

CHRONOLOGICAL SUMMARY: RELEVANT EVENTS AND DOCUMENTS

Annual Funding Agreement with the Confederated Salish & Kootenai Tribes involving the National Bison Range Complex

Summary as of April 7, 2008

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NOTE TO READERS

The passage of time produces an information gap impacting sustained public involvement regarding the annual funding agreement between the US Fish and Wildlife Service, managers of the National Bison Range Complex, and the Confederated Salish & Kootenai Tribes. This document has been designed as a tool to help fill that gap and empower community discussion and action.

Through chronological presentation, the document presents the evolution of the issue and its increasing complexity. Through brevity of explanation, it expedites, as best as possible, breadth of understanding. In electronic form, through embedded links to available documents, it provides access when information depth is desirable and available.

Periodically, as events occur and as new sources of information become available, this document will be updated. The revised document will be at <http://www.bluegoosealliance.org/info/nbrupdate>



AN INTRODUCTION: WHAT IS AN ANNUAL FUNDING AGREEMENT?

The annual funding agreements discussed in this document are, in basic terms, a tribal entitlement program that is available to Native American tribes, at their request, as non-competitive contract opportunities. The agreements were created by Congress as a Department of the Interior (DOI) program under the Self-Governance Act (SGA), 1994 amendments to the Indian Self-Determination and Education Assistance Act. It provided that certain "programs, functions, services, and activities, or portions thereof" of DOI bureaus, other than the Bureau of Indian Affairs, are eligible to be administered by a qualifying tribal government. The SGA established that the Secretary of the Interior (Secretary) may include programs that are of "special geographic, historical, or cultural significance" to a tribe. Subsequently, the DOI published lists of eligible programs in the Federal Register.

In action, the SGA allows a qualifying tribal government to request an annual funding agreement (AFA) for a program that is significant to it, designated as eligible by the DOI and within any departmental agency except the Bureau of Indian Affairs. In this usage "program" may refer to any land or resource management responsibility deemed eligible by the DOI. Among the eligible DOI agencies is the US Fish and Wildlife Service (FWS), the agency responsible for managing the National Wildlife Refuge System. This System, its resources and law are, in particular, discussed here. As the DOI program also impacts national parks, monuments and fish hatcheries, some aspects of this discussion may have relevance to those publicly-held resources.

While the SGA defines the overall program and provides the Secretary with discretionary authority, it also includes a significant limitation: "Nothing in this section is intended or shall be construed to expand or alter existing statutory authorities...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."

The AFA instrument, under the ISDEAA, is also used by the BIA to fund tribe-managed programs that uniquely provide health, education or law enforcement benefits to tribe members. Differently, AFAs involving non-BIA programs serve all Americans. The SGA funds both AFA uses identically, transferring financial accountability and information access from federal to tribal jurisdiction.

As application of the SGA for annual funding agreements has been limited to date, boundaries on it set by existing statutes are only now being tested. The meaning of the term "inherently Federal" has not been legally clarified. Neither has been the impact of statutory limits of other law on SGA authority e.g. the National Wildlife Refuge System Administration Act.

◆ Code of Federal Regulation, SGA AFA: <http://frwebgate3.access.gpo.gov/cgi-bin/waisgate.cgi?WAISdocID=3797355084+21+0+0&WAISaction=retrieve> : Page down to [[Page 1165]], marked on the left side of the page, then to Sec. 1000.80

◆ National Wildlife Refuge System Administration Act of 1966, as amended prior to 1/19/04: http://caselaw.lp.findlaw.com/cascode/uscodes/16/chapters/5a/subchapters/iii/sections/section_668dd.html



CHRONOLOGICAL SUMMARY

April 5, 2002: A public notice of the Department of the Interior list of eligible programs for all of the Department's non-Bureau of Indian Affairs (BIA) agencies appears in the Federal Register. The list includes all 16 of the National Wildlife Refuges in Alaska, 14 National Wildlife Refuges in other states, 4 National Fish Hatcheries, and, under the management of the National Park Service, 34 parks, monuments, and recreation areas.

◆ Federal Register Notice: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-7386-filed.pdf

February 20, 2003: Negotiations begin for a proposed annual funding agreement (AFA) with the Confederated Salish and Kootenai Tribes (CSKT) and involving lands within the Tribes' historical reservation boundaries within the National Bison Range Complex (NBRC). Local meetings during negotiations include Paul Hoffman, Deputy Assistant Secretary for Fish, Wildlife and Parks of the DOI, CSKT leadership and FWS National Wildlife Refuge management. A few members of the local community attend one meeting but the public is not otherwise involved.

June 25 & 26, 2003: CSKT Chairman Fred Matt, in letters to Deputy Secretary Steven Griles and Assistant Secretary Paul Hoffman, describes recent negotiation activity and submits a revised proposal. He acknowledges Assistant Secretary Hoffman's commitment to make this negotiation his highest priority. The letter was released in March 2008 in response to a FOIA request.

◆ Chairman Matt letters of 6-25&26-03: Available on request to NBRC.AFA.Info@gmail.com.

March 18, 2004: CSKT Chairman Fred Matt, in a letter to FWS Regional Director Ralph Morgenweck, raises objections to changes made by the FWS in a recent AFA draft and includes a list of concerns regarding terms involving volunteer liability status, inclusion of tribal law and Title I (ISDEAA) provisions, carry-over funds and tribal lobbying of Congress. The letter was released in March 2008 in response to a FOIA request.

