



Blue Goose Alliance Bulletin

#70 – November 15, 2010

National Wildlife Refuge System and National Park System Threatened

H. R. 4347an Act to amend the Indian Self-Determination and Education Assistance Act to provide further self-governance by Indian tribes, and for other purposes may be considered by the Senate as early as November 18, 2010 . Several provisions would adversely affect the National Wildlife Refuge System. You are urged to contact your Senator by telephone, fax or email to express your concerns about this legislation. Blue Goose Alliance Vice-President, Bill Reffalt has developed a briefing paper, which follows. Your action is needed now!

National Wildlife Refuge System and National Park System Threatened November, 2010

Shortly before the present congressional recess, the House of Representatives passed H.R. 4347 (referred to the Senate Indian Affairs Committee) containing a major amendment to the 1994 Indian Self-Governance Act (SGA). The amendments change important provisions in the SGA to prevent delegation to Indian tribes of Inherently Federal functions and an explicit statement that the statute did not “authorize the Secretary to enter into any agreement where the statute establishing the existing program does not authorize the type of participation sought by the tribe... .”

The National Wildlife Refuge System Administration Act and the National Park Service Organic Act restrict delegation of management to entities other than the Fish and Wildlife Service and National Park Service, respectively. The new Self-Governance legislation negates those congressionally intended safeguards and thus would make available large portions of the Refuge System and Park System to control and management by individual sovereign tribal governments. Ultimately, the provisions of the SGA would permit the tribes to alter the management practices and policies governing the refuge and park units having Annual Funding Agreements, thereby breaking off segments of those vital conservation “Systems”.

History

Amendments to the Indian Self-Determination and Education Assistance Act in 1994 gave discretionary authority to the Secretary of the Interior to allow federally recognized tribes to negotiate with agencies other than the Bureau of Indian Affairs seeking Annual Funding Agreements (AFAs) for federal programs, functions, services and activities, or portions thereof (pfsas). Although originally designed to increase

self-determination for Indian Tribes by taking control of government programs that were established to benefit them, provisions in the 1994 Amendments added an allowance for tribes to seek AFAs in areas having special geographic, historical, or cultural significance to them. That provision, broadly applied, has resulted in 34 National Wildlife Refuges and National Fish Hatcheries and more than 53 National Parks having been made available for negotiations by tribes to assume control of pfsas, including their funding.

The 1994 statute contained an important “Disclaimer Clause”:

Section 403(k): 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).

These disclaimer provisions established vital safeguards assuring that national programs intended to benefit all Americans equally, would remain with the agencies Congress intended to administer them.

The Threat

Provisions in H.R. 4347 would change the disclaimer. Section 401(7) defines Inherent Federal Function: The term **‘inherent Federal function’ means a Federal function that cannot legally be delegated to an Indian tribe**. As demonstrated by the continuing efforts of OMB to define Inherent Governmental Functions and develop policies to implement the Federal Activities Inventory Reform Act (Fair Act, P.L. 105-270), statutes are not written to forbid delegation of those activities, rather the term “inherent” is viewed as a self-contained protection from non-federal control (see Federal Register Vol. 75, No. 61, March 31, 2010, pp. 16188-16197). By establishing a legal standard, the new law could create a presumption that federal statutes must contain an explicit prohibition of delegation.

Secondly, the new Disclaimer Section, (Section 411 of H.R. 4347) states: Nothing in this title expands or alters any statutory authority of the Secretary so as to authorize the Secretary to enter into any agreement under section 405(b)(2) or 405(b)(3)...in a case in which the law establishing a program **explicitly prohibits the type of participation sought by the Indian tribe** (without regard to whether one or more Indian tribes are identified in the authorizing law); or... .

Such a restriction vitiates the protections of the 1994 statute as federal laws establishing broad conservation programs simply is not worded to prohibit specific delegations to specific entities. Rather, they contain clear delegations to the agencies of the Department of the Interior intended by the Congress to administer the programs functions, services and activities. Those safeguards should be maintained.

The Blue Goose Alliance urges the Senate Committees and Subcommittees with jurisdiction over the Refuge System and the Park System to work with the Senate Indian Affairs Committee to have the language in H.R. 4347 Section 411 amended to return it to the 1994 Disclaimer Clause, and to delete the definition of Inherent Federal function now contained in Section 401(7).

The Blue Goose Alliance is a national non-profit organization dedicated to maintaining the integrity of the National Wildlife Refuge System, to increasing its stature and perpetuating it in strategically important ways for the fish, wildlife and plants depending upon it for sustenance for the benefit of the American people.

For further information, contact:

William C. Reffalt, Vice President and Issues Coordinator
Blue Goose Alliance
1050 Matador Dr. SE
Albuquerque, NM 87123-4223
Phone: (505) 299-6069
Email: w.c.reffalt@comcast.net

This Bulletin and all previous Bulletins are available in PDF format at
<http://www.bluegoosealliance.org>

**NATIONAL WILDLIFE REFUGES....
WHERE THE EXTRAORDINARY IS EVERY DAY!**

Ronald Fowler
Vice-President Communications
Blue Goose Alliance
bluegoosealliance@gmail.com