Property) available to CSKT for performing the work, but nothing specific is identified. (Except that, any horse owned by the United States is apparently part of that available property.) Attachments C and D are not available for review or comment. CSKT liaisons are not identified. Some of the activity descriptions (Attachment A) are so imprecise that it is difficult to understand exactly what CSKT will be doing for the Service. If these descriptions remain unclear it will be problematic to monitor and evaluate CSKT's performance. For example, one of the activities listed under the biological program is, *"In August and September, coordinate and conduct waterfowl banding in the physical area covered by this AFA."* There is no discussion of species to be targeted, numbers of birds to be banded, techniques to be used, State and Federal permit requirements, salvage of banding casualties, acceptable mortality rates, etc.

For the most part, timelines are not identified for completion of the activities. There is just a general statement under each activity, *"As specified in this AFA and discussed by the Refuge*

Manager and the Coordinator at weekly meetings, or as otherwise agreed upon by the Refuge Manager and the Coordinator.” We found that this draft agreement is so indistinct, it is not possible to determine: 1) exactly what CSKT will be doing for the Refuges; 2) how much CSKT will be paid to do it; 3) how CSKT’s performance will be measured; 4) how many National Wildlife Refuge System employees will be impacted; or 5) how to provide meaningful and constructive comments. We suggest postponing the review period until a more complete and comprehensible draft is developed.

One of the five activities covered under the draft AFA is “Management.” Although this section is mostly about CSKT’s management of their employees and volunteers, the use of the term management is misleading and could be confused with our inherently Federal responsibility to manage this Nation’s National Wildlife Refuges for the benefit of present and future generations of Americans. (As a sidebar, we do not believe the Service should be paying contractors to manage their own employees.) In fact, we believe the draft agreement needs to be thoroughly evaluated from the perspective of ensuring that the U.S. Fish and Wildlife Service is not contracting any functions which are inherently Federal [as prohibited by section 403(k) of the Tribal Self-Governance Act, 25 U.S.C. § 458cc (k)].

We believe certain functions outlined in the draft represent inherently Federal functions. For example, it appears that CSKT will have ultimate control over Federal records and databases (Section 13. C. and Attachment A, B.); will be collecting, controlling, and accounting for Federal monies (Attachment A, E.); and will be directing and controlling Federal employees [see Section 5 (B) of the Federal Activities Inventory Reform Act of 1998]. Certainly the management recommendations that CSKT employees will be providing to the Refuge Manager (and the small Federal staff) on environmental education, fire management, grazing, habitat management, and the use of herbicides and pesticides are extensive.

Managers necessarily rely heavily on the recommendations of their staffs when making discretionary management decisions. So even though the draft states repeatedly that the Refuge Manager will have “*final responsibility and authority*,” CSKT will have a great deal of influence over management decisions that affect Federal public lands within the National Wildlife Refuge System -- without the input of other interested parties. We do not believe that this was the Congressional intent of extending the Indian Self-Determination and Education Assistance Act to non-BIA Department of the Interior agencies. The cumulative effect of the activities that are to be performed by CSKT goes far beyond providing routine services. Some of the activities that will be provided by CSKT require a thorough knowledge of the laws and policies of the National Wildlife Refuge System. The extensive recommendations and value judgments made by CSKT will in effect bind the U.S. Fish and Wildlife Service to a course of action. We believe, at a minimum, National Wildlife Refuge System employees with expertise in each of the major program fields need to be retained by the Service to validate or refute recommendations made by CSKT (or any other outside source).

There is a striking lack of information on budgets, costs, and personnel actions associated with this annual funding agreement. There are also other management issues that need to be addressed more clearly in the draft. For example, the safety and liability aspects of using a sovereign Tribe to accomplish hazardous work (fire management, bison round-ups, use of

herbicides and pesticides, etc.) are not clear. It is also unclear how the Refuge's extensive use of volunteers will be affected by this agreement. And finally, it is not apparent to us how this agreement will benefit the National Bison Range Complex and/or the National Wildlife Refuge System.

Although the draft AFA states that, "*The FWS will not provide the CSKT any funds or other consideration to pay for indirect costs . . .*" there is a provision in the draft for subsequent AFA's to include indirect or contract support costs. To ensure consistency within the National Wildlife Refuge System, we believe the issue of "allowable indirect costs" (25 CFR 1000.137) the Service will include in annual funding agreements for 403(c) programs needs to be reviewed, discussed, and resolved by Service leaders at the national level. The U.S. Fish and Wildlife Service, and all government programs, has been placed under increasing financial scrutiny (KPMG audits, OMB reviews, GAO and OIG reports, etc.) to ensure that public monies are spent wisely. We as an agency should ensure that annual funding agreements with Tribal Governments are held to the same level of accountability that we apply to all of our other programs. [We also note, the draft agreement indicates CSKT will be paid for the "*management, oversight, planning, reporting, and the supervision of CSKT Employees, CSKT Contractors, and CSKT Volunteers*" (Attachment A. Section 2). Are these not "indirect costs associated with performing the Activities covered by this FY 2005 AFA"?]

As a minor point, "Operational Standards" are defined in the draft as, "*a requirement of a law, regulation, written policy, approved written plan, or published FWS standard, whether or not existing on the date of execution of this AFA, that governs the performance of an Activity, and which the FWS would have to meet if the FWS itself performed the Activity.*" Under Section 8, CSKT is required to perform each Activity in compliance with all applicable Operational Standards. Although we fully support this concept, as written, the draft would require CSKT employees to take safety and administrative training FWS employees are required to take by policy (e.g., Basic Watercraft and Aircraft Safety, EEO/Diversity, Ethics, First Aid/CPR, Information Technology Security, Hazard Communication, numerous National Wildland Fire Training Courses, New Employee Orientation, Sexual Harassment, Supervisory Training . . .). This would certainly complicate implementation of the agreement. We doubt that the intent of this provision was to require this level of compliance with our operational standards, but whatever the case, the requirement needs to be clarified.

From our years of experience and perspectives as managers of National Wildlife Refuges and National Fish Hatcheries, the agreement as written is too broad and comprehensive and lacks the specificity needed to make it work, or to even support a meaningful review. Throughout the agreement, the Refuge Manager clearly remains responsible and accountable for all Refuge operations. However, the agreement does not ensure that the Manager has the authority to accomplish the Refuge mission. If the responsibility is there, which it clearly is, the authority must also be ensured. **No Refuge Manager, no matter how skilled, could successfully implement this agreement as it is written.**

The National Wildlife Refuge System has had many successes in establishing and maintaining government-to-government relationships with Native American organizations and tribes, and we fully endorse Region 6's efforts to work more closely with Tribal Governments in the

management of America's National Wildlife Refuges. Many of us are working on Refuges that have strong positive partnerships with local Tribes. However, we firmly believe that any annual funding agreements under the Tribal Self-Governance Act with Native American tribes for work on National Wildlife Refuges or National Fish Hatcheries should: 1) add value to the program, 2) have specific performance standards and ensure fiscal accountability, 3) be accomplished in a sound and competent manner, 4) be cost effective to the U.S. Fish and Wildlife Service and the American public, and 5) exclude inherently Federal functions and "programs where the statute establishing the program does not authorize the participation sought by the Tribe." As currently written, it is not clear that the draft annual funding agreement with CSKT meets any of these five criteria.

cc: Assistant Secretary for Fish and Wildlife and Parks
Deputy Assistant Secretary for Fish and Wildlife and Parks
Director, U.S. Fish and Wildlife Service
Chief, National Wildlife Refuge System
Regional Director, Region 6

(List of managers who developed and endorsed this memorandum)

Margaret Anderson, Refuge Manager, Agassiz NWR
Greg Siekaniec, Refuge Manager, Alaska Maritime NWR
Daryle Lons, Refuge Manager, Alaska Peninsula and Becharof NWR Complex
Richard Voss, Refuge Manager, Arctic NWR
Eric T. Nelson, Refuge Manager, Humboldt Bay NWR Complex
Bill Schaff, Refuge Manager, Innoko NWR
Rick Poetter, Refuge Manager, Izembek NWR
Merry Maxwell, Acting Refuge Manager, Kanuti NWR
Robin West, Refuge Manager, Kenai NWR
Leslie Kerr, Refuge Manager, Kodiak NWR
Dianna Ellis, Refuge Manager, Kootenai NWR
Mike Spindler, Refuge Manager/Pilot, Koyukuk and Nowitna NWR Complex
Mary Stefanski, Refuge Manager, Mille Lacs and Rice Lake NWRs
Jean Takekawa, Refuge Manager, Nisqually NWR Complex
Roy Lowe, Project Leader, Oregon Coast National Wildlife Refuge Complex
Paul Hayduk, Project Leader, Quinault National Fish Hatchery
Lee Anne Ayres, Refuge Manager, Selawik NWR
Craig Heflebower, Acting Refuge Manager, Sequoyah and Ozark Plateau NWR Complex
Edward Merritt, Refuge Manager, Tetlin NWR
Paul Liedberg, Refuge Manager, Togiak NWR
Kevin Ryan, Refuge Manager, Washington Maritime NWR Complex
Mike Rearden, Refuge Manager, Yukon Delta NWR
Ted Heuer, Refuge Manager, Yukon Flats NWR

From: [Rick Coleman](#)
To: [Dean Rundle](#)
Subject: Re: AFA Negotiation Brief
Date: 03/30/2011 08:11 AM

The RD is out all week on vacation. The DRD will be back on Thurs and Friday. I have my weekly meeting with her Thurs. at 2pm. I can ask then.
Rick

Rick Coleman
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

▼ Dean Rundle/R6/FWS/DOI

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

To Rick Coleman/R6/FWS/DOI@FWS
cc

03/30/2011 07:41 AM

Subject Re: AFA Negotiation Brief 

Rick: I haven't heard anything back from 4th floor on this issue. Negotiations start two weeks from today and I would really like to get this back to WO ASAP - and maybe get an answer before we sit down with the CSKT. Can I ask about this, or do you want to do that?

dean

▼ Rick Coleman/R6/FWS/DOI

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

To Stephen Guertin/R6/FWS/DOI, Noreen Walsh/R6/FWS/DOI
cc Dean Rundle/R6/FWS/DOI, Bud Oliveira/R6/FWS/DOI
Subject AFA Negotiation Brief

03/25/2011 03:03 PM

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

Thank you.
Rick

[attachment "AFA32511.doc" deleted by Dean Rundle/R6/FWS/DOI]

Rick Coleman
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

From: [Ashe, D M](#)
To: [Walsh, Noreen](#)
Subject: Re: advice
Date: Thursday, October 11, 2012 9:03:46 PM

Hey Noreen. Your instincts are right on. Keep your plans for Bismarck.

Communications are good.

Dan.

Dan Ashe
Director, U.S. Fish and Wildlife Service

On Oct 11, 2012, at 7:16 PM, "Walsh, Noreen" <noreen_walsh@fws.gov> wrote:

Dan,

I am sorry to bother you – I wanted to seek your advice. My conflict with this CSKT bison meeting is an all-employee surrogate species workshop I planned to host in Bismarck and meetings I have set up with Steve Adair of DU and Terry Steinwand of NDG&F while I am in town.

I believe Dean Rundle and Jeff King could represent us well at the CSKT meeting, so I didn't immediately offer to change my plans. However, I get how important the bison issue has become and I could certainly switch my plans and have the ARDs host the workshop if you would prefer me to attend the CSKT meeting.

Also, please let me know if I'm communicating too much or too little with you on any of these topics – any feedback welcome.

Thanks very much,

Noreen

Noreen Walsh
Deputy Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

From: Silva-Banuelos, Jorge G
Sent: Thursday, October 11, 2012 4:29 PM
To: Walsh, Noreen; Torbit, Stephen
Cc: Ashe, D M; Hogan, Matt

Subject: RE: CSKT Meeting Agenda

Rachel is wondering if Steve Guertin is available to attend. Can you check with him for me?

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks
Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | ☎ 202.208.6211 (direct)
jorge@ios.doi.gov

From: Walsh, Noreen
Sent: Thursday, October 11, 2012 5:10 PM
To: Silva-Banuelos, Jorge G; Torbit, Stephen
Cc: Ashe, D M; Hogan, Matt
Subject: RE: CSKT Meeting Agenda

Jorge,
I would have liked to attend, but unfortunately I am also committed to an event in Bismarck, North Dakota that same day. I have confirmed that Jeff King and Dean Rundle will be there to represent the Service.
Noreen

Noreen Walsh
Deputy Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

From: Silva-Banuelos, Jorge G
Sent: Thursday, October 11, 2012 12:51 PM
To: Walsh, Noreen; Torbit, Stephen
Subject: FW: CSKT Meeting Agenda

Hi Noreen and Steve –

Rachel and Dan were discussing this CSKT meeting today, and they suggested that we invite one of you to attend as well. Are either of you willing/able to go? Thanks.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks
Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | ☎ 202.208.6211 (direct)
jorge@ios.doi.gov

From: Silva-Banuelos, Jorge G
Sent: Wednesday, October 10, 2012 5:18 PM
To: Wenk, Dan; Dave Hallac; King, Jeff; Rundle, Dean; KILLSBACK, Dion K; Laverdure, Del; Hanley, Jacquelynn (Kallie); Doherty, Stephen; 'Bert.Frost@nps.gov'
Subject: CSKT Meeting Agenda

Greetings all –

Below (and attached) you will find the CSKT meeting agenda for Wednesday, October 17, 2012. I'd like to ask for your assistance in preparing some briefing statements ahead of this meeting. If possible, can you get them to us no later than COB Friday?

FWS (Dean/Jeff) – Can you provide us with a briefing statement on item # 2? FWS already put together a recent memo that I think will work for item #4 (also attached)

NPS (Dave) – Item # 6. Can you send us a copy of the final letter that went out to tribes ahead of the calls? The calls I believe are set for early next week, so you all should be prepared to discuss how they went.

BIA/ASIA (Dion/Kallie) – Item # 7. Can you send us a copy of the final letter that went out to Wind River?

Thanks for your help.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks
Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | ☎ 202.208.6211 (direct)
jorge@ios.doi.gov

Wednesday, October 17, 2012

8:00 am Depart Missoula, MT and travel by vehicle to Pablo, MT

9:00 am Meeting with Confederated Salish and Kootenai Tribes

Draft Agenda

1. Welcome, Invocation (CSKT), Introductions of all attendees
2. The Annual Funding Agreement - Status, timeline, issues of concern
3. General discussion on the status of the Secretary's Bison Directive and any new developments
4. Discussion of possible relocation of Yellowstone –origin quarantine bison to the National Bison Range (NBR)
 - <!--[if !supportLists]-->a) <!--[endif]-->Current status of quarantine bison
 - <!--[if !supportLists]-->b) <!--[endif]-->Key considerations

that are being evaluated

<!--[if !supportLists]-->a. <!--[endif]-->Genetics
<!--[if !supportLists]-->b. <!--[endif]-->Health
<!--[if !supportLists]-->c. <!--[endif]-->NEPA
Compliance
<!--[if !supportLists]-->d. <!--[endif]-->Logistics
(roundup, management, agreements)
<!--[if !supportLists]-->c) <!--[endif]-->Issues, Concerns,
and Opportunities

5. Discussion of the possibility of relocation of YNP Bison to the CSKT reservation lands outside of the National Bison Range. Is there interest, what are the constraints/opportunities?

6. National Park Service tribal consultation on disposition of surplus bison

7. Status of Wind River Reservation's request for Turner Ranch bison

8. Next steps

Noon Depart to Missoula, MT

From: [Noreen Walsh](#)
To: [Leith Edgar](#)
Cc: [Matt Hogan](#); [Marla Trollan](#); [John Bryan](#); [Will Meeks](#)
Subject: Re: AFA
Date: Wednesday, August 06, 2014 8:01:37 AM

glad we are ready for it!

will will be awesome.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

On Aug 6, 2014, at 8:54 AM, Leith Edgar <leith_edgar@fws.gov> wrote:

Thanks, Noreen, you beat me to it.

Also, we've got two interviews lined up for Will today: Montana Public Radio & EE News. The latter will very likely involve us explaining what happens if & when an employee refuses to sign an IPA. The reporter brought the topic up when I queried her on the info she wants to go over today.

Leith

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Wednesday, August 06, 2014 5:25 AM
To: Leith Edgar; marla Trollan; John Bryan
Cc: Matt Hogan
Subject: AFA

Nice work Leith!

FWS PROPOSES TRIBAL DEAL ON BISON RANGE MANAGEMENT. The [AP](#) (8/6) reports that the FWS has “proposed a new agreement to share management of the National Bison Range with American Indian tribes claiming historical and cultural ties to the land, following the failure of two previous deals in the past decade.” Under the proposed agreement, the Confederated Salish and Kootenai Tribes would “be responsible for running the range’s biology, fire management, maintenance and visitor services programs, with the government-employed refuge manager signing off on all plans.”

Coverage by the AP was also picked up by the [Great Falls \(MT\) Tribune](#) (8/5, 90K) and the [San Francisco Chronicle](#) (8/6, Volz, 2.87M).

Noreen Walsh
Regional Director
Mountain-Prairie Region

U. S. Fish and Wildlife Service

From: [Noreen Walsh](#)
To: [Will Meeks](#)
Cc: [Matt Hogan](#)
Subject: RE: Alternatives off to contractor
Date: Monday, October 21, 2013 12:39:47 PM

I don't think so, but I am not sure. Maybe we can chat this afternoon when you come up.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Friday, October 18, 2013 3:40 PM
To: Noreen Walsh
Cc: Matt Hogan
Subject: FW: Alternatives off to contractor

Is this something that you'd like to be involved with? Maybe I can get them to have the meeting here??

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, Laura [mailto:laura_king@fws.gov]
Sent: Friday, October 18, 2013 3:21 PM
To: Jeff King; Brendan Moynahan; Will Meeks
Subject: Alternatives off to contractor

I have sent the draft EA to Bill Mangle, our contractor with ERO, and he will be reviewing the document for at least the next two weeks. At some point, we plan to have a 2-3 day consequences analysis workshop here at NBR which Bill will facilitate. Before we start picking any dates **I wanted to invite Will to join us.** I think it would be very beneficial to have you here for these discussions. These analysis workshops are definitely the heart of the EA process.

I'll send out a doodle to see which dates, starting next month, will work for everyone.

Thanks,

Laura

Laura King, Refuge Program Specialist

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

From: [Matt Hogan](#)
To: [John Baughman](#)
Subject: Re: Attached Blue Goose Alliance Comments from 2009 that list federal laws violated by the AFA, which apply even more to the third AFA at the NBRC.
Date: Tuesday, August 26, 2014 7:41:34 PM

No comment as we will get a FOIA.

> On Aug 26, 2014, at 4:50 PM, John Baughman <john.baughman@bresnan.net> wrote:
>
> How can you piss off such a nice lady?
>
>
>
>
>
>
> --- the forwarded message follows ---
> <Blue Goose Alliance 2009 complaint about second AFA at National Bison Range.pdf>
> <NBR third AFA for 2012-2016.pdf>
> <a - NBRC from all refuge managers in FWS.pdf>

From: [Will Meeks](#)
To: [Marla Trollan](#); [Matt Hogan](#)
Subject: RE: Bison AFA Summary Document
Date: Wednesday, July 23, 2014 8:40:50 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Bison AFA two pager-FINAL- WMdocx.docx](#)

See attached with comments, edits.

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: Marla Trollan [mailto:Marla_Trollan@fws.gov]
Sent: Wednesday, July 23, 2014 8:14 AM
To: Matt Hogan
Cc: Will Meeks
Subject: Bison AFA Summary Document
Importance: High

Matt—Betsy asked for a summary document of the NBR AFA controversy. I've attached a final version for your review...I'd like to send this to her this morning per her request. Please let me know if you have any concerns.

Thanks,
-Marla

Marla Trollan
Assistant Regional Director
External Affairs
U.S. Fish and Wildlife Service
Mountain-Prairie Region
303-236-4510 / 720-648-2542
<http://www.fws.gov/mountain-prairie/>



National Bison Range Annual Funding Agreement

OVERVIEW

As part of its Tribal trust responsibilities and the Self Governance Act, the U.S. Fish and Wildlife Service (Service) ~~has developed~~ negotiated a draft Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT) in March 2012. Per the National Environmental Protection Act (NEPA), we have developed an Environmental Assessment (EA) to analyze the proposed action (draft AFA) as well as other alternatives. ~~for an Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT).~~ This proposed action would allow CSKT to manage and implement the visitor services, biology, maintenance, and fire programs on the National Bison Range Complex (refuge complex). The units included in this proposal are the National Bison Range, Pablo National Wildlife Refuge, Ninepipe National Wildlife Refuge, and nine waterfowl production areas; all of which are within the boundaries of the Flathead Indian Reservation in Lake and Sanders counties in Montana.

The CSKT requested negotiations for this AFA under the authority of Title IV, Section 403(c) of the Indian Self Determination and Education Assistance Act, as amended. This is the third attempt at a negotiated agreement with CSKT in 10 years. A previous attempt was litigated by Public Employees for Environmental Responsibility (PEER) and the Blue Goose Alliance.

REASON FOR CONTROVERSY

In the proposed action (alternative B), the Service would retain three of the 11 positions responsible for managing the refuge complex, including the refuge manager, deputy refuge manager, and law enforcement officer. The remaining positions would be transferred to CSKT. Reasons for the current controversy are many including: litigants in the past have claimed that there is damage to the natural resources of the refuge complex due to staff turn-over, violation of the Refuge System Improvement Act (no current Comprehensive Conservation Plan), violation of NEPA, and “co-management” of the refuge. ~~, which is the cause of the current controversy.~~

Current permanent Service employees would be requested to sign a voluntary Intergovernmental Personnel Act (IPA) agreement, assigning them to work for CSKT. If these affected employees choose not to sign these agreements, that position and funding would be transferred to CSKT for recruitment.

In addition, CSKT would receive funding for recruitment of up to six seasonal employees and a GS-11 (equivalent) wildlife refuge specialist. The individual occupying this new position would be supervised by the manager of the CSKT Fish, Wildlife, Recreation and Conservation Program. They would receive day-to-day direction from the refuge manager and would be responsible for supervising all permanent and temporary CSKT and IPA Service staff.

A July 22 PEER news release referenced leaked draft comments from employees early in the process when employees were understandably concerned about the proposed option. Later comments from employees were more benign and the final employee consensus internal comments were submitted. The comments featured in PEER’s news release included: “We are very concerned about making any comments individually....We worry about retaliation both by the Service and the Tribes.” PEER claimed

employees are frustrated at being shut out of the negotiations on an AFA that they supposedly believe will:

- Create an Unworkable Structure: “This proposed agreement is almost exactly like the one in 2008 and the fundamentals of that agreement didn’t work – even though this document says it worked well.”
- Ignore Resource Management Realities: “There is no analysis on refuge operations. The EA does not analyze how the changes in staff will affect the resource.”
- Encourage Ruinous Turnover: The short term and uncertain nature of these jobs make it hard to hire “experienced staff” from the CSKT. “In fact, several employees, particularly in leadership positions, had no affiliation with the Tribes.”

RECOMMENDED ACTION

Respond to query using the following talking point:

“We received and responded to PEER’s earlier request under the Freedom of Information Act for documents related to the Annual Funding Agreement between the U.S. Fish and Wildlife Service and the Confederated Salish Kootenai Tribes. Because we are planning to open up a comment period later this month ~~(July (2014))~~ on the draft environmental assessment for a proposed annual funding agreement between the Service and the Tribes that may allow for Tribal management and implementation of the biological, maintenance, public use, and fire programs on the National Bison Range, it would be inappropriate for us to comment on the proposed annual funding agreement until after the public comment period has closed and we have addressed the comments received from the public.”

Comment [WAM1]: This is true, however the FOIA and the Press Release are two independent events. In other words, the internal draft list of staff comments was not part of the FOIA. The final list of staff comments are part of the administrative record.

ADDITIONAL BACKGROUND:

We do not yet have a publication date for the EA, but we believe we are on track to meet the NOA-driven August 1 deadline. The Mountain-Prairie Region Refuge staff briefed Steve Guertin on the NOA on July 21 and we are now waiting for the Department’s approval. If they approve it by July 25, and we expect they will, we will meet the deadline and will have a publication date in approximately two weeks. At that point, we will issue our news release, open the public comment period, and otherwise follow the communications plan.

Comment [WAM2]: This is still the goal.

From: [Matt Hogan](#)
To: [Noreen Walsh](#)
Subject: Re: Bison Range CCP
Date: Tuesday, January 01, 2013 7:33:37 AM

In retrospect don't think he was the manager but he was the Refuge Supervisor for MT before going to the RMA so that is his connection.

BTW, Maya got a stuffed pig from my Mom over the holidays and we have named all her stuffed animals. ♦ We decided to call the pig Louis in honor of Louis Bacon. ♦ Not sure I will share that with his folks however as they may not see it as an homage. ♦

Sent from my iPad

On Jan 1, 2013, at 6:56 AM, Noreen Walsh <noreen_walsh@fws.gov> wrote:

Berendzen was once manager at NBR? I did not realize that. ♦ Or I have forgotten.

♦

From: Matt Hogan [mailto:matt_hogan@fws.gov]
Sent: Tuesday, January 01, 2013 6:54 AM
To: [Noreen Walsh@fws.gov](mailto:Noreen_Walsh@fws.gov)
Subject: Re: Bison Range CCP

♦

Former manager who felt more able to speak freely since he is no longer there. More on the 9th.

♦

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Tuesday, January 01, 2013 06:25 AM
To: Matt Hogan <matt_hogan@fws.gov>
Subject: RE: Bison Range CCP

♦

And I have a letter, inviting me up to meet with them. ♦ Let ♦s talk about this issue soon, in more depth, maybe on the 9th?

What is Steve B ♦s involvement? ♦ Or just a concerned employee?

♦

From: Matt Hogan [mailto:matt_hogan@fws.gov]
Sent: Monday, December 31, 2012 8:31 AM
To: Noreen Walsh
Subject: Fwd: Bison Range CCP

♦

Had unsolicited phone call from Steve Berendzen about this as well just before the holidays. ♦

♦

At same time, Dean has been urging me as Refuge ARD and now as DRD to go meet with the tribe early in 2013. ♦ With his impending retirement early next year, they (tribe) are fearful they are losing their only POC in the RO. ♦

♦

Would really like to get this AFA to the point that we were not constantly defending it or worse.

Sent from my iPad

Begin forwarded message:

From: Joe Mazzoni Sr. <josephmazzoni@sbcglobal.net>
Date: December 30, 2012, 10:29:15 PM MST
To: Noreen Walsh <Noreen_walsh@fws.gov>
Cc: Matt Hogan <Matt_hogan@fws.gov>, Dan Ashe <dan_ashe@fws.gov>
Subject: Fw: Bison Range CCP
Reply-To: Joe Mazzoni Sr. <josephmazzoni@sbcglobal.net>

Ms. Walsh....



I understand that you are now the Regional Director for Region 6. You are no doubt not very familiar with the history of the AFA issue at the National Bison Range. I have been following this issue since its inception, and have been deeply troubled by the manner in which it has been handled by the Service.



I am forwarding you a copy of an exchange of correspondence I recently had with NBR Refuge Manager Jeff King. As noted in my response to his comments, I don't buy the logic of pursuing the AFA independently of the CCP process, and would urge you to shelve the AFA process at the Bison Range until what it proposes is thoroughly vetted by the public as part of the CCP process.



I also feel strongly that no AFA should be pursued on any unit of the Refuge System, including the Bison Range, until the national AFA policy that has been in draft form for several years in the Washington office is finalized and can provide guidance to Refuge Managers and Regional personnel directly responsible for the development of AFA's on their refuges. Had the original policy draft that many of us saw been in place and applied when the AFA process was initiated at the Bison Range, the disastrous outcome that has evolved over the past few years would have been avoided, and the integrity of the refuge as a unit of the Refuge System would have been preserved.



Thank you for your consideration, and good luck in your new position.



Joe Mazzoni
Retired FWS Employee and former manager of the NBR





----- Original Message -----

From: [Joe Mazzoni Sr.](#)

To: [King, Jeff](#)

Cc: [John Cornely](#) ; [Bob Fields](#) ; [Marvin Plenert](#) ; [Steve Thompson](#) ; [David Houghton](#) ; [Jeff Ruch](#) ; [Janet KASCHKE](#)

Sent: Thursday, December 20, 2012 4:03 PM

Subject: Re: Bison Range CCP



Jeff...



I'm having trouble understanding the logic of your position. ♦
The AFA, as proposed, will have a major impact on how the refuge is managed, now and into the future. ♦ And all of the so-called benefits that it claims are simply bogus, and ought to be thoroughly ♦ vetted as part of the CCP process. I don't believe those claims can withstand public scrutiny.



I remain puzzled (and disappointed) by your and a few other Service people's apparent determination to abrogate management authority and responsibility for this iconic refuge to the tribe. ♦ Where is the pressure coming from to continue this travesty? And why don't you and others in the Region have the courage to stand up for preserving the integrity of the Bison Range as an historical and ♦ very unique unit of the Refuge System?



As a former manager of this very special refuge, I have been and continue to be deeply troubled by the manner in which the NBR AFA process has been handled by the Service. ♦ It could have provided for a cooperative arrangement with the tribe that would have added real value to the management program....similar to what was done with the AFA on the Yukon Flats NWR in Alaska. ♦ Instead it has been allowed to become a tool of the tribe in their apparent efforts to gain complete control of ♦ the refuge lands and operation. ♦ And, in the process, it wreaked havoc on and demoralized ♦ the existing dedicated, professional staff; destroyed an effective management structure; virtually eliminated the manager's ability to effectively manage the various refuge functions in a coordinated, day to day manner; and abrogated key management functions and responsibilities to a non public entity. ♦



To say that the AFA will somehow add value to the program at the NBR is a sham. ♦♦ I'm just grateful that I was never in your shoes. ♦ I'm afraid my career would have been on the line.



Sorry Jeff, but I feel very strongly about this.◆ The nearly five years I spent as manager of the Range were some of the happiest, most enjoyable of my nearly 40 year career with the Service.◆ I loved that refuge and the wonderful staff of professionals I worked with, and left there feeling good about my personal legacy as the team leader. It just breaks my heart to see what the AFA process has done to the people affected and to the program. While I don't hold you personally responsible for what has occurred, those who were and are responsible within the Service should be ashamed of what they have wrought.



Joe



----- Original Message -----

From: [King, Jeff](#)

To: [Joe Mazzoni Sr.](#)

Sent: Monday, December 17, 2012 2:49 PM

Subject: Re: Bison Range CCP



Joe,



We do not plan to talk about the AFA in the CCP. The CCP is focused on what types of actions we will implement to better manage the refuge resources and programs, regardless of who will do the work. Also, the CCP is a 15-year document; whereas, the AFA is a 5-year agreement. We would not want to outline an AFA in the CCP since it has to be negotiated every 5-years. Actually, by separating the AFA EA from the CCP, we can give it the attention it deserves while not allowing this issue to overtake the CCP process. We wouldn't want that to result in less time being dedicated to evaluate how to better manage the refuge resources and programs.



I hope this answers your question. If you need more information or have other questions, please let me know.



Thanks,



Jk◆

On Mon, Dec 17, 2012 at 3:24 PM, Joe Mazzoni Sr.

<josephmazzoni@sbcglobal.net> wrote:

Jeff....



Addressing the AFA proposal as part of the CCP process seemed to make such good sense. What has happened to that proposal that I and several others made earlier?



Joe



From: [Jeff King](#)
To: [Matt Hogan](#)
Subject: Re: Bison Range CCP
Date: Tuesday, January 15, 2013 7:46:59 AM

Matt. I'm in this week if you would like to discuss nbr.💎
Jk

Sent from Jeff's iPhone

On Jan 4, 2013, at 1:19 PM, Matt Hogan <matt_hogan@fws.gov> wrote:

Dont think this is a rush so we can get it on the calendar after you use your leave.

Sent from my iPad

On Jan 4, 2013, at 1:19 PM, "King, Jeff" <jeff_king@fws.gov> wrote:

Matt,

Hope you had a good new year.

Yes, I would like the opportunity to discuss my thoughts on the AFA. Let me know when a good time is for you. I still have some use or lose time that I'm trying to burn but will work around your schedule.💎

Thanks,

jk

On Mon, Dec 31, 2012 at 7:52 AM, Matt Hogan
<matt_hogan@fws.gov> wrote:

Thanks for sharing Jeff. 💎Happy to have an off-line conversation with you about your thoughts on this.

And sorry I could not be more forthright about the ARD job but I am sure you understand that we needed to keep our selection of Will Meeks quiet until approved in DC. 💎Keep me apprised of any interest to come to the RO and let me know if you would like to talk about the AFA at some point.

Happy New Year.

Matt

Sent from my iPad

On Dec 20, 2012, at 5:46 PM, Jeff King
<jeff_king@fws.gov> wrote:

Thought you should see.💎
Jk

Sent from Jeff's iPhone

Begin forwarded message:

From: Joe Mazzoni Sr.
<josephmazzoni@sbcglobal.net>
Date: December 20, 2012, 5:03:49 PM MST
To: "King, Jeff" <jeff_king@fws.gov>
Cc: John Cornely
<johncornely@msn.com>, Bob Fields
<bandjfields@comcast.net>, Marvin Plenert
<marvplenert@yahoo.com>, Steve Thompson
<steve@stevethompsonllc.com>, David Houghton
<dhoughton@refugeassociation.org>, Jeff Ruch
<jruch@peer.org>, Janet KASCHKE
<kastree@polson.net>
Subject: Re: Bison Range CCP
Reply-To: Joe Mazzoni Sr.
<josephmazzoni@sbcglobal.net>

Jeff...



I'm having trouble understanding the logic of your position.💎 The AFA, as proposed, will have a major impact on how the refuge is managed, now and into the future.💎 And all of the so-called benefits that it claims are simply bogus, and ought to be thoroughly💎 vetted as part of the CCP process. I don't believe those claims can withstand public scrutiny.



I remain puzzled (and disappointed) by your and a few other Service people's apparent determination to abrogate management authority and responsibility for this iconic refuge to the tribe.💎 Where is the pressure coming from to continue this travesty? And why don't you and others in the

Region have the courage to stand up for preserving the integrity of the Bison Range as an historical and very unique unit of the Refuge System?

As a former manager of this very special refuge, I have been and continue to be deeply troubled by the manner in which the NBR AFA process has been handled by the Service. It could have provided for a cooperative arrangement with the tribe that would have added real value to the management program....similar to what was done with the AFA on the Yukon Flats NWR in Alaska. Instead it has been allowed to become a tool of the tribe in their apparent efforts to gain complete control of the refuge lands and operation. And, in the process, it wreaked havoc on and demoralized the existing dedicated, professional staff; destroyed an effective management structure; virtually eliminated the manager's ability to effectively manage the various refuge functions in a coordinated, day to day manner; and abrogated key management functions and responsibilities to a non public entity.

To say that the AFA will somehow add value to the program at the NBR is a sham. I'm just grateful that I was never in your shoes. I'm afraid my career would have been on the line.

Sorry Jeff, but I feel very strongly about this. The nearly five years I spent as manager of the Range were some of the happiest, most enjoyable of my nearly 40 year career with the Service. I loved that refuge and the wonderful staff of professionals I worked with, and left there feeling good about my personal legacy as the

team leader. It just breaks my heart to see what the AFA process has done to the people affected and to the program. While I don't hold you personally responsible for what has occurred, those who were and are responsible within the Service should be ashamed of what they have wrought.



Joe



----- Original Message -----

From: [King, Jeff](#)

To: [Joe Mazzoni Sr.](#)

Sent: Monday, December 17, 2012 2:49 PM

Subject: Re: Bison Range CCP

Joe,

We do not plan to talk about the AFA in the CCP. The CCP is focused on what types of actions we will implement to better manage the refuge resources and programs, regardless of who will do the work. Also, the CCP is a 15-year document; whereas, the AFA is a 5-year agreement. We would not want to outline an AFA in the CCP since it has to be negotiated every 5-years. Actually, by separating the AFA EA from the CCP, we can give it the attention it deserves while not allowing this issue to overtake the CCP process. We wouldn't want that to result in less time being dedicated to evaluate how to better manage the refuge resources and programs.

I hope this answers your question. If you need more information or have other questions, please let me

know.

Thanks,

Jk

On Mon, Dec 17, 2012 at 3:24 PM,
Joe Mazzoni Sr.

<josephmazzoni@sbcglobal.net>

wrote:

Jeff....



Addressing the AFA proposal as
part of the CCP process seemed
to make such good sense. What
has happened to that proposal that
I and several others made earlier?



Joe

From: [Will Meeks](#)
To: [Matt Hogan](#)
Subject: Re: Bison Range
Date: Thursday, July 11, 2013 11:44:22 AM

Not sure it has changed significantly . . . other than . . . coming in with a workable solution to the process. ♦

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

On Jul 11, 2013, at 12:39 PM, Matt Hogan <Matt_Hogan@fws.gov> wrote:

Ok, so let's set a deadline for that follow up briefing. ♦ Secondly, if your thinking has changed significantly since the last discussion, it would be good if we knew that up front. ♦ Thanks.

♦
♦

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Thursday, July 11, 2013 11:25 AM
To: Matt Hogan
Subject: Re: Bison Range

♦

Dean and I will be traveling to NBR the 22nd/23rd and will return, schedule a briefing, and provide recommendations for a path forward. ♦

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

On Jul 11, 2013, at 12:23 PM, Matt Hogan <Matt_Hogan@fws.gov> wrote:

Will,

It has been a few weeks since we have heard anything in follow up to the discussion on the NBR. ♦ Wanted to see if you could provide an update on where we are. ♦ Thanks.

♦

Matt Hogan
Deputy Regional Director
Mountain-Prairie Region
U.S. Fish and Wildlife Service
(303) 236-7920



From: noreen_walsh@fws.gov
To: Matt_Hogan@fws.gov
Subject: RE: Briefing paper meeting with CSKT on 10/17
Date: Friday, October 12, 2012 9:04:08 AM
Attachments: [smime.p7s](#)

Yes, thank you, that was what I forgot.

Noreen Walsh

Deputy Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

From: Matt_Hogan@fws.gov [mailto:Matt_Hogan@fws.gov]
Sent: Friday, October 12, 2012 8:53 AM
To: Walsh, Noreen
Subject: RE: Briefing paper meeting with CSKT on 10/17

A comment was raised by an interested party that in the Refuge Improvement Act, Congress specifically decided that AFAs did not apply to tribes and only to states. We have asked the SOL to weigh in on this issue as the CSKT is concerned about litigation on this front once the EA is released and would like to get a legal read in advance, as would we.

"Walsh, Noreen"
<noreen_walsh@fws.gov>

10/12/2012 08:48 AM

To "Hogan, Matt"
<Matt_Hogan@fws.gov>

cc

Subject RE: Briefing paper meeting with
CSKT on 10/17

Although at one time I knew this substantial comment that prompted a SOL opinion, I no longer recall. Please advise what that is.

Thanks,
Noreen

Noreen Walsh
Deputy Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

From: Matt_Hogan@fws.gov [mailto:Matt_Hogan@fws.gov]
Sent: Friday, October 12, 2012 8:45 AM
To: Walsh, Noreen
Subject: Fw: Briefing paper meeting with CSKT on 10/17

----- Forwarded by Matt Hogan/R6/FWS/DOI on 10/12/2012 08:45 AM -----
-

Dean Rundle/R6/FWS/DOI

10/11/2012 04:42 PM

To Jorge_Silva-banuelos@ios.doi.gov
cc Jeff King/R6/FWS/DOI@FWS,
Matt Hogan/R6/FWS/DOI@FWS
Subject Briefing paper meeting with
CSKT on 10/17

Jorge: Attached is the briefing paper you requested in preparation for our meeting with CSKT Tribal Council in Pablo next week.

Dean Rundle
Refuge Supervisor
303/236-4306

(See attached file: BP.NBR.AFA.10.11.12.doc) (See attached file: smime.p7s)

From: [Guertin, Stephen](#)
To: [Noreen Walsh](#)
Cc: [Cynthia Martinez](#); [Jim Kurth](#); [Rowan Gould](#); [Dan Ashe](#); [Will Meeks](#); [Matt Hogan](#)
Subject: Re: briefing paper on CSKT visit tomorrow
Date: Monday, January 27, 2014 2:48:46 PM

Thanks for the update Noreen.

On Mon, Jan 27, 2014 at 2:09 PM, Noreen Walsh <noreen_walsh@fws.gov> wrote:

In anticipation of the CSKT meeting tomorrow, 1230 pm eastern time, here is an update on the status of our negotiations on the AFA.

This will be roused in DTS also.

Noreen Walsh

Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

The Mountain-Prairie Region of the U. S. Fish and Wildlife Service: We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Monday, January 27, 2014 11:49 AM
To: Noreen Walsh
Cc: Matt Hogan
Subject: BP/NTR

Here they both are.

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: Dean Rundle <Dean_Rundle@fws.gov>
To: Jeff_King@fws.gov
Subject: Re: Checking in
Date: Wednesday, November 03, 2010 6:53:36 AM

Jeff: My thoughts are that we should approach the tribe about a coop agreement for FY 11, to get the basic help you need to get through the year -and that we should begin promulgating policy. We'd continue with coop agreements until a FWS AFA policy is signed, and then go and negotiate a new self-governance AFA. However, those are only my thoughts and they have not been communicated effectively with HQ and DOI. When I met with the Regional Solicitor on Monday, he told me that the direction being received from Senior Mgmt (DAS Lyder) is that DOI wants to enter a new AFA as soon as possible, and that SOLs job is to provide the legal advice to the Bureau, Dept. needed to implement those desires of Sr. Mgmt. hence, I'm supposed to be working on a new CATEX this week.

I'm gonna send a msg. up the chain today re. a slower approach, and see if it can gain any traction. Stay tuned.

Dean

To: Dean Rundle/R6/FWS/DOI@FWS
CC: Jeff King/R6/FWS/DOI
Subject: Re: Checking in

Dean. Tom brought up a coop agreement during a phone conversation when we were discussing the roundup and the need for help. We ended going with 30 day hires. I would like to pitch the coop idea as a possibility while we are developing policy. Your thoughts?

Jk

Sent from Jeff's BlackBerry

----- Original Message -----
From: Dean Rundle Sent: 11/02/2010 09:41 AM MDT
To: Jeff King
Subject: Re: Checking in

Things are going ok. I met with SOL yesterday. They think they can call Jonathan Lee and find out what the IG report will say. Hopefully that's true. I'm waiting for them to let me know what he says.

Did you tell me that Tom McDonald had called asking about a Coop Agreement? Apparently, no one beyond Rick or I have heard of that idea, so may want to throw that back up the chain to see if it can gain any traction. Very confusing about who is/is not engaged at the HQ/DOI levels. Will probably be working on a CATEX this week.

Call when you get home. Hope your hunt goes well. Enjoy. I'm in tues, weds, fri, off on thurs.

dean

Jeff King/R6/FWS/DOI11/02/2010 06:51 AM

To Dean Rundle/R6/FWS/DOI@FWS

cc

Subject Checking in

Hey. Just wondering how things are going? Bird hunted yesterday on wpas. Shot some sharp tails. Antelope today. Talk to you later.

Jk

Sent from Jeff's BlackBerry

From: [Will Meeks](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#)
Subject: Re: Comments to Dale/Mitch
Date: Monday, August 25, 2014 2:21:23 PM

OK. I will get them on letterhead for you.

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

On Aug 25, 2014, at 2:06 PM, Noreen Walsh <noreen_walsh@fws.gov> wrote:

This will be fine. I will sign on Thursday when I get back.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

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From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Monday, August 25, 2014 1:20 PM
To: Noreen Walsh
Cc: Matt Hogan
Subject: Comments to Dale/Mitch

Noreen,

See text below that can be cut and pasted for your use. I kept it short and if you need something more, just kick it back.

Thanks.

Dale,

Thank you for your letter dated August 12, 2014 about the Environmental Assessment (EA) evaluating Annual Funding Agreements at the National Bison Range. Your

suggestion for improvement is noted and we will correct the inaccuracy in the final EA by citing your December 10, 2006 memo. Much like you, I look forward to strengthening our partnership that continues to grow today. As always, thank you for your input.

Mitch,

I appreciate you taking the time to review and provide comments on the Environmental Assessment (EA) evaluating Annual Funding Agreements at the National Bison Range. Your comments lead me to believe that correcting the omission and referring to the Director's December 10, 2006 memo is appropriate. Thank you for noting this and I appreciate your interest in the EA.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: [Griffin, Toni](#)
To: [Noreen Walsh](#)
Cc: [Will Meeks](#)
Subject: Re: CSKT AFA
Date: Monday, June 16, 2014 9:56:22 AM
Attachments: [NBR-AFA-DRAFT-EA_04-25-14_lowres.pdf](#)

Good Morning Noreen,

An electronic copy of the National Bison Range Draft Environmental Assessment for a Draft AFA is attached. The Draft AFA is included within the EA as Appendix A. Please let me know if there is anything else you need.

Thank you,
Toni

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

On Thu, Jun 12, 2014 at 6:55 PM, Will Meeks <will_meeks@fws.gov> wrote:
Toni,

See below. Can you send an electronic copy of the EA and the AFA to Noreen.
Thanks.

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

Begin forwarded message:

From: Noreen Walsh <noreen_walsh@fws.gov>
Date: June 12, 2014 at 6:51:52 PM MDT
To: Will Meeks <will_meeks@fws.gov>
Cc: Matt Hogan <matt_hogan@fws.gov>
Subject: RE: CSKT AFA

Both would be great – thank you

Noreen Walsh

Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

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

Sent: Thursday, June 12, 2014 6:51 PM

To: Noreen Walsh

Cc: Matt Hogan

Subject: Re: CSKT AFA

We just got the comments back from CSKT today. But I can't read the PDF (file is corrupt). I'd say we are 30 days out or so from publication. Is say it's OK to share with the caveat that our internal review period has closed and we are incorporating comments currently.

Do you need an e-copy of the EA, AFA, or both?

