

Blue Goose Alliance
907 Parkview Drive
Tallahassee, FL 32311

July 30, 2007

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

Dear Mr. Chairman:

Mr. James Steele, Jr., Chairman of the Confederated Salish and Kootenai Tribes (CSKT) has copied you with his letter of July 12, 2007 to the Blue Goose Alliance (BGA). The letter is fraught with ambiguities concerning my letter to you of June 1, 2007. The most significant items of his concern seem to be: the National Wildlife Refuge Administration Act (NWRAA) and subsequent Amendments; the Indian Self-Determination and Education Assistance Act (ISDEAA); the failure of CSKT to perform adequately under the Annual Funding Agreement (AFA) of 2005-06 at the National Bison Range Complex (NBR); the NBR employee grievance; the Ninepipe and Pablo Refuges that are managed as a part of the Refuge System under an easement; the CSKT contention they have never requested or sought exclusive management of the NBR.; and the capabilities, accomplishments, and record of CSKT in managing the natural resources on the Flathead Reservation.

We feel an obligation to provide clarifying comments to the items Mr. Steele wished to highlight as well as some few additional comments that should provide more useful background for the Committee's consideration.

The National Wildlife Refuge Administration Act and subsequent Amendments. We should have referenced a District Court order of some years ago that denied the Secretary of Interior the right to assign the U.S. Geological Survey the responsibility to conduct a study required to assess the wildlife and other resources on the Arctic National Wildlife Refuge. The study was a requirement of the 1002 section of the Alaska National Interest Lands Conservation Act. Part of that court decision was supported by the NWRAA that denies assignment of management responsibilities on a National Wildlife Refuge (NWR). Congressman Dingell has also challenged Secretary Kempthorne to show where in the NWRAA, or the ISDEAA, delegations of authority to manage refuges are extended beyond anyone other than the Director of the U.S. Fish and Wildlife Service.

The Indian Self-Determination and Education Assistance Act. The Department of the Interior (DOI) continues to ignore that section of the ISDEAA that negates any attempt to alter existing statutory authorities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. The DOI has claimed the power to determine by policy what is, and what is not, an inherent Federal responsibility, thereby side-stepping the explicit restrictions on the delegation of authority by the Secretary cited in the NWRAA.

The failure of the CSKT to perform adequately under the AFA of 2005-06. It is our view that the stage was set for the failure of the NBR AFA by the first Refuge AFA between the Council of Athabascan Tribal Governments (CATG) and the Yukon Flats National Wildlife Refuge, Alaska. Section 3 of that AFA stated unequivocally, "This agreement is authorized by and is to be interpreted in a manner consistent with title IV of the ISDEAA, Pub. Law 93-638... ." The acceptance immediately placed that refuge in the position of operating under Indian Law. The BGA is on record as opposing that AFA because it was a precedent-setting action for more elaborate and intrusive actions that would do nothing to enhance the mission or responsibilities of any refuge.

The drafting of the AFA between CSKT and the NBR became a contentious matter from its onset. Negotiations that began between the CSKT and the Regional Office of the FWS soon evolved into negotiations between CSKT and the Office of the Secretary. The result was a convoluted lengthy document incorporating extensive responsibilities, transferring more than half the staff of the NBR to the CSKT with line authority that put Federal and tribal regulations in direct conflict. As the only tool available for purposes of statutory accountability the Refuge Manager generated extensive, detailed records of AFA activity progress. These records became the performance assessments that describe the outcome of the badly flawed and failed agreement. Those documents are a matter of record. If ever there was an example of why dual supervisory responsibility on the same project won't work, this was it. The refuge actually suffered a setback in operational efficiency and effectiveness. Yet, CSKT has been relentless in seeking extended funding and term of the agreement time, leading toward eventual total control of the Bison Range.

