

Blue Goose Alliance Bulletin

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CHRONOLOGICAL SUMMARY: RELEVANT EVENTS AND DOCUMENTS

**Annual Funding Agreement with the Confederated Salish & Kootenai Tribes
involving the National Bison Range Complex**

Summary as of March 4, 2007

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NOTE TO READERS

The passage of time produces an information gap impacting sustained public involvement regarding the annual funding agreement between the US Fish and Wildlife Service, managers of the National Bison Range Complex, and the Confederated Salish & Kootenai Tribes. This document has been designed as a tool to help fill that gap and empower community discussion and action.

Through chronological presentation, the document presents the evolution of the issue and its increasing complexity. Through brevity of explanation, it expedites, as best as possible, breadth of understanding. Through embedded links to available documents, it provides access when information depth is desirable and available.

Periodically, as events occur and as new sources of information become available, this document will be updated. The revised document will be at <http://www.bluegoosealliance.org/info/nbrupdate>



AN INTRODUCTION: WHAT IS AN ANNUAL FUNDING AGREEMENT?

The annual funding agreements discussed in this document are, in basic terms, a tribal entitlement program that is available to Native American tribes, at their request, as non-competitive contract opportunities. The agreements were created by Congress as a Department of the Interior (DOI) program under the Self-Governance Act (SGA). The SGA was included in 1994 amendments to the Indian Self-Determination and Education Assistance Act. It provided that certain "programs, functions, services, and activities, or portions thereof" of DOI bureaus, other than the Bureau of Indian Affairs, are eligible to be administered by a qualifying tribal government. The SGA established that the Secretary of the Interior (Secretary) may include programs that are of "special geographic, historical, or cultural significance" to a tribe. Subsequently, the DOI published lists of eligible programs in the Federal Register.

In action, the SGA allows a qualifying tribal government to request an annual funding agreement (AFA) for a program that is significant to it, designated as eligible by the DOI and within any departmental agency except the Bureau of Indian Affairs. In this usage "program" may refer to any land or resource management responsibility deemed eligible by the DOI. Among the eligible DOI agencies is the US Fish and Wildlife Service (FWS), the agency responsible for managing the National Wildlife Refuge System. This System, its resources and law are, in particular, discussed here. As the DOI program also impacts national parks, monuments and fish hatcheries, some aspects of this discussion may have relevance to those publicly-held resources.

While the SGA defines the overall program and provides the Secretary with discretionary authority, it also includes a significant limitation: "Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities...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."

As application of the SGA for annual funding agreements has been limited to date, boundaries on it set by existing statutes are only now being tested. The meaning of the term "inherently Federal" has not been legally clarified. Neither has been the impact of statutory limits of other law on SGA authority e.g. the National Wildlife Refuge System Administration Act.

◆ Code of Federal Regulation, SGA AFA: <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=3797355084+21+0+0&WAISaction=retrieve> : Page down to [[Page 1165]], marked on the left side of the page, then to Sec. 1000.80

◆ National Wildlife Refuge System Administration Act of 1966, as amended prior to 1/19/04: http://caselaw.lp.findlaw.com/cascode/uscodes/16/chapters/5a/subchapters/iii/sections/section_668dd.html



CHRONOLOGICAL SUMMARY

April 5, 2002: The first notice of the Department of the Interior list of eligible programs appears in the Federal Register. The list includes all the National Wildlife Refuges in Alaska, 14 National Wildlife Refuges in other states, 4 National Fish Hatcheries, and, under the management of the National Park Service, 34 parks, monuments, and recreation areas.

◆ Federal Register Notice: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-7386-filed.pdf

February 20, 2003: Negotiations begin for a proposed annual funding agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT) and involving lands within the Tribes' historical reservation boundaries within the National Bison Range Complex (NBRC). Local meetings during negotiations include Paul Hoffman, Deputy Assistant Secretary for Fish, Wildlife and Park of the DOI, CSKT leadership and FWS National Wildlife Refuge management. A few members of the local community attend one meeting but the public is not otherwise involved.

May 15, 2003: The first formally announced public meeting is held regarding the NBRC-AFA and is attended by Paul Hoffman, CSKT leaders and FWS management of the NBRC. Announced several days prior in local media, it is reported as a controversial issue. Media coverage continues subsequently, both locally and nationally.

July 14, 2004: First draft of the NBRC-AFA is released for public comment. It assigns broad functions to the CSKT and transfers about half of the existing NBRC positions to the tribe. Numerous conservation and hunting groups and members of the public submit comments.

◆ Federal Register Notice:

<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-15859.pdf>

◆ Draft NBRC-AFA: <http://www.refugenet.org/new-pdf-files/Draft-CSKT-FWS-AFA.pdf>

August 1, 2004: The first AFA in the National Wildlife Refuge System goes into effect at the Yukon Flats National Wildlife Refuge with the Council of Athabascan Tribal Governments following public comment and without Congressional action. Program commitment is limited to \$59,000 annually for narrowly defined responsibilities. It affects no Refuge employee positions. This AFA continues in effect without interruption into 2007.