Will Meeks

U.S. Fish and Wildlife Service

R6 - Assistant Regional Director

NWRS and PFW

303-236-4303 (w)

720-541-0310 (c)

On Jun 12, 2014, at 5:29 PM, Noreen Walsh <noreen_walsh@fws.gov> wrote:

Hi Will,

How close are we to publication of the draft EA? I would like to share a copy with Ren Lohofener, R8, who has a tribe who would like to explore a similar arrangement. If it is going to be a while until publication for the public, I might like to share the draft with Ren now, close hold.

Thank you,

Noreen

Noreen Walsh

Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

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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

Contents

<i>Summary</i>	5
<i>Abbreviations</i>	7
CHAPTER 1—Purpose and Need for Action	9
CHAPTER 2—Decision to Be Made	13
CHAPTER 3—Background	15
3.1 The National Bison Range Complex	16
3.2 The Confederated Salish and Kootenai Tribes	21
3.3 The National Wildlife Refuge System	21
3.4 National Bison Range Complex Purposes	22
3.5 The Self-Governance Policy of the United States	23
3.6 The Self-Governance Act and Annual Funding Agreements	24
CHAPTER 4—Public Involvement	31
4.1 Public Scoping	31
4.2 Issues Identified During Scoping	31
CHAPTER 5—Proposed Action and Alternatives	33
5.1 Elements Common to Alternatives Considered for Further Analysis	33
5.2 Alternative A—No Action	34
5.3 Alternative B—Draft AFA (Proposed Action)	38
5.4 Alternative C—AFA for Fire and Visitor Programs	42
5.5 Alternative D—AFA Same as Alternative C plus Incremental Addition of More CSKT Staff in All Programs	44
5.6 Alternative E—AFA Same as Alternative D plus District Programs with Combined Service and CSKT Staff in All Programs	47
5.7 Alternatives Considered but Eliminated from Further Analysis	51
CHAPTER 6—Affected Environment	53
6.1 Physical Environment	54
6.2 Habitat Management	56
6.3 Wildlife Management	61
6.4 Threatened and Endangered Species	67
6.5 Special Management Areas	68
6.6 Research, Inventory, and Monitoring	68
6.7 Visitor Services	70
6.8 Cultural Resources	73
6.9 Operations	77
6.10 Socioeconomics	79

CHAPTER 7—Environmental Consequences of the Proposed Action and Alternatives	85
7.1 Analysis Approach	86
7.2 Habitat Management	87
7.3 Wildlife Management	88
7.4 Research, Inventory, and Monitoring	89
7.5 Visitor Services	90
7.6 Cultural Resources	90
7.7 Operations	91
7.8 Socioeconomics	92
7.9 Summary of Environmental Consequences	94
7.10 Cumulative Effects	95
 CHAPTER 8—Agency Coordination	 97
Appendix A, Draft Annual Funding Agreement	99
Appendix B, Federal Register Notice	139
 <i>Bibliography</i>	 145
 FIGURES	
1. Map of the National Bison Range Complex within the boundary of the Flathead Indian Reservation, Montana	10
2. Base map of the National Bison Range, Montana	17
3. Base map of the Ninepipe National Wildlife Refuge, Montana	19
4. Base map of the Pablo National Wildlife Refuge, Montana	20
5. Organizational staff chart for alternative A (no action)	35
6. Organizational staff chart for alternative B, the draft AFA (proposed action)	40
7. Organizational staff chart for alternative C, AFA for fire and visitor programs	43
8. Organizational staff chart for alternative D, AFA same as alternative C with incremental addition of more CSKT staff	46
9. Organizational staff chart for alternative E, AFA same as alternative D plus district programs with combined Service and CSKT staff in all programs	49
 TABLES	
1. Management units of the National Bison Range Complex, Montana	53
2. List of invasive plant species identified on the National Bison Range Complex, Montana, as of 2012	58
3. The species and estimated numbers populations of other big game animals on the National Bison Range, Montana, in 2012	65
4. Additional cost estimates for each alternative when compared to current conditions	92
5. Alternative employment and annual labor income estimates	93
6. Summary of environmental consequences	94

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.

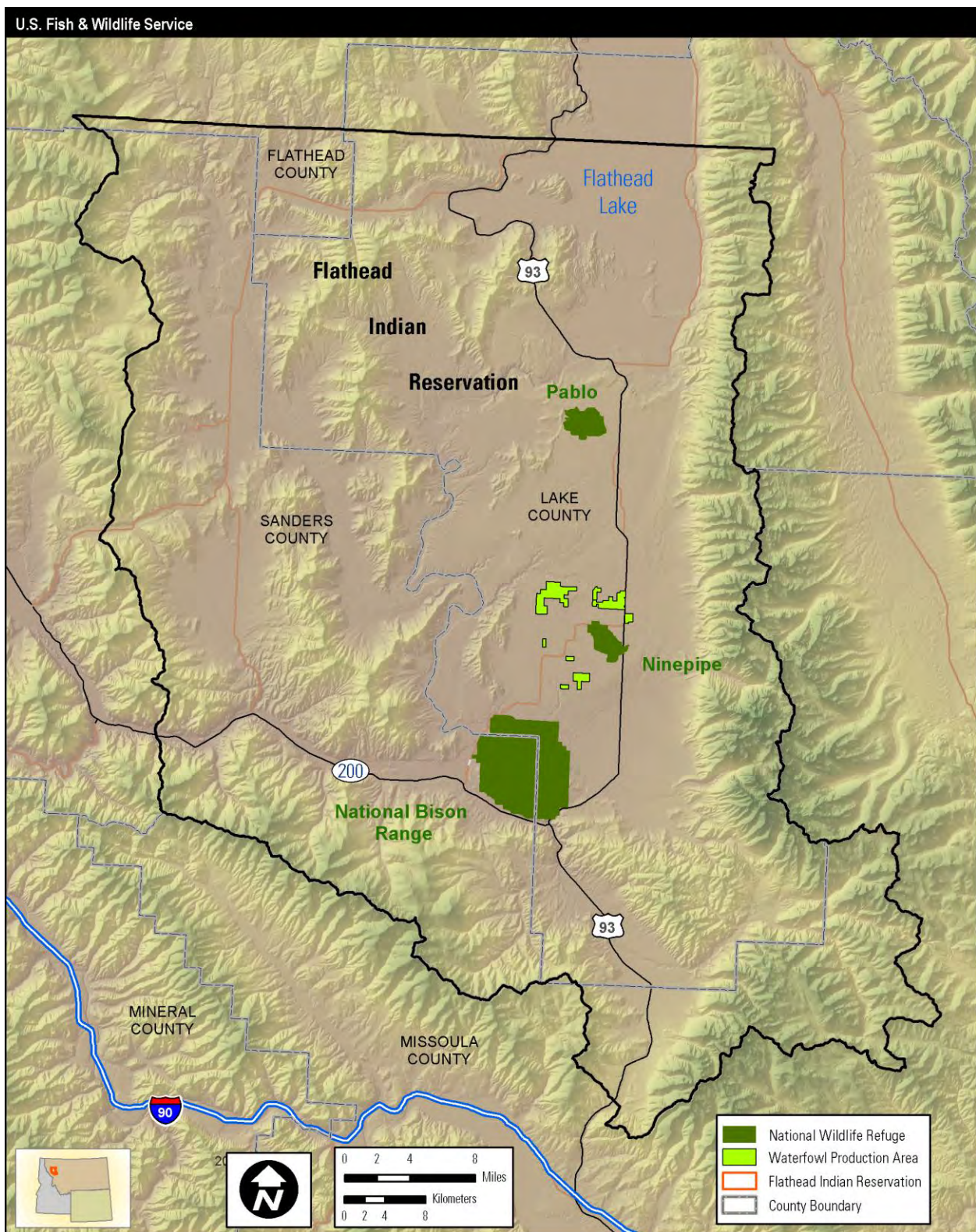


Figure 1. Map of the National Bison Range Complex within the boundary of the Flathead Indian Reservation, Montana.

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. Totalling 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.

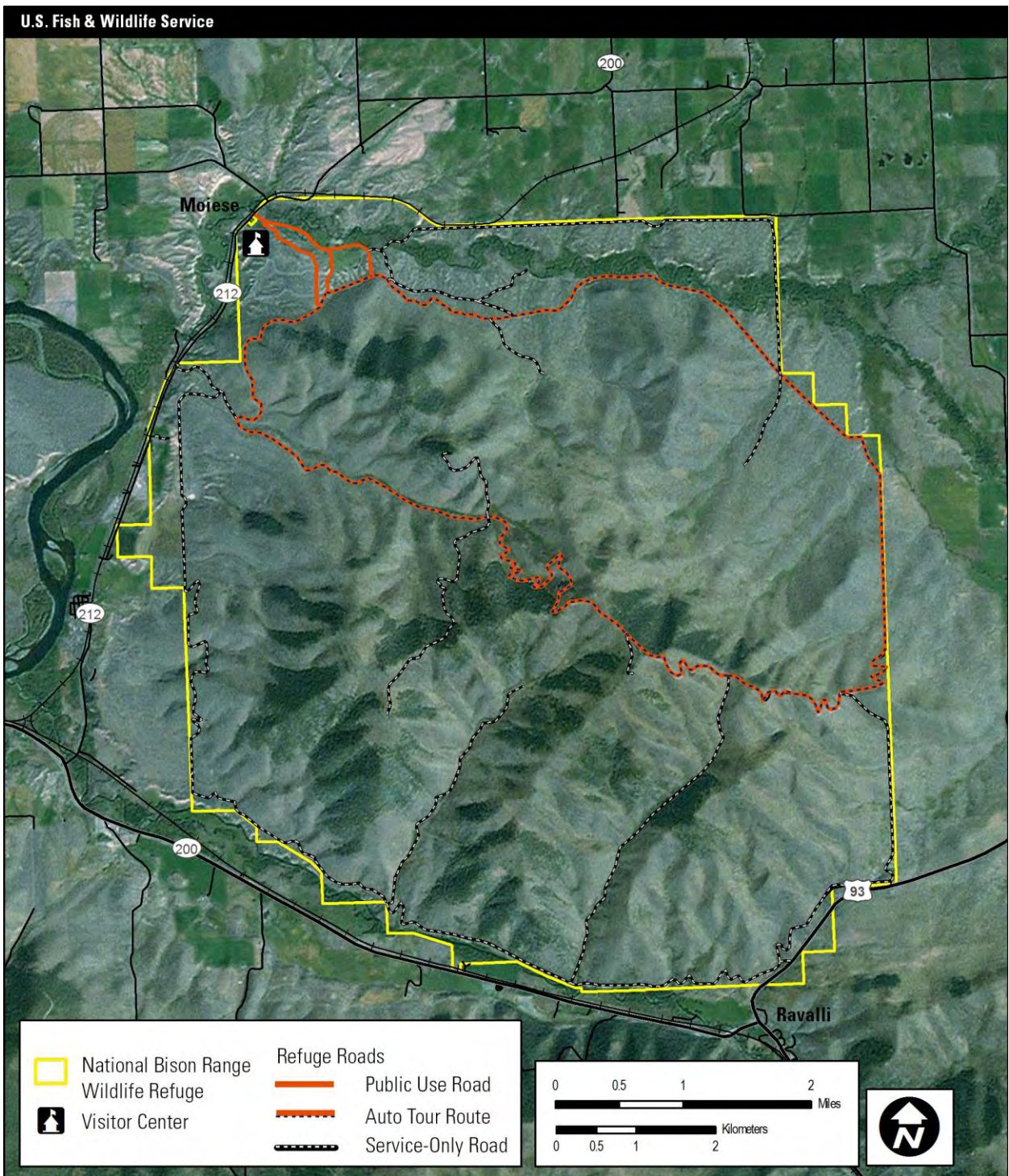


Figure 2. Base map of the National Bison Range, Montana.

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.

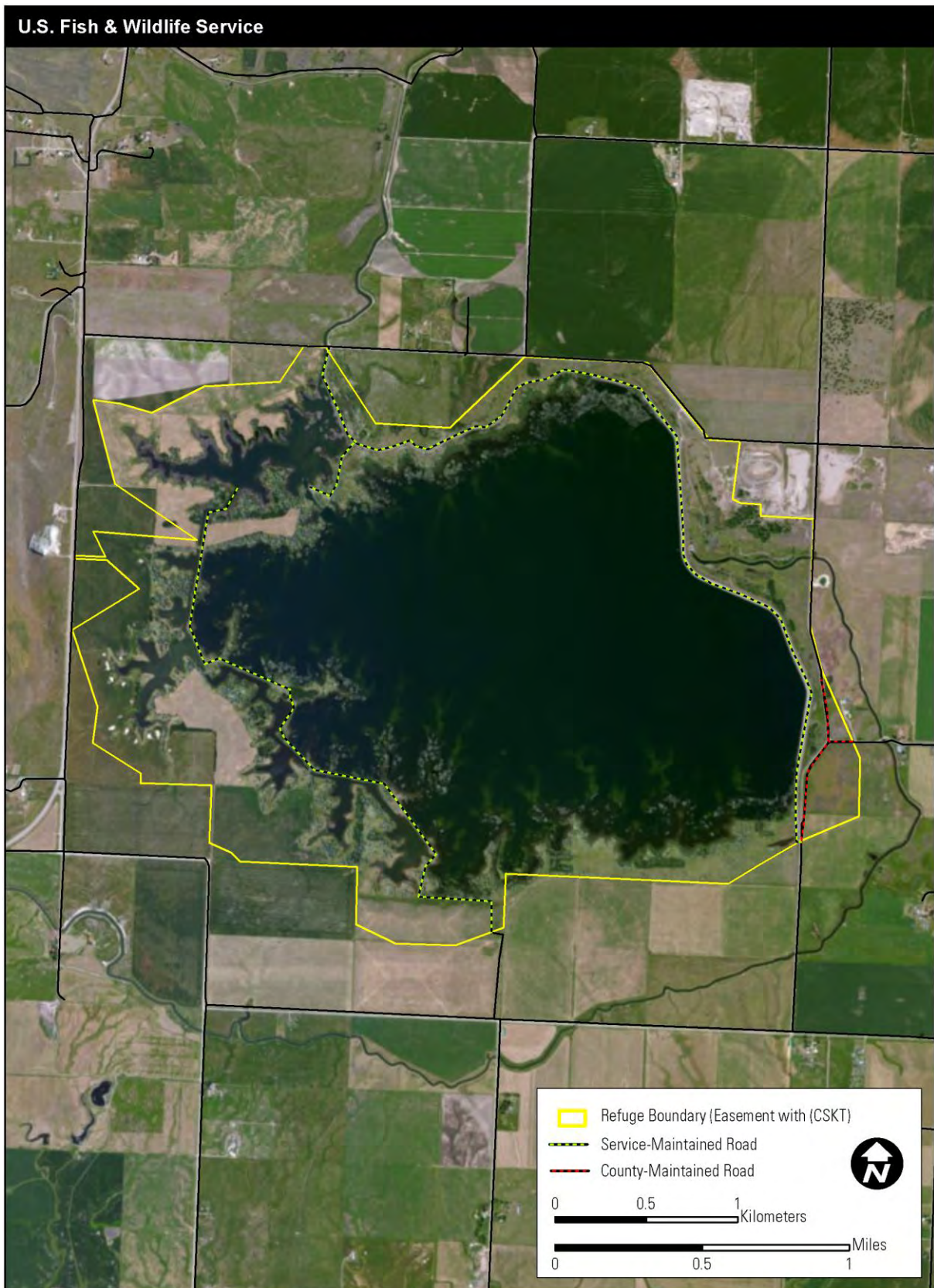


Figure 4. Base map of the Pablo National Wildlife Refuge, Montana.

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.

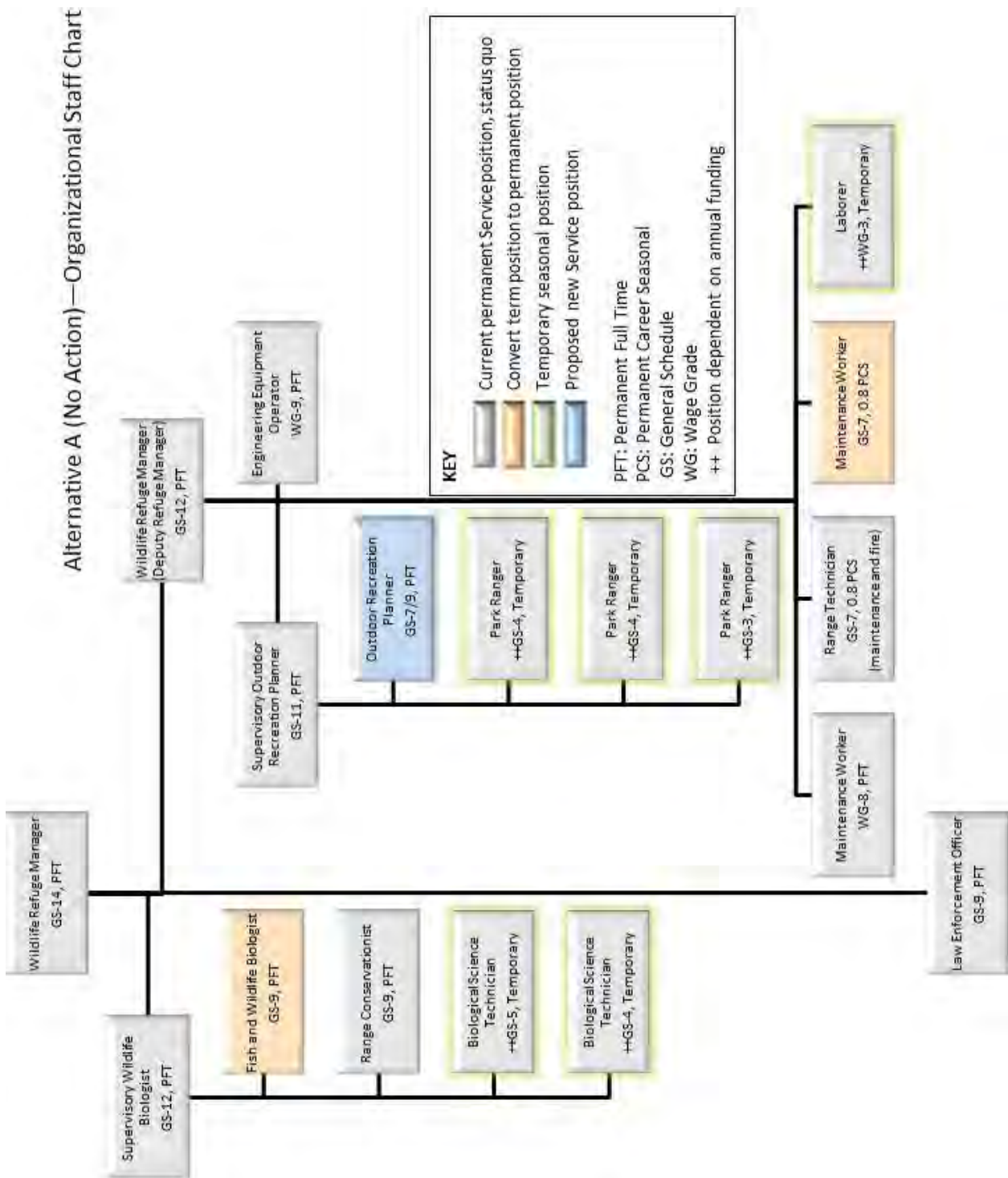


Figure 5. Organizational staff chart for alternative A (no action).

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.

Alternative B (Proposed Action)—Organizational Staff Chart

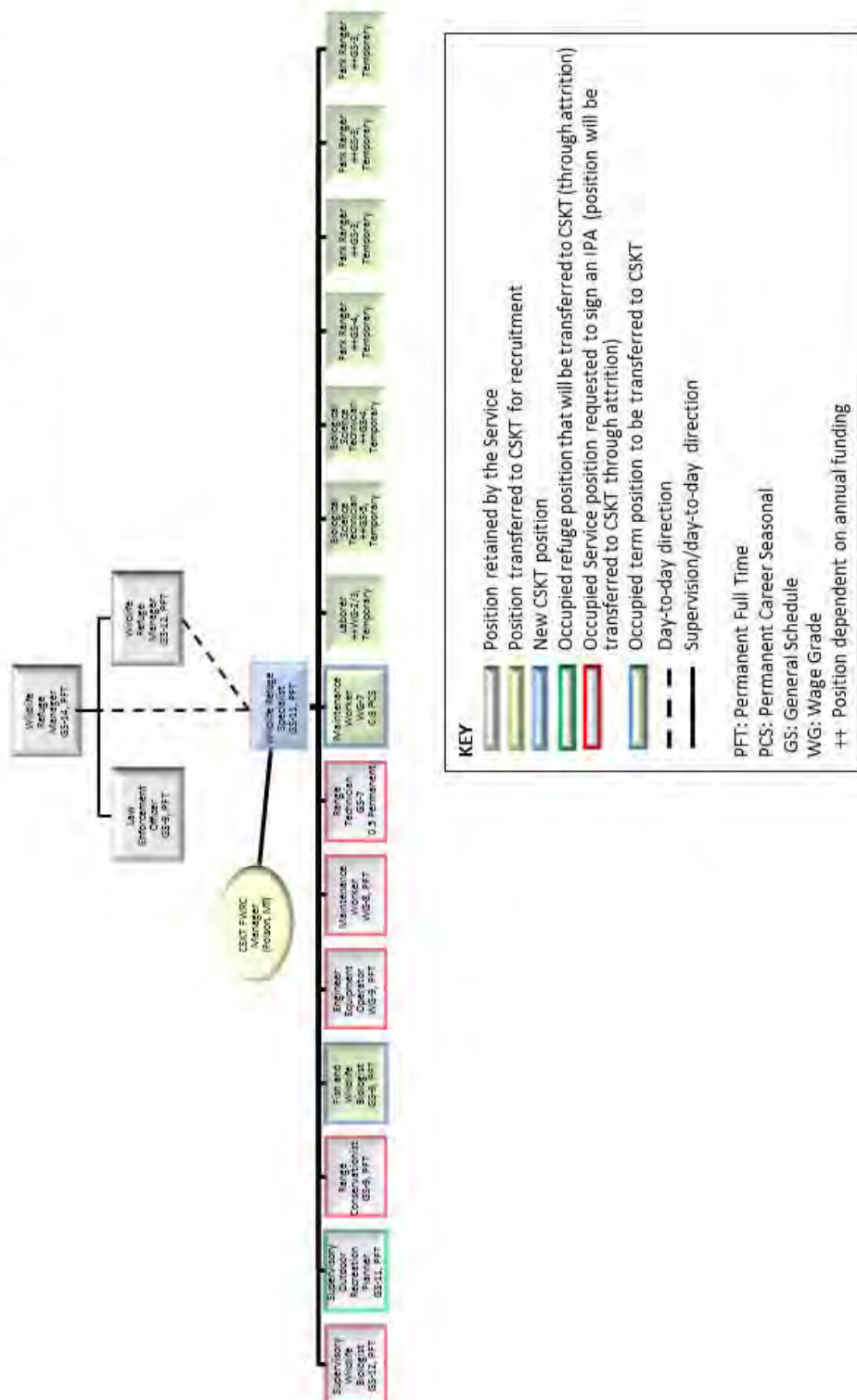


Figure 6. Organizational staff chart for alternative B, the draft AFA (proposed action).

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.

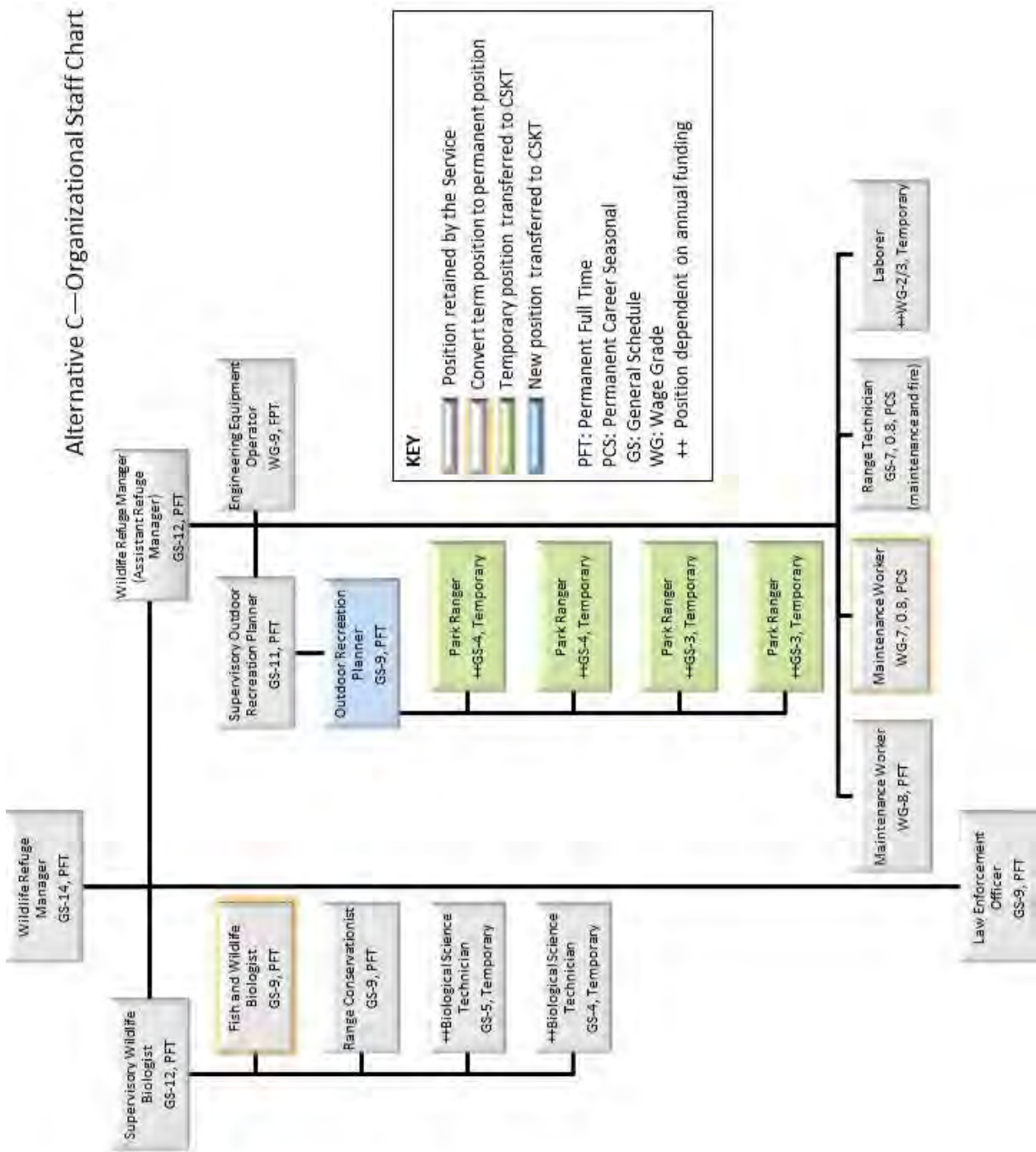


Figure 7. Organizational staff chart for alternative C, AFA for fire and visitor programs.

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.

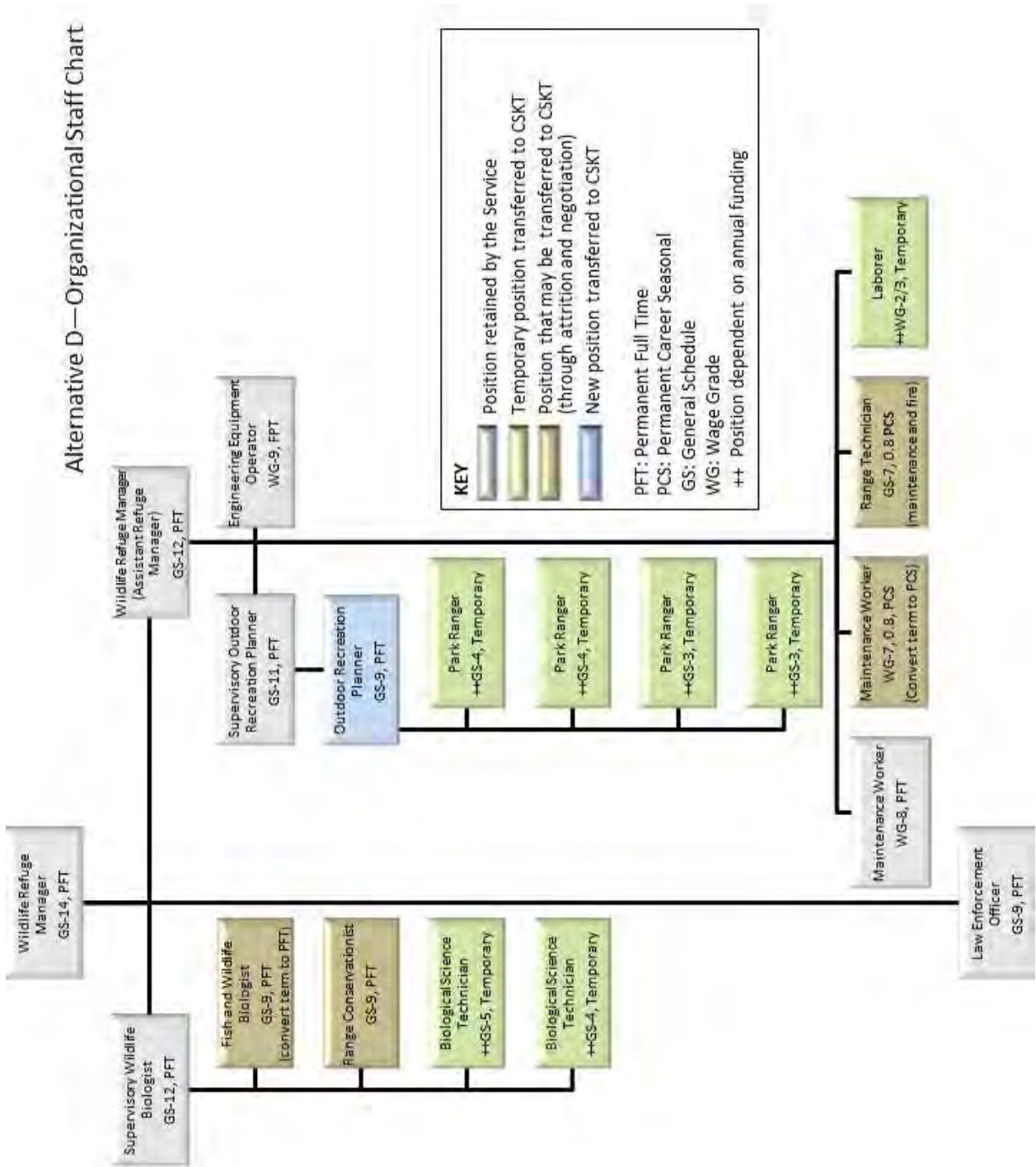


Figure 8. Organizational staff chart for alternative D, AFA same as alternative C with incremental addition of more CSKT staff.

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.

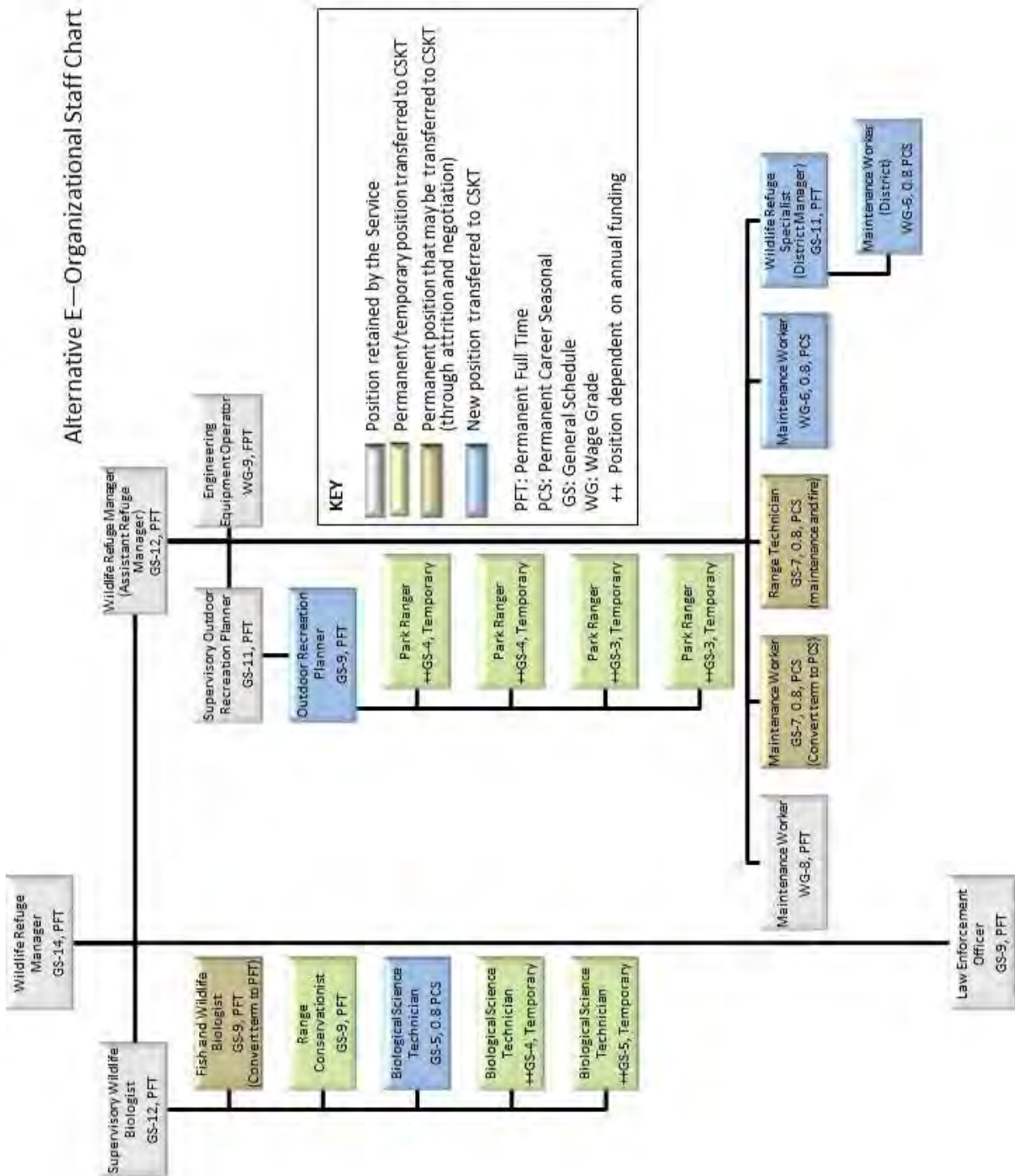


Figure 9. Organizational staff chart for alternative E, AFA same as alternative D plus district programs with combined Service and CSKT staff in all programs.

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.

<i>Unit name</i>	<i>Unit type</i>	<i>Acres</i>	<i>Ownership</i>	<i>County</i>
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 PM₁₀ (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.

<i>Documented in more than 10 years</i>		<i>Documented in less than 10 years</i>	
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.

<i>Species</i>	<i>Estimated current population</i>
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 CSKT’s 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.

<i>Alternative</i>	<i>Added salary cost including benefits</i>	<i>Indirect cost</i>	<i>Total estimated added cost</i>
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

<i>Employment, labor income</i>	<i>Alternative A</i>	<i>Alternative B</i>	<i>Alternative C</i>	<i>Alternative D</i>	<i>Alternative E</i>
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.

<i>Resource topic</i>	<i>Alternative A</i>	<i>Alternative B</i>	<i>Alternative C</i>	<i>Alternative D</i>	<i>Alternative E</i>
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 (Missoulain 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 (“NWRSA”), 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

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 1 of 38



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 NWRSA, 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 NWR. 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.

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 5 of 38



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;

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 7 of 38



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.

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 9 of 38



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(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

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 24 of 38



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 be 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. §§ 450l(b) and

450l(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 NWRSA (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
Chairman, CSKT Tribal Council

Date

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 37 of 38



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

FY 2013-2016 FWS/CSKT AFA – March 8, 2012 DRAFT w/tech corrections as of 4/12/12 Page 38 of 38

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) 208-7588.

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 Athabaskan 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 Athabaskan 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 (ONRR) 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 FOGCMA section 202 cooperative agreement, as this is the term contained in FOGCMA 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. Aniakchak 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. Quinalt 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; 9:45 am]

BILLING CODE 4310-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R1-ES-2012-N199;
FXES11130100000C2-123-FF01 E00000]

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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From: noreen_walsh@fws.gov
To: Jorge_Silva-banuelos@ios.doi.gov; Stephen_Torbit@fws.gov
Cc: D_M_Ashe@fws.gov; Matt_Hogan@fws.gov
Subject: RE: CSKT Meeting Agenda
Date: Friday, October 12, 2012 3:00:29 PM

Jorge,

I did check in with Steve Guertin and he is also committed next week and cannot attend.

I am hosting a conference call with FWS reps Dean Rundle (regional NWR supervisor) and Jeff King (NBR project leader), who will attend the meeting, as well as Steve Torbit (Asst. Regl Director). Steve and I will share the happenings of the last few days and go through the agenda with them.

Please let me know if you have any questions.

Thanks,
Noreen

Noreen Walsh

Deputy Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

From: Silva-Banuelos, Jorge G
Sent: Thursday, October 11, 2012 4:29 PM
To: Walsh, Noreen; Torbit, Stephen
Cc: Ashe, D M; Hogan, Matt
Subject: RE: CSKT Meeting Agenda

Rachel is wondering if Steve Guertin is available to attend. Can you check with him for me?

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | (202.208.6211 (direct)

jorge@ios.doi.gov

From: Walsh, Noreen
Sent: Thursday, October 11, 2012 5:10 PM
To: Silva-Banuelos, Jorge G; Torbit, Stephen
Cc: Ashe, D M; Hogan, Matt
Subject: RE: CSKT Meeting Agenda

Jorge,

I would have liked to attend, but unfortunately I am also committed to an event in Bismarck, North Dakota that same day. I have confirmed that Jeff King and Dean Rundle will be there to represent the Service.

Noreen

Noreen Walsh

Deputy Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

From: Silva-Banuelos, Jorge G
Sent: Thursday, October 11, 2012 12:51 PM
To: Walsh, Noreen; Torbit, Stephen
Subject: FW: CSKT Meeting Agenda

Hi Noreen and Steve –

Rachel and Dan were discussing this CSKT meeting today, and they suggested that we invite one of you to attend as well. Are either of you willing/able to go? Thanks.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | (202.208.6211 (direct)

jorge@ios.doi.gov

From: Silva-Banuelos, Jorge G
Sent: Wednesday, October 10, 2012 5:18 PM
To: Wenk, Dan; Dave Hallac; King, Jeff; Rundle, Dean; KILLSBACK, Dion K; Laverdure, Del; Hanley, Jacquelynn (Kallie); Doherty, Stephen; 'Bert_Frost@nps.gov'
Subject: CSKT Meeting Agenda

Greetings all –

Below (and attached) you will find the CSKT meeting agenda for Wednesday, October 17, 2012. I'd like to ask for your assistance in preparing some briefing statements ahead of this meeting. If possible, can you get them to us no later than COB Friday?

FWS (Dean/Jeff) – Can you provide us with a briefing statement on item # 2? FWS already put together a recent memo that I think will work for item #4 (also attached)

NPS (Dave) – Item # 6. Can you send us a copy of the final letter that went out to tribes ahead of the calls? The calls I believe are set for early next week, so you all should be prepared to

discuss how they went.

BIA/ASIA (Dion/Kallie) – Item # 7. Can you send us a copy of the final letter that went out to Wind River?

Thanks for your help.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | (202.208.6211 (direct)

jorge@ios.doi.gov

Wednesday, October 17, 2012

8:00 am Depart Missoula, MT and travel by vehicle to Pablo, MT

9:00 am Meeting with Confederated Salish and Kootenai Tribes

Draft Agenda

1. Welcome, Invocation (CSKT),
Introductions of all attendees

2. The Annual Funding Agreement -
Status, timeline, issues of concern

3. General discussion on the status of the Secretary's Bison
Directive and any new developments

4. Discussion of possible relocation of Yellowstone –origin
quarantine bison to the National Bison Range (NBR)

a) Current status of quarantine bison

b) Key considerations that are being evaluated

a. Genetics

b. Health

c. NEPA Compliance

d. Logistics (roundup, management, agreements)

c) Issues, Concerns, and Opportunities

5. Discussion of the possibility of relocation of YNP Bison to the CSKT reservation lands outside of the National Bison Range. Is there interest, what are the constraints/opportunities?

6. National Park Service tribal consultation on disposition of surplus bison

7. Status of Wind River Reservation's request for Turner Ranch bison

8. Next steps

Noon

Depart to Missoula, MT

From: [Will Meeks](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#)
Subject: RE: CSKT Meeting in DC (Wed, March 20th)
Date: Tuesday, March 19, 2013 11:54:23 AM

Thanks. Will do.

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

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Tuesday, March 19, 2013 11:54 AM
To: Will Meeks
Cc: Matt Hogan
Subject: RE: CSKT Meeting in DC (Wed, March 20th)

Thanks Will; looks great. I am going to email to HQ and DOI; SOP is that the program should upload to DTS so it is formally available that way as well.

Noreen

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Tuesday, March 19, 2013 11:44 AM
To: Noreen Walsh; Matt Hogan
Subject: RE: CSKT Meeting in DC (Wed, March 20th)

Yes – Env. Consequences. Changed on the attached.

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

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Tuesday, March 19, 2013 10:27 AM
To: Will Meeks; Matt Hogan
Subject: RE: CSKT Meeting in DC (Wed, March 20th)

Will, is the “impact analysis” the same as the “environmental consequences” section you have contracted out for?

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Tuesday, March 19, 2013 9:43 AM

To: Matt Hogan
Cc: Noreen Walsh
Subject: RE: CSKT Meeting in DC (Wed, March 20th)

See attached with SOL opinion.

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

From: Matt Hogan [mailto:matt_hogan@fws.gov]
Sent: Monday, March 18, 2013 8:30 PM
To: Will Meeks
Cc: Noreen Walsh
Subject: Re: CSKT Meeting in DC (Wed, March 20th)

Will,
The memo does not say what the SOL opinion said....we should include that

Matt Hogan
Deputy Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
303-236-7920

On Mar 18, 2013, at 5:31 PM, Will Meeks <Will_Meeks@fws.gov> wrote:

Matt,

Here's a BP that included the timeline that Jorge references below.

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

From: Matt Hogan [mailto:matt_hogan@fws.gov]
Sent: Monday, March 18, 2013 11:57 AM
To: Will Meeks
Subject: FW: CSKT Meeting in DC (Wed, March 20th)

See below....can you update the memo accordingly.

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Monday, March 18, 2013 10:59 AM

To: jorge_silva-banuelos@ios.doi.gov; Dean_Rundle@fws.gov
Cc: Rachel_Jacobson@ios.doi.gov; matt_hogan@fws.gov; will_meeks@fws.gov
Subject: Re: CSKT Meeting in DC (Wed, March 20th)

Thanks Jorge, I will get something back to you this week.
Noreen

From: Silva-Banuelos, Jorge [mailto:jorge_silva-banuelos@ios.doi.gov]
Sent: Monday, March 18, 2013 09:08 AM
To: Noreen Walsh <noreen_walsh@fws.gov>; Dean Rundle <dean_rundle@fws.gov>
Cc: Jacobson, Rachel L <Rachel_Jacobson@ios.doi.gov>
Subject: CSKT Meeting in DC (Wed, March 20th)

Hi Noreen and Dean:

CSKT Chairman Joe Durgalo has set up a meeting with the Assistant Secretary for Indian Affairs this Wednesday, and Rachel and I were just invited to attend. The folks over at AS/IA assume bison and the AFA will come up.

I think we have enough info with respect to bison, but I could use some help to provide Rachel with an update on where things stand with the AFA.

I've attached the last briefing memo that you all provided us back in October for our trip. Is the timeline listed in this memo still on schedule? Did SOL get back to you with the opinion you requested back in July?

Thanks for your help.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish and Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | ☎ 202.208.6211 (direct)

jorge@ios.doi.gov

<BP NBR AFA EA 3 18 2013.dr.a.doc>

From: Gregory Siekaniec <Gregory_Siekaniec@fws.gov>
To: Rick_Coleman@fws.gov
Cc: Bud_Oliveira@fws.gov; Dean_Rundle@fws.gov; Jim_Kurth@fws.gov; Noreen_Walsh@fws.gov
Subject: Re: Draft AFA platform
Date: Thursday, April 07, 2011 5:53:14 AM

Rick,

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

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

greg

	To	Gregory Siekaniec/NWRS/R9/FWS/DOI Jim Kurth/NWRS/R9/FWS/DOI, Dean Rundle/R6/FWS/DOI, Jeff
Rick Coleman/R6/FWS/DOI04/05/2011 05:04 PM	cc	King/R6/FWS/DOI@FWS, Noreen Walsh/R6/FWS/DOI, Bud Oliveira/R6/FWS/DOI
	Subject	Draft AFA platform

Rick Coleman

ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

From: [Debbie Schreiner](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#); [Will Meeks](#)
Subject: RE: Email to Rowan from Marvin Plenert re: National Bison Range
Date: Monday, December 16, 2013 10:02:12 AM

I confirmed with Nikki in CCU. No response required. It is FYI or appropriate action.

-----Original Message-----

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Monday, December 16, 2013 9:46 AM
To: Debbie Schreiner
Cc: Matt Hogan; Will Meeks
Subject: RE: Email to Rowan from Marvin Plenert re: National Bison Range

I thought perhaps she had a conversation with you, since there was no explanation in her email. I hope it is for our reference only but if it is an assignment they should put it through DTS with a due date to us. Thanks for checking Debbie.

-----Original Message-----

From: Debbie Schreiner [mailto:Debbie_Schreiner@fws.gov]
Sent: Monday, December 16, 2013 9:44 AM
To: Noreen Walsh; Will Meeks; Matt Hogan
Subject: RE: Email to Rowan from Marvin Plenert re: National Bison Range

This has not been controlled thru DTS. Since it was emailed to us, it should be for appropriate action and we can respond if we want but I will confirm that with Nikki in CCU.

