

# Blue Goose Alliance Bulletin

#58 - January 21, 2007

A task group of BGA Affiliates continues to monitor and develop responses to efforts by the Department of the Interior to implement an Annual Funding Agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT) at the National Bison Range. Bulletin # 56 provided the status of this issue as of last August.

On November 26, 2007, recently appointed Interior Assistant Secretary Lyle Laverty directed reinitiating deliberations. His directive included an action plan and called for completion of a new AFA no later than March 28, 2008.

The full text of Mr. Laverty's directive and action plan can be viewed at our website at: <http://www.bluegoosealliance.org/info/national-bison-range-correspondance>. There you will also find the complete text of a series of selected letters and articles spawned by Mr. Laverty's initiative. They are listed chronologically below with a few excerpts of key contents that demonstrate the continuing complexities and deep differences surrounding this topic.

---Public Employees for Environmental Responsibility (PEER) News Release December 7, 2007. **INTERIOR ISSUES NEW MARCHING ORDERS FOR BISON RANGE DEAL** — Funding Agreement with Tribe by Next March but Big Questions Remain

“Given that more than 75 national parks and wildlife refuges are eligible for similar tribal transfers, Interior needs to end its ad hoc approach and adopt a national policy on these funding agreements,” stated PEER Executive Director Jeff Ruch, noting that a proposed national policy has been pending at Interior for more than two years. “A function is either ‘inherently federal’ or it is not – what is inherently federal does not vary from place to place or mutate through negotiation.”

---December 17, 2007 letter from BGA President Redfean to Assistant Secretary Laverty

*.....Our position from our early involvement in this issue has been to question the DOI interpretations that the discretionary authorities in the ISDEAA take precedent over the mandatory duties placed on the Secretary and the FWS in the NWRSA.....*

*Congress and the courts have consistently held that National Wildlife Refuges are to be managed by the FWS. The "Game Range Act Amendments" of 1976 to the NWRSA and the Bureau of Land Management Organic Act went even further to prohibit disposal of any National Wildlife Refuge or to assign management of any refuge without formal consent of Congress. On this record, NWRSA supporters believe that a new Bison Range*

*AFA, with provisions similar to the previous 2004 agreement, would be contrary to refuge system law.*

---December 18, 2007 letter from former Assistant Secretary for Fish, Wildlife and Parks, Nathaniel P. Reed to Assistant Secretary Laverty

*I want you to know that I am deeply concerned over your support of an Annual Funding Agreement with the Confederated Salish and Kootenai Tribes concerning management of the National Bison Range. Rather than consider your objective as assisting the Native Americans to become managers of the Range, I think there are serious ramifications that have either been overlooked or you may not have considered. I was involved with Congressman John Dingell, a champion of the refuge system, to craft the legal basis that binds the USFWS to be the 'managers of the refuge system'.*

*I do not know what pressures you must be facing with the BIA and Members of Congress, but your fall back position is clearly legally defensible: management responsibility legally rests with FWS, It may well be timely to work with the tribes to delineate areas where they can cooperatively share some management and be involved in many facets of management planning. A Cooperative Agreement is legal and could be pursued.*

*The precedent of ceding management authority to the tribes may produce future misunderstandings that are limitless, as they may pertain to a great number of national wildlife refuges and even national parks.*

*The controversies that would emanate from such decisions would reverberate throughout the country and would be a hindrance on your efforts to restore a sense of stability in the office that you hold.*

---January 9, 2008 letter from Assistant Secretary Laverty to BGA President Redfearn

*Some of the confusion surrounding any AFA concerns the issue of inherently federal functions. Congress did not define this term in the Tribal Self-Governance Act.....*

---January 11, 2008 Redfearn letter to Assistant Secretary Laverty

*The point you make in your letter of January 9 that, "some of the confusion surrounding any AFA concerns the issue of inherently Federal functions" is exactly the point we have been making from the onset of negotiations for the AFA between the Yukon Flats National Wildlife Refuge and the Council of Athabaskan Tribal Governments at Fort Yukon and the CSKT. While the Service does contract and cooperate with private and public entities to perform maintenance, construction and other work at refuges, the distinction to be made is that the Service retains complete control in specifying the work, the standards, the objectives*

*and the disbursement of payments upon completion of work, etc. The AFA, as signed in 2005, immediately placed the control of funds with the CSKT, subjected the Service to function under Indian Law and assigned personnel and positions to be supervised by CSKT. The CSKT failed to perform adequately in more than 50% of projects assigned to them. Operating under dual management responsibilities is impractical in most any situation, but becomes impossible when the objectives are completely out of sync because of different purposes and different authorities under which they normally function.*

*We believe the Self-Governance Act recognizes the limits of AFAs by the inclusion of the disclaimer of application to inherent Federal responsibilities. The problem has evolved due to failure to accept the conflict between Indian Law and Refuge System Law. It seems that well-meaning people have led CSKT to believe that the ISDEAA does apply to complete management control of Refuge operations under Indian Law without regard to Refuge Laws, or that they can cherry-pick portions of the activities that occur in the management process by saying they are not an inherent Federal responsibility simply because they can on occasion be contracted.*

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