◆ Federal Register Notice: <http://www.fws.gov/policy/library/04-15704.pdf>

◆ Yukon Flats AFA: <http://alaska.fws.gov/media/catg/afa.pdf>

December 15, 2004: A final NBRC AFA is published and will be activated unless there is Congressional oversight action. The agreement involves about 65% of the NBRC including the National Bison Range, the Ninepipe National Wildlife Refuge (NWR), the Pablo NWR and several Waterfowl Production Areas. Perhaps \$300,000 will be paid to the CSKT upfront with budget supplements as required for supplies. The agreement had been vigorously opposed by numerous

environmental, hunting and fishing groups, a large group of National Wildlife Refuge managers and members of the public.

◆ FWS & CSKT Press Release: <http://mountain-prairie.fws.gov/cskt-fws-negotiation/>

◆ Final NBRC AFA: http://mountain-prairie.fws.gov/cskt-fws-negotiation/nbrc_afa_12104final.pdf

March 15, 2005: After no response by Congress to public and member requests for formal review, the annual funding agreement between the FWS and the CSKT goes into effect.

September 9, 2005: A Federal Register notice updates the list of agency programs eligible for annual funding agreements. The list expands the number of eligible units of the National Park Service to 53.

◆ Federal Register Notice:

<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-17914.pdf>

May 2006: The FWS published a Calendar Year 2005 performance evaluation of the outcomes of the AFA. The document included assessments plus response comments by the CSKT. The FWS summary of CSKT performance reports that responsibilities were successfully met just 53% of the time.

◆ Public Employees for Environmental Responsibility (PEER) press release and NBRC AFA performance documents: http://www.peer.org/news/news_id.php?row_id=777: see links at end of text.

April 12, 2006: FWS and CSKT officials began negotiations for renewal of the AFA, preparatory to the end of the existing term on September 30th. During the course of these negotiations, the FWS prepared and offered a revised agreement. The CSKT rejected it.

September 20, 2006: Seven FWS employees file a joint grievance charging that the FWS, by establishing the AFA, created a hostile work environment. They asked, as resolution, that the AFA be terminated. The FWS, as a first action, hired an independent investigator to determine facts.

◆ PEER press release and joint grievance documents:

http://www.peer.org/news/news_id.php?row_id=766: see links at end of text.

September 30, 2006: The 18 month term of the AFA ends. Parties involved continue performance of responsibilities, without a contract, while negotiations continue.

October 4, 2006: The CSKT issues a draft agreement that includes terms that propose, in three years, transfer of all responsibility for the National Bison Range Complex to the CSKT. The agreement would expand involved NWR lands by about 50% to include refuges and wetlands that are beyond the historical boundaries of the Flathead Reservation.

◆ PEER press release: http://www.peer.org/news/news_id.php?row_id=784

◆ CSKT Draft of new AFA: http://www.peer.org/docs/nwr/06_15_11_cskt_plan.pdf

December 11, 2006: The FWS terminates CSKT performance and all further negotiation with the Contractor-Tribe by order of FWS Director Dale Hall. The basis is two-fold: (1) Failure to perform

and (2) Resolution of the conditions that created the joint grievance. The Tribal employees were gone from the Bison Range as ordered by the end of the next day.

◆ PEER press release and NBRC AFA termination documents:

http://www.peer.org/news/news_id.php?row_id=795; see links at end of text.

December 29, 2006: A Department of Interior (DOI) press release reopens negotiations with the stated purpose of reinstating the AFA. Subsequent DOI comment indicated the intention to reactivate the AFA by the end of January.

◆ DOI press release: http://www.doi.gov/news/06_News_Releases/061229.html

January 9, 2007: Leaked documents regarding the independent investigation confirm that the NBRC employee joint grievance is the outcome of an extremely hostile work environment and that management's recommendation for resolution is termination of the AFA. Subsequent to the leak of the investigator's findings, the Office of the Secretary of the DOI assumed all responsibility for actions and decisions regarding the grievance.

◆ PEER press release and joint grievance investigation documents:

http://www.peer.org/news/news_id.php?row_id=803; see links at end of text.

January 2007: CSKT file an administrative appeal with the Bureau of Indian Affairs, stating that statements by the FWS leading to the December 11th termination of the AFA are incorrect and the termination did not follow BIA regulations.

◆ CSKT press release: http://www.cskt.org/about/press/tribes_file_appeal011607.htm

January 18th, 2007: Letters to DOI and FWS officials from the attorney representing the employees involved in the joint grievance are posted. The complaint moves from an informal to formal grievance.

◆ PEER press release and joint grievance documents:

http://www.peer.org/news/news_id.php?row_id=807; see links at end of text.

January, 2007: The House Resources Committee decides it will ask the DOI for a briefing meeting with majority and minority staff. Committee staff begins to acquire information and plans for a briefing meeting following the return of DOI officials from meetings at the NBRC.

