

Blue Goose Alliance
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Honorable Nick J. Rahall II, Chairman
Committee on Natural Resources
U.S. House of Representatives
Room 1324 Longworth HOB
Washington, DC 20515

June 1, 2007

Dear Mr. Chairman:

Your May 15, 2007 letter to Secretary of the Interior Kempthorne contains a considerable number of undocumented statements. It is certainly heavily biased in favor of the Confederated Salish and Kootenai Tribes (CSKT). We, the Blue Goose Alliance (BGA), hereby make an urgent request for your Committee to hold oversight hearings on the Annual Funding Agreement (AFA) at the National Bison Range Complex (NBRC).

The initial AFA at the NBRC, signed in 2005, resulted in serious failures by tribal employees at the refuges and led to the development of a hostile and unsafe working environment for the long-time Federal employees. Though we are still awaiting the report from Interior's Inspector General, we strongly believe that a full GAO investigation of the entire process at the Department of the Interior (DOI) is necessary to document what caused the failure of the AFA. Only then will it be possible for the committee, and the interested public to be privy to complete and unbiased information on this matter.

There is an apparent rush to assign fault to the Fish and Wildlife Service (FWS). Yet the entire process and program demonstrate serious and on-going deficiencies within DOI. To force yet another unworkable agreement onto the refuge and its staff will only exacerbate an already tenuous and unfriendly relationship. It serves neither the public nor the principals to reach such conclusions without unbiased investigations and an opportunity for the people on the ground to provide facts and details. There have been several detailed and well-documented reports by the Refuge Manager, the single person invested by law with the responsibility to manage the refuges to achieve the mandates provided in guiding statutes.

The work environment became so contentious that a joint grievance was filed by the Federal employees, followed by an investigation by an independent investigator. The result has been a settlement after the Office of Hearings and Appeals at DOI found the claims held merit, and directed the FWS to reach an appropriate settlement. None of those documents support the statements in your letter, or would seem to warrant unqualified support for the draft proposal now being studied by the FWS for compliance with its laws.

It is true the last properly published list of FWS projects eligible for negotiations under the Self-Governance Act (SGA) contained 34 refuges and hatcheries. To characterize that as "a very small percentage of the Refuge System" is unreasonably misleading. The land area encompassed by those refuges represents more than 80% of the lands administered by the National Wildlife Refuge System (NWRS). What was not stated is the fact that the list is not intended as definitive and can be increased by subsequent lists. It is worth noting that there have been requests to negotiate AFAs on refuges not listed.

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The potential impact upon the NWRS is at such a significant level that, in our view, the FWS is required to prepare an Environmental Impact Statement (EIS) on the effects of the current SGA program as administered by DOI for Refuges. Your committee needs such information to make a full and factual analysis of this program. The public needs and deserves to know the available alternatives and likely impacts, including costs and benefits from such large-scale alteration in the administration of the Refuge System.

The characterization of the refuge administration act in your letter is also misleading. While the NWRS has authority to contract with other parties for the conduct of specific activities or projects on refuges, the statute does not permit the "delegation of management" to other entities. The provision broadly referenced in your letter (subsection (b)(4) of the refuge act) states that the Secretary is authorized: "*Subject to standards established by and the overall management oversight of the Director, and consistent with standards established by this Act, to enter into cooperative agreements with State fish and wildlife agencies for management of programs on a refuge.*" It specifically does not include tribes or other entities, hence that might logically be construed that Congress withheld such authority.

It would have been appropriate and helpful when citing applicable law to include the important disclaimer clause in the SGA - "*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... .*"

As explained by Senator John McCain during debate on the 1994 amendments to the ISDEAA, it was not the intent of Congress in enacting Title IV of ISDEAA to make subject to self-governance compacts the ". . . 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 . . ." [140Cong.Rec.S14678-79 (daily ed. Oct. 7, 1994) (statement of Senator McCain)].

The limitations described and the continuing demand by the tribes to restrict management authority of FWS, while extending tribal authority on the refuges, should make it obvious to the committee that no AFA with provisions such as were forced by DOI at the NBRC can legally be authorized. We contend the SGA legislative history cited in your letter can not ignore the limitations enacted in the Disclaimer section. Neither can the SGA provide legislative authority where it does not exist.

We consider the discussion of a Tribal government not being a corporate entity to be an effort to dissemble the whole issue of the use of AFAs under the SGA. The CSKT purports to operate as a government or a corporate entity, as suits their purpose. On an income-source basis, the Tribe is unlike Federal, State and local governments. They have to operate on a for-profit basis in order to succeed. This they do quite successfully. But, when the SGA uses the AFA, all that is provided is supplemental income that is not stable because the refuges rely on taxes. Additionally, there is no statutory method or authority through AFAs that allow Tribes to progress from entitlement to actual independent governance. Neither the cultural interest nor fiscally aggressive nature of CSKT is well served by an AFA. When considered in a cold and

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logical manner this is probably why the legislation is specific in prohibiting AFAs with inherently Federal functions.

Mr. Chairman, you are well-known as a fair man, and an able legislator. The letter sent to Secretary Kempthorne surely does not fairly represent your ideals or your history. We ask you to reconsider your unqualified support and to move for hearings and an investigation by the GAO of the entire AFA episode at the NBRC. The public deserves factual information on this vital National Wildlife Refuge complex and its administration and management.

We request that you respond to the points made in this letter and to our requests for a GAO study and oversight hearings.

Respectfully,

Don Redfearn, President

cc: Honorable Don Young
Honorable Dirk Kempthorne
Honorable John Dingell
Honorable Madeleine Bordallo
Honorable Denny Rehberg
Honorable Max Baucus
Honorable Jon Tester