-----Original Message-----

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Monday, December 16, 2013 9:39 AM
To: Debbie Schreiner; Will Meeks; Matt Hogan
Subject: RE: Email to Rowan from Marvin Plenert re: National Bison Range

Is this being controlled to us to draft a response from Rowan?

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

The Mountain-Prairie Region of the U. S. Fish and Wildlife Service: We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.

-----Original Message-----

From: Debbie Schreiner [mailto:Debbie_Schreiner@fws.gov]

Sent: Monday, December 16, 2013 8:05 AM
To: Will Meeks; Noreen Walsh; Matt Hogan
Subject: FW: Email to Rowan from Marvin Plenert re: National Bison Range

-----Original Message-----

From: Nikki Randolph [mailto:nikki_randolph@fws.gov]
Sent: Friday, December 13, 2013 9:02 PM
To: debbie_schreiner@fws.gov
Subject: Fw: Email to Rowan from Marvin Plenert re: National Bison Range

----- Original Message -----

From: Sellars, Roslyn [mailto:roslyn_sellars@fws.gov]
Sent: Friday, December 13, 2013 02:20 PM
To: Rowan Gould <r_w_gould@fws.gov>; Sabrina Chandler
<Sabrina_Chandler@fws.gov>; Nikki Randolph <Nikki_Randolph@fws.gov>
Subject: Email to Rowan from Marvin Plenert re: National Bison Range

----- Forwarded message -----

From: Marvin Plenert <marvplenert@yahoo.com>
Date: Wed, Nov 20, 2013 at 3:06 PM
Subject: Kalispell meeting
To: "Rowan_Gould@fws.gov" <Rowan_Gould@fws.gov>
Cc: Paula Dinerstein <pdinerstein@peer.org>, ron fowler
<rfowler64@verizon.net>, Bob Fields <bandjfields@comcast.net>, Marvin
Kaschke <kastree@polson.net>, don Redfern <bga1don@aol.com>

Rowan As a followup to the meeting we had regarding the National Bison Range Complex at Kalispell. You indicated that you would run down the status of the draft AFA policy and see if there was any way to get it moving and completed. Our suggestion, if you will remember was to scrap the AFA which is not required by law, and proceed with the CCP effort which is required by law, thereby killing two birds with one stone of allowing the Public and others to get involved, which has been grossly lacking to date, as well as allowing the planning process to proceed without any constraints or givens to be the determining factor on long term planning for the refuge. This in my opinion would be a win-win situation for everyone, except perhaps the CSKT who's ultimate goal is to gain control of the land and management of the NBRC. Rowan, moving forward with a CCP process that is free of constrained Agency mandates not only puts the FWS in compliance with the law, but will also go a long way toward ending the 12 year battle over the misguided AFA's

Implicit in our meeting was the understanding not only that you would look into the issue, but that we would get some feed back, thus far there has been nothing but silence. Will be awaiting your reply.
Thanks Marv Plenert

From: [Rundle, Dean](#)
To: [Will Meeks](#); [Matt Hogan](#); [Noreen Walsh](#)
Subject: Re: FW: From Greenwire -- WILDLIFE: Park Service, tribe team up to restore buffalo in Badlands
Date: Tuesday, July 02, 2013 9:55:46 AM

There are some significant differences between the situation at Badlands and NBR. The Ogallala Lakota at Pine Ridge are not a Self-Governance Tribe (like CSKT), and are not eligible to request an AFA with the Park Service to manage Badlands NP.

Secretary Salazar (or maybe it was John Jarvis) signed off last year on an EIS with the preferred alternative to create Badlands as a Tribal NP, to be managed by the tribe. This requires legislation.

If Congress passed a law to create NBR as a tribally managed refuge, then we would be in the same boat. This was actually proposed as an alternative by myself and Rick Coleman in the spring of 2007. At the time, Director Hall rejected the notion and indicated there was no stomach in either DOI or on Capital Hill for a legislative fix that would take NBR out of NWRS.

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

On Tue, Jul 2, 2013 at 9:26 AM, Will Meeks <Will_Meeks@fws.gov> wrote:

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: Matt Hogan [mailto:Matt_Hogan@fws.gov]
Sent: Friday, June 28, 2013 4:06 PM
To: Noreen Walsh; Will Meeks
Subject: RE: From Greenwire -- WILDLIFE: Park Service, tribe team up to restore buffalo in Badlands

Absolutely.

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Friday, June 28, 2013 2:40 PM
To: Will Meeks; Matt Hogan
Subject: FW: From Greenwire -- WILDLIFE: Park Service, tribe team up to restore buffalo in Badlands

Maybe we should arrange a chat with NPS about how this is working. What do you think?

From: leith_edgar@fws.gov by E&E Publishing [mailto:email_this@eenews.net]
Sent: Monday, June 24, 2013 7:44 PM
To: noreen_walsh@fws.gov
Subject: From Greenwire -- WILDLIFE: Park Service, tribe team up to restore buffalo in Badlands

E-mail this story, sponsored by America's Natural Gas.

This Greenwire story was sent to you by: leith_edgar@fws.gov



AN E&E PUBLISHING SERVICE

WILDLIFE: Park Service, tribe team up to restore buffalo in Badlands (Monday, June 24, 2013)

In an effort to restore the buffalo population in the Badlands, the National Park Service and the Oglala Sioux are working on legislation to create the first tribal national park.

Under the measure, the tribe would have the right to manage and operate the lands in the 133,300-acre South Unit, a part of the Pine Ridge Reservation. The area has been mostly barren since the 1940s, when the Army forced families in the Oglala Sioux to leave in order to turn it into a bombing range.

While the land has since recovered, the bison that once roamed the area have not yet returned. The group wants to bring more than 1,000 buffaloes to the area in order to ensure genetic diversity.

"Our buffalo are going to be coming back to our country," said Ruth Brown, an Oglala Sioux tribal council member who is helping draft the legislation.

The tribe has long sought to control the land. An original plan signed by the Park Service in 1976 did not recognize the Oglala Sioux tribe as "its own country," said Eric Brunnemann, superintendent of Badlands National Park.

Both the federal government and the tribe recognize that it will be a "government-to-government relationship" (Juliet Eilperin, [Washington Post](#), June 23). --JE

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From: Bud Oliveira
To: Jeff King/R6/FWS/DOI@FWS
Cc: Bill Berg/R6/FWS/DOI@FWS; Rick Coleman/R6/FWS/DOI@FWS; Tina Dobrinsky/R6/FWS/DOI@FWS; Matt Kales/R6/FWS/DOI@FWS; Dean Rundle/R6/FWS/DOI@FWS
Subject: Re: Fw: IMPORTANT - PLEASE READ: Briefing Papers for Confirmation - Due COB Wednesday, December 8
Date: Wednesday, December 08, 2010 8:43:22 AM

Thank you Jeff!

----- Original Message -----

From: Jeff King
Sent: 12/08/2010 08:34 AM MST
To: Bud Oliveira
Cc: Bill Berg; Rick Coleman; Tina Dobrinsky; Matt Kales; Dean Rundle
Subject: Re: Fw: IMPORTANT - PLEASE READ: Briefing Papers for Confirmation
- Due COB Wednesday, December 8
Folks,

Included Steve's comments and expanded/clarified some other bullets.

jk

[attachment "R6.NBR.AFA JKING 2.doc" deleted by Bud Oliveira/R6/FWS/DOI]

Bud Oliveira/R6/FWS/DOI
12/08/2010 07:36 AM

To
Jeff King/R6/FWS/DOI@FWS, Bill Berg/R6/FWS/DOI, Tina Dobrinsky/R6/FWS/DOI
cc
Rick Coleman/R6/FWS/DOI
Subject
Fw: IMPORTANT - PLEASE READ: Briefing Papers for Confirmation - Due COB
Wednesday, December 8

Tina

Can you work with Bill & Jeff to make the requested edits?

Bill & Jeff - sorry for the back and forth.

b

----- Forwarded by Bud Oliveira/R6/FWS/DOI on 12/08/2010 07:35 AM -----

Matt Kales/R6/FWS/DOI
12/08/2010 07:28 AM

To
"Julie Lyke" <Julie_Lyke@fws.gov>, dean_rundle@fws.gov, tina_dobrinsky@fws.gov,
seth_willey@fws.gov, "Bridget Fahey" <bridget_fahey@fws.gov>
cc
"Michael Thabault" <Michael_Thabault@fws.gov>, rick_coleman@fws.gov,
bud_oliveira@fws.gov, "Leith Edgar" <leith_edgar@fws.gov>
Subject
Fw: Fw: IMPORTANT - PLEASE READ: Briefing Papers for Confirmation - Due COB
Wednesday, December 8

Folks,

Please see below initial feedback from the Front Office re: the BPs for Dan's confirmation hearing. As Steve indicates, Noreen may have additional comments, but I thought you all may want to get going on the below revisions, some of which may take a few minutes.

NWRS: it looks like the only substantive edits are on the AFA paper.

ES: similarly, it looks like the only substantive edits are on the wolverine paper (you can insert the timeline Seth developed yesterday into the existing grizz paper).

I am away from the RO until 1000 today but available to assist with writing as necessary after that. I'll pass on any additional comments from Noreen as soon as I get them.

Thanks, all. Matt

Sent by BlackBerry

From: Stephen Guertin
Sent: 12/08/2010 06:06 AM MST
To: Matt Kales
Cc: Noreen Walsh; Debbie Schreiner; Leith Edgar
Subject: Re: Fw: IMPORTANT - PLEASE READ: Briefing Papers for Confirmation - Due COB Wednesday, December 8

Thanks for pulling these together and I know Noreen will also offer substantive comments.

CMR issue paper

· Drop "Despite lengthy delays and lack of accomplishments in the past several years" (too negative) and start sentence with "The Agencies (Corps of Engineers and Fish and Wildlife Service) have recently made significant progress towards divestiture of cabin sites within the Refuge.

AFA issue paper

We say "Deputy Assistant Secretary Jane Lyder has requested that the Service negotiate a new AFA while national policy is being developed." What concrete actions to negotiate a new AFA have we taken since that guidance came out? Mention Dean's visit to Tribes.

Yellowstone Grizzly

We need to expand the issue paper to include the brief update / timeline on the NCDE so the Director nominee has this important information in this briefing book. These two very complicated issues are now linked and we may have Senators asking about them given the media play.

Wolverine

. We conclude that "The finding of warranted, but precluded is likely to make state-led wolverine conservation, including restoration efforts in the southern Rocky Mountains more difficult due to uncertainty surrounding the potential for future regulatory actions." when in fact we are hosting a Colorado led initiative to do just that on Monday and it sets a tone of pessimism when we want to talk about being proactive. Please close briefing paper on a realistic yet positive note.

Looking forward to seeing the wolf paper.

Thanks for the hard work on these.

Steve

Steve Guertin
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

-----Matt Kales/R6/FWS/DOI wrote: -----

To: Stephen Guertin/R6/FWS/DOI@FWS, Noreen Walsh/R6/FWS/DOI@FWS
From: Matt Kales/R6/FWS/DOI
Date: 12/07/2010 05:05PM
cc: Debbie Schreiner/R6/FWS/DOI@FWS, Leith Edgar/R6/FWS/DOI@FWS
Subject: Fw: IMPORTANT - PLEASE READ: Briefing Papers for Confirmation - Due COB Wednesday, December 8

Steve, Noreen:

Please see attached our regional submissions for the below data call. We are waiting on one (1) item, NRM wolf, which are developing in concert w/R1 but, in the interests of time, I am sending you all other items for your review/surname. I anticipate we will have the wolf item in hand NLT 1100 tomorrow (12/08). Once the entire package is ready to go, Debbie can route the docs to AEA via DTS.

Thanks. MK

----- Forwarded by Matt Kales/R6/FWS/DOI on 12/07/2010 04:57 PM -----

Matt Kales/R6/FWS/DOI
12/06/2010 10:26 AM

To

Hugh Morrison/R6/FWS/DOI@FWS, Leith Edgar/R6/FWS/DOI@FWS, Debbie Schreiner/R6/FWS/DOI@FWS, Jean Clemens/R6/FWS/DOI@FWS, Rick

Coleman/R6/FWS/DOI@FWS, Bud Oliveira/R6/FWS/DOI@FWS, Sharon R Rose/R6/FWS/DOI@FWS, Larry R Gamble/R6/FWS/DOI@FWS, Doug Fruge/R6/FWS/DOI@FWS, Steve Oberholtzer/R6/FWS/DOI@FWS, Honora Gordon/R6/FWS/DOI@FWS, Matt Hogan/R6/FWS/DOI@FWS, Casey Stemler/R6/FWS/DOI@FWS, James Dubovsky/R6/FWS/DOI@FWS, Michael Thabault/R6/FWS/DOI@FWS, Julie Lyke/R6/FWS/DOI@FWS

cc

Stephen Guertin/R6/FWS/DOI@FWS, Noreen Walsh/R6/FWS/DOI@FWS

Subject

Fw: IMPORTANT - PLEASE READ: Briefing Papers for Confirmation - Due COB Wednesday, December 8

Folks,

As mentioned at this morning's RDT meeting, please see below the formal data call for Dan's upcoming confirmation hearing (date TBD). Please be sure to use the attached template, and please send me any/all responses by 1200 MST tomorrow (12/7/1), so we have adequate time to QA/QC, move through RD surname, and upload to DTS by the below deadline. Per my earlier messages on this item, I recommend the following topics for our (R6) EPW Members:

Max Baucus, MT: NRM wolves; CMR CCP and cabins; Bison Range; wolverine
John Barrasso, WY: NRM wolves; Yellowstone grizz; Greater sage-grouse

Please note the BP for NRM wolves applies to both members, so one version is fine. If there is another issue that you feel warrants briefing, please let me know; we have plenty of room for more WY BPs, and can collapse the CMR BPs into one as necessary if we want to add another item for MT.

Thanks, and please let me know if you have any immediate questions. Thanks. Matt

----- Forwarded by Matt Kales/R6/FWS/DOI on 12/06/2010 10:18 AM -----

Elizabeth Stevens/ARL/R9/FWS/DOI
12/06/2010 07:30 AM

To

FWS Directorate & Deputies

cc

Charna Lefton/RO/R2/FWS/DOI@FWS, David Patte/RO/R1/FWS/DOI@FWS, Jason Holm/R3/FWS/DOI@FWS, Jeffrey_M_Fleming@fws.gov, kyla_hastie@fws.gov, Larry Bell/R7/FWS/DOI, Matt Kales/R6/FWS/DOI@FWS, Paul McKim/R8/FWS/DOI@FWS, Sarah GannonNagle/NCTC/R9/FWS/DOI@FWS, chris_tollefson@fws.gov, bruce_decker@fws.gov, matthew_huggler@fws.gov

Subject

IMPORTANT - PLEASE READ: Briefing Papers for Confirmation - Due COB Wednesday, December 8

Good Morning Everyone:

On Friday, December 3, the White House announced the intent to nominate Dan Ashe to be the Service's next Director. We expect Dan's confirmation hearing to occur quickly, as the Senate is currently scheduled to be in session only a couple more weeks in December. Therefore, to assist with hearing preparations, we would like the Regions and Washington Office Programs to ensure that all briefing papers on high profile issues of interest to Members of the Senate Environment and Public Works Committee (see list below) are updated by COB, Wednesday, December 8 .

We would like no more than 5 "hot topic" briefing papers per Member using the attached briefing paper format . The briefing papers can be either new topics or updated versions of briefing papers already in the database. Any new briefing papers must be cleared through the appropriate Assistant Director or Regional Director and uploaded - individually - in DTS and routed to AEA-CLA.

Note - We are looking for high profile issues being worked on within the Service or those that have been raised by relevant Congressional Members during meetings, authorizing Committee oversight and legislative hearings, correspondence, etc.

If you have any questions, please contact Matt Huggler (703-358-2243) in CLA.

Thank you in advance for your help in pulling this information together.

Senate Environment and Public Works Committee

Region 1

Jeff Merkley (D-OR)

Mike Crapo (R-ID)

Region 2

Tom Udall (D-NM)

James M. Inhofe (R-OK)

Region 3

Amy Klobuchar (D-MN)

George V. Voinovich (R-OH)

Christopher S. Bond (R-MO)

Region 4

David Vitter (R-LA)

Lamar Alexander (R-TN)

Region 5

Thomas R. Carper (D-DE)

Frank R. Lautenberg (D-NJ)

Benjamin L. Cardin (D-MD)

Bernard Sanders (I-VT)
Sheldon Whitehouse (D-RI)
Kirsten Gillibrand (D-NY)
Arlen Specter (R-PA)

Region 6
Max Baucus (D-MT)
John Barrasso (R-WY)

Region 8
Barbara Boxer (D-CA) (Chairman)

[attachment "briefing paper template.doc" deleted by Matt Kales/R6/FWS/DOI]

Elizabeth H. Stevens (Beth)
Assistant Director, External Affairs
(202) 208-6541
(202) 501-6589 FAX

[attachment "R6.CMR NWR.cabins..doc" deleted by Jeff King/R6/FWS/DOI]

[attachment "R6.CMR NWR.CCP.doc" deleted by Jeff King/R6/FWS/DOI] [attachment

"R6.CMR.water issues.docx" deleted by Jeff King/R6/FWS/DOI] [attachment

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

"R6.GrSG.status.doc" deleted by Jeff King/R6/FWS/DOI] [attachment

"R6.Yellowstone grizz.doc" deleted by Jeff King/R6/FWS/DOI] [attachment

"R6.wolverine 12-month finding.docx" deleted by Jeff King/R6/FWS/DOI]

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: [Matt Hogan](#)
To: [Noreen Walsh](#)
Subject: RE: FWS aims to give tribes more control of bison range, but employees object
Date: Thursday, August 07, 2014 4:45:20 PM

Maybe this would be some indication of the source: "We are so tired of being in limbo for over a

decade now, " the employees

wrote. "

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Thursday, August 07, 2014 4:18 PM
To: Marla Trollan
Cc: Matt Hogan
Subject: Re: FWS aims to give tribes more control of bison range, but employees object

I believe these are quotes from the previously leaked internal document?

Sent from my iPhone

On Aug 7, 2014, at 4:37 PM, Marla Trollan <Marla_Trollan@fws.gov> wrote:

Noreen, employees are talking....note the quotes in yellow.

From: Leith Edgar [mailto:leith_edgar@fws.gov]
Sent: Thursday, August 07, 2014 11:32 AM
To: Marla Trollan; John Bryan
Cc: Will Meeks; Paul Santavy; Mike Blenden; Toni Griffin; Jeff King; Laura King; Ryan Moehring; Vanessa Kauffman
Subject: FWS aims to give tribes more control of bison range, but employees object

Quotes:

"We don't think the document accurately reflects what could happen to the refuge complex if the current Service employees don't sign IPAs," the employees wrote in the anonymous document, released by watchdog group Public Employees for Environmental Responsibility. "Won't there be a negative effect if all but three employees are replaced by much less experienced 5-year term AFA staff? What if an AFA fails again and there are only 3 people left to run a very complex operation? That was never discussed or evaluated."

"Why does the analysis only look at the effects of the number of staff that are here? That's such a small part of the picture. Why didn't it look at how the refuge is administered?" one employee wrote in the internal document.

Will Meeks, the assistant regional director for refuges in the Mountain-Prairie Region, acknowledged that "there's a wide range of opinions amongst the staff." But he emphasized that IPAs are voluntary and are used throughout the federal government.

"I feel that CKTP, with their wildlife division, [has the ability] to hire qualified individuals in the event someone doesn't sign an IPA," he said.

Meeks said the agency used the Tribal Self-Governance Act as a guide for the agreement. He also highlighted some changes from the 2008 agreement -- namely, the removal of a tribal "co-equal deputy" and a provision that keeps budget control with the FWS refuge manager.

"We have a great opportunity right now with the tribe to build a productive relationship," he said.

For FWS employees, a primary concern is stability. If FWS decides to implement the latest agreement, it will likely be subject to a lawsuit from PEER and former Interior officials. And if the lawsuit prevails, they will once more be left to pick up the pieces.

"We are so tired of being in limbo for over a decade now," the employees wrote. "Everything has been up in the air for so long, from staff and planning, to facilities. ... Let's pick an option that may not give CSKT everything they want, but will give us a place to start building from and won't risk another lawsuit. We have lost so much, from losing dozens of experienced staff, both Service and CSKT, to our credibility with the surrounding community and our visitors while the Bison Range has been in this turmoil. Why is the Service willing to make this sacrifice over and over?"

FWS aims to give tribes more control of bison range, but employees object

Emily Yehle, E&E reporter

Published: Thursday, August 7, 2014

The Fish and Wildlife Service is moving forward with plans to give local tribes more control of Montana's National Bison Range Complex, despite misgivings from environmentalists and some of its own employees.

FWS has tried for more than a decade to hammer out a workable agreement with the Confederated Salish and Kootenai Tribes (CSKT). This week, the agency released the [draft environmental assessment](#) for its third attempt -- a proposed Annual Funding Agreement that would hand over most of the range's day-to-day responsibilities to the tribes, with oversight from the agency's refuge manager.

The proposal has drawn fire in the past, primarily from environmentalists and former Interior Department officials, who say it cedes too much control to the tribes ([Greenwire](#), May 22, 2012).

Now, the draft EA faces criticism for not addressing the potential consequences

of the agreement for FWS employees.

In an internal [document](#), the range's staff raised several concerns about the EA and the proposed agreement. Among their complaints: FWS has not considered what would happen if its employees declined to work for the tribe.

So-called Intergovernmental Personnel Act agreements (IPAs) allow federal employees to retain the pay and benefits of one agency while working for another. Under the proposed agreement with CSKT, five of the range's eight permanent employees would be offered IPAs; if they didn't sign them, they would be placed elsewhere in FWS.

But the draft EA does not consider the possibility that the employees wouldn't sign such agreements. In that case, CSKT would be able to hire their replacements for its five-year contract.

The range's employees argue that CSKT would have trouble finding qualified applicants willing to work under a short-term agreement that could be cut even shorter by a lawsuit.

"We don't think the document accurately reflects what could happen to the refuge complex if the current Service employees don't sign IPAs," the employees wrote in the anonymous document, released by watchdog group Public Employees for Environmental Responsibility. "Won't there be a negative effect if all but three employees are replaced by much less experienced 5-year term AFA staff? What if an AFA fails again and there are only 3 people left to run a very complex operation? That was never discussed or evaluated."

The EA instead focuses almost exclusively on how the staffing levels of each alternative will affect environmental issues such as habitat management, wildlife management, research and operations. Consequently, implementing the proposed agreement is generally found to be beneficial, since the number of permanent positions would stay similar to current levels.

"Why does the analysis only look at the effects of the number of staff that are here? That's such a small part of the picture. Why didn't it look at how the refuge is administered?" one employee wrote in the internal document.

Will Meeks, the assistant regional director for refuges in the Mountain-Prairie Region, acknowledged that "there's a wide range of opinions amongst the staff." But he emphasized that IPAs are voluntary and are used throughout the federal government.

"I feel that CKTP, with their wildlife division, [has the ability] to hire qualified individuals in the event someone doesn't sign an IPA," he said.

'Inherently federal'

The CSKT sees the range as part of its cultural heritage, a link to the animals its ancestors once hunted and worshipped. According to tribal history, some of the bison there descend from six calves the tribes brought to the area.

The range is also within the boundaries of the Flathead Indian Reservation. A

century ago, Congress bought the 16,000 acres that make up the range from the reservation -- and the tribe has pointed out that such sales at the time were often forced.

In the EA, FWS asserts that entering into an annual funding agreement with CSKT would "allow the Tribes to take part in refuge programs that are of special geographic, historical, or cultural significance."

But the scope of the latest agreement has sparked concerns over whether it gives too much authority over federal lands to the tribes.

FWS officials point out that the agency has final authority on decisions, and Meeks said many day-to-day activities at the range are guided by policies and regulations.

But critics note that most positions at the refuge would go to the tribe, which would also be able to protest the FWS refuge manager's decisions. Among other allegations, PEER and former Interior officials say the agreement outsources "inherently federal" functions to tribes, in violation of the Indian Self-Determination and Education Assistance Act.

Nathaniel Reed, a former assistant secretary, is one of several former Interior officials who along with PEER filed a lawsuit against the agency for entering a similar funding agreement with the tribes in 2008 ([Greenwire](#), May 22, 2012).

Adding to the confusion is that FWS does not have a national policy on annual funding agreements. In the past, PEER and the National Wildlife Refuge Association have urged FWS to develop a policy that clearly outlines "inherently federal" responsibilities and sets requirements for cost-effectiveness. But nothing has materialized.

Meeks said the agency used the Tribal Self-Governance Act as a guide for the agreement. He also highlighted some changes from the 2008 agreement -- namely, the removal of a tribal "co-equal deputy" and a provision that keeps budget control with the FWS refuge manager.

"We have a great opportunity right now with the tribe to build a productive relationship," he said.

But an agreement will be long in coming. The draft EA is now open for a month of public comment, after which FWS will decide whether an environmental impact statement is necessary. If not, the agency could submit the agreement for a 90-day congressional review.

For FWS employees, a primary concern is stability. If FWS decides to implement the latest agreement, it will likely be subject to a lawsuit from PEER and former Interior officials. And if the lawsuit prevails, they will once more be left to pick up the pieces.

"We are so tired of being in limbo for over a decade now," the employees wrote. "Everything has been up in the air for so long, from staff and planning, to facilities. ... Let's pick an option that may not give CSKT everything they want, but will give us a place to start building from and won't risk another lawsuit. We

have lost so much, from losing dozens of experienced staff, both Service and CSKT, to our credibility with the surrounding community and our visitors while the Bison Range has been in this turmoil. Why is the Service willing to make this sacrifice over and over?"

From: [Debbie Schreiner](#)
To: [Noreen Walsh](#)
Subject: RE: Letter from Chairman Durglo, CSKT
Date: Friday, August 30, 2013 12:07:32 PM

When I call the number on the letterhead, I get a fast busy signal so it appears that number is not correct. I went online to their website and the main number is (406) 675-2700. When I call that number there is a recording that they work a 4-day 10 hour work week.

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Friday, August 30, 2013 10:51 AM
To: Debbie Schreiner
Cc: Will Meeks
Subject: FW: Letter from Chairman Durglo, CSKT

Debbie, I will call Chairman Durglo late today or early Tuesday. Can you ascertain if the number on the letterhead is the best number for me to call him at?

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Debbie Schreiner [mailto:Debbie_Schreiner@fws.gov]
Sent: Wednesday, August 28, 2013 10:45 AM
To: Noreen Walsh; Matt Hogan
Subject: Letter from Chairman Durglo, CSKT

I will put this into DTS for Refuges to prepare a response.

Debbie Schreiner
Executive Assistant
Mountain-Prairie Region
(303) 236-7920
debbie_schreiner@fws.gov

From: [Dan Ashe](#)
To: [Washburn, Kevin](#)
Cc: [Lawrence Roberts](#); [Sarah Harris](#)
Subject: Re: Meeting next week?
Date: Thursday, January 23, 2014 11:11:11 PM

Thanks Kevin. He is on my schedule. Long, long, long story. We should talk. We are heading to a good place, I think, but we have been sued and lost on this once before. We need to be careful so it doesn't happen again.💎

Dan Ashe
Director, U.S. Fish and Wildlife Service

On Jan 23, 2014, at 9:31 AM, "Washburn, Kevin" <kevin.washburn@bia.gov> wrote:

Hi Dan - just wanted to alert you to this communication. 💎Based on the timing, I suspect that this tribal leader will be in town to testify before the Senate Committee on Indian Affairs on S. 919, the self-governance bill. 💎We probably do not want them upset at the FWS as they head into that hearing because it will give them a big public forum in which to raise concerns. 💎If you can resolve any of this before then, it might be good for FWS and all of Interior. 💎We will, of course, take the meeting with the tribe because this tribe is one of our most important partners. 💎If there is anything we can do to help otherwise, please let us know. 💎KW

----- Forwarded message -----

From: **George Waters** <george@georgewaters.com>
Date: Wed, Jan 22, 2014 at 6:19 PM
Subject: Meeting next week?
To: "Warito, Ratana" <ratana.warito@bia.gov>, anna.owens-brown@bia.gov, Matthew.Martin@bia.gov
Cc: kevin.washburn@bia.gov, lawrence_roberts@ios.doi.gov, "Black, Michael" <Mike.Black@bia.gov>, bryan.rice@bia.gov

Ratana, Ann and/or Matthew - Ron Trahan is the newly elected Chairman of the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation in Montana. He will be in DC next week to testify in the Senate. While here he was hoping to meet Kevin, Larry, Mike and Bryan, to introduce himself and give an update on where things stand with the negotiations with the Fish and Wildlife Service for the CSKT to play a management role at the National Bison Range, a USFWS Refuge that Teddy Roosevelt decided to pluck down smack in the middle of the Flathead Reservation! 💎This has been - and hopefully

will be again - the largest Self Governance Annual Funding Agreement (AFA) for a DOI non-BIA project ever. There is quite a story of how this has been an on-again, off-again AFA. ♦ Right now the CSKT and FWS are negotiating to reinstate it but the local FWS office in Denver is going so slow, and suddenly moving the goal posts, that elected officials at CSKT are getting more than frustrated. ♦ I am trying to set up a meeting with FWS leaders as well but this may need a push from the BIA and/or the Secretary.

I will include Kevin, Larry, Mike and Bryan Rice as cc's on this so they have the benefit of this explanation. ♦ The Chairman will be accompanied by in house attorney Brian Upton and me.

He is available next Tuesday (all day) or Wednesday morning. ♦ Can we set something up? Thank you all. Stay warm!

George Waters, President
George Waters Consulting Service
505 Capitol Court., NE
Suite 200
Washington, DC 20002
(202) 544-3044
(202) 544-3155 fax
george@georgewaters.com

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Kevin K. Washburn
Assistant Secretary for Indian Affairs
U.S. Department of the Interior
1849 C Street, NW, MS 4141
Washington, DC 20240
Main number 202-208-7163
Fax 202-208-5320
kevin.washburn@bia.gov

<winmail.dat>

From: [Matt Hogan](#)
To: [Will Meeks](#)
Subject: RE: Meeting request re: Draft EA for the Draft AFA at the National Bison Range Complex
Date: Wednesday, August 13, 2014 12:48:53 PM

One edit

Ms. Reneau,

Thank you for your email dated August 14, 2014 regarding the current Environmental Assessment (EA) for a proposed Annual Funding Agreement with the Confederated Salish and Kootenai Tribes at the National Bison Range.

I also appreciate the invitation to meet with you; however I will be unavailable during the times you proposed. We will also consider your request for an extension and make a final decision soon.

If you would like to visit with the Assistant Regional Director – NWRS R6, Will Meeks, about the EA feel free to contact him at will_meeks@fws.gov or by phone at 303-236-4303. Mr. Meeks has not read 60 books, let alone authored any but he is the best we can offer.

-----Original Message-----

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Wednesday, August 13, 2014 12:42 PM
To: Noreen Walsh
Cc: Matt Hogan
Subject: RE: Meeting request re: Draft EA for the Draft AFA at the National Bison Range Complex

How's this . . . if it doesn't fit the bill, I'll take another stab. (Short and sweet)

Ms. Reneau,

Thank you for your email dated August 14, 2014 regarding the current Environmental Assessment (EA) for a proposed Annual Funding Agreement with the Confederated Salish and Kootenai Tribes at the National Bison Range.

I also appreciate the invitation to meet with you; however I will be unavailable during the times you proposed. We will also consider your request for an extension and make a final decision soon.

If you would like to visit with the Assistant Regional Director – NWRS R6, Will Meeks, about the EA feel free to contact him at will_meeks@fws.gov or by phone at 303-236-4303.

Will Meeks
U.S. Fish and Wildlife Service, Region 6 ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

-----Original Message-----

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]

Sent: Wednesday, August 13, 2014 12:00 PM

To: Will Meeks

Cc: Matt Hogan

Subject: Re: Meeting request re: Draft EA for the Draft AFA at the National Bison Range Complex

Yep. Short and sweet acknowledge receipt

Sent from my iPhone

> On Aug 13, 2014, at 11:54 AM, Will Meeks <Will_Meeks@fws.gov> wrote:

>

> Noreen,

>

> Would you like me to take the lead and draft a response?

>

> Will Meeks

> U.S. Fish and Wildlife Service, Region 6 ARD-NWRS and PFW

> 303-236-4303 (w)

> 720-541-0310 (c)

>

>

> -----Original Message-----

> From: Noreen Walsh [mailto:noreen_walsh@fws.gov]

> Sent: Wednesday, August 13, 2014 9:26 AM

> To: Roslyn Sellars; Matt Hogan; Will Meeks

> Cc: Thomas Irwin

> Subject: RE: Meeting request re: Draft EA for the Draft AFA at the

> National Bison Range Complex

>

> Thanks Roslyn, I would prefer to respond to her from here in the region.

>

> Noreen Walsh

> Regional Director

> Mountain-Prairie Region

> U. S. Fish and Wildlife Service

>

> 303 236 7920

>

> The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:

> We provide conservation stewardship of some of America's most scenic

> lands, to ensure healthy fish and wildlife for the enjoyment and

> benefit of all people.

>

>

> -----Original Message-----

> From: Sellars, Roslyn [mailto:roslyn_sellars@fws.gov]

> Sent: Wednesday, August 13, 2014 9:24 AM

> To: Noreen Walsh; Matt Hogan

> Cc: Thomas Irwin

> Subject: Meeting request re: Draft EA for the Draft AFA at the

> National Bison Range Complex

>

> Do we need to do anything with this?

>

> Roslyn

>

> ----- Forwarded message -----

> From: Susan Reneau <bluemountain@montana.com>

> Date: Tue, Aug 12, 2014 at 3:17 PM

> Subject: Time to extend the deadline for the Draft Environmental

> Assessment for the Draft AFA at the National Bison Range Complex

> To: noreen_walsh@fws.gov, matt_hogan@fws.gov

> Cc: Dan_Ashe@fws.gov

>

>

> Dear Noreen Walsh, U.S. Secretary of the Interior, and Matt_Hogan,

> Deputy Secretary of Interior,

>

>

>

> I would like to meet with you sometime between this Friday, Aug. 15

> and Wednesday, Aug. 20 to discuss the newly released "Draft

> Environmental Assessment for a Draft AFA for the National Bison Range
> Complex."

> Accompanying me will be my husband, Jack Reneau, who is the wildlife
> biologist for the Boone and Crockett Club and director of big game

> records for the B&C. We as individuals not representing anyone wish

> to speak to you in earnest about the ramifications of such an AFA on

> the entire National Wildlife Refuge System and specifically one of the

> most publically known of all national wildlife refuges – namely the

> National Bison Range Complex.

> Between the both of us, we have authored and edited in excess of 60

> books on big-game hunting and wildlife conservation.

>

>

>

> I met with Jim Kurth, Refuge Chief, in Washington, D.C. a while ago at

> the time when the Confederated Salish and Kootenai (CSKT) tribal

> government representatives, including lawyers, had free access to

> writing an Annual Funding Agreement that satisfied their demands but

> did not allow the public to participate in the process nor for

> long-term U.S. Fish and Wildlife Service employees to give their

> expert opinions about what was best for one of our nation's finest

> national wildlife refuges. I've met with several Secretaries of the

> Interior and White House representatives regarding this issue since

> 2003 as well as many other top officials of the U.S. Department of

> Interior under many presidential administrations.

>

>

>

> Now we are in receipt of the 160-page "Draft Environmental Assessment

> for a Draft Annual Funding Agreement for the National Bison Range

> Complex" with a deadline to comment of less than one month after the

> CSKT lawyers, tribal leaders and lobbyists were allowed to spend four

> years writing an AFA to their liking. By a federal judge's order,

> CSKT workers under the previous AFA were removed from the National

> Bison Range and in the past other CSKT workers under other AFA

> agreements were removed for non-compliance and despicable behavior

> towards federal workers, some of whom were CSKT members.

>

>

>

> At minimum, Noreen and Matt, the public should be afforded the amount

> of time and same amount of access to the U.S. Fish and Wildlife

> Service as the CSKT since the public funds the National Wildlife

> Refuge System and are citizens of our nation with as much right to

> feedback as any other special interest group that are Americans. A
> comment period of 90 days is more in order.
>
>
>
> Friday evening we'll be tied up starting at 4 p.m. but could meet with
> you prior to that. Monday, Aug. 18, we are open in the morning and
> late afternoon. I have a business appointment on Aug. 18 regarding
> this issue at
> 2 p.m. with some of my national conservation heroes but could meet
> with you at 4 p.m. if the morning doesn't work for you.
> Tuesday and Wednesday of next week, Aug. 19 and 20, we are wide open.
> Our meeting with you would take less than one hour.
>
>
>
> This draft EA has catastrophic ramifications for the entire National
> Wildlife Refuge System if enacted. It flies in the face of other
> federal laws set up to protect the management, operations and
> financial stability of this federal public land system and excludes
> one very famous national wildlife refuge from the rest of the system.
>
>
>
> In the spirit of Ding Darling, Theodore Roosevelt and the men of the
> late 19th century and early 20th century that set up our entire
> federal land systems, including the National Wildlife Refuge System, I
> say, the wildlife and its habitat cannot speak so I must and so must
> you. You are obligated to enforce existing federal laws for the
> protection and enhancement of the federal land systems you are in
> charge of upholding in public trust.
>
> A quote from Theodore Roosevelt comes to mind. "Here is your country.
> Cherish these natural wonders, cherish the natural resources, cherish
> the history and romance as a sacred heritage, for your children and
> your children's children. Do not let selfish men or greedy interests
> skin your country of its beauty, its riches or its romance."
>
> A system of management and financing of our National Wildlife Refuge
> System and National Park System was set up in the early 1900s under
> the presidential leadership of Theodore Roosevelt and a close-knit
> group of his friends in Congress. This AFA and any AFA that is so
> far-reaching would rewrite how such federal land systems are managed
> and financed for the betterment of a few Americans and not for the
> betterment of the land or all other Americans.
>
> Susan Campbell Reneau
>
> 719-661-4037

From: [Noreen Walsh](#)
To: [Matt Hogan](#)
Subject: Re: Meeting with CSKT
Date: Monday, September 16, 2013 4:27:48 PM

We can divide and conquer

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

On Sep 16, 2013, at 2:10 PM, Matt Hogan <matt_hogan@fws.gov> wrote:

Do you want me to be part of these? ♦ I was planning on antelope hunting on oct 1-2. ♦

Sent from my iPhone

Begin forwarded message:

From: Debbie Schreiner <Debbie_Schreiner@fws.gov>
Date: September 16, 2013, 1:20:32 PM MDT
To: Dean Rundle <dean_rundle@fws.gov>, Noreen Walsh <noreen_walsh@fws.gov>, ♦ Will Meeks <will_meeks@fws.gov>, Matt Hogan <matt_hogan@fws.gov>, ♦ Sharon Brenna <sharon.brenna@sol.doi.gov>, Dana Jacobsen <dana.jacobsen@sol.doi.gov>, ♦ Jeff King <jeff_king@fws.gov>
Subject: RE: Meeting with CSKT

We can schedule the meeting from 9:00 a.m. ♦ 11:00 or either 10:00 a.m. ♦ 12:00. ♦ If you need more than 2 hours, we can go with the 9:00 a.m. ♦ 12:00. ♦ Let me know.

♦

From: Rundle, Dean [mailto:dean_rundle@fws.gov]
Sent: Monday, September 16, 2013 8:59 AM
To: Debbie Schreiner; Noreen Walsh; Will Meeks; Matt Hogan; Sharon Brenna; Dana Jacobsen; Jeff King
Subject: Meeting with CSKT

♦

CSKT Attorney Brian Upton called and left me a message that the morning of Tuesday Oct. 1 is an acceptable time for Tribal Council representatives to meet with the RD, ARD, others re. the NBR AFA EA process at the RO in Lakewood.

♦

Brian is out of his office until Thursday this week and said he would get me a list of CSKT participants later this week. ♦ He anticipates Tribal Chairman Durglo, maybe 3 - 4 other Tribal Council members

and himself will travel to Denver for the meeting.

◆

Debbie: ◆ I know you had the whole day blocked off on RD's calendar, please advise what time RD would want to meet on morning of 10/1, and I will relay that information to the tribe.

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

From: [Noreen Walsh](#)
To: [Steve Woodruff](#)
Cc: [Will Meeks](#); [Matt Hogan](#)
Subject: RE: National Bison Range AFA comments from National Wildlife Federation
Date: Friday, August 22, 2014 2:45:45 PM

Dear Mr. Woodruff,

I wanted to let you know that I received your transmittal, and we appreciate you taking the time to comment.

Sincerely,
Noreen Walsh

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Steve Woodruff [mailto:WoodruffS@nwf.org]
Sent: Friday, August 22, 2014 12:22 PM
To: noreen_walsh@fws.gov
Subject: National Bison Range AFA comments from National Wildlife Federation

Dear Ms. Walsh:

The National Wildlife Federation would like to share with you the formal comments we have submitted in support of the proposed Annual Funding Agreement with the Confederated Salish and Kootenai Tribes to manage the National Bison Range Complex in Montana in partnership with the U.S. Fish and Wildlife Service. Our comments are attached.

The National Wildlife Federation is America's largest conservation organization and has over 4 million supporters and 47 state affiliates. NWF has a long history of involvement and interest with the Bison Range, the U.S. Fish and Wildlife Service, and the Confederated Salish and Kootenai Tribes. We are confident the proposed AFA will prove beneficial for all.

Sincerely,

Steve Woodruff

Senior Policy and Communications Manager
National Wildlife Federation
Northern Rockies & Pacific Regional Center
240 N. Higgins Ave.
Missoula, MT 59802
406-541-6733 (w) 406-531-5019 (m)

woodruffs@nwf.org

From: [Marla Trollan](#)
To: [Will Meeks](#)
Cc: [Matt Hogan](#); [Leith Edgar](#)
Subject: RE: National Bison Range
Date: Monday, August 04, 2014 1:21:10 PM

Okay...Leith has not posted....it's an internal Q&A. Will share with Jeff once we hear from you.

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Monday, August 04, 2014 1:08 PM
To: Marla Trollan
Cc: Matt Hogan
Subject: Re: National Bison Range

Marla,

I'd like to make a small change to #11. Standby.

Once we make that change, please have Leith share it with Jeff King.

Thanks.

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

On Aug 4, 2014, at 10:10 AM, Marla Trollan <Marla_Trollan@fws.gov> wrote:

Guys, we are ready for rollout today...it's in the Reading Room today.

Let me know if you have any final concerns.

From: Leith Edgar [mailto:leith_edgar@fws.gov]
Sent: Monday, August 04, 2014 9:57 AM
To: Marla Trollan; John Bryan
Subject: FW: National Bison Range

FYI--

Hi April, Jeff and Nedra,

Wanted to let you know that the attached comms plan will be put into action early next week. The issue is very FWS specific, but given that it involves bison (tangentially in the form of management of the National Bison Range) and a Native American Tribe I wanted you all to be aware.

Note that the news release and FAQs are embedded in the plan

Please let me know if you have any questions,

Best,

G

Gavin G. Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel: 703-358-2649
Cell: 703-346-9123
gavin_shire@fws.gov

<073014 REVISED NBR AFA Outreach.docx>

From: [Marla Trollan](#)
To: [Will Meeks](#)
Cc: [Matt Hogan](#)
Subject: RE: National Bison Range
Date: Monday, August 04, 2014 3:42:08 PM

Got it...will pass along.

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Monday, August 04, 2014 3:16 PM
To: Marla Trollan
Cc: Matt Hogan
Subject: Re: National Bison Range

Let's try this unless you see something that I don't about the statement:

If the Service's proposed AFA is adopted, five Service employees would be impacted. No employee would lose their federal status. Each employee would have the option to voluntarily sign an Inter-governmental Personnel Agreement whereby the employee would remain a Service employee, though the employee would be assigned to the CSKT for the purposes of day-to-day duties. If a transfer to the CSKT is not desirable to the employee, we will work with the employee to place them a different job.

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

On Aug 4, 2014, at 10:10 AM, Marla Trollan <Marla_Trollan@fws.gov> wrote:

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Let me know if you have any final concerns.

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Sent: Monday, August 04, 2014 9:57 AM
To: Marla Trollan; John Bryan
Subject: FW: National Bison Range

FYI--

Hi April, Jeff and Nedra,

Wanted to let you know that the attached comms plan will be put into action early next week. The issue is very FWS specific, but given that it involves bison (tangentially

in the form of management of the National Bison Range) and a Native American Tribe I wanted you all to be aware.

Note that the news release and FAQs are embedded in the plan

Please let me know if you have any questions,

Best,

G

Gavin G. Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel: 703-358-2649
Cell: 703-346-9123
gavin_shire@fws.gov

<073014 REVISED NBR AFA Outreach.docx>

From: [Will Meeks](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#)
Subject: RE: Natl Bison Range Complex
Date: Friday, August 15, 2014 11:22:37 AM

Noreen,

He called and left the same message with me. He'd like me to call him; I will either today or Monday.

He used to be a Refuge Supervisor in the Region.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Friday, August 15, 2014 11:20 AM
To: Sanchez, Denise
Cc: Will Meeks
Subject: Re: Natl Bison Range Complex

Sent from my iPhone

On Aug 15, 2014, at 11:13 AM, "Sanchez, Denise" <denise_sanchez@fws.gov> wrote:

Hi Noreen,

I received a call this morning from an external citizen (Barney Schranck - 303-989-0585) and he asked that his statement be sent directly to Noreen Walsh.

Stated: In regards to the Draft Environmental Assessment - for the draft annual funding agreement - Natl Bison Range Complex - 30 day comment period should be extended to 60 days.


:)

--

Denise Sanchez | Administrative Assistant
USFWS Mountain-Prairie Region External Affairs
134 Union Blvd, Lakewood, CO 80228
denise_sanchez@fws.gov | 303-236-2985

<http://www.fws.gov/mountain-prairie>



 Flickr - Photos linked in this email.

From: [Will Meeks](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#)
Subject: Re: NBR AFA Final Review pdf Attached
Date: Sunday, July 27, 2014 2:20:18 PM

I just sharing it with you via Google Drive. Let me know if it doesn't work.

