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U.S. House of Representatives
Committee on Natural Resources
 Washington, DC 20515

May 15, 2007

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Honorable Dirk Kempthorne
 Secretary
 Department of the Interior
 1849 C Street, NW
 Washington, DC 20240

Dear Mr. Secretary,

As Chairman and Ranking Member of the Committee with jurisdiction over Indian legislation and the National Wildlife Refuge System, we wish to convey our support for the proposal by the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation to manage and operate the National Bison Range Complex (NBRC) via an Annual Funding Agreement (AFA) with the U.S. Fish & Wildlife Service (FWS) under the Tribal Self-Governance Act. We also are concerned that the lack of support of this agreement by some individuals within the FWS may have resulted in a distorted record concerning NBR activities under the AFA.

The Indian Self-Determination Act and the Tribal Self-Governance Act allow qualified tribes to contract to perform the activities of the Federal government for local program management. As part of the Tribal Self-Governance Act (Act), Congress specifically authorized tribes to manage certain types of non-Bureau of Indian Affairs programs within the Department of the Interior (Department). The Committee Report accompanying the Act (H. Rpt. 103-653) makes it clear that the Act applies to FWS programs and, in particular, to circumstances such as those found at the NBRC. We specifically stated in the Committee Report: *"The Committee intends this provision in conjunction with the rest of the Act, to ensure that any federal activity carried out by the Secretary within the exterior boundaries of the reservation shall be presumptively eligible for inclusion in the Self-Governance funding agreement."* As you know, the entire National Bison Range, along with its ancillary Ninepipe and Pablo Refuges, are located within the exterior boundaries of the Flathead Indian Reservation.

CSKT's connections to the NBRC, and its bison, make for unique circumstances. Also in this instance, CSKT owns the land on which two of the NBRC's ancillary refuges are located. In fact, the Ninepipe and Pablo National Wildlife Refuges are operated by FWS pursuant to easements obtained from CSKT. Another compelling fact is that the bison at the NBRC consist of descendants of a bison herd that was owned by CSKT Tribal members over a century ago. That herd was started and managed by Tribal members at a time when the bison were on the verge of extinction due to non-Indian activities.

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Under the Act, the Department is required to publish annually a list of non-BIA Interior programs that are eligible for compacting under Self-Governance. Currently, of the 546 refuges that exist in this country, the FWS list identifies only 18 in the lower 48 states and 16 in Alaska as eligible. Three of the 18 are wholly located within the Flathead Indian Reservation and are part of the NRBC. Since enactment of the Act, 13 years ago, there have been only two AFAs with the FWS: the first involving the Council of Athabascan Tribal Governments exclusively for project work at the Yukon Flats National Wildlife Refuge in Alaska; and the second being the CSKT-FWS AFA for the NBRC. In short, a very small percent of the Refuge System is listed as even being eligible for contracting, and of those 34 refuges, only two have tribal contracts associated with them.

The National Wildlife Refuge Administration Act (the Administration Act) does not prohibit the delegation of management activities to non-federal entities. To the contrary, the Administration Act makes multiple references to working with State governments on refuge programs: mandates that the Interior Secretary ensure coordination, interaction, and cooperation with adjacent landowners and State fish and wildlife agencies; requires the Interior Secretary to cooperate and collaborate with Federal agencies and State fish and wildlife agencies when managing refuges; and specifically authorizes FWS to "enter into cooperative agreements with State fish and wildlife agencies for the management of programs on a refuge." (16 U.S.C. § 668dd (b)(4)) (*emphasis added*). Working with Tribal governments in the same manner under the authorization of the Tribal Self-Governance Act should not be viewed any differently than partnering with State governments especially in this instance where the tribe owns the land on which the ancillary facilities of the NRBC National Bison Range Complex are located.

Some critics of the AFA have said that the principle of the 1976 amendments to the Administration Act was that there should never be any attempt to establish a second National Wildlife Refuge System by delegating FWS authorities to non-federal entities. We do not believe allowing CSKT to help manage the NBRC is creating a second refuge system. To the contrary, we see it as a logical partnership under both the Administration Act and the Tribal Self-Governance Act. Although the Refuge System's organic Act was significantly amended by the 1997 National Wildlife Refuge System Improvement Act, this law did not prohibit Tribal Self-Governance agreements.

This type of partnership is even encouraged by Executive Order 12996, entitled "Management and General Public Use of the National Wildlife Refuge System." Section 2(c) says:

"Partnerships. America's sportsman and women were the first partners who insisted on protecting valuable wildlife habitat within wildlife refuges. Conservation partnerships with other Federal agencies, State agencies, Tribes, organizations, industry, and the general public can make significant contributions to the growth and management of the Refuge System."

As we are both strong supporters of the Refuge System, we would be concerned if the NBRC AFA could serve as a precursor to privatization of refuges. Yet we are convinced that this is not the

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case. Agreements with other governments — be they State or Tribal — are not comparable to privatization schemes where for-profit entities take over federal programs. A Tribal government is not a corporate entity any more than a federal, state or local government is a corporate entity. Under the AFA and the Tribal Self-Governance Act, the NBRC remains a federally-owned Refuge and all applicable federal statutes and regulations that apply to the Refuge System continue to apply under the AFA. In the absence of compliance with this requirement, we would not support the NBRC AFA.

The CSKT have demonstrated a high level of performance in contracting a wide variety of other federal programs. Under their AFA, CSKT has stated repeatedly its commitment to operate the NBRC pursuant to the laws and regulations applicable to all refuges. In fact, the Act contains safeguards that protect against any jeopardy to natural resources or other federal assets. We understand that CSKT is the first tribe to designate an official wilderness: the Mission Mountain Tribal Wilderness Area. Their efforts have led to that area being one of the few places in Montana where there are grizzly bears. The CSKT also manage a large herd of Bighorn sheep, and they worked with the FWS to reintroduce the Trumpeter Swan to the Flathead Valley. In short, CSKT has excellent credentials to manage wildlife-related programs at the NBRC.

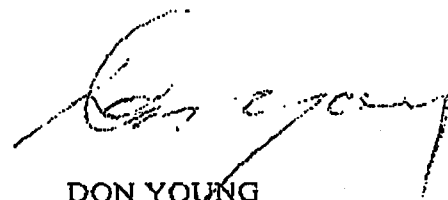
We also understand that, beyond the scope of work required of it through the AFA, the CSKT has devoted extensive tribal resources to the NBRC. At a time when the overall National Wildlife Refuge System budget has suffered, CSKT employees and volunteers literally worked thousands of hours at the NBRC. If a new AFA, with broader tribal management, might result in a continuation of that degree of tribal supplementation at a federal refuge, we would think the Department would do everything in its power to make it happen.

Finally, we are concerned to hear of the recent development wherein the FWS is proposing to radically downsize the number of staff and bison at the NBRC. The proposed reduction from 20 full time staff down to 6 staff is no way for the FWS to treat the refuge it recently referred to as the Refuge System's "Crown Jewel" nor does it make sense to reduce the number of bison from over 300 animals down to 100. Such cuts are not merely the NBRC's proportionate share of agency wide reductions, rather, they have every appearance of being proposals intended to make the CSKT disinterested in future management of the NBRC. We hope you will immediately reverse these proposed reductions.

We hope you agree that promoting a fair implementation of a Tribal Self-Governance AFA at the National Bison Range furthers important congressional and federal objectives as identified in both the Administration Act and the Tribal Self-Governance Act.

Sincerely,


NICK J. RAHALL, II
Chairman


DON YOUNG
Ranking Member