

July 12, 2007

Mr. Don Redfearn, President
The Blue Goose Alliance
907 Parkview Drive
Tallahassee, FL 32311

Re: Blue Goose Alliance Letter to House Natural Resources Committee Chairman

Dear Mr. Redfearn,

On behalf of the Confederated Salish & Kootenai Tribes (CSKT), I would like to respond to your letter, dated June 1, 2007, to House Natural Resources Committee Chairman Nick Rahall concerning the National Bison Range Complex (NBRC).

Your letter requests that the Committee hold oversight hearings on our Annual Funding Agreement (AFA) with the U.S. Fish & Wildlife Service (FWS) under the Tribal Self- Governance Act, and you also ask Chairman Rahall to request an investigation by the Government Accountability Office (GAO). You may not be aware that, earlier this year, the GAO turned down a prior request to investigate this issue.

Your letter also references an FWS employee grievance which you say resulted in the Interior Department's Office of Hearings and Appeals directing FWS to reach "an appropriate settlement." The inference in your letter is that CSKT was somehow found to be at fault. In fact, in the FWS employees' original informal grievance they alleged that the U.S. Fish & Wildlife Service had created a hostile work environment simply by virtue of the AFA being in place - a clear demonstration of the resistance some FWS staff harbor against CSKT and the AFA. CSKT was never provided with a copy of the complaint or any information about what was alleged although we understand allegations of harassment by CSKT staff were claimed. An informal Equal Employment Opportunity (EEO) investigation into the allegations was initiated by the Interior Department. After this informal phase, the FWS staff were advised of their right to file a formal EEO complaint and they chose not to do so. We always knew that FWS staff allegations of harassment by CSKT staff were without merit and we believe this was likely what FWS staff were advised during the informal phase of the EEO investigation, hence their decision not to file a formal complaint lest it be deemed frivolous.

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Instead, last January FWS staff filed a formal grievance under FWS' internal administrative procedures. CSKT has not been provided any information about the substance of the grievance or its resolution. CSKT was never asked to provide any information with respect to the grievance and, as far as we are aware, this grievance did not involve allegations against CSKT staff but instead grieved FWS actions. Your letter states that the grievance resulted in "an appropriate settlement" but does not give the reader any information as to what that settlement involved, what findings were made in the grievance, or whether anyone was determined to be at fault for anything.

The rest of your letter repeats the Blue Goose Alliance's contention that federal law does not allow Tribal Self-Governance contracting of Refuge management. Your position is not shared by the long-serving Chairman and Ranking Minority Member of the House Natural Resources Committee, nor is it shared by current Montana Senator Jon Tester or former Montana Congressman Pat Williams, who was involved with passage of the Tribal Self-Governance Act. We do not believe your position is shared by the Interior Department. In fact, during a meeting in Washington D.C. last fall, FWS Director Dale Hall had agreed to a CSKT proposal to phase in tribal management at the NBRC over a multi-year period. He then directed CSKT to submit our proposal for phased-in management to FWS' Denver Regional Office for final negotiations. It was around this time that FWS staff suddenly made allegations of a hostile work environment at the Bison Range, followed by accusations of insufficient bison feeding - providing FWS with a convenient excuse to cease negotiations. I believe you have copies of our responses to these fabricated allegations; if you do not, I would be pleased to provide them to you.

The timing of the abrupt allegations of a hostile work environment was especially suspect because FWS had just completed its exhaustive "evaluation" of CSKT's performance at the NBRC over the prior year and it contained no allegations, criticisms or other comments on any CSKT staff behavior. While that "evaluation" was riddled with subjectivity, errors and omissions, it was quite comprehensive in nature. It is impossible to believe that such a major issue as hostile work environment was not detected as part of that extensive evaluation - the drafting of which involved the same FWS staff who had alleged a hostile work environment.