Thanks.

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

On Jul 27, 2014, at 3:47 PM, Noreen Walsh <noreen_walsh@fws.gov> wrote:

WAIT! R u in Boston?! I will ask Toni tomorrow - don't worry

Sent from my iPhone

On Jul 27, 2014, at 1:11 PM, Noreen Walsh <noreen_walsh@fws.gov> wrote:

I was going to take a quick look at it for my familiarity, however Adobe says the doc is damaged and cannot be repaired. Can you have Toni resend please?

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Will Meeks [mailto:will_meeks@fws.gov]
Sent: Saturday, July 26, 2014 7:18 AM
To: Noreen Walsh
Cc: Matt Hogan
Subject: Fwd: NBR AFA Final Review pdf Attached

I will be reviewing this final version this weekend. Would you like to see it as well? Thanks.

Will Meeks

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

Begin forwarded message:

From: "Griffin, Toni" <toni_griffin@fws.gov>
To: Will Meeks <will_meeks@fws.gov>, Jeff King
<jeff_king@fws.gov>, Laura King
<laura_king@fws.gov>, Brendan Moynahan
<brendan_moynahan@fws.gov>
Subject: Fwd: NBR AFA Final Review pdf Attached

Hi Team,

The Draft EA is attached for a final review. Please provide your comments to Laura or myself by *COB Tuesday, July 29*. If we send the document to the printer Wednesday we should receive it no later than August 4, and as early as August 1.

Will--Would you like me to send this version of the Draft EA to Dana and Sharon?

Another milestone today is the *NOA is cleared to publish*. We will send it to the Federal Register Monday. If received Tuesday it should be published Aug 1 or 4, and announces the start of the 30-day public review period.

Mitch will post an electronic copy of the Draft EA on the NBR website. Hard copies will be sent to people on the mailing list, and available upon request.

Thanks everyone, for your efforts to get this far.

Have a nice weekend,
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

----- Forwarded message -----

From: Werner, Mitchell <mitchell_werner@fws.gov>
Date: Fri, Jul 25, 2014 at 2:51 PM
Subject: NBR AFA Final Review pdf Attached
To: Toni Griffin <toni_griffin@fws.gov>

Hi, Toni,

Here it is.

--

^^^!^^^!^^^!^^^!^^^!^^^!^^^!^^^

Mitch Werner
Writer-Editor
Division of Refuge Planning
U.S. Fish and Wildlife Service
Lakewood, Colorado
303 / 236 4209
303 / 236 4792 fax

From: noreen_walsh@fws.gov
To: Matt_Hogan@fws.gov
Subject: RE: NBR AFA
Date: Tuesday, September 04, 2012 12:33:47 PM

Just go – and know that you tried. Any highpoints I should pass on if they miss you? Last I heard it was going well.

Noreen Walsh

Deputy Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

From: Matt_Hogan@fws.gov [mailto:Matt_Hogan@fws.gov]
Sent: Tuesday, September 04, 2012 12:02 PM
To: Walsh, Noreen
Subject: Re: NBR AFA

Nothing yet....hope they call soon so we can make our meeting.

From: "Walsh, Noreen" [noreen_walsh@fws.gov]
Sent: 09/04/2012 10:57 AM CST
To: Matt Hogan
Cc: Stephen Guertin
Subject: FW: NBR AFA

They will call your cell in ten minutes. If you need to redirect them to a landline at that point you can.

Thanks a million

Noreen

Noreen Walsh

Deputy Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

From: Gould, R W

Sent: Tuesday, September 04, 2012 10:43 AM

To: Guertin, Stephen; Walsh, Noreen; Hogan, Matt

Subject: FW: NBR AFA

Anyone up to speed?

From: Silva-Banuelos, Jorge G

Sent: Tuesday, September 04, 2012 12:41 PM

To: Gould, R W

Subject: NBR AFA

Hi Rowan –

Can you tell me if there is anyone I can speak to in the next hour to get the latest on the AFA negotiations between NBR and CSKT? Rachel is looking for an update ahead of a call with the Tribe. Thanks.

Jorge Silva-Bañuelos | Special Assistant | Office of the Assistant Secretary for Fish & Wildlife and Parks

Department of the Interior | 1849 C Street NW | Room 3148 | Washington, DC 20240 | (202.208.6211 (direct)

jorge@ios.doi.gov

From: Dean Rundle <Dean_Rundle@fws.gov>
To: [Brenna, Sharon](#)
Cc: [Coleman, Rick](#); [Rundle, Dean](#); [King, Jeff](#); [Walsh, Noreen](#); [Guertin, Stephen](#); [Oliveira, Bud](#); [Buskness, Natoma](#)
Subject: RE: NEPA for AFA
Date: Wednesday, October 27, 2010 10:43:56 AM

Yesterday, I responded to Rick that I would start working on this new NEPA document for the 2008-2011 AFA next week, and would have it done by Friday.

But, after thinking about that some more -I have to recommend that we slow this train down.

We should not do new NEPA, addressing potential extraordinary circumstances until we receive the report from OIG on the current inquiry they are conducting at NBR.

The OIG inquiry was stimulated by PEER complaints about safety and effectiveness of the CSKT under the current AFA. Many of the complaints that PEER filed with the OIG are very similar, or the same, as the complaints that plaintiffs filed with the judge in district court that lead the judge to throw out the AFA based on FWS/DOI failure to address the potential for extraordinary circumstances - because of reported CSKT performance and safety issues.

I think it would be extremely unwise to write a new CATEX addressing extraordinary circumstances next week, before we have the OIG report. If the OIG finds, as I suspect they will, that the PEER complaints are groundless or grossly overblown, we are vindicated and can proceed with a very strong statement about the potential for extraordinary circumstances in a new CATEX.

How will we look however, if the OIG finds some validity in PEER complaints? I know that all of the information the IG received during employee interviews was not positive. If the OIG has findings that are negative, we can respond to those, but if we say everything is perfect in a new CATEX, and 2 months later, the OIG says it is not, we will appear (and will in fact be) more arbitrary and capricious than we were in 2008.

I don't know who is pushing this "hurry up" approach, back to the courts. If it is SOL, I think the Service is getting bad advice, Management should not accept that advice. If this is from DOI Mgmt, I suggest that the chain of command should inform the Dep. AS that it would be wise to wait until we have the OIG report - should be out around the first of the year.

Dean

-----"Brenna, Sharon" <Sharon.Brenna@sol.doi.gov> wrote: -----

To: "Coleman, Rick" <rick_coleman@fws.gov>, "Rundle, Dean" <dean_rundle@fws.gov>, "King, Jeff" <jeff_king@fws.gov>
From: "Brenna, Sharon" <Sharon.Brenna@sol.doi.gov>
Date: 10/22/2010 03:10PM
cc: "Walsh, Noreen" <noreen_walsh@fws.gov>, "Guertin, Stephen" <Stephen_Guertin@fws.gov>, "Oliveira, Bud" <bud_oliveira@fws.gov>, "Buskness, Natoma" <natoma_buskness@fws.gov>
Subject: RE: NEPA for AFA

Thanks, Rick. John Most will file for an enlargement of time this weekend or by Monday for sure. He suggests the NEPA analysis be done with the Service's view of the situation both from the time of negotiations and the present

time. Have a good weekend! Sharon

-----Original Message-----

From: Rick_Coleman@fws.gov [mailto:Rick_Coleman@fws.gov]

Sent: Friday, October 22, 2010 1:42 PM

To: Rundle, Dean; King, Jeff

Cc: Walsh, Noreen; Guertin, Stephen; Oliveira, Bud; Brenna, Sharon; Buskness, Natoma

Subject: NEPA for AFA

Dean and Jeff.

Please prepare the NEPA compliance (possibly a Categorical Exclusion with analysis of extraordinary circumstances) for the 2008-2011 AFA by Nov. 5, 2010. Sharon Brenna will review it beginning Nov.5 for a court submittal deadline of Nov.9.

Thank you.

Rick

Rick Coleman

ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

From: Dean Rundle <Dean_Rundle@fws.gov>
To: Rick Coleman/R6/FWS/DOI@FWS
Cc: Jeff King/R6/FWS/DOI@FWS
Subject: Re: NEPA for AFA
Date: Tuesday, October 26, 2010 3:19:36 PM
Attachments: [AFAPreferredopiton101510.doc](#)

Rick: I will start on a CATEX on Monday, Nov. 1, and will have the NEPA completed by Nov. 5.

FYI, If the 2008-2011 AFA is reinstated, it says that we will initiate negotiations for a follow-on AFA in Feb. 2011. We would have to work very quickly to get policy in place by Feb 11. It could be done, but would require help from WO.

dean

-----Rick Coleman/R6/FWS/DOI wrote: -----

To: Jeff King/R6/FWS/DOI@FWS, Dean Rundle/R6/FWS/DOI@FWS
From: Rick Coleman/R6/FWS/DOI
Date: 10/22/2010 02:48PM
Subject: Re: NEPA for AFA

See briefing paper: complete the NEPA so that 2008-2011 AFA can be reinstated, then complete policy and use policy to inform the next AFA negotiations.

Rick Coleman
ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

- AFAPreferredopiton101510.doc

**Draft Preferred Option – Annual Funding Agreement
National Bison Range
October 15, 2010**

Background:

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

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

Preferred Option:

The Service supports:

1. Request District Judge to reconsider remedy, reinstating AFA while the Service completes NEPA compliance (Categorical Exclusion with evaluation of extraordinary circumstances). Following this NEPA compliance, or if the request to reconsider is denied, the Service would then pursue the next step.
2. Complete the Service policy on AFAs and prepare a new AFA with new terms/conditions, negotiated with the CSKT, that could be informed and supported by the national policy, and submit to Congress for a 90-day review.

From: Jeff King
To: Rick Coleman/R6/FWS/DOI@FWS
Subject: Re: NEPA for AFA
Date: Friday, October 22, 2010 2:02:48 PM

Does this mean we are going to appeal? Are we still recommending (briefing paper) we finish the policy prior to entering into a new AFA? Jk

Sent from Jeff's BlackBerry

----- Original Message ----- From: Rick Coleman Sent: 10/22/2010 01:42 PM MDT
To: Dean Rundle; Jeff King Cc: Noreen Walsh; Stephen Guertin; Bud Oliveira;
Sharon Brenna; Natoma Buskness Subject: NEPA for AFA

Dean and Jeff.

Please prepare the NEPA compliance (possibly a Categorical Exclusion with analysis of extraordinary circumstances) for the 2008-2011 AFA by Nov. 5, 2010. Sharon Brenna will review it beginning Nov.5 for a court submittal deadline of Nov.9.

Thank you.

Rick

Rick Coleman

ARD - Refuges/Partners for Fish and Wildlife

303-236-4303

From: [Matt Hogan](#)
To: [Irwin, Thomas](#)
Cc: [Sellars, Roslyn](#)
Subject: Re: PENDING: Meeting/Conference Call (Steve, Jim Kurth/Cynthia Martinez and Will Meeks/Matt Hogan) to discuss the FR NOA for a draft EA for the National Bison Range AFA - Room 3357
Date: Monday, July 21, 2014 7:42:13 AM

Thanks Thomas....appreciate your help.

Matt Hogan
Deputy Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
303-236-7920

On Jul 21, 2014, at 8:39 AM, "Irwin, Thomas" <thomas_irwin@fws.gov> wrote:

Matt,

Sending the calendar invite was more of an info purposes only.

thomas_irwin@fws.gov | Office of the Director | U.S. Fish and Wildlife Service

1849 C Street NW | Room 3356 | Washington, DC 20240 | (202) 208-4545

On Mon, Jul 21, 2014 at 9:18 AM, Matt Hogan <matt_hogan@fws.gov> wrote:

Thomas,
Neither Noreen nor I are going to be on the call as we are on travel. Hopefully the refuge folks in HQ will confirm but if not, can we just schedule Will and Steve so we can keep this package moving. We have a deadline to get this published on Aug 1. Thanks very much.

Matt Hogan
Deputy Regional Director
Mountain-Prairie Region
U.S. Fish & Wildlife Service
303-236-7920

On Jul 21, 2014, at 6:14 AM, "Irwin, Thomas" <thomas_irwin@fws.gov> wrote:

Will,

I know you have confirmed that you're available anytime, but we have not heard back from all invited participants with availability.

Once a time is confirmed, a calendar invite will be sent with call-in and passcode information.

Steve is available:

Mon, Jul 21

11:00a.m. - 1:00p.m.Eastern

4:00p.m. - 5:00p.m.

Thomas

In future please include Roslyn (roslyn_sellars@fws.gov) on emails related to scheduling for Dan Ashe, Rowan Gould or Stephen Guertin.

thomas_irwin@fws.gov | Office of the Director | U.S. Fish and Wildlife Service

1849 C Street NW | Room 3356 | Washington, DC 20240 | (202) 208-4545

On Sun, Jul 20, 2014 at 1:56 PM, Will Meeks

<will_meeks@fws.gov> wrote:

Good morning Thomas.

Would you mind sending me the time of the meeting first thing on Monday morning?

Also, any call-in information would be appreciated too.

Thanks.

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

From: [Noreen Walsh](#)
To: [Will Meeks](#)
Cc: [Matt Hogan](#)
Subject: RE: Question on timeline specificity
Date: Wednesday, October 30, 2013 1:14:29 PM

Thanks for asking Will.

I would like us to outline reasonable goals for ourselves, and share them with CSKT, with an explanation of what is not under our control and a pledge to notify them immediately if a key date is slipping.

I also generally like to promise less and deliver more, so that's why I would want to be aggressive and committed on our part but not overly optimistic on the timeframe.

I was struck in reading the draft doc that you gave me that we started negotiations in 2010, so this has been going on a while and I'd like to bring it to closure.

Does that help?

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Wednesday, October 30, 2013 12:26 PM
To: Noreen Walsh
Subject: Question on timeline specificity

Noreen,

I am sure we will be asked by CSKT on a timeline. Here are some things to consider and we can discuss more tomorrow at 9:00 am. We have a slide prepare that show what's left to do, but does not state some of these dates.

- The last timeline we provided CSKT had a final NEPA decision in February 2014.
- We legitimately could add two months to that because of the problems with the contract that we became aware of in July, and the shutdown.
- I suggest that we tell the tribe we're now shooting for the NEPA decision: FONSI on a preferred alternative or do an EIS in April, 2014. (But we've done this before and then had

to move the deadline.)

- Any new AFA cannot be implemented until there is a 90 day review by Congress.
- This would push the final decision into the 4th Quarter of the FY.
- At this point it does not seem possible to implement an AFA (assuming a FONSI) before Oct. 1, 2014.

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: Rundle, Dean [mailto:dean_rundle@fws.gov]
Sent: Tuesday, October 29, 2013 3:41 PM
To: Will Meeks
Subject: Fwd: revised presentation

Boss: I was in today at 6, (haven't caught up w/time change and waking up at 2), so am taking off at 3:30 today. In early tomorrow.

Laura revised the power point added the "combined" D& E alternative. We can do this, because both of these will be analyzed by the contractor and we can just combine the "consequences" for the combined alternative. I think this is better.

I talked to her about adding some dates/timelines to the final slide. Laura is leery of doing that, because of our past performance in not meeting the timelines we have given the tribe, and the legitimate uncertainty of how long things will take (e.g. how many substantive comments will we get in the public review; what if the tribe makes very significant comments in the internal review, etc.) I told her that the Council is probably going to want to know when we plan to get done, and that we should ask Noreen how specific she feels she needs to be in response to that inevitable question. I ask Laura to draft up a revised final slide with some additional timeline information for our review.

The last timeline we provided CSKT had a final NEPA decision in February 2014. We legitimately could add two months to that because of the problems with the contract that we became aware of in July, and the shutdown. I suggest that we tell the tribe we're now shooting for the NEPA decision: FONSI on a preferred alternative or do an EIS in April, 2014. I just don't know if we're willing to go there.

Any new AFA cannot be implemented until there is a 90 day review by Congress. If we were done in February as previously planned, potentially a new AFA could have been implemented in the 4th qtr. of FY 14. At this point it does not seem possible to implement an AFA (assuming a FONSI) before Oct. 1, 2014. That would be two years later than originally intended, but we'll have a thorough NEPA analysis and can start at the beginning of a FY.

We could implement on 10/1/14 as long as we get a FONSI by mid-June, and if we get it done sooner than that - all the better, more time to prepare, and for CSKT to staff up. If we don't get a FONSI and have to do an EIS - all bets are off.

I'll be in early tomorrow and catch up with you when you get in.

dean

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

From: [Matt Hogan](#)
To: [Dean Rundle](#); [Will Meeks](#)
Cc: [Paul Santavy](#); [Jeff King](#)
Subject: RE: Retiree's Panel on NBR AFA
Date: Thursday, July 11, 2013 9:02:13 AM

Great. Mamie Parker who I discussed this with after Dick called me said that she has assumed charge of this portion of the agenda and wants to make sure they don't misstep. I will share your comments to Dick with Mamie.

From: Rundle, Dean [mailto:dean_rundle@fws.gov]
Sent: Thursday, July 11, 2013 8:51 AM
To: Will Meeks; Matt Hogan
Cc: Paul Santavy; Jeff King
Subject: Retiree's Panel on NBR AFA

Dick Gritman of the FWS Retirees called me at home last night. I know he'd called Matt a week or two ago. He was asking my opinion about whether the retirees should proceed with their plans to have a panel discussion, including FWS and CSKT representatives at their Kalispell meeting in Sept. I told Dick I didn't think such a panel discussion would be productive and doubted whether either FWS or CSKT would participate. He said he was getting a lot of feedback from other people he talked to that it was not a good idea. He also was aware of Secretary Jewell's recent speech about Indian Trust responsibilities and was concerned about making waves early in her tenure.

I told Dick that the Service is doing a very comprehensive NEPA document before signing another AFA and that it was not going to be a "rubber stamp" type of EA, but would be real NEPA and evaluate a full range of alternatives and that the best thing retirees can do is wait for that and then engage fully in the NEPA process. My impression is that he is going to recommend to the Retirees Board that they cancel the panel discussion.

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

From: [Noreen Walsh](#)
To: [Will Meeks](#)
Cc: [Matt Hogan](#)
Subject: Re: September in Denver
Date: Wednesday, August 20, 2014 8:21:21 AM

Thanks much will!

Sent from my iPhone

On Aug 20, 2014, at 7:08 AM, Will Meeks <Will_Meeks@fws.gov> wrote:

Noreen,

Just wanted to let you know that I responded to Ms. Reneau. She met with Cynthia Martinez yesterday, but has yet to take me up on the offer.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Thursday, August 14, 2014 12:32 PM
To: 'bluemountain@montana.com'
Subject: September in Denver

Ms. Reneau,

It is my understanding that you will be in Denver in early September, and you would like to meet to discuss the Environmental Assessment for the National Bison Range.

The Regional Director, Noreen Walsh, asked if I could set up a time for me to meet with you personally. Please provide me the dates you are planning on being in Denver, and I'd be happy to arrange a meeting with you.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: [Will Meeks](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#)
Subject: RE: Time to extend the deadline for the Draft Environmental Assessment for the Draft AFA at the National Bison Range Complex
Date: Thursday, August 14, 2014 9:57:20 AM

Will do.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Thursday, August 14, 2014 9:50 AM
To: Will Meeks
Cc: Matt Hogan
Subject: FW: Time to extend the deadline for the Draft Environmental Assessment for the Draft AFA at the National Bison Range Complex

Will,
Please take the lead to see if you and Ms. Renault can find a mutually convenient time to discuss the issues. My calendar is pretty full in early September.

Thank you,
Noreen

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Susan Reneau [mailto:bluemountain@montana.com]
Sent: Thursday, August 14, 2014 12:16 AM
To: 'Noreen Walsh'; 'Matt Hogan'
Cc: Dan_Ashe@fws.gov
Subject: RE: Time to extend the deadline for the Draft Environmental Assessment for the Draft AFA at the National Bison Range Complex

Ms. Walsh,

Thank you for your email. So sorry but I will be in Washington, D.C. this week and will stop at the Dept. of Interior to talk to with Jim Kurth. I leave

for D.C. tomorrow morning at 6 a.m.

I'm going to be in Denver in early September coordinating publicity about my book, *Colorado's Biggest Bucks and Bulls*, so I would like to personally meet with you at that time. I would also like to meet with Will Meeks.

The fact that the CSKT has had four years to pour over the inner workings of the National Bison Range Complex and was allowed to completely rewrite the EA written by NBRC Project Leader Jeff King is a true insult to Mr. King and all the professionals within the National Wildlife Refuge System that have dedicated themselves to the proper workings of one of our nation's finest national wildlife refuges that belongs to ALL Americans and have worked within the limits of federal law.

Four years were given to the CSKT to propose whatever they wanted and to substitute qualified federal workers for "temporary" federal workers that happened to be to the liking of the CSKT is also an outrage at the National Bison Range Complex.

The press and the public that foots the bill for maintenance and management of all our national wildlife refuges were left out of the entire four-year process given to an Indian government that proved itself unworthy when it sent workers to fulfill the tasks outlined in the first to AFAs.

Extension of time to review the 160-page document written by the lawyers of the CSKT is in order, Ms. Walsh.

The USFWS gave the CSKT four years to do what they wanted to do so all I'm asking is a comment period of three months for a document that if accepted would totally destroy the National Bison Range Complex operations.

I have yet to understand the loyalty shown to the CSKT by top level USFWS staff at the exclusion of qualified USFWS employees that worked to enforce the federal laws they are obligated to enforce when administering policies, tasks and practices at a national wildlife refuge.

The National Bison Range Complex does not belong to the CSKT or any special interest group or individual. It is a part of the National Wildlife Refuge System but many USFWS administrators seem to have forgotten that fact. They also seem to have ignored the Civil Service Commission policies for hiring and many levels of federal laws passed by Congress and signed into law by several U.S. presidents that protects all national wildlife refuges as part of a system.

I look forward to meeting you and Will Meeks. Please give me a date that works for you and I will try to make that date and time.

Sincerely and in the spirit of Theodore Roosevelt, Ding Darling and the men of the late 19th and early 20th century that established the National Wildlife Refuge System and other federal land systems, I say, the wildlife and its habitat cannot speak so I must and I will and I do and so must you who are the keepers of the National Wildlife Refuge System.

Susan Campbell Reneau
719-661-4037

From: Noreen Walsh [mailto:noreen_walsh@fws.gov]
Sent: Wednesday, August 13, 2014 12:53 PM
To: Susan Reneau; Matt Hogan
Cc: Dan_Ashe@fws.gov
Subject: RE: Time to extend the deadline for the Draft Environmental Assessment for the Draft AFA at the National Bison Range Complex

Ms. Reneau,

Thank you for your email below dated August 14, 2014 regarding the current Environmental Assessment (EA) for a proposed Annual Funding Agreement with the Confederated Salish and Kootenai Tribes at the National Bison Range.

I also appreciate the invitation to meet with you; however I will be unavailable during the times you proposed. We will consider your request for an extension, make a final decision soon, and notify you of that decision.

If you would like to visit with my Assistant Regional Director for the Refuge system in this region of the U. S. Fish and Wildlife Service, Will Meeks, about the EA, please feel free to contact him at will_meeks@fws.gov or by phone at 303-236-4303.

Sincerely,
Noreen Walsh

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

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From: Susan Reneau [mailto:bluemountain@montana.com]

Sent: Tuesday, August 12, 2014 1:17 PM

To: noreen_walsh@fws.gov; matt_hogan@fws.gov

Cc: Dan_Ashe@fws.gov

Subject: Time to extend the deadline for the Draft Environmental Assessment for the Draft AFA at the National Bison Range Complex

Dear Noreen Walsh, U.S. Secretary of the Interior, and Matt_Hogan, Deputy Secretary of Interior,

I would like to meet with you sometime between this Friday, Aug. 15 and Wednesday, Aug. 20 to discuss the newly released "Draft Environmental Assessment for a Draft AFA for the National Bison Range Complex."

Accompanying me will be my husband, Jack Reneau, who is the wildlife biologist for the Boone and Crockett Club and director of big game records for the B&C. We as individuals not representing anyone wish to speak to you in earnest about the ramifications of such an AFA on the entire National Wildlife Refuge System and specifically one of the most publically known of all national wildlife refuges – namely the National Bison Range Complex. Between the both of us, we have authored and edited in excess of 60 books on big-game hunting and wildlife conservation.

I met with Jim Kurth, Refuge Chief, in Washington, D.C. a while ago at the time when the Confederated Salish and Kootenai (CSKT) tribal government representatives, including lawyers, had free access to writing an Annual Funding Agreement that satisfied their demands but did not allow the public to participate in the process nor for long-term U.S. Fish and Wildlife Service employees to give their expert opinions about what was best for one of our nation's finest national wildlife refuges. I've met with several Secretaries of the Interior and White House representatives regarding this issue since 2003 as well as many other top officials of the U.S. Department of Interior under many presidential administrations.

Now we are in receipt of the 160-page "Draft Environmental Assessment for a Draft Annual Funding Agreement for the National Bison Range Complex" with a deadline to comment of less than one month after the CSKT lawyers, tribal leaders and lobbyists were allowed to spend four years writing an AFA to their liking. By a federal judge's order, CSKT workers under the previous AFA were removed from the National Bison Range and in the past other CSKT workers under other AFA agreements were removed for non-compliance and despicable behavior towards federal workers, some of whom were CSKT members.

At minimum, Noreen and Matt, the public should be afforded the amount of time and same amount of access to the U.S. Fish and Wildlife Service as the CSKT since the public funds the National Wildlife Refuge System and are citizens of our nation with as much right to feedback as any other special

interest group that are Americans. A comment period of 90 days is more in order.

Friday evening we'll be tied up starting at 4 p.m. but could meet with you prior to that. Monday, Aug. 18, we are open in the morning and late afternoon. I have a business appointment on Aug. 18 regarding this issue at 2 p.m. with some of my national conservation heroes but could meet with you at 4 p.m. if the morning doesn't work for you. Tuesday and Wednesday of next week, Aug. 19 and 20, we are wide open. Our meeting with you would take less than one hour.

This draft EA has catastrophic ramifications for the entire National Wildlife Refuge System if enacted. It flies in the face of other federal laws set up to protect the management, operations and financial stability of this federal public land system and excludes one very famous national wildlife refuge from the rest of the system.

In the spirit of Ding Darling, Theodore Roosevelt and the men of the late 19th century and early 20th century that set up our entire federal land systems, including the National Wildlife Refuge System, I say, the wildlife and its habitat cannot speak so I must and so must you. You are obligated to enforce existing federal laws for the protection and enhancement of the federal land systems you are in charge of upholding in public trust.

A quote from Theodore Roosevelt comes to mind. "Here is your country. Cherish these natural wonders, cherish the natural resources, cherish the history and romance as a sacred heritage, for your children and your children's children. Do not let selfish men or greedy interests skin your country of its beauty, its riches or its romance."

A system of management and financing of our National Wildlife Refuge System and National Park System was set up in the early 1900s under the presidential leadership of Theodore Roosevelt and a close-knit group of his friends in Congress. This AFA and any AFA that is so far-reaching would rewrite how such federal land systems are managed and financed for the betterment of a few Americans and not for the betterment of the land or all other Americans.

Susan Campbell Reneau
719-661-4037

From: [Noreen Walsh](#)
To: [Marla Trollan](#)
Cc: matt_hogan@fws.gov; [Will Meeks](#); [John Bryan](#); [Leith Edgar](#)
Subject: Re: U.S. Fish and Wildlife Service releases draft environmental assessment for proposed annual funding agreement with Confederated Salish and Kootenai Tribes - KXLO - KLCM
Date: Tuesday, August 05, 2014 5:19:27 PM

Thank you. They are all publishing the press release verbatim I believe.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

> On Aug 5, 2014, at 3:20 PM, Marla Trollan <Marla_Trollan@fws.gov> wrote:
>
> Just received another media inquiry from E&E Publishing regarding AFA for
> Bison. Leith will get in contact with the program.
>
> -----Original Message-----
> From: Marla Trollan [mailto:Marla_Trollan@fws.gov]
> Sent: Tuesday, August 05, 2014 1:44 PM
> To: Noreen Walsh; 'matt_hogan@fws.gov'; Will Meeks
> Cc: John Bryan
> Subject: RE: U.S. Fish and Wildlife Service releases draft environmental
> assessment for proposed annual funding agreement with Confederated Salish
> and Kootenai Tribes - KXLO - KLCM
>
> Noreen--another story (posted late yesterday)--similar language as story on
> KXLO FM. We just received a request from MT Public Radio....waiting to hear
> back from the program for interview. No other media calls to EA as of this
> afternoon.
>
> Billings Outpost--Aug. 4:
>
> <http://www.billingsnews.com/index.php/web-extras/5339-fws-releases-draft-ea-for-proposed-agreement-with-confederated-salish-and-kootenai-tribes>
>
> FWS releases Draft EA for proposed agreement with Confederated Salish and
> Kootenai Tribes Created on Monday, 04 August 2014 12:01 Hits: 94
>
> U.S. Fish and Wildlife Service - Mountain-Prairie Region
>
> The U.S. Fish and Wildlife Service (Service) today announced publication of
> the draft Environmental Assessment (EA) for a proposed Annual Funding
> Agreement (AFA) that would allow the Confederated Salish and Kootenai Tribes
> (CSKT) to manage and implement the biological, maintenance, public use, and
> fire management programs on the National Bison Range Complex (refuge
> complex).
>
> The EA addresses those units located within the boundaries of the Flathead
> Indian Reservation; specifically the National Bison Range, Ninepipe and
> Pablo National Wildlife Refuges, and nine waterfowl production areas. All of
> these units are within Lake and Sanders counties in Montana.
>
> The CSKT requested negotiations for an AFA in November 2010 under the
> authority of the Indian Self Determination and Education Assistance Act, as
> amended. The Service then developed the draft AFA to explore a more full

- > partnership agreement with CSKT that would allow the Tribes to take part in
- > the refuge programs that are of special geographic, historical, or cultural
- > significance.
- >
- > Now, the Service has prepared the EA to evaluate the environmental
- > consequences of the proposed agreement, in compliance with the National
- > Environmental Policy Act. In addition to this proposed agreement, the
- > Service also developed and analyzed four other AFA alternatives for the
- > public's consideration and comment. Each AFA alternative would allow CSKT to
- > manage or assist with programs, services, functions, and activities on the
- > refuge complex to various degrees for a term of five years.
- >
- > Comments on the draft EA from members of the public will be welcomed by the
- > Service during a 30-day public review period.
- >
- > "We always think that it's important to involve stakeholders in the process
- > of deciding how to best manage our shared natural resources, in this case
- > the locally- and nationally-known National Bison Range," said Will Meeks,
- > Mountain-Prairie Region assistant regional director for Refuges. "Both
- > citizens and Tribal members with an opinion on how the National Bison Range
- > will be managed are invited to comment on the draft environmental assessment
- > during the thirty-day comment period."
- >
- > The document can be downloaded from the refuge complex's website:
- > www.fws.gov/bisonrange. Comments should be specific and reference the
- > relevant document section where possible. Comments may be submitted by email
- > to bisonrange@fws.gov or mailed to National Bison Range, 58355 Bison Range
- > Rd., Moiese, MT 59824. All comments must be emailed or postmarked by
- > September 3, 2014.
- >
- > Frequently Asked Questions
- >
- > Why did the Service prepare the draft Environmental Assessment (EA)?
- >
- > The Service prepared the draft EA to evaluate the draft Annual Funding
- > Agreement (AFA) with the CSKT developed by the Service under the
- > Self-Governance Act. As part of the EA process under the National
- > Environmental Policy Act (NEPA), the Service developed and analyzed four
- > 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 refuge complex to
- > various degrees for a term of five years.
- >
- > Why is the draft AFA considered appropriate for the Service to consider as a
- > management option for the National Bison Range complex?
- >
- > The AFA was developed by the Service to fulfill its desire to enter into an
- > expanded partnership agreement with the CSKT under the authority of the
- > Tribal Self-Governance Act of 1994 (Self-Governance Act) that would allow
- > the Tribes to take part in the refuge programs that are of special
- > geographic, historical, or cultural significance. An AFA is needed to carry
- > out the Tribe's desire for tribal involvement in activities on the refuge
- > complex under the Self-Governance Act.
- >
- > Why is the Service considering adoption of the AFA?
- >
- > Pursuant to its Tribal-trust responsibilities, the Service would like to
- > forge a productive and long-term partnership with the CSKT at the National
- > Bison Range Complex (refuge complex) in Montana that would allow the Tribes
- > to take part in refuge programs that are of special geographic, historical,

- > or cultural significance.
- >
- > What is an Environmental Assessment?
- >
- > The National Environmental Policy Act of 1969 sets up procedural
- > requirements for all Federal Government agencies to analyze the
- > environmental impacts of a Federal action. NEPA's procedural requirements
- > apply to all Federal agencies in the executive branch.
- >
- > An EA is a concise public document, prepared in compliance with the National
- > Environmental Policy Act, that briefly discusses the purpose and need for an
- > action and alternatives to such action and that provides sufficient evidence
- > and analysis of effects to determine whether to prepare an environmental
- > impact statement or finding of no significant impact (40 CFR 1508.9).
- >
- > What types of impacts were studied in the EA?
- >
- > The EA examined a number of environmental and social impacts, including the
- > following:
- >
- > Physical Environment including soils, climate, and air quality
- >
- > Biological Resources including habitat management, habitat resources, and
- > wildlife management.
- >
- > Visitor Services including wildlife observation and photography,
- > interpretation, environmental education, and other uses
- >
- > Refuge Operations including the number and type of staff positions proposed.
- >
- > Cultural Resources
- >
- > Socioeconomic Conditions
- >
- > Cumulative Impacts
- >
- > Who prepared the CCP and EA?
- >
- > A team composed of Service personnel from both the refuge complex and the
- > regional office. In addition, the Service hired a contractor to assist with
- > the environmental analysis.
- >
- > Who makes the decision on whether to proceed with the AFA?
- >
- > The Regional Director of the Mountain-Prairie Region of the Service will
- > decide whether to proceed with an AFA with the Tribes and, if so, to what
- > degree.
- >
- > What will happen if the decision is made to proceed with the AFA?
- >
- > 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.
- >
- > Where is the National Bison Range located?
- >
- > 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.

>

>

> -----Original Message-----

> From: Noreen Walsh [mailto:noreen_walsh@fws.gov]

> Sent: Tuesday, August 05, 2014 10:07 AM

> To: Marla Trollan

> Subject: Re: U.S. Fish and Wildlife Service releases draft environmental

> assessment for proposed annual funding agreement with Confederated Salish

> and Kootenai Tribes - KXLO - KLCM

>

> Thanks for forwarding Marla. I'm pretty sure they just printed the press

> release. What has the rest of the press been like? Any calls to Jeff or

> noise from our detractors?

>

> Thanks

> Noreen

>

> Noreen Walsh

> Regional Director

> Mountain-Prairie Region

> U. S. Fish and Wildlife Service

>

>> On Aug 5, 2014, at 6:45 AM, Marla Trollan <marla_trollan@fws.gov> wrote:

>>

>> Good story on AFA...excellent quote Will!

>>

>> [http://www.kxlo-klcm.com/site/index.php?option=com_content&view=article](http://www.kxlo-klcm.com/site/index.php?option=com_content&view=article&id=3288:u-s-fish-and-wildlife-service-releases-draft-environmental-assessment-for-proposed-annual-funding-agreement-with-confederated-salish-and-kootenai-tribes&catid=10:news-pod&Itemid=114)

>> e&id=3288:u-s-fish-and-wildlife-service-releases-draft-environmental-a

>> ssessment-for-proposed-annual-funding-agreement-with-confederated-sali

>> sh-and-kootenai-tribes&catid=10:news-pod&Itemid=114

>>

>>

>> Marla Trollan

>> Assistant Regional Director

>> External Affairs

>> Mountain-Prairie Region

>> U.S. Fish and Wildlife Service

>> 303-236-4510

From: [Guertin, Stephen](#)
To: [Noreen Walsh](#)
Cc: [Jim Kurth](#); [Rowan Gould](#); [Dan Ashe](#)
Subject: Re: Update on CSKT and National Bison Range AFA
Date: Thursday, May 23, 2013 7:51:34 AM

Noreen

We have such a strong partnership with CSKT on grizzlies, the GNLCC, and bison range issues so thanks for investing time to visit with them on the AFA and their habitat projects. Looking forward to hearing about complications that have arisen.

We can track down an update on the status of the DOI report.

On Wed, May 22, 2013 at 8:31 PM, Noreen Walsh <noreen_walsh@fws.gov> wrote:

Last week I accepted the invitation of the CSKT Tribal Council Chair, Joe Durglo, to visit with the CSKT Council. Dean Rundle, Jeff King, and I spent an afternoon with the Council, first discussing the ongoing work on the AFA and then visiting some of the wildlife habitat projects of the Tribe's Natural Resource Division.

The meeting was very positive. They would like to see the AFA move along faster, however, they share our goal of ensuring that our NEPA compliance on the AFA is well done and defensible. They anticipate potential litigation not only from Blue Goose Alliance and PEER, but also some local groups that are gaining influence in Montana. They were appreciative and complimentary of Dean and Jeff's role in the negotiations. I pledged that we would continue to work in a transparent and collaborative manner.

Internally, some complications have arisen that are probably best discussed in person. I will be in your offices on the 11th of June and would like to give you a brief overview at that time. However, if for any reason you'd like to discuss sooner than that, please let me know.

Lastly, on the issue of the DOI report to the Secretary on Bison Management, they were well aware of its existence (I believe they discussed it with Rachel Jacobsen when she visited last fall). They inquired whether we expected it to be released soon. I'm not sure what the status is currently, but if you all have an update that I might pass on to them, please let me know.

Thanks,

Noreen

Noreen Walsh

Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

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To: [Noreen Walsh](#)
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Thanks,

Noreen

Noreen Walsh

Regional Director

Mountain-Prairie Region

U. S. Fish and Wildlife Service

303 236 7920

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From: Gregory Siekaniec
To: Dean Rundle/R6/FWS/DOI@FWS; [Sharon Brenna](#)
Cc: Jim Kurth/NWRS/R9/FWS/DOI@FWS; Rick Coleman/R6/FWS/DOI@FWS; Jeff King/R6/FWS/DOI@FWS
Subject: Re: Who at DOI has the NBR?
Date: Sunday, January 30, 2011 6:52:44 AM

Hi Dean,

I can try and find out who will be covering in Jane's absence.

Also, if the concern over a categorical exclusion is significant controversy than the EA may have a similar hurdle. A determining factor in completing an EA vs. EIS is the level of controversy generated by the proposed action.

greg

From: Dean Rundle
To: Gregory Siekaniec; Sharon.Brenna@exchange.sol.doi.gov
Cc: Jim Kurth; Rick Coleman; Jeff King
Date: 01/28/2011 06:43 PM EST
Subject: Who at DOI has the NBR?

Greg/Sharon: Learned this week that DAS Lyder will be on detail to NPS for a month starting in Feb. 2011. Jeff King and I met with CSKT yesterday. It was a good meeting with staff and tribal council. CSKT does not want to proceed with negotiating a new AFA, using a new CATEX for NEPA coverage. They understand that Ms. Lyder does not want to do an EA, because it might set a precedent for NEPA on contracts. The Tribe thinks this is different enough from regular contracts that it would not be a precedent. CSKT is concerned that one of the "extraordinary circumstances" that invalidate a CATEX if that the proposal is highly controversial. They are afraid that plaintiffs can make a straight-faced argument that due to the controversy around past AFAs at NBR, that a CATEX is invalid. They are not willing to return CSKT employees to NBR with that risk.

The issue of NEPA coverage for a new agreement needs to be resolved. CSKT wants to know if Ms. Lyder will continue to represent DOI on NBR/AFA issues, or if someone else will be responsible for that during her absence from Washington. Let me know if you have information on that matter.

Dean

From: [Will Meeks](#)
To: [Matt Hogan](#)
Subject: RE: Who's the best person for Jewell to talk to
Date: Tuesday, August 19, 2014 3:48:40 PM

Nevermind the email I just sent. There are two things going on:

1. Bison Compact
2. NBR Proposed AFA

I asked Leith to clarify.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

-----Original Message-----

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Tuesday, August 19, 2014 3:46 PM
To: Matt Hogan (Matt_Hogan@fws.gov)
Subject: FW: Who's the best person for Jewell to talk to

Will Meeks
U.S. Fish and Wildlife Service, Region 6 ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

-----Original Message-----

From: Leith Edgar [mailto:leith_edgar@fws.gov]
Sent: Tuesday, August 19, 2014 3:45 PM
To: Gavin Shire; Marla Trollan; John Bryan
Cc: Will Meeks; Paul Santavy; Mike Blenden
Subject: RE: Who's the best person for Jewell to talk to

Gavin,

Will Meeks, our ARD for Refuges in R6, is the best-suited spokesperson for this topic, though obviously not local. I would start with Will before talking with folks on the ground.

Best,

Leith

-----Original Message-----

From: Gavin Shire [mailto:gavin_shire@fws.gov]
Sent: Tuesday, August 19, 2014 1:52 PM
To: Leith Edgar; Marla Trollan; John Bryan
Subject: FW: Who's the best person for Jewell to talk to

Any ideas??

Thanks,

G

Gavin G. Shire
Chief of Public Affairs
U.S. Fish and Wildlife Service
MS: EA
5275 Leesburg Pike
Falls Church, VA 22041-3803
Tel: 703-358-2649
Cell: 703-346-9123
gavin_shire@fws.gov

-----Original Message-----

From: Katherine Kelly [mailto:kate_kelly@ios.doi.gov]
Sent: Tuesday, August 19, 2014 3:15 PM
To: Gavin Shire
Subject: Who's the best person for Jewell to talk to

About the bison compact with Cskt?

Is there a local or regional manager that's knowledgeable on the history?

Sent from my iPhone

From: [Noreen Walsh](#)
To: [Matt Hogan](#)
Subject: RE:
Date: Tuesday, January 08, 2013 1:20:50 PM

Thanks. I have a copy, part of the great unwashed masses.....

From: Matt Hogan [mailto:matt_hogan@fws.gov]
Sent: Tuesday, January 08, 2013 1:12 PM
To: Noreen Walsh
Subject: FW:

This clarifies what it was....not a court decision. This is on the issue of whether we can enter in to agreements with tribes since the legislation only says states.

From: Santavy, Paul [mailto:paul_santavy@fws.gov]
Sent: Tuesday, January 08, 2013 8:26 AM
To: Matt Hogan
Subject: Re:

It was actually a SOL opinion on the AFA, I said the wrong thing, my apologies. Still haven't read it, not sure if Dean has or not, I'll forward your way.

PAUL SANTAVY, CFP, AWB
Deputy ARD - NWRS and PFW
Mountain-Prairie Region
U.S. Fish & Wildlife Service
Phone: 303-236-4304
Cell: 307-690-6072

On Tue, Jan 8, 2013 at 8:17 AM, Matt Hogan <matt_hogan@fws.gov> wrote:
Can you give me some details on the lawsuit you mentioned on NBR. Was not on my radar screen. Thanks.

From: [Susan Reneau](#)
To: ["Will Meeks"](#)
Cc: ["Matt Hogan"](#); ["Noreen Walsh"](#); ["Jim Kurth"](#); ["Cynthia Martinez"](#); jeff_king@fws.gov; laura_king@fws.gov
Subject: September in Denver
Date: Monday, August 25, 2014 9:19:03 AM

Hi Will,

Good dates to know. I can't come to Denver until after Sept. 15, so Sept. 29 or 30 will likely be the time I'm in Denver so I can meet with you. I will confirm with you as soon as I talk to my printer about fall promotions of my latest book.

I'd also like to meet with Matt Hogan at the same time. I have written and edited 15 books for the Boone and Crockett Club and know Matt from B&C meetings and events.

Frankly, Will, if we meet Sept. 29 or 30, will the deadline to submit comments be extended as I have requested? The deadline should be extended to Nov. 3 at the minimum since the CSKT was given unprecedented access to USFWS financial and personnel information regarding the management of the National Bison Range Complex for the past four years without any involvement of the general public or press. I will once again remind you and everyone in this email that the CSKT were twice removed from the National Bison Range Complex for the previous two Annual Funding Agreements that violated federal law voted by the U.S. Congress and signed by U.S. Presidents to maintain and protect the National Wildlife Refuge System.

What can I accomplish if the deadline for comment ends Sept. 3? When will I know if you have respected my request to extend the deadline as have others?

Sincerely and with heavy heart regarding the National Wildlife Refuge System,

In the spirit of Theodore Roosevelt, Ding Darling and the flying blue goose, I say, the wildlife and its habitat cannot speak so I must and so must all of you who work for the U.S. Fish and Wildlife Service and the National Wildlife Refuge System and are responsible for upholding federal law that relates to the management and funding of the National Wildlife Refuge System of which the National Bison Range Complex is a part.

Susan Campbell Reneau
Author, *Colorado's Biggest Bucks and Bulls*
Author and editor of 21 additional books about big game and western history
719-661-4037

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Monday, August 25, 2014 8:17 AM
To: Susan Reneau
Subject: RE: September in Denver

Ms. Reneau,

As it stands now, my available dates in September include: 2, 4, 12, 15, 29, 30.

Once you have made your arrangements with your printer, please let me know.

Thank you.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: Susan Reneau [mailto:bluemountain@montana.com]
Sent: Friday, August 22, 2014 10:48 PM
To: 'Will Meeks'
Cc: Dan_Ashe@fws.gov; 'Jim Kurth'; 'Cynthia Martinez'; 'Noreen Walsh'
Subject: September in Denver

Hi Will,

I haven't set the dates that I'll be in Denver yet so I wanted to know if you had a specific date in mind. I need to meet with my printer in Denver regarding promotions of my newest book and would want to combine that with a meeting with you and Ms. Walsh. I met with Cynthia Martinez, deputy chief of the National Wildlife Refuge System, in Northern Virginia at the new USFWS offices this week regarding this issue at my own expense.