The National Bison Range Employee Grievance. Mr. Steele attempts to downplay the Bison Range employee grievance by inserting reference to an informal Equal Employment Opportunity (EEO) investigation initiated by the Interior Department. He demonstrates a lack of familiarity with governmental personnel procedures as the EEO matter is not related to a grievance. It is a reference of interest only as to the role that the DOI may have played in attempting to learn the depth of the allegations in the grievance. Whatever the charges in the situation, they were apparently of such magnitude that the Director of the FWS had little choice but to terminate the informal extension of the AFA and to cease all negotiations for another AFA. It is worth noting that this situation appears to have been of concern to Chairman Steele for some time. On January 18 of this year, in a story in the Tribe's newspaper, the *Charkoosta News*, he says, "We look forward to working with the EEO and OIG investigators and correcting the record so we can repair the damage done to CSKT's reputation...." Privacy Act restrictions will preclude any examination of the final Grievance conclusions, so it appears it would be meaningful to the CSKT, and to all interested parties, to see the report on overlapping issues that was completed during the same time by the DOI Inspector General's Office. That report is yet to be made public.

The Ninepipe and Pablo Units of the NBRC are operated under an easement from CSKT. Mr. Steele makes some kind of mental connection that because these two units of tribal lands are under an easement agreement and operated as National Wildlife Refuges, and that the NBR is within the historical boundary of the Flathead Indian Reservation, all should be owned, managed and operated by CSKT. What he fails to reveal or discuss is that the CSKT Business Committee originally requested the Pablo and Ninepipe easement arrangement and supported the special appropriations measure that made payment to the tribes. Further, the BGA has serious doubts about tribal willingness to openly accept basic wildlife practices and procedures of the NWRS since there are long-standing, unresolved incompatibility issues involving CSKT activity at both Ninepipe and Pablo.

CSKT contend they have never requested or sought exclusive management of the Bison Range. Mr. Steele professes a benign and cooperative attitude toward the NBR in his letters, but such protestations ring hollow when reviewing the many statements by CSKT leadership subsequent to the 1994 passage of the Self-Governance Act:

Looking at the background of the AFA effort as early as May 26, 2003, the NPR's *Morning Edition*, reporter Kathy Witkowsky spoke with CSKT Natural Resources Head Clayton Matt: Mr. MATT: "This bison range, we will manage it. I believe that it's a matter of time, and I believe that buffalo are coming back to us." Ms. WITKOWSKY: "If his people have their way, Matt's dream will soon come true. The Confederated Salish and Kootenai Tribes have asked to take over management of the bison range..."

In a November 24, 2003 story in the *New York Times*, Jim Robbins wrote about the CSKT: "A mission statement in 1996 said the tribes would "strive to regain ownership and control of all land within our reservation boundaries."

On June 3, 2003 in verbal and written testimony before the U.S. Senate Committee on Indian Affairs, Clayton Matt and then-Chairman Fred Matt requested the Senators support for "our proposal to manage the National Bison Range complex..."

Last fall, on November 22, 2006, a story by reporter Vince Devlin in *The Missoulian* stated: "Control of the National Bison Range is again on the negotiating table - and again sparking a fierce debate. The Confederated Salish and Kootenai Tribes are talking with the U.S. Department of the Interior and the U.S. Fish and Wildlife Service about a complete takeover of one of the nation's oldest wildlife refuges, which sits in the heart of the Flathead Indian Reservation. The phased takeover would begin in 2007 and be completed by 2010." This story followed the CSKT's draft proposal of October 4, 2006 proposing a greatly expanded AFA for fiscal years 2007 to 2011. The strategy leads an expansion to include all Refuges of the NBR, inside and beyond historical reservation boundaries, adding functions including law enforcement, and by FY 2011 placing all management with the CSKT.

And the latest, April 19, 2007, in a story in *The Valley Journal*, reporter B.I. Azure, states: "McDonald (Rob McDonald, CSKT spokesperson) reiterated that it is no secret that the Tribes eventually want full management control of the NBR."