To the contrary, it was CSKT staff that endured a hostile work environment while encountering resistance on a daily basis from FWS staff. The response of our tribal staff was to keep their nose to the grindstone and to complete their work duties. We are proud to say they accomplished this and I believe you have a copy of our annual report summarizing those accomplishments. I believe you also have a copy of our rebuttal to the FWS "evaluation", which we believe was drafted with an eye to creating a record which would justify discontinuing our AFA.

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The Blue Goose Alliance has asserted in the past that every management function, program, service, or activity conducted by, or on a NWR is an inherent Federal responsibility (see your letter to me dated October 16, 2006). This absolutist position, which claims that even routine maintenance, visitor service and biological tasks are somehow inherently federal functions, does not withstand legal scrutiny, as I have explained in my prior letters to you dated September 18, 2006 and October 30, 2006. Taking that kind of position seems to be more a result of an absolute opposition to any Tribal Self-Governance participation at National Wildlife Refuges, despite Congress' clear authorization. The Blue Goose Alliance's opposition appears to be rooted in part in your fear that, as you have stated in a past letter, acquisition of the land or some other "hidden agenda" is the motivation for CSKT's efforts to secure a Self-Governance agreement for the NBRC. CSKT has never attempted to acquire the NBRC (keeping in mind CSKT already owns the Ninepipe and Pablo Refuges) and the Tribal Self-Governance Act does not allow such an action. Under our FY 2005-06 AFA, and any future AFA, the National Bison Range would continue to be protected by the sale/conveyance restrictions which apply to all refuges under the National Wildlife Refuge Administration Act (NWRAA) (16 U.S.C. § 668dd(a)(5)). This is a reflection of the fact that the NBRC's status as a federal Refuge does not change just because of Tribal Self-Governance contracting - a fact demonstrated during the tenure of our FY 2005-06 AFA.

While your letter takes issue with Chairman Rahall and Congressman Don Young's statement that Tribal Self-Governance contracting is consistent with the NWRAA, you also quote the very section of that Act that explicitly authorizes agreements with non-federal entities (state fish & wildlife agencies) for the management of programs on a refuge (16 U.S.C. § 668dd(b)(4)). This contradicts your earlier assertions that every activity on a refuge is inherently federal and can not be contracted out. Such activities are therefore not precluded by the Tribal Self-Governance Act's prohibition contracting "inherently federal functions". The Tribal Self-Governance Act explicitly authorizes tribal governments to contract Interior Department programs, regardless of which bureau or agency operates them, if the tribe can demonstrate that the program is of special geographic, historical or cultural significance to it (25 U.S.C. § 458cc(c)). No one questions that CSKT's relationship with the National Bison Range Complex meets all three of those criteria. Further, no one questions that CSKT is capable of managing the NBRC.

As I have pointed out to you in the past, CSKT is a landowner of two of the Refuges which are part of the NBRC. CSKT owns the land upon which the Ninepipe and Pablo National Wildlife Refuges are located and FWS operates them pursuant to easements. Like the National Bison Range, the Ninepipe and Pablo Refuges are wholly located within the Flathead Indian Reservation.

Under canons of statutory construction, Congressional statutes which are *in pari materia* (i.e., address the same subject matter) are to be read in harmony with each other. *Erlenbaugh v.*

United States, 409 U.S. 239 (1972). The NWRAA and the Tribal Self-Governance Act can easily be harmonized in the following common-sense manner: that Congress, via the NWRAA, directed the Interior Secretary to administer the Refuge System through FWS and that it later authorized the Secretary and FWS to contract refuge activities to qualifying tribal government entities through the Tribal Self-Governance Act (25 USC § 458cc(c)).