For starters, the deadline to submit comments about the third AFA with the CSKT ends September 3 and I will not be in Denver that week. The deadline to submit comments is ridiculously short given the fact that the CSKT government was allowed to pour over personnel and financial records of the National Bison Range Complex for the past four years and replace federal workers with CSKT "temporary" workers at the National Bison Range without regard for the hiring practices established by President Theodore Roosevelt and the U.S. Congress when they established the Civil Service Commission. The public and press were excluded from these practices with the excuse that government to government were allowed to exclude anyone

interested in the workings of the National Wildlife Refuge System, which is contrary to federal law protecting the operation of the NWRS.

This is a national issue, not a regional issue, and what happens at the National Bison Range Complex will negatively impact the entire National Wildlife Refuge System. What has occurred with the first and second AFAs has already side-lined and demoralized many layers of outstanding federal workers that did nothing wrong at the National Bison Range and worked overtime to enforce laws passed by the U.S. Congress and signed into law by many U.S. presidents for the betterment of the National Wildlife Refuge System.

A letter composed by the refuge managers of many national wildlife refuges back in 2004 applies to the third Annual Funding Agreement proposal today as much as it applied to the first AFA that went into effect in 2005. The first AFA was cancelled by Dale Hall as the director of the U.S. Fish and Wildlife Service in 2006 because CSKT workers given inherently federal positions and tasks at the National Bison Range Complex and the chairman of the CSKT verbally and physically attacked federal workers who were directing the CSKT workers to follow federal laws and procedures and to properly complete tasks assigned to them. What the letter from the refuge managers expressed remains the same concerns expressed by myself and many others that an AFA such as the one proposed since 2003 is not workable and destroys the successful workings of the entire National Wildlife Refuge System.

I simply cannot understand why anyone working for the U.S. Fish and Wildlife Service or the U.S. Department of Interior can turn their backs on all the federal laws put into place by the U.S. Congress and signed by many U.S. presidents to protect and enhance national wildlife refuges. The Indian Self Determination Act does not trump other federal laws created for the National Wildlife Refuge System and was written to provide opportunities for one segment of the U.S. population to enhance national wildlife refuges, not destroy them.

I welcome a time to meet with you so let me know what your availability is in September.

In the spirit of Theodore Roosevelt, Ding Darling and the men of the early 1900s that established the National Wildlife Refuge System, the National Park System, the National Forest System and all other federal land systems in the United States of America, I say, the wildlife and its habitat cannot speak so we must and you as a federal workers are obligated to do so on behalf of the citizens of the U.S.A. that pay your salaries.

Susan Campbell Reneau
Blue Mountain, Montana

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Thursday, August 14, 2014 12:32 PM
To: bluemountain@montana.com
Subject: September in Denver

Ms. Reneau,

It is my understanding that you will be in Denver in early September, and you would like to meet to discuss the Environmental Assessment for the National Bison Range.

The Regional Director, Noreen Walsh, asked if I could set up a time for me to meet with you personally. Please provide me the dates you are planning on being in Denver, and I'd be happy to arrange a meeting with you.

Thanks.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
ARD-NWRS and PFW
303-236-4303 (w)
720-541-0310 (c)

From: [Will Meeks](#)
To: [Noreen Walsh](#)
Cc: [Matt Hogan](#)
Subject: to ERO 1st draft version 1-4 AFA EA.docx
Date: Monday, October 21, 2013 6:22:07 PM
Attachments: [to ERO 1st draft version 1-4 AFA EA.docx](#)

Noreen,

Attached is what was sent to the contractor (ERO) for review.
Alternatives are at the end of Chapter 4.

I have also asked Laura to provide me a .ppt. The .ppt should include a timeline of remaining events and the alternatives sent to the contractor.

If there is something else you'd like added, let me know. Also, let me know if you'd like a pre-brief. I think the options would be the morning of the 29th or the morning of the 31st. However, I think I recall you will be in MT on the 29th.

Thanks.

Draft Environmental Assessment for a Proposed Annual Funding Agreement

between the National Bison Range Complex and
the
Confederated Salish and Kootenai Tribes
Moiese, Montana

October 2013

Prepared by:
U.S. Fish and Wildlife Service
Region 6, Mountain-Prairie Region
National Wildlife Refuge System
134 Union Boulevard, Suite 300
Lakewood, CO 20228

Abbreviations

ABA	American Bison Society
Administration Act	National Wildlife Refuge System Administration Act of 1966
AFA	Annual Funding Agreement
AUM	Annual Unit Month
AWP	Annual Work Plan
BIA	Bureau of Indian Affairs
Bison Range or refuge	National Bison Range
Bison Range Complex	National Bison Range Complex
CATEX	Categorical Exclusion
CCP	Comprehensive Conservation Plan
CFR	Code of Federal Regulations
cfs	Cubic feet per second
CSKT	Confederated Salish and Kootenai Tribes
DOI	Department of Interior
EA	Environmental Assessment
EIS	Environmental Impact Statement
E.O.	Executive Order
CSKT FWRC Division	Confederated Salish and Kootenai Tribes Fish, Wildlife, Recreation, and Conservation Division
FONSI	Finding of No Significant Impact
IC	Incident Commander
IHS	Indian Health Service
IPA	Inter-Governmental Personnel Act of 1970
GS	General Schedule
Improvement Act	National Wildlife Refuge System Improvement Act of 1997
NEPA	National Environmental Policy Act of 1969
NHPA	National Historic Preservation Act 1966
Ninepipe Refuge or refuge	Ninepipe National Wildlife Refuge
OIG	Office of Inspector General
OMB	Office of Management and Budget
Pablo Refuge or refuge	Pablo National Wildlife Refuge
Pub. L.	Public Law
refuge complex	National Bison Range Complex
Refuge System	National Wildlife Refuge System
Reservation	Flathead Reservation
SAMMS	Service Asset Maintenance Management System
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
Stat.	statute
Tribes	Confederated Salish and Kootenai Tribes

USFWS	U.S. Fish and Wildlife Service
U.S.	United States
U.S.C	United States Code
WMD	Northwest Wetland Management District
WG	Wage Grade Schedule
WPA	Waterfowl Production Area

Chapter 1. Introduction

The U.S. Fish and Wildlife Service (Service) has prepared this Environmental Assessment (EA) to develop and evaluate alternatives for entering into an annual funding agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT) for operations of refuge programs, services, functions, and activities, or portions thereof, on the Nation Bison Range Complex (refuge complex or Bison Range Complex).

Any agreement with CSKT would cover only those portions of the refuge complex that are located within the boundaries of the Flathead Indian Reservation (Reservation) in Lake and Sanders counties, Montana, including the National Bison Range, Pablo and Ninepipe National Wildlife Refuges (Pablo or Ninepipe Refuge or refuge), and the federally-owned lands of the Lake County portion of the Northwest Montana Wetland Management District (WMD), which includes 9 waterfowl production areas (WPA). All of these affected units, totaling 26,372 acres, and associated resources, are further described in Chapter 3. Affected Environment. The United States owns all the lands within the refuge complex except for Ninepipe and Pablo Refuges. These two refuges are tribal trust lands owned by CSKT and encumbered by refuge easements purchased by the Service in 1948.

1.1 Purpose and Need for Action

Background

Established in 1908, the National Bison Range Complex (refuge complex), managed by the U.S. Fish and Wildlife Service (Service), is part of the National Wildlife Refuge System (Refuge System) whose mission is

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 northwest Montana, a significant portion of the refuge complex is located within the boundaries of the Flathead Indian Reservation, a 1.3 million acre area established in 1855 as a result of the Hellgate Treaty with the CSKT. The CSKT are comprised of the Bitterroot Salish, the Pend d'Oreille and the Kootenai tribes. Under the authority of the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended, the CSKT are recognized as a self-governing tribe.

Originally enacted in 1975, the ISDEAA was intended to assure “maximum Indian participation in the direction of educational as well as other Federal services to Indian communities” 25 U.S.C. § 450a(a), Pub. L. No. 93-638, 88 Stat. 2203 (1975). The ISDEAA 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 DOI for the benefit of

Indians. 25 U.S.C. § 450f(a)(1). In 1994, this act was amended when Congress passed the Tribal 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 numerous programs, particularly those administered by the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS).

As part of negotiating for agreements under the Self-Governance Act for BIA and non-BIA programs otherwise available to Indians tribes or Indians (section 403 (a) and (b)), each self-governing Tribe may also request negotiations for other non-BIA Department of 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, the CSKT requested negotiations, under the authority of section 403(c), for an Annual Funding Agreement (AFA) on the National Bison Range Complex. This is the third negotiated AFA with the CSKT in the last 9 years. The two previous AFAs were cancelled (section x.x) or rescinded (section x.x). These new negotiations concluded in April 2011 and the resulting draft AFA is one of the alternatives (alternative B) being considered in this process.

There are numerous factors that must be considered in any self-governance funding agreement on a national wildlife refuge. The Self-Governance Act prohibits including any functions that are inherently federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe (Self Governance Act 1994). We note that the term “inherently federal” remains undefined by Congress in statute, by the Executive Branch in regulation, or by the Courts in any case law. Until that time, each negotiating team is tasked with determining how this term applies to the positions, programs, or activities being considered in each agreement (section x.x).

In the Refuge System, the most relevant establishment statute is the National Wildlife Refuge System Administration Act of 1966 (Administration Act), in particular the 1976 amendment commonly referred to as the Game Range Act. This amendment requires that the Refuge System "shall be administered by the Secretary (of Interior) through the United States Fish and Wildlife Service." Id. § 668dd(a)(1). The term ‘administer’ was not defined in the Administration Act; however, in case law the court defined the term as ‘manage’ or ‘control and direct.’ In addition, the Senate committee report for the Game Range Act (No. 94-593) states that, ‘there will be no joint administration of any units within the System by the U.S. Fish and Wildlife Service and any other agency.’

Purpose and Need

The purpose and need for this action is to respond to the CSKT's request to enter into an annual funding agreement, evaluate the negotiated agreement, develop other proposed alternatives to this proposed AFA, and determine the capacity for each alternative to

1. Fulfill the intent of the Self-Governance Act (section 1.6);
2. Comply with the statutes establishing and governing the National Wildlife Refuge System (section 1.5), in particular the National Wildlife Refuge System Administration Act of 1966, as amended, (Administration Act), 16 U.S.C. §§ 668dd-668ee;
3. Ensure that functions which are considered inherently Federal remain with the Service (section 2.2)
4. Forge a long-term partnership with CSKT that would allow them to integrate their expertise and knowledge of the natural and cultural resources found on the units of the refuge complex;
5. Maintain enough internal capability so the Service is able to effectively administer the refuge;
6. Develop a long-term, quality refuge complex program that will maintain and expand our capabilities to better understand, manage, and protect the natural and cultural resources, provide consistency in management, deliver quality visitor services programs, maintain and enhance refuge facilities, and build upon successes.

Selection of the Preferred Alternative

The preferred alternative will be selected by the Service's Region 6 Regional Director after the public reviews and comments on this document. This final decision will be presented to CSKT (and the public). The CSKT will have the option to accept, reject, or propose amendments. Any proposed amendments may not include new activities or actions that have not been evaluated and found acceptable through this EA process. In addition, the only elements that may be eliminated from the preferred alternative are those not specifically designed to protect the interest of the Service. One example would be the Tribe not wanting to assume responsibility for a specific position or project that the Service has found acceptable for transfer.

1.2 National Bison Range Complex

The units of the National Bison Range Complex affected by this proposal are located in the Mission Valley of Northwestern Montana within the boundaries of the Flathead Reservation. The refuge headquarters is located in Moiese, Montana in Lake County, 40 miles north of Missoula.

The refuge complex is located on the gently rolling glacial till deposits of ancient Lake Missoula and terminal moraines 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 spring and fall migrations when peak numbers occur. The

units of the Bison Range 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 auto tour route that travels through the various habitats found on the Bison Range. In 2012, over 120,000 visitors traveled this auto tour route.

National Bison Range

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 is one of the oldest and most iconic units of the Refuge System. The Bison Range, totaling 18,563 acres, was established by special legislation (35 Stat. 267), and was the first refuge for which Congress appropriated funds for land acquisition. The Service is 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, forest, and streams found on this unique refuge.

The refuge is open to the public all year; although a portion of the popular 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 Refuge encompasses 2,062 acres and is located approximately 5 miles south of Ronan, MT. Pablo Refuge is 2,542 acres and is located approximately 2 miles south of Polson, MT. Both 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 two Executive Orders (E.O.), 3503 and 3504, which established these same lands as national wildlife refuges for migratory birds. It was not until 1948 that the government compensated CSKT for past and future reservoir operations. At that time, the government also purchased 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 the 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.”

Both satellite refuges have relatively flat terrain and contain both natural and managed wetlands and grassland areas. These refuges provide nesting and breeding habitat for migratory birds such as waterfowl, shorebirds, and grassland and wading birds. Ninepipe Refuge is surrounded by State land managed by the Montana Department of Fish, Wildlife, and Parks as a Wildlife Management Area.

Both of these 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 as Waterfowl Production Areas for migratory birds. The nine WPAs being considered in this EA are all located in Lake County and total 3,268 acres including Crow, Duck Haven, Sandmark, Kicking Horse, Anderson, Herak, Johnson, Montgomery, and Ereaux WPAs. All of these units contain both wetland and grassland components that the Service manages for nesting, breeding, resting, and feeding areas for a variety of wetland-dependent migratory birds.

These WPAs are open to the public year round for wildlife observation and photography. Waterfowl and upland game bird hunting is permitted under both State and Tribal regulations. Big game hunting and trapping is permitted, but the Flathead Reservation regulations permit only tribal members to harvest big game and trap wildlife within reservation boundaries.

1.3 The Confederated Salish and Kootenai Tribes

The Confederated Salish and Kootenai Tribes 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. 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. 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 (12 Stat. 975). 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.

The CSKT and Bison

Bison have 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. "Going to buffalo" was part of the traditional life cycle of these tribes. In both the Hellgate Treaty and the Treaty of the Upper Missouri (11 Stat. 657) they reserved hunting rights to buffalo country on the east side of the Continental Divide.

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 Montana's eastern plains could not continue, tribal leaders allowed the son of Atatice, Latatí (Little Peregrine Falcon Robe), to bring back some orphaned calves to the Flathead Reservation. Some years later, when the rescued calves had reached maturity and begun to reproduce, Latatí's father-in-law, Samwél (often referred to as Samuel Walking Coyote) sold the bison to CSKT tribal members and ranchers Michel Pablo and Charles Allard. Pablo and Allard already had a herd of buffalo (cultural resource overview 2000); however, they wanted to increase their herd. It is unknown where the original Pablo and Allard bison herd came from but Latatí's calves became part of the nucleus of the Pablo-Allard herd that ranged on the Flathead Reservation. When Allard died suddenly in 1896, his descendants sold his portion of the herd to Charles and Alician Conrad, ranchers in Kalispell. Eventually Pablo sold his herd to Canada after 1904 when the Natives Ultimately, the Pablo-Allard herd provided the foundation for many of today's bison conservation herds, including the Bison Range 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.

1.4 American Bison Society

In the late 19th and early 20th century, as the Pablo-Allard herd was growing on the Flathead Reservation, sportsmen-conservationists were banding together in New York, with a goal of saving bison from extinction. In 1905, the American Bison Society (ABS) was founded by Theodore Roosevelt and William T. Hornady, who served as its first President. ABS lobbied Congress to appropriate funds to establish a "national bison range" and committed to raise private funds for purchasing "pure-blood" bison to stock that range. ABS was successful and on May 23, 1908, President Theodore Roosevelt signed the Department of Agriculture Appropriation Act for 1909 (Public Law 136), which included an amendment that appropriated \$30,000 for land acquisition, \$10,000 for fencing, and directed the President to

"...reserve and except from the unallotted lands now embraced by the Flathead Indian Reservation, in the State of Montana, not to exceed twelve thousand eight hundred acres of said lands, near the confluence of the Pend d' Oreille and Jocko Rivers, for a permanent national bison range for the herd of bison to be presented by the American Bison Society".

On March 4, 1909, President Roosevelt signed a second Department of Agriculture Appropriations Act which authorized an expansion of the Bison Range from 12,800 acres to "not to exceed twenty thousand acres." (Public Law 330)

While the ABS could be justifiably proud of its success in getting the Bison Range established, contemporary documents of the period make clear that the fledgling American conservation movement had not yet generated sufficient political will in the United States to consider subordinating any agricultural or economic development opportunities to the needs of wildlife. In his March 20, 1909, report to ABS membership, Hornady discussed the effort required to “find a suitable location for the permanent preservation of this historic animal. The rapid settlement of the public range lands of the Western States, which was the native habitat of the buffalo, has made it difficult to point out any specific location where sufficient land could be secured for the purpose without interfering with the settlement of the country.” Hornady was unable to acknowledge that this land had already been occupied, indeed “settled”, by Indian nations, for millennia. The United States and the precursor European colonial powers of Great Britain and France had continually treated these nations as sovereigns since the 17th century arrival of Europeans in North America.

The Flathead Reservation was chosen as the site for the Bison Range for several reasons, one of which was biological. As Hornady (1909) reports, on selection of a site for the Bison Range, “Special attention was called to the Flathead Indian Reservation, in western Montana, on account of the fact that the great Pablo-Allard bison herd had grown up on that reservation...The history of that herd has amply demonstrated the fact that bison suitably located on the Flathead Reservation could live all the year round by grazing and without being fed hay”.

In addition to the fact that it provided suitable year-round habitat, including water and grass, the other main reason that the Bison Range is where it is today, is that this land would be relatively easy to acquire. There were few political problems for State or Federal elected officials because the proposed location was on an Indian reservation, land not yet available for homesteading.

In 1907 ABS had commissioned University of Montana Professor of Biology Morton J. Elrod to examine potential sites on the Flathead Reservation for establishment of a bison range. Elrod (1908) outlined four criteria for selecting a location. One of his criteria was “The Range: This must be suitable to afford ample grazing grounds for the herd, both summer and winter, with plenty of water. There must be ample natural protection from winter storms and blizzards. Naturally the public will not desire to see choice farm or fruit lands set apart as a buffalo range; hence non-irrigable land must be selected.” Later in his report, as Elrod describes his recommended location, he notes, “The range described contains five Indian allotments, with a total of 800 acres”. Tribal members had selected sites for their allotments around springs and creeks—lands that would not be available to homesteaders under the Flathead Allotment Act. Elrod continued, “These five Indian allotments should be eliminated, either by purchase or by lien selections”. He suggested that if the allotments could not be obtained, they should be fenced out of the bison range facility. Documents about the acquisition are incomplete but best available sources indicate that 994.7 acres of Indian allotments were acquired. These allotments were cancelled and the individual owners were paid for any improvements. The owners were then given the opportunity to select new allotments in lieu of their cancelled

allotments. The original allotments^{4.8} reverted back to the tribe and were in turn sold to the United States Government.

In his further description of the proposed lands to comprise the Bison Range, Elrod notes that “The range is strictly non-agricultural, but the greater portion of it affords excellent grazing. By non-agricultural is meant it cannot be irrigated, owing to the fact that it is high above water and irregular. For dry-farming the hills are too steep.” Establishment of the Bison Range followed the pattern at the Wichita Forest Reserve and Game Preserve in Oklahoma established in 1904. Today, this is known as the Wichita Mountains National Wildlife Refuge. The Oklahoma preserve, another site of early and continuing bison conservation, was also established within the boundaries of an Indian Reservation that was opened to white settlement.

Following the Act of May 23, 1908, that established the Bison Range, ABS launched its fund-raising drive to raise the then-enormous amount of \$10,000 to purchase “pure-blood” bison for the “nucleus herd” to stock the refuge. In less than one year, ABS met its goal and raised a total of \$10,560.

With the impending implementation of the Flathead Allotment Act, U.S. officials told Michelle Pablo he could no longer run his bison and cattle on the open range of the reservation. ABS had wanted to purchase bison to stock the Bison Range 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 in the Charles Conrad herd located in Kalispell, MT. Charles Allard had died in 1896, but his heirs had sold some of his bison to Conrad. In 1909, Conrad’s widow, Alicia, agreed to sell 34 bison to the ABS and also donated her finest male and a female. The original nucleus herd of 40 bison on the National Bison Range consisted of these 36 bison from the original Pablo-Allard herd, plus one cow donated by Charles Goodnight of Texas, and three calves donated by Mr. Corbin of the Blue Mountain Forest Association in New Hampshire.

Acquiring the National Bison Range

In 1908, when the National Bison Range was established within the boundaries of the Flathead Reservation, CSKT received the appraised value of \$28,955.48 (CSKT 2000). There was a mixed reaction to the establishment of the Bison Range. Duncan McDonald, a tribal member, was in favor of the reserve as an effort to preserve the species. He and other tribal members were upset that Pablo had sold his herd to Canada and wanted to see the herd returned and kept ‘where they can be seen.’ (CSKT 2000) Some tribal members complained that they lost their allotments for small financial compensation and were not given suitable substitute lands for livestock. Pend d’Oreille elder Mose Čxawté (Chouteh) told of a meeting in the Reservation town of St. Ignatius in which a federal Indian agent informed tribal members of the establishment of the National Bison Range. Mose Čxawté said tribal leaders told the federal agent 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.

Since 1980, the Service has had a “willing seller” policy, acquiring private lands for refuge purposes only from willing sellers at appraised fair market value. In the 1950s and 1960s the Service acquired many private lands for migratory bird refuges through the exercise of eminent domain, but paid the owners fair market value. In 1908, when the Bison Range was established, neither the willing seller policy nor the requirement to pay fair market value was in place.

In 1971 the CSKT filed a lawsuit in federal court seeking compensation for the lands taken out of the Reservation for white settlement and other purposes, including those lands reserved for the National Bison Range. *Confederated Salish and Kootenai Tribes v. United States*, 437 F.2d 458 (1971) (<http://openjurist.org/437/f2d/458/confederated-salish-and-kootenai-tribes-of-flathead-reservation-montana-v-united-states>, accessed 2/21/2013). Between 1908 and 1909, the United States had “disposed of” 4,834 parcels of Flathead Reservation land totaling 485,171.31 acres pursuant to the Flathead Allotment Act. The court found that this federal acquisition of Flathead Reservation lands was a breach of the Hellgate Treaty, and ordered the government to pay 6.1 million dollars, plus interest, to CSKT as just compensation.

1.5 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. In 1940, the responsibility for administering refuges passed from the Department of Agriculture’s Bureau of Biological Survey to the Department of the Interior’s newly formed Bureau of Sports Fisheries and Wildlife, within the U.S. Fish and Wildlife Service.

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) which 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.

National Wildlife Refuge System Administration Act, as Amended

Congress has twice amended the Administration Act—under the 1976 Game Range Act and under the 1997 National Wildlife Refuge System Improvement Act (Improvement Act). The 1976 Game Range Act added a new requirement that the Secretary of the Interior must administer the Refuge System through the Director of the Service. In case law, administer has been equated with ‘manage’ or ‘control and direct’. In addition, the Senate committee report for the Game Range Act (No. 94-593) states that, ‘there will be no joint administration of any units within the System by the U.S. Fish and Wildlife Service and any other agency.’ This effectively means that the Service cannot “co-

manage” the Bison Range Complex with the CSKT or any other entity. It does not preclude “cooperative management” pursuant to the Native American Policy of the Service.

In addition to the Administration Act, on March 1996, President Clinton issued E.O. 12996, “Management and General Public Use of the National Wildlife Refuge System.” (<http://www.fws.gov/refuges/policiesandbudget/EO12996.html>, accessed 2/21/2013) This E.O. provided a mission statement and established four guiding principles for the Refuge System, and provided direction to the Secretary “in carrying out his trust and stewardship responsibilities for the Refuge System.” One of the guiding principles is “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.

The Service enters into partnerships and agreements with a wide range of organizations at the national, regional and local levels. These agreements are intended principally to encourage cooperative projects that benefit the Refuge System and the nation’s wildlife resources. It allows organizations to contribute funds for facilities, projects or materials to benefit refuge visitors and to improve wildlife habitats. Partnerships also allow refuges to take advantage of the expertise and personnel of the various organizations in cooperative efforts ranging from habitat management to information and education programs focused on conservation and ethical use of natural resources.

In the 1997 Improvement Act Congress significantly amended the Administration Act, giving much of the language of E. O. 12996 the force of law, but also changing some of its guidance, including modifying 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.

With respect to the Bison Range Complex, the Service’s primary and over-riding mandates are fulfillment of the various wildlife conservation purposes of the units and the mission of the Refuge System.

1.6 The Self-Governance Policy of the United States

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. The Bison Range was established during what is often referred to as the “Allotment Era”. 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, the individual Indians were to have their own plots of land where they would learn to be farmers and ranchers. The United States hoped and wrongly assumed that Indian farmers would assimilate into the predominant European agricultural economy and society. During this era, the tribes lost much of their treaty-reserved land.

The Allotment Era ended in 1934 with the passage of the Indian Reorganization Act (IRA). The IRA represented the beginning of a new direction in federal policy toward tribes. Other than the United States’ 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 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 Indian Self-Determination and Education Assistance Act of 1975, codified at 25 U.S.C. §§ _____. (Self-Determination Act). The Self-Determination Act 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 operate federal service programs that directly benefited tribes and tribal members (within the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS)).

The CSKT was the first tribe to achieve self-governance status under the Self-Determination Act, and is acknowledged to be among the most successful tribes participating in the Self-Governance Program. In order to enter into self-governance, a tribe must provide authorization from its tribal governing body and complete a planning phase. It must also demonstrate, for the previous three fiscal years, financial stability and financial management capability, as evidenced by having no material audit exceptions in required annual audits of its self-determination contracts. Between 1991 and 2012 the number of tribes participating in the DOI self-governance program has grown from 7 tribes to 251 (44% of the 566 federally recognized American Indian and Alaska Native tribes) (<http://www.bia.gov/cs/groups/xocl/documents/text/idc-021744.pdf>, accessed 2/21/ 2013). On average, 2-3 tribes are added to this program every year.

In 1994, Congress amended the Self-Determination Act, passing the Tribal Self-Governance Act, codified at 25 U.S.C. §§_____ (Self-Governance Act). Title IV of the Self-Governance Act requires the Secretary of the Interior to carry out a permanent Self-Governance Program. The Self-Governance Act created authority for eligible self-governance tribes to request negotiations with Interior Bureaus, other than the Bureau of Indian Affairs, to negotiate AFAs "...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" (<http://www.gpo.gov/fdsys/pkg/BILLS-103hr4842eh/pdf/BILLS-103hr4842eh.pdf>, accessed 1/3/2013).

The policy to permanently establish and implement tribal self-governance is reinforced in an Executive Order, the U.S. Code of Federal Regulations, and in agency policy statements including:

- **Executive Order 13175, November 6, 2000**

E.O. 13175, Sec. 2. "Fundamental Principles," provides:

In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

- **25 CFR 1000.4**

Self-Governance Policy is codified at 25 CFR 1000.4(c), which states, in pertinent part, as follows:

25 CFR 1000.4 (c) (3): It is the policy of the Secretary to have all bureaus of the Department work cooperatively and pro-actively with Tribes and Tribal Consortia on a government-to-government basis with the framework of the Act and any other applicable provision of law to make the ideals of self-determination and self-governance a reality.

...

25 CFR 1000.4 (c) (5): It is the policy of the Secretary that all bureaus of the Department will negotiate in good faith, interpret each applicable Federal law and regulation in a manner that will facilitate the inclusion of programs in each annual funding agreement authorized, and enter into such annual funding agreements under Title IV, whenever possible.

25 CFR 1000.4: (c) (6) It is the policy of the Secretary to afford Tribes and Tribal Consortia the maximum flexibility and discretion to meet the needs of their communities consistent with the diverse demographic, geographic, economic, cultural, health, social, religious and institutional needs. These policies are designed to facilitate and to encourage Tribes and Tribal Consortia to participate in the planning, conduct, and administration of those Federal programs, included, or eligible for inclusion in an annual funding agreement.

- **The Native American Policy of the U. S. Fish and Wildlife Service (1994)**

The Service's 1994 Native American Policy provides:

The Service favors empowering Native American governments and supporting their missions and objectives in assuming program management roles and responsibilities through contracting and other mechanisms. Therefore, the Service supports the rights of Native Americans to be self-governing and further supports the authority of Native American governments to manage, co-manage, or cooperatively manage fish, and wildlife resources and to protect their Federally recognized authorities.

The Self-Governance Act and Government-to-Government Negotiations

On November 11, 2010, the CSKT requested that the U.S. Fish and Wildlife Service enter into government-to-government negotiations for an annual funding agreement that would allow CSKT to receive funding and conduct activities on the National Bison Range Complex. The Service entered into negotiations for a new agreement shortly after this formal request was made by CSKT. The resulting draft agreement is one of the alternatives (alternative B) being evaluated in this document.

The Tribal Self-Governance Act expanded the self-governance program. Under Title IV of this amendment, tribes were given the authority to request and enter into negotiations for annual funding agreements with non-BIA Department of Interior agencies, which

includes the U.S. Fish and Wildlife Service. (<http://www.gpo.gov/fdsys/pkg/BILLS-103hr4842enr/pdf/BILLS-103hr4842enr.pdf>, accessed 2/21/2013).

The Self-Governance Act provides, in pertinent part:

Section 403 (b)(2) [25 U.S.C. § 458cc(b)(2)] Contents. Each funding agreement shall . . . 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 U.S.C. § 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;

. . .

Section 403(c) [25 U.S.C. § 458cc(c)], Additional Activities. Each funding agreement negotiated pursuant to subsections (a) and (b) [25 U.S.C. §§ 458cc(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.. . .

. . .

Section 403(k) [25 U.S.C. § 458cc(k)], 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)[25 U.S.C. §§ 458cc(b)(2) and 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) [25 U.S.C. § 458cc(b)(2)].

AFAs for non-BIA agencies are unique and more challenging than those negotiated for BIA and IHS programs which are specifically designed to benefit tribes and tribal members. Non-BIA programs are designed to benefit the American public as a whole, which includes tribes. George Skibine, Acting Principal Deputy Assistant Secretary for Indian Affairs, made this clarification in his testimony on November 18, 2010, before the Senate Committee on the proposed amendments to the Self-Determination Act, contained in H.R. 4347:

Unlike IHS, which is dedicated to providing health services to American Indians and Alaska Natives, these non-BIA bureaus serve many constituent groups and interests through diverse programs and projects, which affects how these other bureaus are structured and how they carry out their programs. The Department believes that the way Title V programs [BIA and IHS programs] are administered would not work well for Title IV [Self-Governance] programs.

(http://www.doi.gov/ocl/hearings/111/hr4347_11182010.cfm, accessed 2/21/2013)

Unlike BIA and IHS, which were established to serve American Indians and Alaska Natives exclusively, non-BIA agencies like the Service have the discretion to add *any* necessary provisions to a negotiated AFA or reject a proposal altogether, as again described by George Skibine in his testimony on H.R. 4347:

I think the problem that we have with the IHS criteria is that right now, for non-BIA agencies, the entering into [a] self-governance compact and funding agreement is discretionary, by and large discretionary. So if it doesn't work, they don't do it...The Secretary may determine, for example, that the final offer does not adequately fulfill the mission of the non-BIA bureau or office...The only declination reasons that H.R.4347 offers to non-BIA bureaus and offices are that the tribal government proposes to assume an inherently Federal function or that the tribe is not eligible to participate in self-governance. This severe limitation on the Secretary's ability to reject a tribe's final offer deprives the Secretary of the necessary authority to influence how Federal programs that are not for the benefit of Indians because of their status as Indians are to be carried out.

(<http://www.gpo.gov/fdsys/pkg/CHRG-111shrg65293/html/CHRG-111shrg65293.htm>, accessed 2/21/2013)

AFA for non-BIA programs are described in 25 CFR § 1000.121:

Annual funding agreements for non-BIA programs are legally binding and mutually enforceable agreements between a bureau and a Tribe/Consortium participating in the self-governance program that contain:

- (a) A description of that portion or portions of a bureau program that are to be performed by the Tribe/Consortium; and
- (b) Associated funding, terms and conditions under which the Tribe/Consortium will assume a program, or portion of a program.

(<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=a9ab8092c7cf77178c215c08f21c2ee9&rgn=div8&view=text&node=25:2.0.5.10.1.6.76.2&idno=25>, accessed 2/21/2013):

Currently there are 8 active AFAs for non-BIA programs across the nation. Some examples include an AFA for operating portions of the maintenance program at Grand Portage National Monument in Minnesota 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 prior 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. That AFA is no longer active due to a lack of funding for the agreed-upon activities, including harvest data collection, moose management, and maintenance of federal property around Fort Yukon.

Any AFA for the Bison Range Complex should maintain and enhance the Service's ability to achieve the purposes for which the refuge complex was established, support the guiding principles and mission of the National Wildlife Refuge System, and ensure the Service is able to maintain control of its mission and operations.

Chapter 2. Refuge Purposes, Laws, and Issues

The following chapter summarizes the purposes of the units of the Bison Range Complex, a discussion on the laws and policies relevant to this decision, and a summary of the substantive issues identified during scoping, both internally and by the public, that will be addressed in this EA.

2.1 Refuge 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. The Service is required to manage each Refuge System unit to fulfill its establishment purposes, and no third-party or public uses that materially interfere with or detract from refuge purposes can be allowed. 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 purposes for units of the National Bison Range Complex include the following:

National Bison Range (18,563 acres)

- "...for a permanent national bison range for the herd of bison to be presented by the American Bison Society." 35 Stat. 267, May 23, 1908
- "...as refuges and breeding grounds for birds." Executive Order 3596, dated Dec. 22, 1921
- "...to provide adequate pasture for the display of bison in their natural habitat at a location readily available to the public..." 72 Stat. 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 (2,062 acres)

- "...reserved, subject to Reclamation Service uses...as a refuge and breeding ground for native birds. Executive Order 3503, dated 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 (2,542 acres)

- "...as a refuge and breeding ground for native birds." Executive Order 3504, dated June 25, 1921.

Northwest Montana Wetland Management District (3,228 acres)

- "...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)

2.2 Laws, Policies, and Inherently Federal Functions

In negotiating an AFA at the Bison Range Complex, the Service is challenged to implement the intent of Congress in two laws, the Administration Act, and the Tribal Self-Governance Act. These laws are equally important; neither has priority over the other. Congress provides no guidance on how these two laws are to be balanced and executed at the same time and place. The Administration Act does not mention tribes or Indian nations. The Self-Governance Act pays no special attention to the Refuge System. Line officers of the Service, in consultation with the Office of the Solicitor, are left to craft a way to fulfill the letter and spirit of both laws, particularly in the absence of Service policy on how to implement the Tribal Self-Governance Act on refuges.

One of the most challenging issues has been defining what is inherently Federal, as referred to in the Tribal Self-Governance Act. The Service has requested and received Solicitor opinions on how to interpret this language as it applies to the activities on refuges. The most recent written opinion was provided on May 17, 1996 by Solicitor John Leshy ("Leshy Opinion"). The Leshy Opinion is provided in appendix B and summarized below. This opinion provides some guidance and leaves a great deal of discretion to the agency when negotiating. The Service will use this opinion and the following summarized information when determining what functions are inherently Federal at the National Bison Range Complex. The Tribal Self Governance Act does not release the Service from its obligations to the American public; therefore, the Service must also determine what level of internal capability and critical functions must be preserved in order to maintain control of our mission and operations.

Tribal Self-Governance Act and the prohibition on including "inherently Federal functions" in an AFA

The Self-Governance Act provides, in part:

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) [25 U.S.C. § 458cc(b)(2) and 25 U.S.C. § 458ee(c)(1)] with respect to functions that are inherently Federal

Section 403 (k), 25 U.S.C § 458cc(k). The term “inherently Federal” remains undefined by statute, regulation, or case law. While the Leshy Opinion provides guidance in interpreting the meaning of Section 403(k) as related to inherently Federal functions, it does not provide a list of functions that are inherently Federal and therefore not available for inclusion in an AFA. The Leshy Opinion advises bureaus to refer to the Office of Management and Budget (OMB) guidance in effect at the time of passage of the Self-Governance Act, the OMB Office of Federal Procurement Policy’s Policy Letter 92-1, “Inherently Governmental Functions,” (September 23, 1992). The OMB definition of an inherently governmental function is “a function that is so intimately related to the public interest as to mandate performance by Government employees.” These functions include those activities that require either the exercise of discretion in applying Government authority or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: (1) the act of governing, i.e., the discretionary exercise of Government authority, and (2) 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 to:

- (a) bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- (b) determine, protect, and advance its economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- (c) significantly affect the life, liberty, or property of private persons;
- (d) commission, appoint, direct, or control officers of employees of the United States; or
- (e) 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 appropriated and other Federal funds.

This policy was rescinded when the government revised and reissued a new OMB policy on September 12, 2011. This new OMB policy letter 11-1 was also given a new title, “Performance of Inherently Governmental and Critical Functions.” The term and concept of critical functions was added to this new policy and 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.

In applying the OMB guidance, The Leshy Opinion cautions,

...we must keep in mind the idea that it was prepared in the context of government contracting with essentially private entities. Indeed, it was issued pursuant to the Office of Federal Procurement Policy Act, 41 U.S.C § 405(a). Under the Tribal Self-Governance Act, by contrast, we are dealing with agreements with Indian tribes that generally possess sovereign authority. This creates an important limitation on how the OMB guidance ought to be applied here.

The Service is left to exercise judgment as to what functions of the Bison Range Complex are “inherently Federal” and therefore cannot be delegated to the tribes under an AFA. The Service believes there are clearly inherently Federal positions and associated duties at the refuge complex including the refuge manager, deputy manager, and federal wildlife officer positions. The remaining career (permanent) and term (not to exceed 4 years) staff positions and their associated duties are where the majority of questions have arisen and where the impacts could occur. These 8 positions include the GS-12 supervisory wildlife biologist, a GS-11 supervisory outdoor recreation planner, one career and one term GS-9 fish and wildlife biologist, a GS-7 range technician, a WG-9 engineer equipment operator, a WG-8 maintenance worker, and a WG-7 term maintenance worker. The specific duties or tasks related to each of the career and term positions is further described in section 3.12. In addition, the Service recruits 2-8 seasonal staff for 6 months or less, depending on projects and funding. These seasonal employees typically assist with the biological and visitor services programs.

All of the career and term positions are currently encumbered by Service employees. The length of service on the refuge complex ranges from 6 months to 29 years. To support the Service's policy of creating a diverse workforce, the Service has looked for opportunities to hire qualified tribal members and descendants for these federal positions. Currently, 3 of the 11 career or term Service employees are tribal members. The refuge complex also employs a student in the Pathways program, which is designed to recruit and train future career Service employees. The Pathways position is currently occupied by a CSKT tribal descendent. In the past 5 years the refuge complex has recruited two other students into this program; one a tribal member, the other a descendant of the CSKT. One student has completed the program and is now a career Service employee in the Region 6 refuge management program.

Annual Federal Register Notice of Programs Eligible for Inclusion in Annual Funding Agreements

The Tribal Self-Governance Act requires the Secretary of the Interior to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that may be eligible for inclusion in agreements negotiated 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 an eligible tribe or tribes. The annual notice was last published on January 23, 2013, at 78 Fed. Reg. 4861.

The Federal Register notice identifies two categories of non-BIA programs eligible for self-governance funding agreements under the Tribal Self-Governance Act:

(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, historic, 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.

The Federal Register notice acknowledges that some general legal and policy guidance regarding what constitutes an inherently Federal function exists, and directs non-BIA bureaus to determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances.

The annual Federal Register notice includes a list of Service facilities having components that may be suitable for contracting through a self-governance funding agreement. This list includes fish hatcheries and refuges selected based on their proximity to identified self-governance tribes. There are 31 national wildlife refuges listed, including the National Bison Range, and Pablo and Ninepipe Refuges. This list does not specifically mention any WMD, including the Northwest Montana WMD.

The Federal Activities Inventory Reform (FAIR) Act and OMB Circular A-76

The Federal Activities Inventory Reform (FAIR) Act of 1998 (P.L. 105-270), requires federal agencies to prepare and submit inventories of commercial activities performed by federal employees to the OMB by June 30 of each year. The implementing guidance at OMB Circular A-76 (A-76), “Performance of Commercial Activities,” further requires agencies to submit inventories of their inherently governmental activities to OMB. The Service has complied with these requirements and submitted a list of positions it considers either inherently governmental or commercial. Under A-76, the Service positions considered inherently governmental on the Bison Range Complex include the refuge manager, deputy manager, and federal wildlife officer.

Under A-76, the outdoor recreation planner and wildlife biologist positions are considered to be commercial plan A positions, which are considered mission critical and therefore would not be contracted to private vendors. The maintenance positions are considered commercial plan B positions, which are contractible to private vendors under A-76. However, given the unique operations of managing a herd of wild bison, portions of these maintenance jobs relating to relocating and managing the bison herd, including the annual roundup, would be considered mission critical to the purposes of the bison range. Those portions of their duties would be considered commercial plan A, and therefore not contractible to private vendors under A-76. (*personal conversation*, Kathy Garrity, deputy chief, Division of Policy and Directives Management, 2/ 4/ 2012).

The Service recognizes that the CSKT is not a private company and that regulations written to address private contractors do not directly apply to self-governance agreements with tribes. However, the fundamental principles behind these determinations are relevant to the scope and viability of analyzed alternatives, evaluation of consequences, and selection of the preferred alternative, particularly in the absence of any clear definition of “inherently Federal.”

Contracting biological projects with other entities

The Service and the National Bison Range Complex have a history of entering into cooperative agreements with universities and other non-government organizations to perform surveys (e.g. habitat, wildlife), conduct biological research, and provide biological recommendations to management. These agreements are conducted under a scope of work identified and typically written by a Service biologist who also identifies the research need, evaluates proposals, and negotiates project schedules, milestones, and products with the cooperator. The Service, including the Bison Range Complex, also cooperates with state and tribal biologists to conduct biological survey work, particularly on areas with common boundaries. These types of cooperative arrangements demonstrate that at least some Service biological activities are not inherently Federal. However, there are no similar examples of contracts or agreements where the Service conveyed programmatic control or full operations of a refuge’s biological program.

Compliance with the National Wildlife Refuge System Administration Act

The primary statute guiding administration of the Refuge System is the Administration Act. The Administration Act has been amended twice, and both amendments have implications on the final decision. The first amendment was the Game Range Act of 1976 which, among other things, provided that the Refuge System “shall be administered by the Secretary through the United States Fish and Wildlife Service.” Congress made clear that only the Service shall administer or manage the Refuge System and that the Service cannot turn over management of refuges to other entities. The Service cannot and has never intended to relinquish the overall management of the refuge complex to the CSKT. However, some opponents of previous AFAs at the Bison Range argued that the language in those AFAs was, in essence, turning over management or co-managing the refuge complex to CSKT, thus violating the Game Range Act and the disclaimer section 403(k) of the Self-Governance Act. On July 30, 2007, Representative John Dingell, the original sponsor of the Game Range Act, shared similar concerns regarding the new negotiations for the 2008 AFA with then-Interior Secretary Kempthorne (appendix C):

While [Deputy Secretary Lynn Scarlett’s letter] asserts the Department’s decision does not transfer authority from the Service, the annual funding agreement (AFA) with the CSKT cannot honestly be classified in any other terms. . . . The future of the National Bison Range and other national wildlife refuges may be seriously affected by the Service’s AFA. I must request a full explanation of the Department’s precedent-setting decision and its statutory basis.

The Administration Act was further amended by the Improvement Act, the organic legislation that provides the mission statement for the Refuge System. The Improvement Act and Executive Order 12996 contain language that supports partnerships between the Service and owners of adjoining lands, as is the case with CSKT:

”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 the units of the System are located(Improvement Act, § 5(a), 16 U.S.C. § 668dd(a)(4)(E))

E.O. 12996, § 2 mentions tribes in the guiding principles related to partnerships:

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.”

Indian tribes are not specifically mentioned in the Administration Act. This absence of specific Congressional guidance has led some to assert that there is no authority for self-governance AFAs within the Refuge System and that the previous AFAs were a violation of this law. The authority to enter into these types of partnerships is in the Self-

Governance Act. The same provision that prevents the Secretary from allowing tribes to perform inherently Federal functions also authorizes AFAs with tribes regardless of whether they are identified in the authorizing statute unless the type of participation sought by the tribes are specifically prohibited by other laws:

“Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities in the Secretary so as to authorize the Secretary to enter into any agreement under sections 403(b)(2) and 405(c)(1) with respect to functions that are inherently Federal or where the statute establishing the 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).*” Section 403(k), 25 U.S.C. § 458cc(k) (emphasis added).

This provision shows that eligible self-governance tribes have the authority to request the Service to negotiate with them to contract for eligible programs, services, functions, and activities, or portions thereof, to which the tribe has a historical, cultural or geographic connection. The Self-Governance Act pre-dates the comprehensive revision of refuge law made in the Improvement Act. Therefore, in the Improvement Act, Congress had ample opportunity, if that was the legislative intent, to exclude refuges from inclusion in self-governance agreements, and did not.

On June 28, 1994, just prior to the passage of the Self-Governance Act in October, the Service published its Native American Policy (Policy), which includes ten principles including “Government to Government Relations” and “Self-Determination.” (http://www.fws.gov/nativeamerican/graphics/Native_Amer_Policy.pdf, accessed 2/21/2013). Although AFAs were known to be provided for in the forthcoming legislation, there is no mention of AFAs in the Policy; the only options listed for entering into partnerships under the Indian Self Determination and Education Assistance Act are contracts, cooperative agreements, or grants. Under the principle of Government to Government Relations, the Policy provides that the Service “will work directly with Native American governments and observe legislative mandates, trust responsibilities, and respect Native American cultural values when planning and implementing programs.” It further states:

Successful implementation of this Policy will be accomplished through working relationships and mutual partnerships with Native American governments. The Service will rely on Native American governments to identify formal and informal contacts to represent them when coordinating with the Service. Working relationships, in many cases, will be with Native American fish and wildlife departments. For major joint initiatives, the Service will offer to enter into formal agreements, developed by both parties, that clearly identify the roles, responsibilities, and obligations of the Service and each involved Native American government.

