

Blue Goose Alliance  
907 Parkview Drive  
Tallahassee, FL 32311

December 17, 2007

Honorable Lyle Laverty  
Assistant Secretary for Fish and Wildlife and Parks  
U.S. Department of the Interior  
1849 C Street  
Washington, D.C. 20240

Dear Assistant Secretary Laverty:

As one of your earliest actions as Assistant Secretary, you have chosen to aggressively pursue resolution of a situation that dates from 2003 but with roots going back to 1995 and the intentions of the Confederated Salish and Kootenai Tribes (CSKT). While we agree with your observation that closure is needed, we are very concerned about the solution you have directed.

Your memorandum November 26, 2007 to the Regional Director, Fish and Wildlife Service (FWS), Region 6, on the subject of negotiating an Annual Funding Agreement (AFA) with the CSKT, makes note that you have learned the issue has been contentious on many fronts. That understatement elicits more than a small chuckle from me. The Blue Goose Alliance (BGA), a 501(c)(3) organization, has questioned the legal foundation and objectives of the Department of Interior (DOI) position in this matter since 2003.

The memorandum indicates that you may be receiving biased views from those advocating AFAs, views based solely on the Indian Self-Determination and Education Assistance Act (ISDEAA). While we write with concerns, we will provide information omitted from the memorandum and ask some questions. We hope you will be able to respond in the near future.

The issue is complex. We appreciate how it might be difficult to easily come to grips with its great importance. We note that you state "...that the NBR is an isolated island of land completely surrounded by the CSKT reservation." We understand the intent of this statement, but by extension one might say the CSKT reservation is a small island surrounded by Montana. Each is important for what they represent. In contrast it would be quite an understatement for the Refuge Complex that is the subject of this AFA. The NBRC includes three National Wildlife Refuges (NWRs) and nine Wetland Production Areas managed under international agreements. Those wetlands host game birds that disperse to 32 states, six Canadian provinces and Central America. The NBR's bison, stellar in genetic purity and health, were the source of the new herd at Denver's Rocky Mountain Arsenal NWR and for transfers improving bison herds at NWRs in the animal's historic grazing lands in Nebraska and Iowa. Decisions on an AFA cannot be "isolated" by geography or precedent from the greater conservation scale of the other 547 units in the National Wildlife Refuge System (NWRS).

Your statement that, *"the lack of resolution is distracting us from fulfilling our mission,"* gives us pause to wonder if undue priority is being given to the interests of the BIA Trust responsibilities without due regard to Interior's responsibilities for Federal programs to conserve fish, wildlife and parks *for the benefit of all Americans.*

Secretary Kempthorne has made the observation that the Department has dual responsibilities regarding the ISDEAA and the National Wildlife Refuge System Administration Act (NWRSAA) including

Amendments of both. 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. Such interpretations appear to have led the Salish and Kootenai people to believe they have a self-governance right to have the National Bison Range assigned to Tribal management control with all related funding and positions. There has been an unfortunate, persistent failure to publicly acknowledge the Congressional mandates of 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.

We request amplification of your statement, "...the Deputy Secretary and I have concluded that the cooperative agreement approach will not successfully meet all of our objectives..." We are aware of the CSKT objective to have complete management control of the NBRC. There is ample evidence the BIA supports that objective. We are uninformed on your objectives. We do believe that approval of such an AFA by your office and the FWS will set an unacceptable precedent affecting our National Wildlife Refuges and our National Parks.

Respectfully, Mr. Secretary, such fracturing and fragmenting of our premier Federal conservation land systems would be nothing short of a disastrous retreat in our Nation's commitment to world leadership of wildlife and parks conservation. And more, as from a November 2006 editorial in Kalispell, Montana's Daily Interlake: "It's a bad idea, if only because these federal lands should not be managed by 60 different governments with varying capabilities. Let's not make our federal government any more chaotic than it already is."

On a personal level my observations and experiences are that the FWS, and particularly the Refuge System, have had amicable relationships with Native American Tribes throughout the Nation for decades. An agenda to use Federal Indian Law to turn over management of our conservation lands to a multitude of diverse and separate tribal groups would surely poison what has here-to-fore been positive attitudes between Native Americans and environmental advocates. There are many, many success stories out there that will only suffer from such a negative shift.

Nothing is mentioned in the Action Plan about the requirement that exists for all Refuges to complete a Comprehensive Conservation Plan (CCP). That process calls for an extensive and very public NEPA process to determine future management needs and protocols. It also includes compatibility determination of any proposed uses or activities beyond those prescribed in the originating purpose or ones that contribute to the Refuge System Mission. It is our view that situations like this AFA are precisely why this mandate exists. The intensive AFA situation has forced the Bison Range CCP to the back burner. FWS CCP priorities should take precedence over any controversial agreement until the mandate is fulfilled.

The ISDEAA is specific in stating that inherent federal responsibilities are not subject to that law. The National Wildlife Refuge System and National Parks are inherent federal responsibilities. We find it disconcerting that your AFA Action Plan directs that the "FWS and CSKT must discuss and then determine which, if any, "programs, services..." ...are "inherently federal functions." It is totally inappropriate that the

Secretary should permit a federal legal term (inherent) to be redefined and misapplied through negotiation. There is no reasonable explanation for this interpretation but here again it would be precedent setting, potentially placing an inherent federal responsibility (National Wildlife Refuge) under the Self-Governance umbrella. We respectfully request that that particular directive and AFAs in general be withdrawn from the negotiation process. We know FWS does have authority to negotiate Cooperative Agreements and/or Memorandum of Understanding, both of which are appropriate under the NWRSA.

The Blue Goose Alliance will be conducting their annual meeting March 4-5, 2008 at Pacific Grove, CA. You would be most welcome if you could find time in your busy schedule to join us. We are a small group but well qualified for in-depth discourse on many issues pertinent to the present and future of the National Wildlife Refuge System. I look forward to your response to our invitation, questions and issues here raised.

Sincerely,

Don E. Redfearn, President

cc: Dirk Kempthorne, Secretary of Interior  
Dale Hall, Director of Fish and Wildlife Service  
Regional Director, Region 6  
Bill West, Refuge Manager National Bison Range