There is no ambiguity as to Congress' intent under the Tribal Self-Governance Act. Congress specifically requires the Interior Secretary to interpret each Federal law and regulation in a manner that will facilitate: 1) the inclusion of programs, services, functions and activities into an AFA; and 2) the implementation of AFA's. See 25 U.S.C. § 458cc(i)(1) and Section 3.A.1 of our FY 2005-06 AFA. Federal regulations go beyond that and state that it is Interior policy for "all bureaus" to negotiate Self-Governance agreements in good faith and to implement policies and practices that ensure that "the letter, spirit, and goals of the Tribal Self-Governance Act are fully and successfully implemented." See 25 C.F.R. §§ 1000.4(c)(5) and (c)(8). Nothing in the Self-Governance statutes and regulations divest either the Interior Secretary or FWS of their statutory responsibilities for overall administration of the National Wildlife Refuge System. Instead, the Tribal Self-Governance Act provides a powerful tool - cooperation with tribal governments - which allows the Secretary and FWS to better manage refuges in certain situations. This is similar to how the NWRAA explicitly allows the Secretary and FWS to work with State governments for management of refuge programs (again, highlighting that such local refuge work can not be deemed "inherently federal" when Interior and FWS retain the oversight for performance of such work).

Keep in mind that CSKT has never requested "exclusive" management of the NBRC, nor could it contract "exclusive" management under the Tribal Self-Governance Act. CSKT has requested to contract with FWS for local program operation and management authority at the NBRC; FWS would retain oversight management of, and responsibility for, the NBRC, which could be conducted from either FWS' Regional or Central Offices or even other Montana field offices, similar to other federal agency programs which CSKT contracts. What Self-Governance opponents fail to recognize is that FWS can, and should, be an active and productive partner in a Tribal Self-Governance partnership at the Bison Range. That has been CSKT's goal all along.

It is also important to remember that nothing compels the Interior Department to contract the same scope of activities/responsibilities to another tribe that has not demonstrated the same capacity as CSKT in federal program contracting and/or natural resources management. In terms of setting precedent, there are no situations where a tribe has the same kind of connections as CSKT has to the NBRC - which is the prerequisite for this type of Self -Governance contracting. CSKT ownership of two of the refuges that make up the NBRC is just one of the many characteristics which distinguish the NBRC situation from that of other refuges.

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We agree with Chairman Rahall and Ranking Minority Member Young' s statement that a fair implementation of an AFA at the NBRC furthers important congressional and federal objectives as identified in both the NWRAA and the Tribal Self-Governance Act. As Senator McCain stated on the Senate floor during prior to approval of the Tribal Self-Governance Act: "There is no doubt in my mind that self-governance has been a success. One of the ways that I measure the success of self-governance is to see how hard the Federal bureaucracy will fight to maintain the old ways." (*see pages 32425-26 of November 24, 1993 Congressional Record*). We have tried to work with FWS for thirteen years to secure fair implementation of a Self-Governance agreement at the National Bison Range Complex and we will continue to do so, despite the efforts of some to "maintain the old ways."

In closing, I am disappointed that you have not accepted my past invitations to visit the Flathead Indian Reservation and meet with us so you can see first hand CSKT's capabilities, staff, infrastructure, and past accomplishments. We would be happy to sit down and talk with you about our record in natural resources management, and we can refer you to various other governmental agencies with whom we have a long history of cooperative efforts. I believe that, once you have direct knowledge about CSKT and the Flathead Indian Reservation, it would dispel some of the misinformation found in your letters.

Sincerely.

/s/ James Steele, Jr.
James Steele, Jr., Chairman
Confederated Salish and Kootenai Tribal Council

cc:

Nick Rahall, Chairman, House Natural Resources Committee
Don Young, Ranking Minority Member, House Natural Resources Committee
Senator Max Baucus
Senator Jon Tester
Representative Dennis Rehberg
Representative John Dingell
Dirk Kempthorne, Secretary, Department of the Interior
Lynn Scarlett, Deputy Secretary, Department of the Interior
James Cason, Associate Deputy Secretary, Department of the Interior
Dale Hall, Director, U.S. Fish & Wildlife Service