For the past ten years, the CSKT's intent has been repeated, reconfirmed and remained unchanged -- except in the letters of Chairman Steele to me and copied to you and others who are concerned. His action, unfortunately, is a disparity that puts to question the veracity of any CSKT statement.

The capabilities, accomplishments and record of CSKT in managing the natural resources on the Flathead Reservation. The touting of the accomplishments of CSKT managing their natural resources has continually been offered up as justification for their capability to assume management and supervisory control of a National Wildlife Refuge. The BGA has never taken issue with the successes on tribal lands - from all accounts they are to be lauded. That is not the issue. We believe the CSKT are fortunate to have the NBR and the bison it protects in such close proximity. It provides a unique opportunity, without cost, for tribal members to enjoy and cherish the situation, especially when considering the numerous Native American tribes who have parallel historical, cultural, economic and social values involving this iconic American animal.

Why the Blue Goose Alliance opposes Annual Funding Agreements. Comments have been made in several instances alluding to the motives of the BGA, and others, for opposing the AFA. Most allude to bureaucrats or racists. The BGA is a not-for-profit 501(c)(3) organization and we offer the following summary to clarify and to dispel negative "guesses" as to who we are, why we champion the protection of National Wildlife Refuges, and why we adamantly oppose AFAs:

1) - National Wildlife Refuges are an inherent Federal responsibility. This is self-evident from the weight of presidential orders, legislation, and International Treaties that date more than a century ago. The fundamental bases for these federal authorities over wildlife reside in the Constitution. In 1842 the Supreme Court declared that wildlife was not private property, owned by individuals, but rather the collective property of all the people. Based in part on section one of the original Lacey Act of 1900, the federal government initiated actions to reserve lands specifically for wildlife conservation. Today's 547 units of the NWR System are direct lineal descendants of those first reservations. In 1906 Congress accepted the first refuges established by presidential authority. Since then numerous statutes applicable to National Wildlife Refuges have been enacted. In 1966, the NWRAA defined the System

and placed all refuges, whatever their previous nomenclature, under that umbrella. Subsequent amendments to that Act removed authority of the President and Secretary of the Interior to revoke any refuge. Neither of them has authority, absent explicit law, to reassign management of a NWR to an agency, organization, or other entity beyond the U.S. Fish and Wildlife Service. For more background and details we refer you to the Blue Goose Alliance Bulletin #29 of June 20, 2003 on the BGA website at <http://www.bluegoosealliance.org>.

2) - The disclaimer clause in the ISDEAA to enter into Annual Funding Agreements is explicit in stating that nothing 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 with respect to functions that are inherently Federal.

3) - We have stated that CSKT is not authorized (i.e. qualified) to assume management of the NBR. We continue to stand by that statement in light of congressional delegation of authority for many individual refuges and the System as a whole. This includes the practices and procedures normally applied to operations of refuges individually and collectively. It is a system of lands and waters dedicated to the preservation, conservation and management of wildlife and their habitats for the benefit and enjoyment of All Americans. Over the past century, the system has evolved as the premiere model in the world for protecting and managing wildlife. For this to occur has required dedicated professional managers and staffs. Indeed, the NBR would not exist today had it not been for farsighted individuals taking the initial steps to set aside the land, and the professional staffs to carry on, to save the bison. Little wonder then that the management of a National Wildlife Refuge is considered an inherent Federal responsibility.

Mr. Chairman, Mr. Steele's letter is a not so subtle effort to smooth over contradictions, failures, illegal actions, and other shortcomings of procedures to gain the support of your Committee in the quest of CSKT to take control and ownership of the NBR. We trust the foregoing background information will be of assistance in your considerations for carrying out Committee responsibilities for protecting all the natural resources and values to be found within our National Wildlife Refuge System. Future generations depend on actions you and your committee imposes and support in such endeavors. Please do not hesitate to call on us for any additional information that might be of value to you.

Respectfully,

Don E. Redfearn, President

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