Id., Section III. The Policy defines “agreements” as “Documents approved by two or more parties that identify their roles and responsibilities in achieving mutual objectives

(e.g. Memoranda of Agreement, Memoranda of Understanding, Cooperative Agreements, Grants, and Contracts).”

Additional information on the intent of Congress in passing the Self-Governance Act is found in the following statement by the House Committee on Natural Resources:

The Committee Amendment also authorizes Indian tribes to include in the funding agreement any program or portion of programs administered by the Secretary which are of special geographic, historical, or cultural significance to the tribe. The Committee intends this language to provide additional authority to the Secretary to include any program of special importance to an Indian tribe as part of their self-governance compact. The Committee intends this provision to authorize an Indian tribe to include programs or portions of programs administered by the National Park Service, the U.S. Fish and Wildlife Service or the Bureau of Land Management which have special significance to the tribe. The Committee intends this provision [Section 403(c)] 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. For example, an Indian tribe may include in the annual funding agreement the administration of a tourist information center or concession stand at a National Park or on Federal lands which are within or near an Indian community. H.R. Rep. No. 103-653, at 8 (1994) (Appendix D).

In May 2007, the Chairman and the Ranking Member of the House Committee on Resources--Rep. Nick Rahall and Rep. Don Young (a primary sponsor of the Improvement Act) wrote to the Secretary in support of the CSKT’s proposal for an AFA at the Bison Range:

The National Wildlife Refuge System 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 . . . and specifically authorizes the 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 . . . National Bison Range Complex are located. [Note: The only lands owned by the CSKT are those of the Pablo and Ninepipe Refuges. The Service acquired easements from CSKT in order to operate these lands as refuges.] Letter dated May 15, 2007, from Reps. Nick Rahall and Don Young to Dirk Kempthorne (Appendix E.)

The Service administers the National Bison Range Complex and other units of the Refuge System, first and foremost, to fulfill the wildlife conservation purposes for which those units were established, and the mission of the Refuge System. In doing so, the Service is required, and expends significant resources, to comply with a variety of laws, regulations, and policies that do not specifically mention the Refuge System, and on their face have little or nothing to do with wildlife conservation or wildlife refuge management. The Service views the fulfillment of the United States' law and policy related to self-governance within the Refuge System as analogous to fulfillment of other laws and policies, such as those related to the protection of cultural and historical resources on refuges.

The only mention of archaeological and cultural values in the Administration Act is the requirement to inventory "archaeological and cultural features of the planning unit" when preparing Comprehensive Conservation Plans (CCPs). Despite the lack of more specific direction regarding cultural resources in its organic legislation, the Service goes to considerable effort to comply with numerous protection laws, including, most significantly, Section 106 of the 1966 National Historic Preservation Act (NHPA), related to the protection of cultural and historical resources that occur on federal lands.

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title II of this Act a reasonable opportunity to comment with regard to such undertaking. NHPA, § 106, 16 U.S.C. § 470f.

Despite the fact that cultural resources have little to do with the core wildlife conservation mission of the Refuge System, in 1992 the Service developed policy guiding refuges on how to implement the mandates of NHPA and other cultural preservation laws. (Service Manual Part 614) Such laws and policies affect how refuges conduct activities that have the potential to impact cultural resources. Similarly, in this EA we are now analyzing the effects of potentially doing things differently at the Bison Range Complex to continue meeting our refuge purposes and Refuge System mission while also furthering the intent of the Tribal Self-Governance Act.

2.3 Issues Identified During Scoping

Below is a summary of the substantive issues identified during scoping by the public and internally. The Service will consider these issues in developing alternatives and evaluating the consequences of each. Included in this section is a discussion of previous AFAs at the Bison Range, and the NEPA deficiency that led to the court-ordered rescission of the 2008 AFA.

Lack of Service Policy on Self-Governance Annual Funding Agreements

The Service is developing policy for implementing Self-Governance AFAs; however that policy has not been finalized. The Self-Governance Act does not allow the Service to delay implementation “until policy is developed” and federal regulations require the Service to negotiate when negotiations are requested by an eligible self-governance tribe.

While there is no Service policy for negotiating AFAs, federal regulations for negotiation of AFAs by non-BIA bureaus have been promulgated. *See* 25 CFR 1000, subpart F. In addition, the Service has published its Native American Policy, which includes the principle of Self-Determination. The Service “supports the rights of Native Americans to be self-governing and further supports the authority of Native American governments to manage, co-manage, or cooperatively manage fish and wildlife resources and to protect their Federally recognized authorities”. Co-management is defined as “Two or more entities, each having legally established management responsibility, working together to actively protect, conserve, enhance, or restore fish and wildlife resources.” Cooperative management is defined as “Two or more entities working together to actively protect, conserve, enhance, or restore fish and wildlife resources.” While the Game Range Act does not allow for “co-management” of refuges, it does not prohibit “cooperative management.”

Furthermore, the Policy states that the Service is “committed to entering into contracts, cooperative agreements, or grants with Native American governments at their request for the administration of fish and wildlife conservation programs under the terms, conditions, and to the extent provided by the Indian Self Determination and Education Assistance Act.” The Policy makes no specific mention of AFAs (even though it was published just prior to the Self-Governance Act), what functions are inherently Federal, or whether it would be permissible to allow tribes to manage refuge programs. Negotiating teams are left to interpret and negotiate these aspects of any proposed AFA.

Only one other AFA has been negotiated for activities on a national wildlife refuge, at Yukon Flats Refuge in Alaska. However, that AFA was recently cancelled due to funding cuts. As is the case with Yukon Flats NWR, many refuges in Alaska still have villages within their boundaries, and tribal members still subsist on the resources found within these refuges. The Bison Range Complex AFA with the CSKT is very different and much more extensive than the Yukon Flats AFA with the Council on the Athabascan Tribal Governments. Despite these differences, each negotiating team was challenged with determining the intent of various policies and laws, the appropriateness or degree to which AFAs can be employed at a refuge, and the definition of inherently Federal functions. Having Service policy which addressed AFAs would remove the significant challenge each negotiating team has had in making these determinations. In addition, as AFAs continue to be developed, there is always the potential that the individual AFAs could be in conflict with, or inform or influence Service-wide AFA policy in the future.

Lack of Comprehensive Conservation Planning on the National Bison Range Complex

The Service has yet to initiate the planning process for completing a Comprehensive Conservation Plan for the Bison Range Complex, a requirement for each unit in the Refuge System. The Service has not been able to initiate this planning process due to the time and resulting staff turnover related to ongoing negotiations and implementation of successional AFAs with the CSKT. According to the Service's CCP planning policy, the CSKT and other affected tribes will be invited to serve on the planning team along with relevant state and federal agencies whether or not the Service enters into another AFA at the Bison Range Complex. The Service does not intend to discuss the AFA in the CCP. This is a 15-year planning document; whereas, these AFAs are no more than 5 year agreements.

Until the Service completes this CCP, other related step-down plans, such as a habitat management and visitor services plans, will not be initiated. The lack of continuity in programs, due to the constant turnover in staff, has only compounded the impacts of not having these long term planning projects completed.

Use of the Intergovernmental Personnel Act (IPA) to Assign Service Employees to CSKT

Use of the Intergovernmental Personnel Act (IPA) 5 U.S.C. §§ 3371-76, to assign Service employees to CSKT has been a significant issue in negotiating and implementing Self-Governance AFAs at the Bison Range Complex. In the past, CSKT has requested to operate full programs, including those staff positions currently encumbered by career Service employees. The IPA Mobility Program provides a mechanism to legally assign federal employees to work for state, local, and tribal governments, and other entities such as universities. Assignments are intended to facilitate cooperation between the Federal Government and the non-Federal entity through the temporary assignment of skilled personnel. These assignments allow civilian employees of Federal agencies to serve with eligible non-Federal organizations for a limited period without loss of employee rights and benefits. The benefits to the Federal agency and the non-Federal organization are the primary considerations in initiating assignments, rather than the desires or personal needs of an individual employee; however, the assignment is voluntary and must be agreed to by the employee. In the case of assignments to tribes under an AFA, the two-year maximum term of IPA assignments is waived.

If the Service enters into an AFA that provides for operation of full refuge programs by CSKT, the Tribe wants the ability to direct the day-to-day activities of all employees involved in that program. Although neither the Service nor the CSKT believes IPA assignments are particularly desirable, the IPA Mobility Program is the only avenue available to assign a federal employee to work for a tribe while retaining federal employee status and federal benefits.

Under an AFA using IPA agreements, the assigned Service employee's day-to-day activities would be directed by a CSKT employee who would coordinate with the refuge manager and deputy manager on the priorities for each program.

Under the current staffing, up to 6 of the 9 career Service employees on the Bison Range Complex could be asked to sign IPA agreements. The consequences of a Service employee refusing to sign a voluntary IPA agreement will be analyzed for each alternative.

In the past, no tribal employees were assigned to the Service under IPA agreements. An employee of a non-Federal organization must be employed by that organization for at least 90 days in a career position before entering into an Intergovernmental Personnel Act agreement (<http://www.opm.gov/policy-data-oversight/hiring-authorities/intergovernment-personnel-act/#url=Assignment>, accessed 2/21/2013). The CSKT has historically used the salary funding provided by the Service to recruit new employees rather than assigning existing staff from the Division of Fish, Wildlife, Recreation and Conservation (FWRC) to the Bison Range Complex.

Differential Abilities of the Service and CSKT to Recruit and Retain Highly Qualified Employees

Situational constraints in prior AFAs and limitations in CSKT personnel regulations have resulted in difficulties for the CSKT when recruiting and retaining qualified employees. Under the most recent 2008 AFA, the CSKT FWRC Division made every effort to staff their Bison Range Complex positions (up to 16) with qualified personnel. The CSKT's education requirements for the advertised positions met the minimum requirements for federal employees in those same positions. However, finding applicants who have the necessary experience and are willing to apply and accept these positions, has been challenging, particularly in the career-positions.

The CSKT's FWRC Division is widely respected as a professional wildlife conservation agency and has several ongoing partnerships and interactions with the refuge complex aside from any AFA. It has many talented long-term professional employees who have years of experience operating the wildlife management and outreach program on the reservation. In the past, the AFAs had terms of no more than 3 years; therefore, even though the refuge manager tried to encourage several of these FWRC Division employees to apply for the new CSKT positions under the 2008 AFA, many were concerned about the duration and uncertainty of these new positions and chose not to apply. In the end, the CSKT hires came from outside the FWRC Division, and some had no affiliation with CSKT.

Several factors have contributed to the challenges of recruiting and retaining qualified applicants:

- Past AFAs have been for 1- 3 year periods; therefore, the employment CSKT offers is equivalent to short contracts or “term” appointments in federal service. This has resulted in limited interest by career CSKT FWRC and other applicants especially those having permanent full time jobs with other state, tribal, and federal agencies.
- CSKT does not pay relocation expenses for new employees. This has limited most of their applicant pool to the local commuting area.
- CSKT pay scales are not equivalent to federal pay scales; therefore, the CSKT is challenged either to pay its refuge complex employees more than its other equivalent tribal employees (within FWRC, for example), or else to pay its refuge complex employees less than their federal co-workers for doing equivalent work.
- The fact that past AFAs were rescinded creates uncertainty for potential applicants. When the 2008 AFA was rescinded, the CSKT terminated all but 4 of the 16 employees it had hired to work at the refuge complex.

During the 2008 AFA, the employees recruited for the CSKT’s two most senior refuge positions met the federal minimal education qualifications. However, neither had any refuge or equivalent management experience that would have ranked them as qualified were they applying directly to the Service (personal communication, Jennifer Hanson, Human Resources Specialist, USFWS, 2/27/ 2013). As a result, both faced a significantly steep learning curve and had to be provided extensive training, including sending the deputy manager to the 3 week refuge management training course. The CSKT initially hired a lead biologist who resigned in less than 2 years. When CSKT re-advertised the position there were only two applicants, neither of which the FWRC Division leadership found to be qualified. The vacancy in the lead biologist position was noted in the Office of Inspector General Evaluation Report of March, 2011 (OIG Report). In 2012, the Service decided, in consultation with CSKT, to advertise the lead biologist position as federal employment, with relocation benefits. The Service selected from 119 applicants, including many very highly qualified candidates with years of experience. The CSKT FWRC was invited to participate in the interviews.

In recent history, the Service typically has an applicant pool 2–7 times larger than CSKT when filling equivalent permanent or temporary positions at the Bison Range Complex. This is due to differential hiring authorities, benefits, nation-wide career opportunities, and tenure of appointments. One example is the term wildlife biologist position, a 4-year position with benefits. When CSKT advertised this position under the 2008 AFA, it received 12 applications. When the Service advertised this position after the 2008 AFA was rescinded, it received 69 applications. The Service selected the CSKT employee who had worked in this position during the 2008 AFA. Prior to working for CSKT, she had worked as a temporary Service employee on the Bison Range Complex for almost 10 years. This disparity in number of applicants does not preclude the potential for CSKT to hire the same quality employees as the Service hires, but it does make it more difficult.

Both the CSKT and the Service have well established recruitment and hiring practices tailored to the needs of their government, agency, and mission. Each has its own personnel regulations and human resources departments that evaluate job applicants. For

Service positions, the Service advertises and applicants apply through USAjobs, an employment website for all federal jobs. Applications go directly to the Service's Human Resources office. One of the tools the Service uses to screen applicants is a self-evaluation questionnaire, specific to the advertised position. The selecting official, such as the refuge manager, helps develop the list of questions. The applicants give themselves a score from 1-5 (5=expert) based on their ability to perform the duties or tasks addressed in each question. This questionnaire helps identify the extent of the applicant's experience; however, the responses must be supported by information in the application or resume. The Service's Human Resources staff, which is very knowledgeable as to the requirements of each position, evaluates each application, and provides the selecting official with a list of the most qualified applicants.

When the CSKT hires for the same positions under an AFA, it uses its own personnel regulations, recruitment process, and selection criteria. The Service has been invited to participate in some of the interviews; however, the CSKT makes the final selections. This is part of self-governance; however, it has caused challenges in recruiting the most qualified, experienced individuals for the positions, because the CSKT personnel rating and selecting the applicants are not familiar with the needs and operations of the refuge complex. This was evident in many of the CSKT's employee selections under the 2008 AFA.

One example is the recruitment for maintenance staff, designated as wage grade (WG) positions. Since the Service selection criteria include no education requirement, applicants must demonstrate that they have acquired the experience needed for the position, with need for little on-the-job training. The maintenance program on the Bison Range is very complex (section 3.11), given the responsibility of managing the bison herd, including extensive horseback riding experience and understanding animal (bison) behavior. Understanding and evaluating the experience needed for these and other Service positions is critical to ensuring that the applicant has the necessary talents, experience, and knowledge to function in the position and contribute to refuge operations and programs. It allows the selecting official to recognize when none of the applicants has the needed experience to perform the duties. In such situations, the Service will re-advertise or suspend the position. In 2008, the CSKT's use of different recruitment, evaluation, and selection processes resulted in the selection of 2 maintenance staff and other employees who required significant on-the-job training, even beyond bison management activities.

The consequences of these differences in recruitment, application, evaluation, and selection practices must be addressed in any alternatives considered.

Challenges of managing the refuge complex with staff from two separate agencies

The Service recognizes the critical value of partnerships in all aspects of its wildlife conservation mission, including administration of the Refuge System, and is mindful of

the multiple directives in law and policy to promote partnerships. A self-governance partnership has many benefits, but also presents challenges when the field station staff are not fully integrated under the leadership of the Refuge Manager.

In negotiations for all the AFAs, CSKT has sought to manage full refuge programs, including leadership positions in the biological, maintenance, visitor services, and management programs. In the 2008 AFA they were provided some positions and the majority of the funding needed to manage these programs. Prior to the AFA being rescinded by the courts, 16 of the refuge complex' 21 staff members were CSKT employees. In addition, three of the 5 remaining Service employees were assigned to work for the Tribe through IPA agreements.

The CSKT wants full control over the employees in any programs it is responsible for, and in past agreements has received funding to employ a coordinator or manager position to supervise or direct CSKT employees, including federal employees on IPA assignments. This position provides a primary contact for the Service to communicate with CSKT, but also adds a position and layer of management between the Service's refuge manager and deputy and the remainder of the refuge staff. This can make it difficult for the refuge manager to monitor work, address employee issues within the staff, and maintain control of the Service's mission and operations.

Both parties have been negotiating from the position that any employees must be formally supervised by their employing government. The parties' true commitment to a partnership in the 2008 AFA did in fact greatly reduce the real and perceived employee performance and conduct issues experienced by both parties in the 2005-2006 AFA. Nevertheless, when inevitable issues with performance and conduct did arise, the refuge manager could not directly address and resolve them due to the mixed staff arrangement.

The consequences of this issue will be analyzed for all alternatives within this EA.

Staff turn-over and loss of institutional knowledge

All refuges and other Service offices experience staff turnover due to retirements, resignations and reassignments of employees. Most refuge staffs are small, with 4 – 15 permanent employees. Occasionally, multiple transfers or retirements occur in a short time span, but more commonly, staff turnover is gradual and institutional knowledge is retained, particularly in positions that are more apt to be filled locally, such as those in the maintenance and clerical programs.

For the past 10 years, while the Service and the CSKT have been actively negotiating and entering into two formal AFAs, staff turnover and loss has been extreme and costly. In total, 19 Service staff have left the refuge complex as a direct or indirect result of the AFA negotiations, and 29 CSKT staff have either resigned during an AFA or been terminated when AFAs were rescinded. This constant turnover has resulted in a loss of institutional knowledge, including agency and site specific procedures, policies, and history, along with the training and experience gained while operating a unique refuge

like the National Bison Range. There is also a financial cost associated with all the lost training and experience provided to these staff, in addition to the relocation costs for moving federal employees. This is difficult to quantify; nevertheless, it is substantial, both in time and cost.

The programs of the National Bison Range, in particular, are relatively unique, because of the establishment purpose and the bison management programs. Only two other refuges responsible for managing wild bison have comparably complex programs. For example, on most refuges, maintenance staffs conduct similar activities such as carpentry, vehicle and facilities maintenance, and heavy equipment operation. In addition to these skills, the maintenance workers at the Bison Range are required to have highly technical horseback riding skills and knowledge of bison behavior to safely perform their jobs. These specialized skills and knowledge can only be acquired through experience at the Bison Range and a very few other places. When turn-over is rapid, these and other specialized skills are lost, resulting in much more time being expended on training. This not only affects operating efficiency, but the mission of the refuge and the safety of the employees and animals; therefore, turn-over has a greater impact than it would at most other refuges.

As these staff turnovers have occurred, the only thing that has kept the Bison Range Complex functioning is a small group (5-8 individuals) of Service employees that remained after the AFAs were initiated. When the two previous AFAs were terminated, this core group of Service staff continued to sustain operations until new Service employees could be recruited, which has taken up to two years. The long-term objective of the previous AFA was to eventually replace all but three of these Service employees with CSKT staff.

This constant loss and retraining of new employees has made it extremely difficult to build upon the successes of past refuge program efforts, particularly the biological program. Rebuilding a program after extensive staff turnover and prolonged vacancies of key positions takes considerably more time and effort than maintaining the continuous operation of an established program and associated staff. The vulnerability of these types of agreements to constant staff turnover will be considered in alternatives development and analysis.

2.4 Previous Annual Funding Agreements

The Service and CSKT have entered into two previous Self-Governance AFAs at the Bison Range Complex. Both of those agreements were terminated, for different reasons.

The first AFA, signed on December 15, 2004, and implemented from March 15, 2005 to December 10, 2006 (the 2005-2006 AFA), was not successful. The negotiations leading to that agreement were difficult. DOI political appointees were heavily involved in the negotiations and applied significant pressure on the Service negotiators regularly when the parties reached impasses during the negotiations. Political appointees often pressured Service negotiators to concede issues to CSKT. Allegations, in 2006, of improper

political influence resulted in OIG Report, which determined “that Senior DOI officials did exert considerable and unusual influence . . . but that such influence was neither improper nor illegal.”

It is clear from contemporary documents that the 2005–2006 AFA was a difficult and contentious experience for both the Service and CSKT. The AFA called for CSKT to have 10 staff positions at the Bison Range Complex, with the Service retaining 11 staff positions. Several Service employees were reassigned to other stations as their duties were transferred to CSKT. Tensions and difficulties increased following the March 2006 release of a Service report on CSKT performance in FY 2005. The OIG Report states that when negotiations initiated in the spring of 2006 for a follow-on AFA came to an impasse, DOI directed that additional staff positions at the Bison Range Complex would continue to be transferred to CSKT until ultimately, by 2010, the only Service employee would be the refuge manager.

In September 2006, seven Service employees filed a grievance alleging harassment by CSKT employees. An independent investigator, hired by the Service, reported that some Service employees were working in a hostile environment. CSKT did not allow the investigator access to its employees due to the confidential nature of the allegations, and the investigator acknowledged that, “without the CSKT side of the story, the investigation is still considered a preliminary investigation.”

In early December 2006, the Service reassumed CSKT’s duties of feeding confined bison, following the Service’s determination that CSKT was not following required protocols. Shortly thereafter, the Service terminated the AFA based on performance and conduct problems of CSKT employees. When this occurred, all CSKT staff were directed to leave the Bison Range Complex, leaving the remaining 5 career Service staff to resume operations.

A year later, in January 2008, the Service entered negotiations with CSKT for a new AFA. Those negotiations, culminating in June 2008 for a new agreement for FY 2008–2011 (the 2008-2011 AFA), 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 new AFA was fully implemented on January 1, 2009.

During the 2008–2011 AFA, the OIG received allegations of problems, including performance issues with CSKT. The OIG Report, dated March 30, 2011, found 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 System program. 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.

Following implementation, the 2008–2011 AFA was challenged in two consolidated lawsuits charging that the Service had violated eight federal statutes in entering the AFA. The U. S. District Court set aside the AFA on September 28, 2010, finding that the Service failed to comply with its obligations under the National Environmental Policy Act (NEPA) before entering into the AFA. The remaining charges in the lawsuits were dismissed without prejudice.

In entering into the 2008–2011 AFA, the Service relied, for NEPA compliance, on a categorical exclusion (CATEX) and Environmental Action Memorandum, signed on August 31, 2004, prior to the 2005–2006 AFA. The Court found that the Service, in its reliance on the 2004 CATEX, "reflexively applied its prior analysis without considering the fact that it had terminated the prior AFA due in part to the CSKT's performance." The court concluded, "The agency's failure to explain its application of a categorical exclusion, in light of substantial evidence in the record of past performance problems by the CSKT, is arbitrary and capricious."

Past Performance of the CSKT

Termination of the 2008–2011 AFA was based on the Service's failure to consider, in compliance with NEPA, the reported CSKT performance deficiencies during 2005–2006. It is necessary in this EA to address those reports.

An objective evaluation of the Service's reports on CSKT performance in 2005–2006, and the CSKT's responses to those reports, makes several things clear. First, the Service's approach in evaluating CSKT performance was very different from its approach in evaluating its own performance, or that of other types of contractors. Although both parties referred to the first AFA as a "partnership", they were paying lip-service to the term. The general feeling among Region 6 and Refuge System employees was that an unworkable agreement had been forced on the Bison Range Complex by political appointees at DOI. The CSKT had made clear in prior negotiations that it felt it was capable and wanted to manage the refuge complex without any on-site Service oversight. In the view of many inside and outside the Service, it was the CSKT's desire to "take over" the refuge complex. The entire situation was exacerbated by the fact that some Service employees were reassigned prior to implementation of the agreement and the remaining employees were concerned about the security of their employment.

As a result, the Service treated CSKT more as a contractor than a partner. It provided CSKT with a lengthy Annual Work Plan (AWP) (over 1000 pages), listing the tasks to be performed and both general and some specific instructions on how to perform each task. However, the performance criteria – what level of performance would be required to achieve ratings of "Fully Successful" or "Needs Improvement" were not included or were unclear. Throughout FY 05 and 06 Service staff at the Bison Range Complex provided the refuge manager with information on whether CSKT completed the tasks in the AWP satisfactorily or not.

On March 1, 2006 the Service refuge manager submitted a comprehensive written performance review, indicating that, in FY 2005, CSKT had completed only 41% of

assigned tasks satisfactorily. The 2005-2006 AFA made no provision for this type of written performance review without input from CSKT. Instead, Section 10 of the AFA, "Performance Assessment, Reporting and Review," provided that the Service would monitor CSKT performance through direct observation and review of activity records, and notify CSKT of any performance deficiencies. CSKT was given only limited opportunity to review the findings of the performance report before it was submitted to the Service's Regional Office, and prepared a long rebuttal. After the AFA was terminated in January 2007, the Service prepared a similar report for FY 2006, 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 based upon CSKT's rebuttals.

The methods the Service used to evaluate CSKT performance in 2005 and 2006 were different from the methods the Service uses to evaluate its performance or that of private contractors. On an individual basis, all Service employees receive an annual performance plan and an annual appraisal of their performance under that plan. Even though the critical elements of those plans are required to be measurable, it is normal practice for supervisors to give employees some consideration in their evaluations. 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.

At the field station level, evaluation of Service performance is even less stringent than at the individual employee level. Refuge managers are accountable for accomplishing work that they load into the Refuge Accomplishment and Performance Plan (RAPP) database, but there is little oversight on the data submitted. Regional Office Supervisors visit most refuges once or twice a year, usually to meet with employees, get a quick tour and perhaps deal with a handful of specific issues. Comprehensive station evaluations are rare. Many Region 6 refuges have not had a comprehensive station review in 20 years, and in recent years only 1-3 refuges per year receive a comprehensive review. When those reviews do occur, the station being evaluated is provided with a draft report and is encouraged to correct errors, challenge findings of the review team with new information, and offer explanations for any deficiencies noted.

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.

None of this was done with the 2005-2006 reports on CSKT performance. That is not to say that the Service did not communicate at all with the CSKT Tribal Coordinator during

the first AFA. Indeed, the record is clear that the refuge manager and tribal coordinator communicated often. However, in the context of the reports on CSKT performance in FY 2005 and 2006, cited in the Regional Director's letter of December 11, 2006, terminating the AFA, there appears to have been little dialog opportunity for CSKT to rebut, explain, refute or remedy the reported deficiencies.

In their rebuttals to the FY 2005 and 2006 performance reports, CSKT refers to the findings in these performance reports as "allegations", cites the reports as subjective, and cites uncooperative Service employees as contributing to its unsuccessful performance of some activities. CSKT officials sometimes characterize the Service's reports during the first AFA and the tribe's rebuttals as "he said, she said".

In fact, there is no doubt that during the FY 2005–2006 AFA, CSKT employees did not perform all of their work in a satisfactory manner. There were, for example, real and serious deficiencies in fence maintenance in 2006. CSKT did not claim perfection and in their rebuttals acknowledged that some of the reported deficiencies and some of the Service's findings of "unsatisfactory", or "needs improvement" for specific tasks were valid, and it offered remedies to correct those deficiencies in the future.

The CSKT responses also raise extenuating circumstances, particularly unavailability of supplies and equipment to be provided by the Service, or the Service's failure to provide instructions and equipment in a timely manner that led to its inability to meet deadlines and performance criteria. The Service denied withholding resources, but the fact that CSKT did have to rely on Service employees to order supplies and unlock fuel pumps and tool storage areas certainly created a potential for Service logistical performance to affect CSKT operational performance.

CSKT rebuttals also note correctly that it had been authorized not to perform certain tasks in the AWP, because that work was not needed on the refuge complex that particular year. Those tasks had been declared "not required" by the refuge manager. However, the performance reviews included pie charts that were interpreted by many to indicate, for example, that "CSKT was fully successful in only 41% of their tasks", when in fact the "not required" tasks were included in the 59% of tasks not completed fully successfully. As a result, the performance reviews indicated CSKT performance was poorer than it actually was.

Another issue is the way CSKT deficiencies have been characterized. While some deficiencies were significant enough to affect achievement of refuge goals and objectives, others were minor and not relevant to the wildlife purposes of the refuge or safety. For example, in finding the CSKT "needs improvement" on a trail maintenance task, the report indicated that the required maintenance work was done, but that CSKT did not update the information in the Service's SAMMS data base in a timely manner. There was in fact a need to improve SAMMS reporting, but that same need existed at a high percentage of refuges operated by Service employees, and many refuge managers would not consider deficiencies in SAMMS database maintenance as materially impacting their refuge purposes, goals and objectives. In this way, minor deficiencies in CSKT

performance pushed the ratings out of “fully successful”. The Bison Range refuge manager’s reports acknowledge that no distinction was made regarding the importance of various activities in relation to achievement of refuge purposes, goals and objectives. As a result, 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.

The Service also overstated the importance of some tasks in which the CSKT was found deficient. There was a significant dispute between the Service and CSKT regarding the conduct of waterfowl pair counts on the refuge complex. The AFA AWP called for these surveys to be conducted on horseback. CSKT employees assigned these surveys lacked the equestrian skill to safely conduct the surveys on horseback and therefore performed them on foot. The Service argued that, since Service employees had always conducted these surveys mounted, in order for the data to be comparable with the long-term data set, the CSKT was deficient. Both parties prepared extensive documentation to “prove” that their position was correct. The CSKT did not follow the letter of the AWP because it counted waterfowl on foot. But the Service made a big deal out of what in retrospect was a minor issue. After the AFA was terminated, when asked by the regional supervisor- “when was the last time we actually used the information from those surveys to influence a management decision at the Bison Range Complex?”-refuge staff acknowledged they could not remember. They were advised to stop conducting surveys that did not inform management.

In its rebuttals to the Service’s performance reports, CSKT frequently cited uncooperative responses from Service employees when asked for information or assistance. CSKT alleged that Service staff were instructed by Service managers to avoid offering any assistance to help CSKT improve performance. The Service denied those allegations and there is no evidence that such instructions were ever issued. 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 do anything to make the CSKT look good. There is responsibility on both sides.

The Service put its employees in a horrific situation of having to work with and evaluate the performance of employees of a sovereign Indian nation that had stated publicly its desire to manage all aspects of the Bison Range Complex without any Service employees assigned to the Bison Range. These Service employees had already seen co-workers reassigned and moved from their homes to maintain their employment at other refuges. Negotiations for a follow-on AFA for FY 2007 made clear that CSKT desired, and DOI officials intended, an increasingly greater role for CSKT at the Bison Range Complex including continued replacement of Service employees with CSKT employees. Regardless of the intent of the DOI, Service and CSKT leadership, separating personal issues from business was not possible. Political leadership of both parties forced the people on the ground into a shotgun wedding and left them in a no-win situation.

In hindsight both parties should have seen that it was virtually impossible for the rank and file employees, on the ground at the refuge complex, to separate the business of

government-to-government relations from the impacts to their personal lives and careers, and the resource for which they are responsible. Some CSKT employees were alleged to have stated to some Service employees, with significant profanity, that their goal was to “get you (expletive deleted) (Service employees) out of here”. 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. Communications between the refuge manager and Tribal coordinator were regular, but while both professed a desire to “make it work”, many of the messages are defensive and blame-laden. There was no evidence of significant interaction to resolve problems between decision-makers, Service line officers and the CSKT Tribal Council, until it was far too late.

Termination of the FY 2005–2006 Annual Funding Agreement

The seminal performance issue that led directly to termination of the 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 while they were confined to the small pasture unit, including twice-daily checks of bison conditions and provision of food (hay) and water, ad libidum, meaning bison could eat and drink as much as they want since food and water are continuously available.

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 met with the CSKT Tribal coordinator to remind her of the performance requirement for feeding. 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 provide hay to the confined bison. It seems that neither party did little to address the insufficient hay issue until late November.

On November 26, 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 libidum feeding.

Based on reports of those findings to regional office managers, the Deputy Regional Director informed CSKT on December 7, 2006, that the Service was re-assuming responsibility for husbandry of the confined bison. Tribal leaders were upset with the reassumption and the following day, the Tribal Chairman precipitated a serious altercation with the refuge manager at the bison pens. Four days later the Regional Director informed the CSKT that the AFA was terminated and directed the CSKT to turn in any Service equipment in its possession and leave the refuge complex.

The Refuge Manager provided a memorandum report on January 4, 2007, describing the observations that lead to the Service's re-assumption of bison husbandry duties on December 7, 2006. The refuge manager's report characterized the confined bison as "hungry" when he inspected them, and as "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.

In March 2007 CSKT provided a response to that memorandum, citing "allegations of bison malnourishment". The CSKT response included statements 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". The CSKT response also questioned why the Service was holding the bison so long; expressed concerns about feeding methods that resulted in apparent contamination of hay with manure; and provided mathematical calculations to show that CSKT had fed the confined bison sufficient hay to maintain their health.

A review of the written record, including those reports, leads to the following conclusions:

- CSKT did not follow the AWP protocol for twice-daily status checks of confined bison, and the requirement to feed and water, ad libidum. The CSKT report of March 2007 states, "Water availability for the bison was checked each day, except during weekends"; and "On November 22, the bison were fed hay on two separate occasions, in the morning and again in the afternoon, in anticipation of their needs over the Thanksgiving holiday period." This demonstrates that twice-daily checks were not performed on weekends or over the Thanksgiving holiday, per the AWP.
- The mathematical calculations provided by both the Service and CSKT were not relevant. CSKT was not required to figure out how much hay to feed the bison, they were required to feed ad libidum. The CSKT response indicates the tribal coordinator understood what that meant. Because neither party provides a contemporary record of how much hay was fed each day during the period from October 2 to December 7, 2006, the calculations are theoretical at best. The CSKT response shows that the CSKT miscalculated the AUM (Animal Unit Month) value of bison, from the "Livestock Versus Wildlife" AUM table cite in its March 2007 response. CSKT calculated a bison as equal to 0.8 AUM, instead of the correct 1.25 AUM.
- Characterizations of bison as "hungry" by the Service, and as "acclimated to the approach of vehicles as they related vehicles to being fed" by the CSKT are both subjective, beyond proof, and based on the different experience of the parties. It is noted that 2006 was the first time in recent bison range history when so many bison were maintained in confinement for a period of over 2 months.

- Although CSKT did not follow the required protocols of the AWP, upon visual examination by Service Wildlife Health Office personnel, all of the confined bison for shipment to other refuges were determined suitable for transport. Also, at their destinations there was no mortality and the Service had no further concerns about malnutrition.
- The Service did not follow 25 CFR 1000 Subpart M, or the AFA's procedures for reassumption when it reassumed bison husbandry duties on December 7, 2006, or when it cancelled the AFA.

Conduct of CSKT Employees

Although the Court did not rely on reports of harassment and a hostile work environment in terminating the FY 2008–2011 AFA, the Service did cite the conduct of CSKT employees in terminating the earlier FY 2005–2006 AFA. In his letter terminating the agreement, the former Regional Director cited “a work environment characterized by harassing, offensive, intimidating and oppressive behavior on the part of employees of the CSKT . . .”

Because the grievance filed by Service employees was confidential and the allegations therefore could not be provided to CSKT, the Tribe did not allow the independent investigator to interview CSKT employees. While the CSKT did not have an opportunity to tell its side of the story, there is no doubt that a small number of CSKT employees harassed and intimidated some Service employees and that the CSKT on-site leadership at the refuge complex did not effectively address those issues. Not all Service employees complained of harassment, but the harassment of a small number of Service employees was egregious.

It is not clear how or whether the allegations of harassment, routine use of profane language, and other alleged misconduct by CSKT employees were raised to CSKT senior leaders for corrective action in 2006. Given the nature of Service employee allegations regarding the hostile work environment, the independent investigator's report, and the rapidly deteriorating conditions at the refuge complex in the fall of 2006, senior leadership of the Service had little choice other than to terminate the FY 2005–2006 AFA. During the subsequent negotiations for the FY 2008–2011 AFA, CSKT leaders, including the Tribal Council Chairman, acknowledged that, following termination of the FY 2005 – 2006 AFA, the Tribal Council had learned that some of the allegations about the conduct of CSKT employees were true; and that, in retrospect, they regretted having sent some ‘bad actors’ to the Bison Range Complex.

After the 2005–2006 AFA was terminated, several Service employees informed management that one CSKT employee was responsible for most of the offensive remarks and behaviors reported. Those employees said that the majority of CSKT employees working in 2005–2006 were fine to work with, and they regretted that many good CSKT employees had lost their positions when the AFA was terminated.

In the 2008–2011 AFA, and in the current negotiated AFA proposal (alternative B), the Service and CSKT made significant improvements including a Healthy Workplace section, open door policies for both Service and CSKT supervisors, and a process to resolve disputes quickly at the lowest level possible. More importantly, both Service and CSKT leadership are committed to maintaining a healthy, respectful work environment at the bison range complex. There were no employee allegations of harassment or unwelcome behaviors between Service and CSKT employees during the FY 2008–2011 AFA, and the OIG Report states, “Interviewees also said that free and open communication existed between FWS and CSKT employees.”

No employer, including the Service, is immune from problems related to employee conduct. Service managers deal with allegations of harassment and hostile work environment caused by Service employees within the Refuge System every year. The Service does not consider all refuges to be unhealthy workplaces because of the misconduct of a few employees. Neither should the actions of a few former CSKT employees, years ago, be a basis for believing the Bison Range Complex would be an unsafe or disrespectful workplace under a future AFA.

Summary of Past AFA Experience

All involved parties bear responsibility for failure of the 2005–2006 AFA. The Service did not embrace change needed to implement the AFA. CSKT effectively used its political influence on DOI to achieve an AFA that was not fully supported by the Service. Political appointees at DOI failed to adequately consider the consequences of the AFA on its employees and the inevitable repercussions of those impacts. Some Service employees did not fully cooperate with or objectively evaluate CSKT and made inappropriate statements about CSKT. Some CSKT employees were poor performers and some harassed and created a hostile work environment for some Service employees. CSKT performance under the 2005–2006 AFA was not as bad as might be concluded from a singular reading of the Service’s reports, but it was deficient in some minor and some significant tasks.

In any future agreements, the Service and CSKT must ensure that the fundamental flaws in prior agreements that set up an atmosphere of animosity and blame and made managing refuge resources more challenging than was necessary, are highlighted and eliminated. Fundamental to the success of any future agreements is an understanding of each other desires and objectives, a respect for each other challenges with these types of agreements, and a mandate that above all else, the resources of the National Bison Range Complex will not only survive, but thrive under any future partnership.

Chapter 3. Affected Environment

This chapter describes the characteristics and resources of the National Bison Range Complex that are being considered in this analysis:

Physical environment

Biological resources and management

Wildlife Management

Research, inventory, and monitoring

Threatened and endangered species

Special management areas

Visitor services

Cultural resources

Partnerships

Maintenance program and associated facilities

Staffing

Socioeconomics

The National Bison Range Complex comprises 3 national wildlife refuges and 14 Waterfowl Production Areas in Lake, Sanders, and Flathead counties of northwest Montana. All three refuges and nine of the WPAs are entirely within the exterior boundaries of the Flathead Reservation (Figure 3.1). Only this portion of the refuge complex would be subject to the considered alternatives (Table 4.1). The descriptions in this chapter only apply to these units of the refuge complex.

Table 3.1. Management units and acreages of the National Bison Range Complex subject to the considered alternatives.

Unit Name and Type	Unit Type	Acres	Ownership
National Bison Range	National Wildlife Refuge	18,563	Service
Ninepipe	National Wildlife Refuge	2,062	CSKT
Pablo	National Wildlife Refuge	2,542	CSKT
Crow	Waterfowl Production Area	1,549	Service
Duck Haven	Waterfowl Production Area	719	Service
Sandsmark	Waterfowl Production Area	400	Service
Kicking Horse	Waterfowl Production Area	169	Service

Anderson	Waterfowl Production Area	163	Service
Herak	Waterfowl Production Area	80	Service
Johnson	Waterfowl Production Area	80	Service
Montgomery	Waterfowl Production Area	80	Service
Ereaux	Waterfowl Production Area	28	Service
Total Acreage		26,372	

3.1 Physical Environment

Geology and Geomorphology

Northwest Montana has a complex and varied geologic history resulting from the movement of the North American continental plate from the Precambrian age through the Oligocene period, faulting, the geologically recent Bull and Pinedale ice ages, and Glacial Lake Missoula.

The continental crust under Montana metamorphosed into its current form approximately 2.7 billion years ago and younger rocks have accumulated over the continental crust for the past 1.5 billion years (Alt and Hyndman 1986). Deposits of sandy and muddy sediments accumulated in western Montana from approximately 1500 to 800 million years ago (mya) forming thick and hard sandstone, mudstone, and limestone called the Belt formations. Black igneous diabase rock is found in dikes and sills within the Belt formation.

During the Paleozoic from 570 to 240 mya sediments from a shallow sea were deposited on top of the Belt formations. The continental crust rose and sank from during the Mesozoic until the Rocky Mountains formed about 70 mya and the continental crust rose above sea level. Relatively thin belt formation rocks appear to have peeled off the bulging crust and came to rest stacked on top of one another in the overthrust belt that forms the east front of the Rocky Mountains. The Mission Range is the westernmost of the displaced slabs that make up the overthrust belt. The Mission, Flathead, and other valleys along the Rocky Mountain trench mark the boundary between the “thin-skinned tectonics” to the west and the movement of relatively thick slabs that moved at depth along faults to the east (Alt and Hyndman 1986).

Approximately 40 mya the climate of became drier and eroding soils were deposited throughout the valleys of western Montana. From 10 to 20 mya increased precipitation caused streams to flow through Montana before another dry period occurred from 10 to 2.5 mya. The Six Mile Creek formation deposited during this period consists largely of coarse gravel and contains excellent aquifers (Alt and Hyndman 1986).

Great ice ages occurred during the Pleistocene beginning approximately 2.5 mya and modern streams began to flow. Records of the early ice ages that occurred during the Pleistocene are buried beneath more recent glacial features. Glaciers of the Bull ice age reached their maximum extent 70,000 to 130,000 years ago between St. Ignatius and Ronan, covering the Mission Mountains and leaving an enormous moraine south of Ninepipe Reservoir (Alt and Hyndman 1986). Kettle ponds in the area of Ninepipe Reservoir are located where large pieces of ice were buried in the moraine melted.

The maximum extent of the glacier during the Pinedale ice age (approximately 15,000 years ago) reached only as far south as Polson. The smooth topography between Ninepipe and Pablo Reservoirs are the glacial outwash plains formed by water from the melting glacier. Mountain glaciers during the Pinedale ice age gouged valleys in the Mission Mountains that had previously been smoothed by the thicker glacier of the Bull ice age.

Ice broken off from the glacier filled the Missoula Valley damming the Clark Fork River and first impounded Glacial Lake Missoula at the peak of the Pinedale ice age. Water levels in Glacial Lake Missoula rose until the ice dam floated, creating a catastrophic flood across eastern Washington and down the Columbia River to the ocean (Alt 2001). It is estimated that Glacial Lake Missoula formed behind new ice dams thirty six times with the last flood occurring about 13,000 years ago (Alt 2001). When Glacial Lake Missoula filled the Mission Valley, the lower end of the glacier at Polson floated and icebergs drifted south depositing large rocks on the valley floor south of Polson (Alt and Hyndman 1986). Historic shorelines of Glacial Lake Missoula are plainly visible across the slopes of the Bison Range today.

Topography

Current elevation datasets available for Pablo and Ninepipe refuges include 3-meter and 10-meter national elevation datasets. Elevation within the approved boundary of Ninepipe Refuge ranges from 2,790 feet at the southern boundary to 3,937 feet in the northeastern corner. Elevation of Pablo Refuge is 3,215 feet. The Bison Range is much more mountainous than the rest of the refuge complex with elevations ranging from 2,530 to 4,892 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 unconsolidated valley sediments, lacustrine silts, and assorted glacial debris up to and including boulder-sized erratics that originated in British Columbia.

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 initiated in 1995 (NRCS 2012, NRCS 2008) shows similar soil type patterns around the reservoirs, but includes more detailed mapping with additional soil classifications. For example, 74 soil types occur within the approved boundary of Ninepipe Refuge. Soils surrounding Ninepipe Reservoir are still classified as Post silty clay loam and Post silt loam. The Post-Ronan-Water complex predominates the area between the loams surrounding Ninepipe and Kickinghorse Reservoir to the northeast. 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.

At the Bison Range, topsoils are generally shallow and mostly underlain with rock which is exposed in many areas, forming ledges, outcroppings, and talus slopes. Soils over the majority of the refuge were developed from pre-Cambrian quartzite and argillite bedrock. These soils are well-drained and range from very shallow to moderately deep. They have a loamy surface horizon with near neutral pH, high organic content, and varying amounts of parent material fragments. With the exception of surface soils, lower soil horizons have a loamy texture interspersed with rock fragments. Water infiltration rates are generally high and soil erosion is minimal.

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 (NAAQS) and the Prevention of Significant Deterioration (PSD) program. The Flathead Indian Reservation was designated in 1979 as a voluntary Class I Airshed under provisions of the Clean Air Act, which confers the highest degree of protection under that Act. The area is considered to be in attainment of the NAAQS, which are the minimum national air quality standards (EPA 2002). The PSD program provides additional protection from air pollution. One of the goals of the PSD program is to preserve, protect, and enhance air quality in areas of special natural, recreational, scenic, or historic resources, including those of the refuge (Ross 1990). Only a limited amount of additional air pollution – associated with moderate growth in the human population of the valley – can be allowed in the future.

Air quality is considered to be 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 non-attainment areas and not in compliance with PM-10 (EPA 2002). Seasonal burning of logging slash in the mountains and stubble fields at valley ranches causes some short-term, localized smoke. In drought years, heavy smoke from wildfires may be produced locally or delivered to the area 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 and Hydrology

Long-term climate data from 1895 to 2011 from the U.S. Historical Climatology Network (USHCN) (Menne et al. 2012) 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/year and exhibits considerable interannual variation.

Most of the precipitation in the Mission Valley occurs during the spring and early summer, averaging over 2 inches/month each month during May and June (Western Regional Climate Center 2011). Precipitation during the rest of the year is averages between approximately 1 and 1.5 inches/month. Average maximum temperatures range from approximately 30 °F during the December and January to 90 °F during July; average minimum temperatures range from 18 to 50 °F.