January 22-25, 2007: DOI officials visit Montana, meeting with FWS management and CSKT leaders preparatory to a renewed AFA. The visiting group included: Jim Cason, Acting Asst. Secretary for Indian Affairs and Dave Verhey as acting Asst. Secretary for Fish, Wildlife and Parks; Pat Ragsdale, Director of the Bureau of Indian Affairs; Dale Hall Director of the Fish and Wildlife Service. One evening session included a small group of local citizens and representatives of groups opposing the AFA. A summary of that session and a breakfast meeting the next day was prepared by a public attendee. The report includes key points for the planned AFA including ending any FWS documenting and reporting of events and degree and success of program elements.

◆ Public Attendee Report: Available on request to NBRC.AFA.Info@gmail.com.

January 24, 2007: Congressman Denny Rehberg, Montana's only Congressman, issues a press release announcing his actions requesting both an investigation of the AFA situation at the NBRC by the House Committee of Natural Resources and an investigation by the Government Accountability

Office (GAO). In the release Rehberg says "I look forward to the findings of these investigations so that we can resolve the serious issues surrounding this important Montana landmark."

◆ Rehberg Press Release and Letter:

http://www.house.gov/list/press/mt00_rehberg/012407_BisonRange.html

January 26, 2007: The FWS is informed that all communication regarding the AFA, media or Congress requests, must be routed through contacts in the Office of the Secretary of the DOI. This change in access is confirmed in contact attempts by a reporter and the staff of the House Natural Resources Committee.

January 29-31, 2007: Representatives of the DOI Inspector General's office visit the NBRC and the CSKT, making inquiries designed to determine if there has been federal wrong-doing associated with the AFA and, if so, identify the responsible individual or individuals. Several federal employees are interviewed as are CSKT employees and leadership.

January 30, 2007: A CSKT press release announces that it is writing the new agreement under the direction of Acting Asst. Secretary of Indian Affairs Jim Cason. This announcement makes it clear that the agency that will be responsible to taxpayers and wildlife for the outcome of this agreement, the FWS, is not involved in creation of the AFA. In the release, the CSKT continue to reference the boundaries of the historical reservation, as entitlement, omitting mention of CSKT reduction of legally-owned boundaries over time through recorded sales to the federal government and others entities.

◆ CSKT Press Release: Text available by request to NBRC.AFA.Info@gmail.com.

January 31, 2007: A call from GAO staff to a local citizen is the first indication that a GAO investigation has begun. At the same time the multiple, simultaneous investigations limit the progress of one another. The GAO investigation will not address issues related to FWS employees' joint grievance until the DOI investigation of that issue is complete. That same DOI investigation has had no known action since mid-January. The House Resources Committee decides that it will not take further action pending review of the report of the DOI Inspector General's investigation, a date that is unknown and not predictable.

February, 2007: The NBRC released its Calendar Year 2006 AFA Report, dated January 17, 2007. It summarizes the year's results, makes comparisons to AFA results in the prior year, lists activity-by-activity outcomes and includes detailed reports previously prepared on several specific events requiring detailed documentation during the year.

◆ NBRC AFA Report CY 2006: <http://www.montanasnewsstation.com/Global/Link.asp?L=230332>

February 12th, 2007: The House Natural Resources Committee, in a press release, announces the first in a planned series of oversight hearings investigating a wide range of issues at the DOI and specifically including the FWS in the list of agencies of particular concern. The announcement is significant, as the first such oversight on the DOI in six years. The first hearing is restricted to DOI with no direct bearing on the NBRC-AFA.

◆ Committee of Natural Resources Press Release:

<http://resourcescommittee.house.gov/News/PRArticle.aspx?NewsID=20>

◆ 2./16/07 DOI Oversight Hearing:

<http://resourcescommittee.house.gov/hearings/hearingdetail.aspx?NewsID=13>

February 15th, 2007: Congressman John Dingell of Michigan's 15th District, announces his request to the Chairs of the House Committee of Natural Resources and its Subcommittee for Fisheries, Wildlife and Oceans, asking for their action on the issue of the NBRC-AFA. In his request he places major emphasis on the statutory protections of the National Wildlife Refuge Administration Act, citing specific points of concern. He also commits two members of his own staff to work with the Committees' staff, taking a House leadership position on the issue.

◆ Dingell's Press Release and letter: http://www.house.gov/dingell/Press_Releases/110th/02-15-07-2.htm



CURRENT STATUS

The future of this situation remains undetermined. At the end of the meetings in Montana in January, DOI Acting Assistant Secretary Jim Cason stated that there would be a DOI announcement about its plans. As of the date of this document, there has been no announcement from the DOI. Some sources continue to believe that plans are underway to reactivate the AFA despite the investigatory activity and issues that produced termination of the prior agreement. It has been learned that another AFA has been proposed at the Sullys Hill National Wildlife Refuge in North Dakota and that the proposal used the NBRC agreement as its model. The FWS employee joint grievance is now under active review in the DOI Office of Hearings and Appeals. While the degree of Congressional interest in the situation seems to be increasing, no definitive action is underway or publicly known.



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