Specifically on the Bison Range, Mission Creek drains the north side 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. The abundance of springs was one important consideration in the selection of the property as a national refuge for the conservation of bison (USFWS 2002... the EA for Management of Mixed Conifer Forests at [the Bison Range]).

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 (24 cfs) to May (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.

Heterogeneity of valley-fill sediments as a result of sediment accumulation throughout the geologic history of the valley and multiple glaciations created a variable matrix of aquifers in the Mission Valley. Direction of groundwater flow in the Mission 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 bedrocks are fractured.

3.2 Biological Resources and Habitat Management

Biological Resources

The following section describes the biological resources found on the refuge complex including grasslands, forest, wetlands and springs, and riparian areas.

Grasslands

Grassland communities dominate all units of the Bison Range Complex, covering approximately 85% of the area. While these communities remain productive and capable

of supporting the bison herd and other associated wildlife, the condition of the Complex's grasslands has declined over the past century as invasive plants have become established.

Forest

Forest communities cover approximately 10% of the Bison Range. No forest occurs at the satellite refuges or the WPAs.

Riparian and Wetland Areas

Productive, stable riparian areas occur along Mission, Sabine, Pauline, Trisky, and Elk Creeks, and the Jocko River. Common species at these sites include willows, water birch, cattails, sedges, and rushes. Russian olive occurs throughout the area, and Bison Range Complex staff have recently increased control and removal efforts for Russian olive. Though no formal condition assessment has occurred, these areas are generally believed to be in good functioning condition across the complex.

Numerous seeps and springs occur on the National Bison Range Complex. In 2009, the U.S. Government and the State of Montana signed a compact that settled water rights at the Complex for all time (Montana Code 85-20-1601). In addition to in-stream flow and nonconsumptive uses for Mission, Pauline, Trisky, and Elk 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.

Habitat Management

Habitats of the refuge complex include grasslands, forest, riparian areas, and both natural and developed wetlands. The Service actively manages many of these habitat types with an objective to maintain and restore biological diversity and integrity to these systems and provide habitat for federal trust species. An integral part of these management programs is inventorying and monitoring the plant and animal species that are affected by these actions to gauge the effectiveness and success of the selected management activities.

Invasive Species

Invasive 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 pollinator behaviors, niche displacement, hybridization, 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 that change the physical structure of the native communities, increase soil erosion resulting in changes in soil structure and chemical composition, and alter microclimate. Invasive species may alter ecological processes such as community productivity, soil water and nutrient dynamics, community successional patterns 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.

The refuge complex has long battled with invasive species encroachment onto native habitats, using integrated and adaptive management techniques. The Service expends 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 includes substantial coordination and combining of resources with the State and CSKT to combat invaders across the Mission Valley.

Integrated Pest Management (IPM) is an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM programs use current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with best management practices, is used 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 IPM program is mapping and monitoring of invasives and treatment areas. The Service has completed some of the mapping of known invasive species on the refuge complex. All treatment sites are mapped and monitored. Table 3.2 identifies species that the refuge staff has identified as either widespread or localized on the refuge complex along with the length of known infestation.

Table 3.2 List of documented invasive species identified on the National Bison Range Complex as of 2012 (refuge data files).

Documented >10 years		Documented < 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 Cinesefoil	Russian Olive		Leafy Spurge
Cheatgrass			

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.

Invasive Species on the National Bison Range

Species listed above as localized are category 1 and 2 species in Montana that occur at extremely to relatively low levels on the Bison Range (estimated to be less than 500 acres per species). Infested acres for these species are well below that of other established

invaders, but have the potential for a far greater impact if not controlled, making them a high priority for treatment.

Species listed above as widespread, all category 1 species, are all well established and infesting up to ten thousand acres, refuge wide. Suppression activities cover the full range of tools available and are implemented based on selected priorities and likelihood for success. Revegetation efforts are used as a management tool for controlling these invaders in treated areas while improving habitat for trust species, including bison.

Invasive Species on the Lake County portion of the Northwest Montana Wetland Management District

This portion of the Wetland Management District is composed of 9 units containing a combination of riparian, wetland and upland habitat types. All of these units are threatened with numerous invasive species, both established and new invaders. Yellowflag iris, listed above as localized, is an invader of great concern. It is considered established in this area, yet is still a category 3 invader statewide. Irrigation and drainage ditches crisscross all the WMDs and are the primary source of seed dispersal for yellow flag iris. This invader threatens native fish habitats and wetland and riparian plant species. Developing a plan of treatment among all partners within the landscape (including neighboring landowners, CSKT, and the Flathead Irrigation District) is needed to ensure the most effective control. Partner collaboration has already occurred with treatment efforts among the refuge, county, state, CSKT, and private landowners.

Leafy spurge, hawkweeds, and yellow toadflax infest the uplands at low levels and require immediate and consistent treatment to avoid wholesale encroachment onto the entire WMD and surrounding areas.

Whitetop is a category 1 species with dense infestations across the WMD and adjacent lands. Consistent treatment, partnerships and increased awareness have reduced the density and number of infestations district wide. The need for continued management and some restoration remains.

Invasive Species on Pablo and Ninepipe National Wildlife Refuges

These refuges have fluctuating levels of open water (reservoirs), wetland, riparian, and upland areas that are vulnerable to aquatic and terrestrial invasions. New invaders and species with low acreage infestations, such as yellow toadflax, poison hemlock, oxeye daisy, orange and meadow hawkweeds, are a priority for treatment. Category 3 aquatic invaders, such as Eurasian watermilfoil, threaten the refuge but are currently not known to occur. Management focus for these aquatic species is on prevention and education.

Invasive Species Management

Approaches to managing or responding to invasive species can be categorized as prevention, suppression, and eradication all in an atmosphere of partnership with neighboring landowners.

Eradication techniques are applied when an infestation can be totally eliminated. 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 seed bank can be established.

Prevention methods apply when an infestation is anticipated and action is taken to prevent it from occurring. Some species are not known to occur statewide, while others are known local threats. Examples of species that fall into this category are yellow starthistle, Dyer's woad, Eurasian water milfoil, Japanese knotweed, blueweed, and rush skeletonweed.

Examples of methods used for prevention are restricting use of watercraft on service waters; washing equipment used to apply herbicide before and after each application; surveying areas of likely invasion; and promoting education and outreach to increase public awareness of weed problems.

Suppression techniques are applied when a problem has been detected. Suppression methods include biological (integrated pest management), chemical, mechanical (grazing, burning), cultural (education), and legal measures. Early detection and rapid response (EDRR) is a programmatic strategy that incorporates active surveys with targeted treatment application. Containment and control strategies are applied to manage or minimize the spatial extent of a known infestation.

It is generally accepted that early detection and rapid response measures to prevent a large scale invasion by non-native plants is more economical than the cost of suppression efforts after invaders become established. The refuge complex program emphasizes suppression and EDRR strategies for many species.

Prescriptive Haying and Grazing

Prescription grazing, burning, mowing and haying, and farming management activities have been utilized on the refuge complex since the acquisition of the various parcels. Initially, these practices were used with efforts to control various invasive weed species and to convert historical agricultural fields into more productive sites for nesting, brood, and escape cover for waterfowl and other birds. WPA lands were purchased with Federal Duck Stamp funds, underscoring the central goal of waterfowl production and hunting opportunity for management of these units.

Currently, prescriptive grazing and burning are used to reduce matted, thatched dead vegetation for more effective herbicide application on the target invasive forb species present; on some units, these treatments are applied on a 3-5 year rotational plan to provide optimal waterfowl nesting cover and habitat complexity. Farming activities are used on selected units when the density of invasive non-native species requires the use of non-selective herbicide for several years to remove established perennials and to deplete the seed bank of the target species prior to establishing the desired species composition. To prevent seed set on dense stands of invasive species, mechanical controls are used,

including rotary brush hog mowing and sickle bar cutting. All activities on WPAs require clear coordination and communication with the three private cooperators.

Fire History and Vegetation

The climate and repeated disturbances, including grazing, disease, and fire, have been a major force shaping landscapes and influencing productivity throughout North America for thousands of years (Smith 2000). These factors have worked together in the southern reaches of the Flathead Valley to create two primary vegetative communities: prairie and mixed-conifer forest.

Prior to modern agriculture, fire suppression, and urbanization, vegetation patterns were shaped by fire regimes with characteristic severity, size, and return interval (Frost 1998, Gill 1998, Heinselman 1981, Kilgore 1981 – as quoted in Smith 2000). Vegetation of the native palouse prairie is well suited for the climate and range of growing conditions while the forested areas are expanding in the semi-arid environment that experiences a wide range of precipitation based on elevation and aspect. Both vegetative communities evolve through a regime of frequent, low intensity surface fires at intervals of between one and thirty years (Arno 1996, Arno 1976, as quoted in Smith and Arno 1999). Lightning was the principle cause of these fires (Smith and Arno 1999). The historic occurrence of lightning-ignited wildland fires on the refuge complex support this assumption. Since 1980, twenty-two lightning-ignited fires have been suppressed on the refuge complex (Shared Application Computer System 2002). It is reasonable to assume that some would have grown larger if they had not been suppressed.

Before the area was settled by Europeans, the forested regions of what is now western Montana were composed primarily of open stands of mixed-conifer 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 forested areas were likely restricted to a few areas along the upper elevations and rocky areas. Period fires would have maintained the grasslands and killed the majority of small tree seedlings before they could become established. Under favorable conditions, scattered Douglas fir could survive long enough to become established; thereby allowing these trees to develop characteristics such as thick bark that would protect them from low-intensity fires.

Wildland fire has helped shape the environment and maintain the structure and function of some systems, and its removal as an ecological driver can have adverse impacts. The elimination of the historic pattern of frequent low-intensity fires in ponderosa pine and pine-mixed conifer forest has resulted in major ecological disruption (Arno 1996). Arno (1996) suggests that, prior to 1900, open stands of large, long-lived, fire-resistant ponderosa pine were common. Today, as a result of fire exclusion, most of these stands have dense thickets of small trees and are experiencing insect and disease epidemics and increased wildfire severity. Gruell et al. (1982, in Smith and Arno 1999) concluded that the successional trend resulting from the absence of fire was creating structural conditions that would increase susceptibility to severe wildfires, thereby shifting composition toward the more shade-tolerant Douglas fir and, ultimately, contributing to a loss of wildlife habitat and forage. This expansion of forested areas on the bison range, in

the absence of fire, has resulted in a loss of forage areas for bison. The Service is challenged to manage and control these expanding forests. Fire is one tool that can be used to reduce infestations and restore grassland habitat.

Prescribed Burning and Wildfire Response

The Service and CSKT participate in the National Interagency Fire Qualification System which includes employees of federal, state, local and tribal fire organizations. CSKT has been an excellent partner in the refuge complex fire management programs, including wildfire response and prescribed burning programs. Most of the bison range complex is within the CSKT fire response area, except for lands administered by Lost Trail National Wildlife Refuge. The Service has an Annual Operating Plan with CSKT to allow them to respond to wildfires on the bison range complex. There are several individuals on the bison range staff that have the necessary training to conduct fire operations. The only position with specific fire duties is the range technician position, which is designated to serve as the Incident Commander on all refuge complex wildfires.

The bison range complex, participate in a Statewide Annual Operating Agreement which allows other state, tribal, and federal agencies to conduct fire operations on federal lands including serving on Incident Command teams with managing agency oversight. This agreement allows agencies to combine and coordinate resources to more effectively respond to wildfire events.

The National Bison Range Complex manages prescribed fire treatments and wildfire under the current Fire Management Plan (FMP) guidelines. Prescribed burning can be used as a management tool to control invasive species, improve grassland habitat, and manage wildlife movements. Using this tool requires significant planning and pre-monitoring to determine location, duration, and size of treatment area. Biological and fire staff are responsible for writing prescribed burn plan, including monitoring protocol and safety aspects of the operation. Completion of prescribed fire treatments is dependent on funding and meeting the prescriptive window. Funding for prescribed burning programs have almost been eliminated, making it challenging to use this tool in refuge programs. Nevertheless, it is effective and will continue to be used throughout the refuge complex as funding and resources allow.

Water Level Management

Pablo and Ninepipe refuges were first established as reservoirs for irrigation and are operated under an agreement between the Service and the CSKT and the Flathead Irrigation Project. Management of wildlife habitat is a secondary consideration to these irrigation uses. Nevertheless, management of the water regime for irrigation has generally benefited waterfowl and shorebirds, except in high water years, when nests are often flooded.

In the past, artificial nesting structures for waterfowl have been used intensively at both sites in the form of nest platforms and boxes, with some still persisting. In the 1980s, Ducks Unlimited funded projects at both Pablo and Ninepipe. At Pablo Refuge, work included the construction of a ditch and dike for independent water level management of six bays on the western side. Historically, these low-gradient bays were rapidly

dewatered during irrigation season, and the water control structures increased quality and longevity of marsh and open water habitats during nesting, brood rearing, and migration. Collectively, these six bays provide productive breeding pair and brood habitat on approximately 275 acres of wetlands with approximately nine miles of shoreline habitats, and 1,150 acre-feet water.

On Ninepipe Refuge, Ducks Unlimited projects included 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.

There are some water management capabilities on various WPAs. Potholes on Anderson and parts of Crow WPA are historically filled by Service staff pumping water from Spring Creek and Post canal, respectively. Portions of Crow, Sandmark, Duck Haven, Herek, and Montgomery WPAs have ditch systems to fill potholes via check dams placed in established ditches. The Johnson 80 and Hall 80 potholes are filled via flood irrigation from the ditch or natural precipitation and runoff events. Service staff are presently responsible for manipulation activities, sometimes with the assistance of Irrigation District staff.

Forest Health and Management

Forest health monitoring is focused on the Bison Range and is regularly monitored in conjunction with the U.S. Forest Service's Forest Health Protection program based in Missoula. This program completes remote sensing and aerial surveys of forests across the northern Rockies and annually updates maps with known locations and polygons of beetle-killed trees. Several point locations and small polygons have been mapped for the Flathead Indian Reservation Reporting Area.

In 2013, the refuge biological program plans to initiate preliminary scoping to assess the need, outcomes, and required resources for completing a more site-specific forest health assessment of the treed stands on the refuge.

3.3 Wildlife Management

Bison

The National Bison Range maintains an overwintering herd of 325-350 bison. The fundamental objectives of the bison program are to conserve bison genetic diversity, maintain herd health, and provide public opportunity to view bison in a natural prairie setting. The herd size reflects range capacity balance including other ruminants (e.g., elk, deer, bighorn sheep, pronghorn). The grazing management program calls for bison to be rotated through a series of grazing units throughout the year in an effort to maintain the condition of the grassland system. Comprehensive herd health and genetic monitoring programs are an integral part of our herd management. Though herd health is an important aspect of herd management, bison are managed as wild bison; they are not regularly vaccinated for any diseases and are not provided with supplemental feed.

Bison Grazing Management

A rotational grazing program is implemented each year on the Bison Range to maximize forage production and minimize negative impacts to vegetation communities and range condition. Various considerations must be weighed in crafting and implementing the rotational system:

- Herd and human safety
- Minimize risk of movement-related stress on newborns or pregnant cows
- Minimize potential for disease transfer between the Bison Range and domestic animals occupying adjacent properties
- Providing safe and secure calving locations during peak calving season (e.g., consider environmental risks to newborn calves, such as spring high water in Mission Creek)
- Available forage in each pasture and timing of grazing demands relative to annual timing of plant growth, productivity, and sensitivity
- Viewing opportunities for refuge visitors
- Ease of gathering herd prior to roundup to bring to corrals
- Staff availability for moving bison between pastures
- Adequate water, especially during warm months
- Inability to control movement of other grazers on the Bison Range
- Flexibility to adjust grazing program based on real-time conditions and unpredictable events (e.g., unplanned bison moves through down fence)

The current grazing management program was implemented in 2011 based 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), the herd is rotated twice through 6 available pastures. The first rotation calls for 2 weeks in each pasture; the second calls for 3-4 weeks per pasture, depending on the conditions and available forage, as determined by the refuge biologist. For the remaining 22 weeks during the winter months (not including the one week, during roundup, that they spend in and around the corral system), the herd resides on the south side of the refuge.

Rotating the bison herd between grazing units requires significant skill in horseback riding and animal behavior, related to wild bison. The maintenance staff is responsible for leading all relocation efforts including developing a strategy based on the location of the herd, the weather, terrain in which the bison will be moved, animal behavior, access to gates, timing of the move, positioning of riders, based on skill, positioning of gate operators, and safety of all participants. The visitor center is notified about the move and provided with emergency contact information for staff, in case of injury.

Using horses, the herd is moved across steep and uneven terrain, requiring a unique level of expertise from both horse and rider. Experience with bison and horse behavior and the terrain of the Bison Range is an essential element for protecting staff, horses, and the

bison during each move. Several days before a scheduled move, staff will open gates between pastures in order to encourage or allow bison to move through voluntarily. This reduces the number of bison that need to be moved by horseback, reducing the risk to both the staff and animals. This program and associated activities are essential to maintaining the health and wellness of the bison and the habitat they depend on.

Herd Health

The bison herd health monitoring program is designed to assess the presence and prevalence of diseases in the population as a whole, and not necessarily to determine disease status of individual animals. The program includes (1) year-round direct observations of the herd aimed at detection of acute injuries, chronic conditions, mortalities, and emerging disease, and (2) regular sampling, during roundup, for a suite of diseases of particular concern.

The year-round direct observations are performed by Bison Range staff during routine work. Much of the information gleaned from herd health observations is documented and discussed informally among refuge staff, who have the experience necessary to resolve events such as injuries, mortalities, necropsies, etc. Concerns about disease or life-threatening conditions are typically referred to or coordinated with the FWS Wildlife Health Office in Bozeman.

Annual sampling and disease testing has been conducted at the Bison Range since 2000 and focuses on several possible types of disease incursion. Commonly known as Johne's (pronounced YO-nees) disease, paratuberculosis is a bacterial intestinal disease that causes diarrhea, severe weight loss, and eventual death in bison and cattle. The Service also tests for several bovine viral diseases common in the cattle industry, including Bovine Viral Diarrhea (Types 1 and 2), Parainfluenza-3 (PI3) and Bovine Respiratory Syncytial Virus (BRSV). Some agents of diseases such as Malignant Catarrhal Fever (MCF), Johne's disease, and Bovine Viral Diarrhea (BVD), have been detected at very low levels or preliminary data suggests they may be present. In 2010-11, an antigen test for BVD was initiated and not detected in 225 animals tested. The 2012 Bison Range target for random sampling was to collect serum for archive; 50 serology samples from random herd excluding calves (to detect 5% prevalence in herd with 95% confidence); target any thin animals for serology and fecal sample collection at chute; assess body condition on most of the herd; and take 30 fecal parasitology samples randomly from herd through field collections 1 week prior to roundup. Though regular vaccinations are not administered at a matter of course, bison would be vaccinated (if vaccine is available) in the case of a disease irruption. The last time a livestock vaccine was used at the Bison Range was in 2010 (for BVD).

Annual Roundup Operations

The annual bison roundup, conducted in October, is necessary to manage herd size, monitor the health of the herd, mark new calves with microchips and collect samples for genetic testing, and collect any other necessary biological samples for disease monitoring. Following the Service's Fenced Animal Management Plan and an evaluation of the current habitat conditions, the Service maintains an average herd size of 350 animals. Bison are selected for surplus based on combination of their sex, age, and

genetics. The Service's Wildlife Health Office (WHO) maintains a database for all animals on the Bison Range. Once a surplus number is selected by the biological staff, the WHO determines which specific animals will be removed. The surplus bison are first offered to other Service herds for genetic conservation purposes. The remaining bison can be donated to Native American Tribes, research programs, or sold to private individuals. Sale animals are generally 7 years old or less and no calves are sold.

Service maintenance and biological staff are assigned a specific station and lead a group of team members to conduct various operations from rounding up the animals and moving them through the corral system, to collecting biological samples. All bison are herded to the corral system through a series of fences and gates using horses and all-terrain vehicles. The bison are first staged in a series of smaller pastures adjacent to the corral system. They are sorted by experienced staff to allow for ease in processing through the corral facility but also to ensure that each pasture contains only as many bison as the available grass and water will support. Even for a short duration stay, this is an integral part of wildlife stewardship and the roundup.

The bison are brought from the holding pastures through a series of pens in the corral facility where they will be scanned for a microchip, individually identified, and weighed and scored for body condition any signs of disease or injury. This first phase is extremely delicate process and has the greatest risk for injury to both the animals and employees. Experienced refuge staff leads individual teams at this and each stage in the process in order to reduce risk to both staff, including volunteers, and the animals. Injuries to both people and bison can occur at any point in the process. Attention to detail, understanding animal behavior, and maintaining attention to the task at hand are of the utmost importance during this process.

After being identified by their microchip, individuals are sent directly back to the range, to the chutes for testing, or to the surplus area. At the chute, adult animals are tested for a variety of potential diseases while calves are micro chipped and genetic information is gathered. There are several essential positions in this phase of the roundup as well. The hydraulic chutes must be run properly and the samples must be taken with care so as to not injure people or animals.

Extensive planning and preparation is needed for this annual event. Preparation for the following year begins soon after each roundup is completed. The Refuge staff meets to evaluate the operation, address issues, and discuss suggestions for improvement. Each year, the staff looks for ways to further improve facilities, animal handling, and data processing procedures. This annual roundup is critical to managing the bison herd. It takes many steps to plan and prepare for this annual event including:

- Identifying maintenance, equipment, and supply needs (February)
 - Budget planning
 - Corral and operational improvements identified, prioritized, and scheduled
- Corral facilities improvement and repair projects conducted (May through September)
 - Planned and conducted by maintenance staff

- Surplus animal selection (July)
 - Numbers and individual animal selection based on annual reproduction, forage quality and availability, and genetic profiles
 - Coordinated with the Service's Wildlife Health Office
- Closed bid offering to the public for surplus animals (August)
- Final roundup preparations (September)
 - Staff and volunteer assignments
 - Purchasing of supplies for all facets of the operation
 - Bid opening, selection, and notification of successful bidders
 - Corral readiness, volunteer coordination and logistics, sale pen assignments, and surplus animal load out schedules
 - Gather entire bison herd and move to a small holding pasture at the head of the corral system
 - Gather all supplies and equipment

Genetic Integrity

The Department of Interior public bison herds are part of a meta-population management approach to bison conservation. It has been recognized that the smaller size herds are in greater danger of the effects of genetic suppression. When allelic diversity was used as the key criterion for evaluating management alternatives, a population size of about 1000 animals was needed to achieve a 90% probability of retaining 90% of alleles (Gross and Wang 2005).

The Bison Range herd has a high level of genetic diversity, with one of the highest levels of allelic richness, heterozygosity, and private alleles of tested federal herds (Halbert 2003, Halbert and Derr 2007, Hedrick 2009). These bison also have a very low level of cattle allele introgression. The Bison Range has had only 12 animals brought into the herd in the last 98 years. Currently, the herd is closed to bison from outside sources in order to preserve the high genetic quality and low levels of cattle gene introgression. Though small, the actual amount of cattle genetic material in the Bison Range herd is unknown. Genetic drift and management actions may be decreasing the level of cattle allele introgression.

Surplus animals are selected by the Service's regional veterinarian and 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 the highest quality genetics with low disease risk.

Other Ungulates

In addition to the bison herd, the refuge manages herds of Rocky mountain elk, mule deer, white-tailed deer, Rocky Mountain bighorn sheep, and pronghorn (see Table 3.3).

Table 3.3. The species and estimated numbers of other large game animals found on the National Bison Range in 2012.

Species	Estimated Current Population Size
Rocky Mountain Elk	130
Bighorn Sheep	125
Pronghorn	110
Mule Deer	200
White-tailed Deer	200

As with bison, target herd numbers are established by the Service's Fenced Animal Management Plan (1990), which is scheduled to be updated in the next few years. The only other ungulate species actively managed on the refuge are elk (see "Natural Resource Investigations" section, below). Elk utilize the same grazing resources needed by bison, reducing available forage. To reduce this impact, the Service staff maintains a target population of elk on the refuge.

Some of the smaller ungulate species, such as deer, are able to move in and out of the refuge. Other species, such as sheep and pronghorn, are more resident to the refuge. In recent years, the Service has documented a pronounced increase in the bighorn sheep population. Sheep are effective grazers and can reduce forage availability for bison. The biological staff plan to evaluate the impacts of this increasing herd and determine if a response is needed, which could include offering animals to relocation programs.

Wildlife Health

Wildlife health monitoring is a cornerstone to the wildlife management program. The refuge complex biological staff has worked with the Services WHO to design and implement a wildlife health monitoring program. The WHO provides current information and guidance on wildlife threats, assists in the development of protocols and plans for disease management on Service Lands, and provides technical reports on lab results and findings. The Service monitors refuge animals for signs of disease and sickness and conducts necropsies on many big game animals that perish or are dispatched. The refuge complex also participates in other Federal and State programs to monitor for Chronic Wasting Disease (CWD) and West Nile Virus, a disease that can be spread to humans.

Chronic Wasting Disease

Due to concerns regarding CWD the Service and the state of Montana has placed a moratorium on live transport of cervids (members of the family *Cervidae*, but specifically elk). CWD is a transmissible spongiform encephalopathy in which infectious proteins (prions) accumulate in the brain and brain stem resulting in neurological impairment, diminishing body condition, and eventual death. In conjunction with annual elk management activities, the Bison Range identifies the need and methods for continued disease surveillance. A portion of culled elk are sampled for CWD and full necropsies are performed either opportunistically or if a clear and present risk is identified. Protocols for sample management and processing are created cooperatively by the Bison Range biological staff and the WHO.

Avian Diseases

Avian surveys for West Nile Virus and Avian Influenza are another part of the wildlife health monitoring program on the Bison Range Complex. The Service biological staff determines the necessity for conducting annual monitoring programs based on perceived refuge-specific concerns or threats identified by local, state and federal officials.

3.4 Research, Inventory, and Monitoring

Research

Support and facilitation of research projects is an important means by which the Bison Range Complex can improve their understanding of refuge resources. Support of these research projects can include funding, but most often the Service will provide in-kind contributions (e.g., housing, fuel, loaned equipment, transport, assistance with site selection, permitted use of refuge service roads). Research projects are designed to address refuge management needs. Refuge biologists work with universities and other partners to design and evaluate proposals, including evaluating techniques, methods, and projected products or outcomes.

Currently the refuge has several ongoing research projects including:

- Rocky Mountain bighorn sheep population ecology and demography
 - Montana Conservation Science Institute
- Pronghorn population ecology and demography
 - University of Idaho, graduate students
- Ecology of grasshoppers and their effects on available forage
 - University of Notre Dame
- Rangeland ecology and range condition assessment
 - Montana State University, graduate students
- Hydrogeomorphic evaluation of ecosystem restoration and management options
 - Greenbriar Wetland Services

These and other types of research projects will continue to be supported but evaluated by refuge biological staff to determine if they are effectively responding to Service management needs. These types of projects can be a cost-effective way to leverage limited resources into high-quality work. One key component to the success of this program is an experience biological staff with the knowledge of refuge resources and scientific methods that will allow them to prepare project proposals and evaluate research designs. The Service will continue to expand opportunities for universities to conduct research projects in support of graduate programs that can be used to address and resolve management issues.

Inventory and Monitoring

Bison Range Complex biologists complete annual waterfowl pair and brood counts across the WPAs and Ninepipe and Pablo refuges. These annual counts consist of 2-3

crew members conducting point counts at fixed, permanent locations each May (pair counts) and July (brood counts). Data are collected on standardized field forms and are entered into an existing database that resides on the refuge complex file server. Beginning in 2013, data will be summarized in an annual report while historic data will continue to be entered into a waterfowl count database. In some years, the Bison Range Complex participates in an aerial winter waterfowl survey. The Service coordinates with the CSKT NRD to conduct this portion of the survey that includes the Reservation. Generally, the Service's contributions are for the northern half of Flathead Lake and westward toward Lost Trail Refuge.

Two types of big game surveys are conducted, often annually. Ground-based elk counts are conducted by refuge staff (sometimes with volunteer assistance) at fixed points. Aerial surveys focusing on deer populations are completed in most years in January or February, when snow conditions offer improved sightability.

The Bison Range participates in a regional sentinel monitoring program for the occurrence of gypsy moths, led by the U.S. Forest Service. Refuge staff sets out 4-6 glue traps per year at fixed locations. No gypsy moths have been detected on the Bison Range, although they have been detected in northwest Montana. Bison Range lands are also included in the annual aerial forest health survey conducted by the U.S. Forest Service's Region 1 forest health program, headquartered in Missoula.

3.5 Threatened and Endangered Species

As of August 2012, the Service has identified seven listed species that are known to or may occur on the Flathead Reservation: bull trout (threatened), grizzly bear (threatened), Canada lynx (threatened), Spalding's Campion (threatened), water howellia (threatened), wolverine (candidate), and whitebark pine (candidate) (http://www.fws.gov/montanafieldoffice/Endangered_Species/Listed_Species/Reservations/Flathead_Reservation_sp_list.pdf, access November 2012).

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; however, no denning activity occurs on refuge complex lands. The other listed species have not been documented on the Bison Range Complex.

Special Status Species

Special Status Species are species that have some 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 and/or the Migratory Bird Treaty Act. These species occur throughout the Mission Valley and are frequently documented on refuge complex units. Trumpeter swans are part of an on-going effort by CSKT to reestablish a breeding swan population in the area. The Service has cooperated with CSKT on this project

providing wetland areas for reintroduction sites. Bald eagles are known to nest on units of the refuge complex.

3.6 Special Management Areas

Important Bird Areas

The Important Bird Areas (IBA) program, initiated in Montana in 1999, is a global effort to identify and conserve areas vital to birds and biodiversity. To date 39 sites have been designated as IBAs in Montana, encompassing 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 (for example, 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 due to their behavior of congregating in groups

All three national wildlife refuges within the refuge complex have been designated as Important Bird Areas.

3.7 Refuge Planning

The National Wildlife Refuge System supports long range planning, as evidenced by the requirement in the Improvement Act for each refuge to have a comprehensive conservation plan, a document that describes refuge programs and sets priorities for 15 years. In addition, refuges are required to complete step-down habitat management plans allowing managers, biologists, visitor services and maintenance staff to further clarify program objectives and needs, set priorities, and inform and direct management decisions and actions, including budget planning and allocation. The public is asked to participate in the development of these plans sharing ideas, identifying issues, and commenting on proposals.

Currently, the Bison Range Complex does not have a Comprehensive Conservation Plan (CCP) but is scheduled to initiate its development in the next year. Once the CCP is complete, the refuge complex will complete step-down Habitat Management Plans (which will detail on-the-ground activities) and companion Inventory and Monitoring Plans (which will detail the schedule, designs, and methods for long-term monitoring and inventories of refuge resources). Some operational plans are currently in place, including a Fenced Animal Management Plan, Fire Management Plan, and Safety Plan. Also, a Service program known as RAPP (Refuges Annual Performance Plan) is used for annual planning and reporting of accomplishments on the refuges and WPAs.

The refuge biological staff is currently developing an Integrated Pest Management Plan to direct the invasive species program on the refuge complex. The Fenced Animal Management Plan was last completed in 1990 and is still in use. This plan, which is fundamental to the management of the bison herd and other ungulates, will be revised once the CCP is completed. The refuge complex does not have a Visitor Services plan.

3.8 Visitor Services

According to the 2012 Refuge Annual Performance Plan (RAPP) visitation on the refuge complex was approximately 203,500 visitors. These visitors come from all over the nation and the world to learn about the refuge complex and enjoy a variety of wildlife-dependent public use activities such as hunting, fishing, wildlife observation, photography, environmental education, and interpretation. The most popular activity for visitors is to drive the 19-mile long auto tour route on the National Bison Range (Bison Range). This route offers spectacular scenery and opportunities to view wildlife. Birding is another very popular activity on all units of the refuge complex given the abundant species of waterfowl, songbirds, and raptors that use the lands and waters in the area. Hunting is permitted on the Waterfowl Production Areas and accounts for less than 1% of all visitations. Brochures containing area maps, public use regulations, bird species, and general information are available for all the units in the refuge complex.

The National Bison Range visitor center is open intermittent hours Monday–Friday, in the winter and from 8 a.m. to 6 p.m., Monday--Sunday, in the summer months. 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. Pablo and Ninepipe refuges are closed to all public access during the waterfowl hunting season.

Hunting

In addition to the site-specific regulations mentioned below, all State of Montana and Flathead Indian Reservation hunting regulations apply to Service lands in the refuge complex. The National Bison Range, Ninepipe and Pablo refuges are closed to all hunting.

Waterfowl Production Areas (Lake County)

There are 9 waterfowl production areas in Lake County that are open to waterfowl and upland bird hunting including Crow, Anderson, Ereaux, Duck Haven, Kicking Horse, Sandsmark, Herak, Montgomery, and Johnson 80. In 2012, it was estimated that approximately 1,100 visitors participated in hunting waterfowl and upland birds. 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. Shotgun hunters may only possess and use nontoxic shot on lands within the refuge complex, and vehicle travel on the WPA's is not permitted except in designated parking areas and pullouts.

Fishing

In addition to the site-specific regulations mentioned below, all State of Montana and Flathead Indian Reservation fishing regulations apply to Service lands in the refuge complex. Seasonal recreational fishing opportunities are available on all or portions of the National Bison Range, Ninepipe and Pablo refuges. Fishing is permitted on the WMD but the wetland areas provide minimal fishing opportunities. The use of boats, float tubes or other flotation devices are prohibited. The use of lead or lead based fishing tackle is prohibited.

National Bison Range

Fishing is permitted on portions of the bison range during certain times of the year. There are two fishing access areas, one on Mission Creek and the other on the Jocko River. Fishing is permitted on a specific stretch of Mission Creek from the third Saturday in May through November 30. The Jocko River adjacent to the southern boundary is open to catch and release fishing all year. It was estimated that in 2012 approximately 300 visitors fished on the Bison Range.

Ninepipe National Wildlife Refuge

Ninepipe Refuge is closed to fishing during the waterfowl hunting season to provide resting and loafing areas for waterfowl. The entire area is open to fishing, including ice fishing, from the close of waterfowl hunting season to the end of February. From March 1–July 14, fishing is allowed in specific areas to minimize disturbance to ground nesting birds. From July 15 until the waterfowl hunting season, the entire area is open to fishing.

Fishing is very popular on the 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.

Pablo National Wildlife Refuge

Pablo Refuge is open seasonally to fishing. The south and western portions are closed year round to provide a refuge and sanctuary to wildlife. The refuge is closed to fishing during the waterfowl hunting season to provide resting and loafing areas for waterfowl. The north and eastern portions of the refuge are open the remainder of the year to fishing including ice fishing.

Approximately 3,000 visitors fished on Pablo Refuge in 2012. Winter ice fishing is very popular with the local residents and visitors from Missoula and Kalispell.

Wetland Management District

Crow, Ereaux, and Montgomery WPAs are the only waterfowl production areas in the WMD that have water in sufficient quantities either in isolated wetlands, creeks or drainage ditches to minimally sustain fish; therefore, fishing is very poor. In 2012 it was estimated that only 50 visitors fished the entire WMD.

Wildlife Observation and Photography

Opportunities for wildlife observation and photography are abundant within the National Bison Range Complex, and in 2012 it's estimated that more than 200,000 people visited for these purposes.

The most popular activity for visitors to the Bison Range is the 19-mile auto tour route that guides visitors through a variety of wildlife habitats. Over 120,000 visitors traveled the auto tour route in 2012. In the summer months, the visitor center remains open seven days a week, including holidays, to accommodate these thousands of visitors who come to see this scenic part of Montana and view the wildlife the refuge supports.

The auto tour route is graveled and fully maintained through the summer months, including an annual application of dust control. In the winter, the upper road is closed, but a shorter 6-mile winter route is kept open October through May.

The Bison Range has a day-use area located near the main visitor entrance gate. There are picnic tables, a covered pavilion, drinking water fountains and 9 vault toilets including a handicapped accessible toilet available for the users. The area receives a tremendous amount of use during the summer months especially on weekends and holidays. Many visitors begin or end the auto tour route with a visit to the day-use area. This area is most used by school groups for environmental education programs. There is a nature trail adjacent to this area.

Bird watching is particularly popular on Ninepipe, Pablo refuges and the WPAs given the thousands of waterfowl, shorebirds, grassland birds, and wading birds that nest, feed, and rest on these areas every year. There are also several walking trails on both the refuges. 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.

There is an interpretive trail at Ninepipe Refuge. Parking and walk-in access is allowed on Ninepipe and Pablo refuges during certain times of the year and at the waterfowl production areas.

Commercial filmmakers must acquire a special use permit to work on Service lands. The permit specifies regulations and conditions that the permittee 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. Commercial filming on Service lands must also demonstrate a means (1) to generate the public's appreciation and understanding of the refuge's wildlife and their habitats and the value and mission of the National Wildlife Refuge System, or (2) to facilitate the outreach and education goals of the refuge complex. Wildlife photography is popular on the complex especially on the Bison Range. Many photographers come to the refuge to capture the landscape of the Mission Mountain Range, 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 antelope, bighorn sheep, and black bear. Elk are especially popular during the rutting season in the early fall months.

Environmental Education

The diversity of habitats and wildlife found throughout the National Bison Range Complex makes it an ideal “classroom” for the area’s environmental education needs. The Bison Range receives over 3,000 educators and students on field trips, from preschool to university level. The refuge complex staff has instituted 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 on-site programs, demonstrations and talks, particularly at the Visitor Center. Teacher workshops are held and educational materials given out to participants. School groups can check out field kits which include activity sheets on various topics, field guides, magnifying glasses, and wetland habitat fauna collection tools to use on the refuge. The Day Use Area, located next to the Nature Trail, is used extensively for environmental activities as well as a staging and eating area for school groups.

Interpretation

The Visitor Center has extensive interpretive displays and an orientation video. Here the public can receive brochures containing area maps, public use regulations, and general information for the refuge complex and include the following:

- General brochure for National Bison Range
- Bird list for National Bison Range
- Public use regulations for National Bison Range
- Public use regulations for the Wetland Management District, including Ninepipe and Pablo refuges

These brochures are available at the visitor center and brochure boxes are located at the various parking areas on the WMD and Ninepipe and Pablo refuges. There is an interpretive kiosk located in the parking area at the visitor center. The kiosk has 3 interpretive panels displaying a location map, general refuge information, and information about habitat management techniques. A proposed kiosk will be completed in this area that highlights the historical importance of fire on the landscape in the Mission Valley. This project was a cooperative effort between the CSKT Division of Fire and FWS. In addition, the refuge complex’s Web site provides information about programs and regulations.

Annual public events include:

- 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

The Service has provided local newspapers with periodic news articles on refuge complex activities and informative articles on the values and protection of the area's natural resources. This information is also provided on the refuge complex website.

Visitation Levels

Annual visitation to the entire National Bison Range Complex is estimated at over 200,000, according to the Refuge Annual Performance Plan. This figure comes from the car counter located at the entrance to the visitor center combined with estimated counts for the remaining refuge complex. Visitation is most heavily concentrated on Bison Range, Ninepipe and Pablo refuges during wildlife-viewing seasons in the spring, summer and fall months. Visitation on the WMD is the highest during the waterfowl and upland game bird hunting seasons in the fall. Of the total visitors to the refuge complex, the approximate visitor use days includes:

- 50,000 visitor days are for wildlife photography
- 1,000 visitor days are for hunting of upland game birds, and migratory birds on the Wetland Management District
- 6,500 visitor days for environmental education and interpretation and special events
- 11,500 visitor days for fishing
- 138,000 auto tour visitor days
- 40,000 visitors to the National Bison Range Visitor Center

Law Enforcement

Given the number of visitors to the refuge complex, it is important that the Service provide an environment where it is safe for visitors to come to and explore the refuge complex while ensuring that the wildlife for which the refuge complex was established are protected. The Service has a federal wildlife officer on staff that regularly patrols the refuge complex to ensure compliance with refuge regulations. These regulations are designed to provide protection of visitors as well as the wildlife they have come to enjoy. The federal officer also enforces all hunting regulations throughout the refuge complex. On occasion, the Service's federal officer will work with other Service officers and local law enforcement, including CSKT officers, in order to address any reports of natural resource violations or other illegal activities on the refuge complex. The Service's officer is also responsible for ensuring compliance with the rules and regulations associated with various types of conservation easements on private lands.

3.9 Cultural Resources

The following section describes the cultural resources and history of the refuge and the Mission Valley, starting with the documented occupation by the tribes that now comprise the CSKT. It then discusses Euro-American settlement in the valley and changes to the area's land uses, including those within the refuge boundary.

The Protohistoric Period and Early Native Americans

The protohistoric period is the period of time between the arrival of horses and manufactured goods but before the arrival of Euro-American traders and explorers. This time period lasted only about 70 years due to 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 to be settled by whites. 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. In 1855, Governor Isaac Stevens stated the tribal population in western Montana to be 2,750 (Ryan 1977). In an unpublished University of Montana paper, Malouf (1952) reconstructed economy and land use by these tribes in western Montana using ethnographical and historical data.

All tribes were hunters and gatherers, and as such they did not allow for the accumulation of surplus food and supplies. However, famines were rare. Approximately 28 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 in most elevations of western Montana, was also extensively eaten. Stems were typically peeled and eaten raw before flowering, and later 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. Narrow leaf willow, a pioneer species on river gravel bars, was used in the construction of sweat lodges and baskets for cooking (sealed with gum). Most of the common mammals present today in western Montana were hunted including white-tailed deer and mule deer. Columbian ground squirrel, was also harvested. Most birds were not harvested except waterfowl, yet mallard eggs were particularly plentiful and popular. Other gamebirds were not numerous. Fishing was employed on bison hunts and by those left behind when these bison hunt parties were gone.

History of the Salish

Salish is the name of a group of people, consisting of several tribes, and the language they spoke. The Bitterroot Valley was the permanent home of their forefathers. The Stevensville vicinity was their main winter camp. Malouf (1952) stated that the Salish have occupied western Montana for several centuries dating back at least A.D. 1700. In 1730 the Shoshoni of Idaho gave horses to the Salish that inhabited the Bitterroot Valley. This significantly changed the culture of the Salish people.

After the Hellgate Treaty of 1855, pressure increased for the removal of the Salish from the Bitterroot to the Jocko Valley on the Flathead Reservation. In 1872, General James Garfield presented the three Salish Chiefs Charlo, Arlee, and Adolf, with a second treaty which Charlo refused to sign. Charlo remained in the Bitterroot for 20 more years until he and his band were escorted from the valley by General Carrington in October 1891.

The respect and love for the Bitterroot can be summed up in the words of Louise Vanderburg, a Salish elder:

“When we go home I think about our old people. I walk lightly when I walk around. The bones of my Grandparents and their Grandparents are all around here. We return to the Bitterroot each year on a Pilgrimage to honor our connection with our homeland. Also to ensure the preservation of our ancestors’ graves and sacred sites. In doing so we acknowledge the gifts left here by those who have gone on before us, gifts of language, songs, dance, spirituality. This way of life has been sustained for generations by our ancestors’ prayers.”

Tribal territory

The Flathead Indian reservation is home to three tribes, the Bitterroot Salish, the Pend Oreille, and Kootenai. The territories of the three tribes covered all of Western Montana and extended into parts of Idaho, British Columbia, and Wyoming. Before the horse was acquired by tribes throughout the region, about 1600 A.D., the Bitterroot Salish were based both east and west of the Continental divide in the southern portion of Western Montana. They were comprised of at least five major bands whose home territories were located from the Bitterroot Valley to the three forks of the Missouri. Their hunting fishing gathering and trading territory ranged from the Columbia Plateau in the West to central Montana and East and from Canada and the north to Wyoming southern Idaho and Utah in the south.

Before the horse, the Pend Oreille were also comprised of bands based both east and west of the Continental divide and situated north of the Bitterroot Salish. West of the mountains this included the Flathead River and its tributaries the Swan River, Flathead Lake, and the Clark Fork River basin and downstream to the territory of their close relations and allies the Kalispell or lower Pend Oreille.

Ethnohistory of the Salish and Kootenai tribes

The archaeological record of the Confederated Salish and Kootenai territory in Western Montana indicates consistency and population stability for thousands of years during prehistory. There is no evidence of major population shifts or migrations of people's. Many of the tribe's places of historic use which are identified in oral traditions contain archaeological remains suggesting long-term and repeated use well back into the prehistoric period.

Anthropologists who have studied Western Montana generally agree that the Salish and Kootenai have resided in Western Montana for hundreds of years. According to Malouf, every tribe now on reservations in Montana east of the Continental Divide arrived in the state sometime after 1600 A.D.

Tribal economy

The early economic activities of the Salish and Kootenai bands in Western Montana were as diverse and varied as the landscapes they traditionally occupied. They practiced a

broad spectrum economy as opposed to the focused buffalo hunting economy of the Plains tribes to the east.

Though identified as mountain and riverine people some Salish and Kootenai families relied heavily on bison from the eastern slopes in their economy. Some bands resided almost exclusively on the grasslands along the eastern Rocky Mountain front. Other groups focused their economy within the intermontane valleys focusing on riverine resources such as fish or hunted deer and elk on the forested slopes of the mountains. All of the various bands broke into even smaller group seasonally to harvest the abundant variety of food plants available in their home territories such as bitterroot, camas, biscuit root wild carrot and balsamroot.

In the pre-horse days, the tribe seldom hunted outside of their respective territories but they regularly traveled back and forth over the various mountain passes for hunting and gathering, for trading purposes or to visit relatives. Certain west slope bands would conduct annual bison hunting excursions to the eastern plains. Other east slope bands would cross the mountains to partake in the camas harvest or to fish the headwaters of the Columbia River.

Euro-American Settlement and Land Use Changes

The Mission Valley has long been used as a traditional gathering place by Western tribes. Its setting offered excellent hunting and gathering opportunities that provided sufficient 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 Kalispell, Kootenai, Pend Oreille and Bitterroot Salish. The Mission Valley was known to have excellent soil, good grasses, plenty of water and abundant timber nearby. It was also somewhat protected from Blackfeet 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.

Fort Connah

During the winter of 1846–1847 the Hudson's Bay Company established Fort Connah along Post Creek in the Mission Valley. Fort Connah was constructed by Hudson Bay Company traders Angus McDonald and Neil MacArthur. By 1847 a total of 18 buildings were completed. One of those buildings still stands today. Fort Connah became the center of Hudson 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, crop fields, and grazed livestock around the establishment. These farmers imported seeds and domestic stock to the Columbia River basin. By 1871, with the era of the fur trading passed and an increasing emphasis on gold mining in northwestern Montana, Fort

Connah was forced to close. At the time of its closure it was the last fur trading post in Montana.

St. 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 to establish a mission. The result was the St. Mary's Mission, the oldest mission in the state of 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 Oreille and Chief Alexander of the Upper Pend Oreille 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, 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 Oreille territory, some 60 miles north of St. Mary's, about 7 miles from Fort Connah and about 7 miles from a major Upper Pend Oreille encampment along the Jocko River near present-day Ravalli. The new mission was named St. Ignatius.

When the mission was moved from the Pend Oreille River during August and September of 1854, nearly all of the Lower Pend Oreille or Kalispell 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 Kalispell decided to return to their homeland on the Pend Oreille River. The Kalispell felt uncomfortable with the grouping of tribes that swelled the mission. Chief Victor declared that the Kalispell 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/blacksmith shop had been erected at St. Ignatius. By April of 1855, a population of over 1000 people resided in close proximity to St. Ignatius Mission including Kootenai, Bitterroot Salish, Kalispell, Pend Oreille, and Spokane tribal members. As a result of the establishment of St. Ignatius, numerous 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.

3.10 Partnerships

The Service has many ongoing partnerships with a variety of groups and individuals including private landowners, universities, state and county agencies, non-governmental organizations, other federal partners, local schools, and tribes, including the CSKT. These partnerships allow the Service and these partners to complete projects or combine resources to accomplish goals of mutual interest. It also allows for an exchange of information or knowledge.

The Service has a long standing partnership with the CSKT on many on and off refuge programs including conducting surveys, endangered species management, invasive species control, fire management, water level management, cultural history studies, and river and stream restoration, including the Jocko River Watershed project, which flows through the Reservation. These projects have been initiated by both CSKT and the Service, including the refuge staff or the Service's private lands program coordinator. Currently the Service has an ongoing cooperative agreement with CSKT to provide technical and financial assistance on restoration projects in the Jocko and Mission Valleys. The CSKT also assist the refuge complex in completing aerial surveys of waterfowl when they conduct their mid-winter flights on the Reservation. The CSKT have also prepared and installed a display in the Bison Range visitor center that describes the history and traditional uses of the bison for the CSKT people.

3.11 Maintenance Program and Associated Facilities

Like many national wildlife refuges, the maintenance staff on the Bison Range Complex is responsible for the maintenance and repair of all facilities, roads, equipment, and vehicles in order to provide dependable, safe, and secure operating conditions for all programs. They also assist with habitat management projects, such as invasive species control, haying and grazing programs, habitat restoration, and water level management. However, the maintenance program staff at the National Bison Range also has some of the most unique duties and skills in the Refuge System due to their responsibilities for bison management.

Since the refuge was first established over 100 years ago, the maintenance staff at the Bison Range have been responsible for using horses in rough, steep, terrain, in order to relocate wild bison for management purposes. Today, the bison herd is moved an average of 12 times a year from one grazing unit to another. This responsibility has been placed on these employees since this skill can take years to acquire and most maintenance employees tend to be local and remain in these positions for a number of years.

Currently, the most long standing Service employee on the Bison Range is a maintenance employee (29 years). This ensures that regardless of the makeup and skill sets of the management and biological staff, this mission critical function could be accomplished. Other employees, such as managers and biologists, also assist with these moves, as their riding skills allow or progress. However, the maintenance staff leads and instructs this team in the field since they have extensive horseback riding skills and knowledge of bison behavior and know how best to move these wild animals with minimal harm to the animals, including the horses, themselves, and other employees. This operation is certainly the most dangerous and critical program conducted on the Bison Range. These maintenance staff, particularly the two with the longest tenure, also serve as leaders for the annual bison roundup used to monitor herd health and surplus animals. This requires a specific set of skills gained from years of experience including not only horseback riding proficiency but the careful process of herding wild bison through a

corral system. These maintenance staff are required to work in close proximity to these large and dangerous animals to ensure the safety of other staff, the visiting public, and the bison. These same staff not only constructed the corral system, but are constantly learning and improving the corrals and roundup program based on previous experiences. The overall objective is always safety first and then proficiency and data collection.

The maintenance staff also has the unique duty and experience of caring for, including feeding and training, the herd of 10-12 Service horses used in the bison management program. These staff not only select the animals, based on their knowledge of horses and the needs of the operation, but they also have skills and experience that allows them to recognize injuries or illnesses and conduct minor veterinary care. This knowledge and experience ensures that these animals are treated humanely and are able to perform when needed in order to not only move the bison efficiently, but provide for the safety of the riders and the horses themselves.

Facilities and Equipment

The maintenance staff is also responsible for the repair and replacement of approximately 60 miles of 6-8 foot exterior and interior fences. 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 within each unit. Maintenance of the exterior fence is critical to keep the bison from going outside the boundaries of the refuge on to private lands.

There are approximately 80 tanks on the Bison Range used to provide a year round water source. The locations of the tanks are associated with naturally occurring springs. Underground pipes and collection boxes are used to move the spring water to the watering tanks. The maintenance staff are responsible for maintaining and cleaning these tanks, pipes, and collection boxes to provide the bison with an adequate supply of fresh, clean water.

There are 10 buildings located on the Bison Range. These include three staff homes, visitor center and administrative office, a shop, and a barn for the Services horse herd. The visitor center and associated administrative office require a great deal of routine maintenance. Over 120,000 individuals pass through the visitor center annually. The maintenance program is responsible for addressing any mechanical or 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. There are other areas including the Jocko fishing access, parking areas, and observation pull outs and structures that require constant inspection and maintenance throughout the busy visitor season of spring through fall.

There are approximately 21 miles of interior roads throughout the refuge complex that are open to the public, at least seasonally. The most heavily utilized and popular road is the 19-mile long 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 ensure they are safe for the visiting public. The most tenured maintenance staff are responsible and have the necessary skills needed to effectively grade the steeper, narrower roads found on the Bison Range.

The maintenance staff is also charged with maintaining approximately 30 pieces of small equipment. This includes trucks, cars, ATVs, and trailers. They are also responsible for maintaining eight pieces of heavy equipment including tractors, motor graders, front end loader, bulldozer, dump truck, and a backhoe.

The following is a list of facilities and equipment maintained, repaired, and operated by the Service's current four maintenance staff.

National Bison Range

33 pieces of mobile small equipment (all-terrain and utility vehicles, trucks, cars, trailers)

8 pieces of mobile heavy equipment (tractors, motor graders, loaders, bulldozer, skid steer, backhoe, and dump truck)

10-12 horses (for managing bison herd)

13 buildings (visitor center and administrative office, biological staff trailer, several storage buildings, maintenance shop, barn, and three refuge houses)

8 public drinking water wells

59 miles of fences (35 miles interior and 24 miles exterior)

21 miles of public roads (includes the 19-mile long auto tour route)

34 miles of Service-only roads

12 vault restrooms (day-use area, fishing access, High Point pull off, and bison corrals)

80 bison watering tanks

X acres of grounds maintenance (mowing, litter removal, invasive species control)

5 irrigation water pumps

1 environmental education shelter for large groups

1 corral system for handling wild bison herd

Ninepipe & Pablo National Wildlife Refuges and WPAs

Dozens of water control structures (wetland management)

2 RV trailer pads and drinking water wells (volunteers and seasonals)

Access gates and parking areas

3.12 Staff

The Bison Range Complex has a permanent (career) staff of 9 employees including the refuge manager, deputy refuge manager, supervisory wildlife biologist, supervisory outdoor recreation planner, federal wildlife officer, fish and wildlife biologist, range technician, engineering equipment operator, and a maintenance worker. In addition, there are two term employees, a fish and wildlife biologist and a maintenance worker. All of these positions, including the two current terms, are identified on the station organizational chart as career Service positions. Prior to the start of any AFAs, the staff at the Bison Range Complex had totaled 21 career employees. Some of the positions were

lost due to Service-wide budget cuts; however, staff turnover has been extreme and when combined with the ongoing negotiations and associated uncertainties this has created, the loss of these positions has been exasperated.

The 9 career and term staff and associated duties that have the potential to be affected directly by the alternatives being considered include

- GS-12 supervisory wildlife biologist
 - Design, manage, and lead the biological program, supervise biological staff, identify biological information needs, design inventory and monitoring programs, conduct analysis of data, coordinate biological research, coordinate and lead biological activities at annual bison roundup, and prepare management plans for all biological programs.
- GS-11 supervisory outdoor recreation planner
 - Coordinate public use and community relations programs promoting the National Wildlife Refuge System and the U.S. Fish and Wildlife Service. Design and manage visitor services programs including visitor center operations, education and interpretation programs, media outreach, school programs, events, visitor services facility designs and upgrades, and recruit and supervise seasonal staff and volunteers. Operate visitor center bookstore and collect and deposit entrance fees, maintaining all records.
- 2, GS-9 fish and wildlife biologists (one career position and one term)
 - Plan and execute wildlife surveys, write reports from monitoring data and presents results, maintain contact with other state, federal, and tribal agencies, assist lead biologist in developing and conducting research, inventory, and monitoring programs, implement habitat management program including invasive species control and monitoring, plan and conduct annual bison roundup, and assist with the development of management plans.
- GS-7 range technician (fire management responsibilities)
 - Assists with maintenance activities including repairing and maintaining facilities and equipment. Maintains qualifications as an Incident Commander 4 and coordinates fire activities with CSKT on the refuge complex. Constructs, maintains and repairs a 5-8 foot high, sturdy big game type fences. Participates as a team member in using horses to move bison between fenced range units at regular intervals throughout the year. Assists with wildlife habitat management programs including invasive species control and habitat management. Assists with the planning and implementation of the annual bison roundup.
- WG-9 engineering equipment operator
 - Operates and maintains heavy equipment to maintain and repair roads and facilities and is a certified heavy equipment trainer for the Service. Responsible for the care of all public roads, including grading the 19-mile auto tour route on the Bison Range. Leads and trains other staff in how to use horses to relocate bison on horseback between grazing units necessary for bison health and habitat management. Serves as the lead maintenance staff coordinator, including maintaining and improving the corral system

used for the annual roundup of bison used to support annual health monitoring, research, and surplus operations.

- WG-8 maintenance worker
 - Participates as a team leader in relocating bison between grazing units and the annual roundup. Responsible for care, treatment, and feeding of the refuge complex horse herd, including teaching horseback riding skills to new staff. Conducts routine and cyclical maintenance of all equipment and facilities, including using heavy equipment to maintain and repair roads. Assists with habitat management program including invasive species treatment, water level management, prescriptive haying and grazing, and fence maintenance.
- WG-7 maintenance worker (term position)
 - Serves as a member of the maintenance, operations, and bison working crew. Constructs, maintains and repairs 5-8 foot high, sturdy big game type fences. Participates as a team member in using horses to move bison between fenced range units at regular intervals throughout the year. Constructs and repairs facilities and performs routine maintenance and repairs to vehicles and other equipment. Assists with wildlife habitat management programs including invasive species control and habitat management.

3.13 Socioeconomics

The National Bison Range Complex has been part of the surrounding communities for over 100 years. Most local community members have come to enjoy and appreciate the resources and public use activities available to them. In addition to local and state residents, visitors come from all over the country and the world to visit the refuge complex and experience these iconic refuges. In 2012, resident and nonresident visitors spent 203,500 visitor use days viewing and photographing wildlife, fishing, hunting, and participating in refuge events and programs.

The most popular activity for visitors is the 19-mile long auto tour route on the National Bison Range. This route offers spectacular scenery and opportunities to view and photograph wildlife. Several of the refuge units are located along a major state highway that is also the main road leading to Glacier National Park, two hours north. The National Bison Range, although located on a county road, is well identified by directional signage on the highway.

The National Bison Range is listed as one of the top ten tourist attractions in Montana by the Institute for Tourism and Recreation Research (<http://www.itrr.umt.edu/ecorev/EconomicReview2012.pdf>, accessed 2/25/2013). Attractions like the Bison Range Complex brought almost 11 million visitors to the state in 2012, an increase of 9.1% 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. 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).

Most of the Bison Range 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. Each considered alternative may either increase or decrease visitation to the refuge complex and, thus, affect the amount of visitor spending in the local economy. It is not anticipated that any alternative would drastically affect the availability of wildlife dependent public use activities currently open to the public. Effects on public use will primarily be related to the maintenance of public use facilities, content and quality of refuge events and education and interpretive programs. Other effects could be how the refuge is managed, which could affect the quantity and variety of wildlife available for viewing and photographing. Additional economic effects would also be related to those federal positions and salaries, both permanent and seasonal that might be transferred to CSKT. The costs and economic impacts of this transfer, including indirect costs, will be described and evaluated in each alternative.

Because Montana does not have a sales tax, the state and local tax receipts generated by nonresident travelers are generally lower than other states. Montana does, however, have a statewide accommodations tax of seven percent on overnight lodging. In addition, nonresident travelers contribute to the tax base through the payment of excise taxes on items such as those on gasoline and alcohol, and by supporting industries that pay corporate taxes and whose workers' pay income, property and other taxes (Grau et. al. 2012).

Because of the unique nature of this type of agreement, the human dimension will be considered in any alternative. Some of those considerations could be both the CSKT's and Service's connection and appreciation for the resources of the refuge complex, the local communities perception of this partnership, and the social impacts to both past and present Service and CSKT employees that have worked on the Bison Range Complex. In addition, the cumulative socioeconomic impacts of these types of agreements, over the last 10 years, although difficult to quantify, will be evaluated, including, but not limited to, relocation costs for displaced federal employees, new positions created as part of these agreements, training required and provided to new employees, and ongoing legal challenges.

Population, Demographics, and Employment

The portions or units of the refuge complex affected by this decision are all located in Lake and Sanders counties. Sixty-two percent of the refuge lands affected by this action are in Lake County. The remaining 38% are in Sanders County. The largest community in this study area is Polson, MT, which is the Lake County seat and has an estimated population of 4,500. The remaining communities in Lake County include: Arlee, Big Arm, Charlo, Dayton, Dixon, Elmo, Pablo, Ravalli, Ronan, St. Ignatius, and Swan Lake. The communities in Sanders County include Dixon, Heron, Hot Springs, Lonepine, Noxon, Paradise, Plains, and Trout Creek. The closest Sanders County communities include 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% of the state population, estimated at 997,667 (<http://quickfacts.census.gov/qfd/states/30000.html>, accessed 2/25/2013).

Between 1999 and 2009 the number of individuals residing in Lake County increased by 9.7%, which was higher than the state average of 8.6% (http://www.ceic.mt.gov/graphics/Data_Maps/population/county_pop_10yr_growth99-09.gif, access 2/25/13). 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% 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% below the state average. Approximately 68% 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, the majority of the residents in Lake County were under 18 years, estimated at 25.4%. Persons over 65 years of age represented 17.3% of the population. In 2011, 69.7% of the study area population was white persons and 22.4% were American Indians (U.S Census Bureau 2013).

In 2010, 28,359 individuals lived within the boundaries of the Flathead Reservation. Of this population 65% were white, 24% were American Indians or other ethnic groups (13%). When compared to other reservations in Montana, the Flathead reservation not only has the largest population overall, but the number of white individuals comprising that number is substantial. The next closest is the Crow Reservation in eastern Montana, with a white population of 20% (<http://www.ceic.mt.gov/2010%20Census%20Data/2010%20Census%20Redistricting%20Data%20Reservation%20Race.htm>, accessed 2/25/2013). Most of these non-Indian residents live on non-tribal lands, which comprise 38% of the reservation. Since 1934, the CSKT has been actively buying back much of the lands lost to the tribes during the Allotment Era. Today, CSKT owns 62% of the reservation lands, either fee title or through the Tribal Land Trust (<http://therezweliveon.com/land-and-homes/>, accessed 2/25/2013).

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%, 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

(<http://www.lakecodirect.com/archives/populationtrends.html>, access 2/26/2013). Some of the largest employers in the study area include CSKT, Jore Corporation, St. Luke Healthcare, and the school districts. The CSKT employ 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% are tribal members.

The National Bison Range employs 9 full time federal employees, 2 term full-time positions (not to exceed 4 years), and an average of 4-6 seasonal employees (working 6 months or less). Except for some of the seasonal employees, all of the staff at the Bison Range 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% of the state population (<http://quickfacts.census.gov/qfd/states/30000.html>, accessed 2/25/2013). Between 2000 and 2010 the number of individuals residing in Sanders County increased by 11.6%, which was higher than the state average of 8.6%

(http://www.ceic.mt.gov/graphics/Data_Maps/population/county_pop_10yr_growth99-09.gif, access 2/25/13). In 2010, the population density for Lake 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 Lake County was \$38,268, which is 16% below the state average. Approximately 68% 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, the majority of the residents in Sanders County were over 65, estimated at 22.6%. Persons under 18 years of age represented 19.9% of the population. In 2011, 91.6% of the study area population was white persons, 4.4% were American Indians, and 4% were other ethnic groups, including 2% Hispanic (U.S Census Bureau 2013).

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%, 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 the majority (21.6%) of the employment opportunities (http://www.city-data.com/county/Sanders_County-MT.html#ixzz2McCuMqgl, accessed 3/4/2013). The other major employment industries are agriculture, forestry, fishing and hunting, and mining (12.8%), and construction (11.0

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.

Public Use of the Refuge Complex

Wildlife observation, photography, and hiking (nonconsumptive activity) account for 94 percent of visits to the refuge complex (refuge data 2012). 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 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 WPAs for waterfowl and upland game birds, 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 refuge units or WPA that have sufficient water quantities to support a viable fishery are the Bison Range, Ninepipe and Pablo refuges, and three of the WPA s. In 2012, approximately 11,350 visitor use days were dedicated to fishing these areas. Some of the units, like Ninepipe Refuge, are very popular for fishing; nevertheless, this number only accounts for 6% of the annual visitation.

The Service has a lead visitor services specialist who develops programs, designs displays, and conducts school programs and events. The refuge complex has a visitor center located in the refuge headquarters. Approximately 120,000 visitors pass through this visitor center annually. The Service recruits 3 to 4 seasonal employees to run the visitor center, interact with visitors, and assist with programs. In addition, the refuge has a bookstore, run through a cooperating agency that generates funding, along with the entrance fee, for visitor services programs and facilities.

Camping is not allowed 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 in close proximity to the refuge complex.

Visitation Levels

Annual visitation to the National Bison Range Complex is an estimated 203,500 visitor use days, according to Service counts and estimates. Visitation is most heavily concentrated during wildlife-viewing seasons, spring through fall. Refuge staff estimates that 80 percent of all visitor days at the refuge complex are from outside the study area. Of the total visitors to the refuge complex, the visitor use days are broken down as follows:

- 191,050 visitor use days for viewing and photographing wildlife
- 11,350 visitor use days for fishing
- 1,100 visitor use days for hunting upland game birds and waterfowl

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 Bison Range 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, U of M, 3/4/2013). Based on these figures it is estimated that visitors to the Bison Range Complex contribute approximately 18 million dollars to the state and local tourism economy. These expenditures primarily include food, gas, and 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, in close proximity of a residential area is a desirable trait for most buyers, particularly in Montana. The presence of the Bison Range Complex adds value to the associated communities and private lands; however, it is difficult to quantify this or fully understand to what degree the refuge complex encourages individuals to relocate and purchase property in this area.

Chapter 4. Alternatives and Environmental Consequences

The purpose of this chapter is to describe five alternatives, including no-action, that were considered for developing a partnership with the CSKT for managing or assisting with the operations at the National Bison Range Complex. This chapter also contains an analysis of the consequences of each alternative, including cumulative impacts.

Section 4.8 contains a table that provides a side by side comparison of both the alternatives and the consequences of each alternative. Section 4.8 describes alternatives that the Service considered, but eliminated from detailed study.

4.1 Elements Common to All Alternatives Considered for Further Analysis

- All current career status federal employees of the Bison Range Complex would be able to maintain their current federal employment status, pay and benefits under any future AFAs. No current career status federal employees would be forced to accept an involuntary reassignment as a result of any future AFA.
- The Service would retain the refuge manager, deputy refuge manager, and federal wildlife officer positions.

- The work of the refuge complex would be accomplished in accordance with approved Service plans, laws, and policies.
- The CSKT would offer no more than 5-year contracts to all its employees. These positions would be dependent on the continuation of the AFA. A year prior to the termination of these contracts and the AFA, the CSKT and the Service would agree to extend the existing AFA or renegotiate another agreement.

4.2 Alternative A - No-Action

Alternative A is the no-action alternative, under which the Service would continue to administer and carry out all programs conducted on the refuge complex as it does now. The work would be accomplished under direction of the refuge manager in accordance with approved Service plans and policies, primarily by Service employees, augmented as needed by contractors, volunteers, and cooperators such as universities and cooperating farmers and ranchers. The Service would continue targeted recruiting of CSKT tribal members and descendants for seasonal positions, vacated career positions, and Pathways student programs, giving individuals the experience and opportunity to qualify for careers with the Service or other federal agencies.

In accordance with the Administration Act and Executive Order 12996, the Service would continue to coordinate with CSKT as the entity responsible for wildlife management throughout the adjacent Flathead Reservation, and as the owner of the lands within Pablo and Ninepipe refuges and other adjoining tribal lands. Informal and formal cooperation with CSKT would continue on issues such as invasive species control, fire management, trumpeter swan restoration, and grizzly bear and gray wolf management on the reservation. The Service would continue to participate in CSKT functions such as the annual River Honoring, and provide environmental education and interpretive programming to local public and tribal schools. The Service would continue to brief the CSKT Tribal Council on programs and projects conducted on the Bison Range Complex and coordinate activities of mutual interest with the CSKT FWRC Division.

The Service would continue to plan and manage all biological programs in order to support the purposes for which each unit of the refuge complex was established. The Service would continue to develop an internal annual work plan outlining the projects to be completed in order to better understand the resources and address management concerns. Inventory and monitoring programs would continue to focus on federal trust species and those biological resources, including vegetation and water quality and quantity that support those species. Invasive species infestations would continue to be inventoried and monitored and strategies for treatment developed using an integrated approach of chemical, biological, cultural, and mechanical methods. The Service would continue to coordinate with CSKT and other partners in Lake and Sanders Counties to develop a treatment strategy to identify priorities, species lists, and treatment areas. Wildlife health, including that of big game and avian species, would be monitored in coordination with the Service's Wildlife Health Office (WHO). Necropsies to monitor for

diseases would be conducted on all big game species that perish or are dispatched. Bird surveys, including surveys of waterfowl, neotropical migrants, and resident bird species, would continue to be designed and implemented by Service staff. Annual big game counts would continue in order to implement the recommendations in the refuge's Fenced Animal Management Plan. The Service would use prescribed burning, haying, and prescriptive cattle grazing on Ninepipe and Pablo Refuges and the Northwest Montana WMD in order to improve habitat. The Service would coordinate all burning activities with CSKT and the tribe would continue to conduct initial attack operations for all wildfires on the refuge complex.

The Service would continue to monitor bison health and genetic integrity in coordination with the WHO. The Service would monitor the health of its bison herd, conducting necropsies on all animals that perish, to prevent the spread of disease. The Service would plan and conduct the annual bison roundup in order to collect genetic information and monitor herd health. The quality of the forage, including the spread of invasive species and the impacts of other grazing animals and insects, would be studied on the National Bison Range to determine range health and fulfill management objectives.

The Service would coordinate water level management on the satellite refuges and waterfowl production areas with CSKT and the irrigation district. The Service would use water level management structures to optimize nesting, feeding, and brood-rearing habitat for waterfowl and other waterbirds. Water quality data would be collected on all refuge waters including wetlands, streams, and ponds.

The Service would work with partners, including CSKT, to plan and develop all future management plans for the visitor services and biology programs, including the comprehensive conservation plan, habitat management, integrated pest management, and wildlife management plan.

The Service would continue to plan and execute all visitor services programs, which would focus on the federal trust species, including bison and migratory birds, other resident wildlife, and habitats native to the areas surrounding the Bison Range Complex. The Service would coordinate with the CSKT FWRC Division to develop programs that highlight the values and importance of the refuge complex to the Tribes, including the history of the uses of the bison and the cultural significance of this species and other wildlife along with the associated landscape. The Service would continue to provide hunting and fishing opportunities in areas where such uses do not materially detract from the purpose for which a unit was established, or violate state or CSKT laws.

In the preparation of a CCP for the refuge complex, CSKT would be invited to provide representatives to serve on the core planning team, and would be invited to be a NEPA cooperating agency for the EA or EIS accompanying the CCP. The Refuge Manager would continue to consult regularly with the CKST Tribal Council and FWRC Division on issues related to refuge management and seek input from the CSKT to inform refuge plans and operations.

4.4 Alternative B - Implement the draft negotiated AFA

Under this alternative, the Service would execute and implement the draft self-governance AFA negotiated with the CSKT during 2011–2012. The work of the refuge complex would be accomplished under direction of the Service’s Refuge Manager, in accordance with approved Service plans and policies. The Service’s refuge manager and deputy refuge manager would make the final management decisions; however, the CSKT would have the authority to dispute these decisions through the dispute resolution process. This dispute resolution process is described in detail in the proposed AFA found at Appendix E. The dispute process goes through several Service management levels but can go no higher than the Director of the U.S. Fish and Wildlife Service, whose final decision would be honored by both parties.

The CSKT would be responsible for designing, implementing, and managing the biological, maintenance, fire management, and visitor services programs (initially excluding environmental education, cooperating association oversight, and Volunteer coordination activities). The Service would provide funding to the CSKT FWRC Division to recruit its own employees to manage and support these programs. The five career employees (lead wildlife biologist, wildlife biologist, two maintenance mechanics, and a fire technician) that occupy the affected positions (these duties are described section 3.12) would be retained; however, they would be asked to sign an IPA agreement assigning them to work for the CSKT. This would allow CSKT to manage refuge programs; including recruiting and supervising all support staff and directing the day-to-day operations of all program leads. Service employees assigned to CSKT under IPA agreements would continue to be federal employees with no change to their pay, benefits, or other entitlements, rights, and privileges. IPA assignments are voluntary and must be agreed to by the employee. It is uncertain what actions would be taken if an employee chose not to sign an IPA agreement; however, any adverse actions would be considered a violation of the law’s requirement that the assignment be voluntary. The only Service employees that would lose their positions under this alternative are the two term employees—a maintenance worker and a wildlife biologist. These employees’ term appointments would not be renewed and their positions and duties would be transferred to CSKT for recruitment of new tribal employees.

The Service would provide CSKT with the funding necessary to recruit a wildlife refuge specialist (GS-11, step 6). The individual occupying this new position would be supervised by the CSKT FWRC Division, but would receive direction from either the refuge manager or deputy. The wildlife refuge specialist would serve as a team leader and direct the day-to-day work of employees in programs managed by CSKT, including any Service staff serving under IPA agreements.

A Refuge Leadership Team (leadership team or team) would be formed to develop a work plan, determine priorities, address performance and conduct issues, advise the refuge manager when making decisions, and resolve disputes between the parties. The leadership

team would include the refuge manager, deputy manager, CSKT assistant manager, and the manager of the CSKT FWRC Division. The team would meet as needed to discuss management plans and address any issues. If the team was unable to reach consensus on any matter, the decision of the refuge manager would prevail; however, as stated above, the manager of the CSKT FWRC Division could invoke the dispute resolution process, described in the draft AFA at Appendix E, in the event that CSKT disagreed with the refuge manager's decision.

Some of the more significant differences between Alternative B and the previous 2008–2011 AFA include:

- This alternative does not include a “co-equal” GS-12 CSKT deputy refuge manager. There would be only one deputy refuge manager, a Service employee who would exercise all of the authority of the refuge manager when acting. The Service would provide a newly-created position to the Tribe, a GS-11 wildlife refuge specialist. This individual would be responsible for directing the day-to-day activities of the staff in all refuge programs managed by CSKT.
- The CSKT representatives on the Refuge Leadership Team would be the CSKT wildlife refuge specialist and the head of the CSKT FWRC Division, instead of the CSKT deputy project leader and lead biologist.
- The CSKT would pay its employees the equivalent federal wages for each position provided to them by the Service. In the 2008 AFA, the CSKT used their comparable FWRC Division positions and pay scales, which were lower than the federal salaries provided to them.
- The dispute resolution process for resolving disagreements between CSKT and the refuge manager ends at the Director of the Service, as opposed to ending at the Assistant Secretary for Fish, Wildlife, and Parks.
- The refuge manager would retain the operating budget for all programs excluding those salaries provided to CSKT and associated indirect costs. Indirect costs have been negotiated at a flat rate of \$5000.00 (per fiscal year) for each full-time position provided to CSKT. For career-seasonal positions, the Service would prorate this flat rate accordingly.
- The Supervisory Outdoor Recreation Planner (ORP) would not be requested to sign an IPA. The ORP would retain the duties of managing and developing the visitor services program; however, the seasonal visitor services staff that operate the visitor center would be recruited and supervised by the CSKT FWRC Division and the CSKT assistant manager. When the ORP vacates the position, these duties and salary would be transferred to CSKT, who would then recruit their own employee for this ORP position.

4.5 Alternative C - AFA for Fire Management and Visitor Services

Under this alternative, the Service would negotiate a different AFA with CSKT, in which the partnership would include the fire management and visitor services programs. All

work of the refuge complex would be accomplished under direction of the refuge manager or deputy refuge manager, in accordance with approved Service plans and policies. Refuge plans, wildlife and habitat management programs, visitor services programs and other work of the refuge complex would be the same as under Alternative A, except that CSKT would operate the fire management program and provide up to 4 seasonal staff necessary to operate the refuge visitor center and maintain the grounds and facilities at the day use area located at the end of the Red Sleep auto tour road (auto tour).

The CSKT Fire Management Division, operated under the CSKT Forestry Department is a highly effective and professional organization that is responsible for wildland fire management including fire preparedness, wildfire suppression, and application of prescribed fire on the Flathead Reservation. The CSKT fire program is fully integrated into the National Interagency Fire Management Program. CSKT fire management personnel are fully qualified under the National Interagency Fire Qualification System, and are “red-carded” in the same manner as Service and other federal fire management personnel.

The Bison Range Complex annually hires a number of seasonal employees to work in the Bison Range visitor center. Duties include orienting and providing information to refuge visitors, collecting fees for the Red Sleep Auto Tour Route, an approved recreation fee program, operating the cooperating association sales outlet, and interpreting exhibits in the visitor center. These employees also help develop interpretive programs and participate in events such as the annual bison roundup. They also maintain the grounds and facilities at the day use area along the auto tour route, cutting grass, and maintaining comfort stations. Under this alternative the Service would contract with CSKT, through a self-governance AFA, to manage the fire program and provide funding for CSKT to recruit up to 4 employees to operate the visitor center and maintain public use areas during the summer months.

The Service would provide funding for the CSKT FWRC Division to conduct aerial surveys for big game and waterfowl throughout the refuge complex including on the Bison Range. The survey designs would be developed collaboratively by the refuge and CSKT biologists.

Upon agreement of the Parties, the AFA may be amended to include construction or deferred maintenance funding for work to be performed by CSKT. The CSKT would 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 would be responsible for obtaining necessary approvals from the Service’s regional engineer. The Service would oversee each project and CSKT would be responsible for following all established guidelines, design specifications, and laws associated with each project, including assisting with the completion of any required NEPA analysis. Any funding not used for a project would be returned to the Service.

4.6 Alternative D – AFA for Ninepipe and Pablo Refuges and the Waterfowl Production Areas

Under this alternative, the Service would negotiate a different AFA with CSKT, where the partnership would primarily focus on management of Pablo and Ninepipe national wildlife refuges and the 9 WPAs. Combined, these units are commonly referred to as the wetland management district or WMD. This agreement would also include assisting with the development and implementation of the visitor services program and the full fire management program (same as alternative C). Ninepipe and Pablo refuges are what are commonly referred to as overlay or easement refuges. In this case, the CSKT owns these lands; however, in 1948 the Service acquired an easement to continue operating them as national wildlife refuges.

Although the Service does coordinate some activities on these lands with CSKT, historically the Service has managed them exclusively with Service funds and staff. Under this AFA, the Service would provide CSKT with the funding necessary to recruit two employees to assist with the management of the WMD; a GS-11 wildlife refuge specialist and a career seasonal WG-6 maintenance worker. The Service would continue to assist the CSKT FWRC Division with management of these units, providing equipment and staff time, as approved by the Service's refuge manager. The Service would provide the CSKT FWRC Division with operating funds for the habitat management program on these units. Under the direction of the refuge manager, these new CSKT employees would conduct maintenance and habitat management activities such as maintaining public use areas, water level manipulation, habitat restoration projects, and invasive species management. They would also coordinate with current and future permittees for prescriptive activities such as grazing and haying. Although these CSKT employees would be assigned to work on the Pablo and Ninepipe refuges and the 9 WPAs they would be expected to participate in a variety of activities on the Bison Range as well.

In addition to these 2 positions assigned to manage the WMD, the Service would provide CSKT with the funding to recruit additional positions to assist with all refuge complex programs including: a GS-9 equivalent outdoor recreation planner, up to 4 seasonal visitor services staff, two career seasonal staff (a WG-6 maintenance worker and a GS-5 biological science technician), and up to two seasonal biological staff.

The CSKT ORP would serve as the Tribal representative, working alongside the Service's supervisory ORP, developing and presenting interpretive and education programs. These programs would provide visitors with information on refuge complex resources and management, and the cultural significance of the bison and the lands and waters found within the refuge complex. The CSKT ORP would supervise these seasonal staff.

The Service would provide funding for the CSKT FWRC Division to conduct aerial surveys for big game and waterfowl throughout the refuge complex including on the Bison Range. The survey designs would be developed collaboratively by the refuge and CSKT biologists. The Service would coordinate all burning activities with the CSKT Fire Management Division, who would continue to conduct initial attack operations for all wildfires on the refuge complex (same as alternative C).

CSKT staff would still be required to follow all laws, policies, planning documents, and management objectives along with the specifics of the easement agreement. The current 8 Service staff would be retained and work closely with the CSKT staff to provide the training and experience needed to support the operations and programs of the refuge complex.

All CSKT employees would receive day-to-day direction from the Service program leaders. In addition, the refuge manager would be permitted to counsel any CSKT employee in order to address any conduct or performance issues. However, any recommended disciplinary actions would be discussed with and carried out by the CSKT FWRC Division.

Upon agreement of the Parties, the AFA may be amended to include construction or deferred maintenance funding for work to be performed by CSKT. CSKT would 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 would be responsible for obtaining necessary approvals from the Service's regional engineer. The Service would oversee the project and CSKT would be responsible for following all established guidelines, design specifications, and laws associated with each such project, including assisting with the completion of any required NEPA analysis. Any funding not used for a project would be returned to the Service.

4.7 Alternative E – AFA with the incremental integration of CSKT staff

Under this alternative the Service would negotiate a different AFA with CSKT. The long-term objective of this alternative is to provide CSKT with more career (permanent) positions over time. As described in Chapter 3 - Affected Environment, the Bison Range Complex program is very unique, given the purposes of managing federal trust species, particularly bison. In addition, the Service has a unique set of laws, policies, and regulations that govern the Refuge System. Each Service employee, particularly those serving in career positions, has a specific and significant role in fulfilling the mission of the Bison Range Complex. Some of the skills required to perform these duties, such as those needed to manage a herd of wild bison, have taken years to acquire. Many Service staff came with vast amounts of experience related to the duties of their position. Others started in entry level positions, such as seasonal jobs, on the refuge complex, and

acquired the skills necessary to compete for permanent or term positions as they became available.

Initially, most of the positions provided to CSKT in this proposed AFA would be temporary and seasonal (2-8 positions, depending on annual funding). These seasonal positions would be in the visitor services, biology, and maintenance programs. The refuge manager or Service program lead would work collaboratively with CSKT to review applications and make selections. The objective of this approach is to provide the opportunity and time needed for these employees to gain the experience and knowledge necessary to fully perform the activities of more permanent career positions. This concept is similar to the Service's Pathways Program that provides individuals interested in Service careers the diverse experiences necessary to compete for career positions.

All work of the Bison Range Complex would still be accomplished under direction of the refuge manager and deputy refuge manager in accordance with approved Service plans and policies. Refuge plans, wildlife and habitat management programs, visitor services programs and other work of the refuge complex would be the same as under Alternative A. The Service would always retain the refuge manager, deputy refuge manager, and federal wildlife officer positions, and the lead or highest graded positions in the biology, visitor services, and maintenance programs. In addition, the Service would retain the next lowest graded maintenance worker position, currently a WG-8. As described in section 3.11 of chapter 3, the maintenance program on the refuge complex is unique and essential to accomplishing the purposes of the Bison Range. The two senior maintenance staff has each served on the refuge complex for over 20 years. The skills and proficiency needed to safely and effectively move the Service's herd of wild bison through the rough terrain found on the Bison Range and through the annual roundup have taken years of on-site experience to acquire. The justification for retaining this position is the need to ensure that the Service can maintain the core capability, experience, and knowledge of how to manage the Service's bison herd, on the ground, if an AFA is rescinded or the CSKT decides not to continue this partnership. Retaining only the highest graded maintenance position would not accomplish this. As stated in the position description, the responsibilities of this current WG-8 maintenance worker position) include serving as a team leader in moving bison both for management purposes and during the annual roundup. This position also involves training all new employees, including managers and biologists, on how to assist with these activities.

The current Service employees would work closely with the CSKT seasonal staff to provide the training and experience needed to support the operations and programs of the refuge complex. Although the Service would initially retain all lead positions and a second maintenance position, as Service staff transfer, resign, or retire, or new positions are added to programs, these CSKT employees should have years of experience and be competitive when these positions come available. At that time, the Service would re-negotiate with the CSKT to determine whether these employees have acquired the necessary knowledge and experience (as determined by the Service's Human Resources office and the refuge manager) required for these career, permanent positions. This would not limit CSKT's ability to propose its own selections for these positions; however, the

determination as to whether the Service would transfer or retain that career position would be made collaboratively by refuge complex and FWRC staff and both human resources offices.

Upon agreement of the Parties, the AFA may be amended to include construction or deferred maintenance funding for work to be performed by CSKT. The CSKT would not begin any construction covered by this AFA without the refuge manager's prior written approval of all associated design, engineering, and construction plans, specifications, and drawings. The refuge manager would be responsible for obtaining necessary approvals from the Service's Regional Engineer. The Service would oversee such projects, and CSKT would be responsible for following all established guidelines, design specifications, and relevant laws, including assisting with any required NEPA analysis. Any funding not used for a project would be returned to the Service.

CSKT would provide personnel support to their employees, including payroll, leave, benefits, and human resources. The Service would provide indirect costs for CSKT employees, as described in Alternative B. Although CSKT would administer performance management and employee discipline to its employees in accordance with CSKT personnel policies, the Service program leads would direct their day-to-day activities. The refuge manager or deputy would work collaboratively with the CSKT FWRC to address performance and conduct issues.

4.8 Alternatives Considered, but Eliminated from Further Analysis

The following is a summary of the alternatives that were considered for forming a long-term partnership with the CSKT, but were eliminated from detailed study for the various reasons described below.

Hiring Tribal Members as Service employees at the Bison Range Complex

In this alternative, the Service 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. Authorities such as the Pathways Program would be used to develop, train, and hire CSKT tribal members and other Native Americans enrolled at Salish Kootenai College and other accredited institutions to fill professional, technical, administrative, and skilled trade positions at the Bison Range 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. Under this alternative the CSKT involvement would be through individual tribal members working as Service employees. This alternative would assist the Service in achieving its 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 Bison Range Complex. Although this alternative could expand and strengthen a strong partnership between the Service and the CSKT, it would not support the purpose and need related to self-governance, as stated in chapter 1. It is eliminated from further analysis.

Partnering with CSKT through a Cooperative Partnership Agreement

The Secretary of the Interior has numerous broad cooperative authorities in the management of fish and wildlife and their habitat. The Fish and Wildlife Act of 1956 provides the Secretary almost open-ended 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. Under this alternative, the Service would use these authorities to transfer funds to CSKT, which would provide tribal employees to perform a variety of work at the Bison Range 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 the Service and the CSKT, furthering the mission of the Refuge System, and fulfilling the purposes of the refuge complex. It would also meet the Service’s Native American Policy, which lists a cooperative agreement as a viable option for supporting self-governance. However, this alternative would not meet the goals of the Tribal Self-Governance Act and its implementing regulations at 25 CFR Part 1000, which call for the use of annual funding agreements with self-governing tribes whenever possible. This alternative is eliminated from further analysis.

Assignment of CSKT employees to the Service under Intergovernmental Personnel Act (IPA) agreements

This alternative would involve assignment of qualified CSKT employees to fill all seasonal positions and any permanent positions at the Bison Range Complex that are not currently encumbered by career or term Service employees, through the use of Intergovernmental Personnel Act (IPA) agreements. The IPA Mobility Program allows for the temporary assignment of employees from a tribal government to a federal agency. In order to qualify for an IPA agreement, an individual must have been employed for at least 90 days in a career position with the tribal government. Since CSKT would be bringing newly hired employees to these refuge complex positions, the 90 day requirement would not be met. This alternative is eliminated from further analysis.

From: [Noreen Walsh](#)
To: [Jim Kurth](#); [Robert Dreher](#); [Betsy Hildebrandt](#); [Steve Guertin](#); [Rowan Gould](#); [Dan Ashe](#)
Cc: [Matt Hogan](#); [Will Meeks](#)
Subject: worth a read: MISSOULIAN EDITORIAL: Support tribes' role in Bison Range
Date: Thursday, August 14, 2014 12:20:53 PM

Will Meeks and his team worked hard to put out a well-written EA that looks at several alternatives, including our preferred alternative described below.

As anticipated, PEER and Blue Goose Alliance are not shy about advocating their position that the Tribe should have no role in the National Bison Range and calling for extensions to the comment period.

The Missoulian editorial below expresses a different sentiment.

Noreen Walsh
Regional Director
Mountain-Prairie Region
U. S. Fish and Wildlife Service

303 236 7920

***The Mountain-Prairie Region of the U. S. Fish and Wildlife Service:** We provide conservation stewardship of some of America's most scenic lands, to ensure healthy fish and wildlife for the enjoyment and benefit of all people.*

From: Will Meeks [mailto:Will_Meeks@fws.gov]
Sent: Thursday, August 14, 2014 10:00 AM
To: Noreen Walsh
Cc: Matt Hogan
Subject: FW: MISSOULIAN EDITORIAL: Support tribes' role in Bison Range

Thought you'd like to see this editorial.

Will Meeks
U.S. Fish and Wildlife Service, Region 6
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303-236-4303 (w)
720-541-0310 (c)

From: Leith Edgar [mailto:leith_edgar@fws.gov]
Sent: Thursday, August 14, 2014 9:45 AM
To: Marla Trollan; John Bryan
Cc: Will Meeks; Paul Santavy; Mike Blenden; Jeff King; Laura King; Toni Griffin; Ryan Moehring
Subject: MISSOULIAN EDITORIAL: Support tribes' role in Bison Range

MISSOULIAN EDITORIAL: Support tribes' role in Bison Range

August 13, 2014 8:15 am

Management of the National Bison Range has been a point of contention for years. Now, a new proposal that would put most management back in the hands of the Confederated Salish and Kootenai Tribes is up for public comment – and the public ought to support this proposal.

First, let's start with some history. It is widely known that bison were once driven to the verge of extinction in the United States. In 1908, President Theodore Roosevelt authorized funding to establish the National Bison Range in the center of the Flathead Reservation. Now, up to 500 bison roam the 18,500-acre range, which is run by the U.S. Fish and Wildlife Service.

However, for the past 20 years the Confederated Salish and Kootenai Tribes have argued that management of the range ought to be turned over to the tribes. In 1976, Congress approved the Indian Self-Determination and Education Assistance Act with provisions that allow tribes to contract with federal entities on programs that affect tribal welfare. Despite CSKT's insistence that this includes the National Bison Range on its reservation and buffalo in general, governmental delays and a heated public debate kept any agreement from being reached – until 2004.

The agreement signed that year spelled out a partnership with the FWS that would turn over half of the range's management to the CSKT. It came under fire almost immediately, and FWS canceled the contract in 2006. A new funding agreement reached in 2008 was challenged by Public Employees for Environmental Responsibility, which worried that the partnership set a precedent for other National Wildlife Refuge System parks. A U.S. district court judge ruled that the agreement failed to follow proper procedure and rescinded it in 2010.

FWS and CSKT thus entered negotiations yet again in November 2011, ultimately settling on a proposal that covers the entire National Bison Range Complex, including the range, and would retain three FWS employees: the refuge manager, deputy refuge manager and one law enforcement officer. Eight other positions would either be transferred to the tribes or reassigned. Also, a supervisory outdoor recreation planner employee for FWS would stay on, but the position would not be refilled should the current employee transfer or retire.

The completion of a draft environmental assessment for the proposed agreement and its public release on Aug. 4 means that the CSKT are a step closer to finally assuming management of the National Bison Range Complex – management that includes the “biological, maintenance, public use and fire management programs,” according to the FWS announcement.

But first, the public has 30 days in which to comment on the plan, which includes four other alternatives. Three of these call for less tribal involvement in the management of the range, and one of them is a “no action” alternative that would exclude the tribes from management altogether.

That's a very poor alternative indeed. The public ought to support CSKT's willingness to partner with FWS and shoulder the majority of the responsibility for the National Bison Range. Bison have long played an important role in the tribes' culture and history, and the range itself physically occupies the heart of the Flathead Reservation. The tribes ought to play

a direct role in the management of this national treasure.

http://missoulian.com/news/opinion/editorial/missoulian-editorial-support-tribes-role-in-bison-range/article_32dc69e6-22fc-11e4-9a95-0019bb2963f4.html