◆ Chairman Matt letter of 3-18-04: Available on request to NBRC.AFA.Info@gmail.com.

May 15, 2003: The first formally announced public meeting is held regarding the NBRC-AFA and is attended by Paul Hoffman, CSKT leaders and FWS management of the NBRC. Announced several days prior in local media, it is reported as a controversial issue. Media coverage continues subsequently, both locally and nationally.

July 14, 2004: First draft of the NBRC-AFA is released for public comment. It assigns broad functions to the CSKT and transfers about half of the existing NBRC positions to the tribe. Numerous conservation and hunting groups and members of the public submit comments.

◆ Federal Register Notice:

<http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-15859.pdf>

◆ Draft NBRC-AFA: <http://www.refugenet.org/new-pdf-files/Draft-CSKT-FWS-AFA.pdf>

August 1, 2004: The first AFA in the National Wildlife Refuge System goes into effect at the Yukon Flats National Wildlife Refuge with the Council of Athabascan Tribal Governments following public comment and without Congressional action. Program commitment is limited to \$59,000

annually for narrowly defined responsibilities. It affects no Refuge employee positions. This AFA continues in effect without interruption into 2007.

◆ Federal Register Notice: <http://www.fws.gov/policy/library/04-15704.pdf>

◆ Yukon Flats AFA: <http://alaska.fws.gov/media/catg/afa.pdf>

September 28, 2004: Representative Denny Rehberg, in a letter to FWS Director Steve Williams, requests budgetary information pertaining to the draft NBRC AFA and that the public comment period be extended due to the lack of said information. The letter was released in March 2008 in response to a FOIA request.

◆ Rep Rehberg letter of 9-28-04: Available on request to NBRC.AFA.Info@gmail.com.

December 15, 2004: A final NBRC AFA is published and will be activated unless there is Congressional oversight action. The agreement involves about 65% of the NBRC including the National Bison Range, the Ninepipe National Wildlife Refuge (NWR), the Pablo NWR and several Waterfowl Production Areas. Perhaps \$300,000 will be paid to the CSKT upfront with budget supplements as required for supplies. The agreement had been vigorously opposed by numerous environmental, hunting and fishing groups, a large group of National Wildlife Refuge managers and members of the public.

◆ FWS & CSKT Press Release: <http://mountain-prairie.fws.gov/cskt-fws-negotiation/>

◆ Final NBRC AFA: http://mountain-prairie.fws.gov/cskt-fws-negotiation/nbrc_afa_12104final.pdf

March 15, 2005: After no response by Congress to public and member requests for formal review, the annual funding agreement between the FWS and the CSKT goes into effect.

April 12, 2006: FWS and CSKT officials began negotiations for renewal of the AFA, preparatory to the end of the existing term on September 30. During the course of these negotiations, the FWS prepared and offered a revised agreement. The CSKT rejected it.

May 2006: The FWS published a Calendar Year 2005 performance evaluation of the outcomes of the AFA. The document included assessments plus response comments by the CSKT. The FWS summary of CSKT performance reports that responsibilities were successfully met 53% of the time.

◆ Public Employees for Environmental Responsibility (PEER) press release and NBRC AFA performance documents: http://www.peer.org/news/news_id.php?row_id=777: see links at end of text.

September 9, 2005: A Federal Register notice updates the list of agency programs eligible for annual funding agreements for all DOI non-BIA agencies. The list expands the number of eligible units of the National Park Service to 53.

◆ Federal Register Notice:

<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-17914.pdf>

September, 2006: The DOI Inspector General (IG) begins an investigation in response to allegations of federal wrong-doing in the NBRC AFA negotiation process.

September 20, 2006: Seven FWS employees file a joint grievance charging that the FWS, by establishing the AFA, created a hostile work environment. They asked, as resolution, that the AFA be terminated. The FWS, as a first action, hired an independent investigator to determine facts.

◆ PEER press release and joint grievance documents:

http://www.peer.org/news/news_id.php?row_id=766; see links at end of text.

September 30, 2006: The 18-month term of the AFA ends. Parties involved continue performance of responsibilities, without a contract, while negotiations continue.

October 4, 2006: The CSKT issues a draft agreement that includes terms that propose, in three years, transfer of all responsibility for the National Bison Range Complex to the CSKT. The agreement would expand involved NWRS lands by about 50% to include refuges and wetlands that are beyond the historical boundaries of the Flathead Reservation.

◆ PEER press release: http://www.peer.org/news/news_id.php?row_id=784

◆ CSKT Draft of new AFA: http://www.peer.org/docs/nwr/O6_15_11_cskt_plan.pdf

November 16, 2006: CSKT Chairman James Steele, in a letter to FWS Director Dale Hall, discusses CSKT concerns about the NBRC employee grievance. He describes a meeting in Washington on November 13, 2006 with Associate Deputy Secretary Jim Cason when Sharon Eller, Director of the DOI Office of Civil Rights, attended to explain the EEO complaint process and stated that in her opinion the resolution sought by employees was not suited to an EEO complaint. The letter was released in March 2008 in response to a FOIA request.

◆ CSKT J. Steele letter of 11/16/06: Available on request to NBRC.AFA.Info@gmail.com.

December 11, 2006: The FWS terminates CSKT performance and all further negotiation with the Contractor-Tribe by order of FWS Director Dale Hall. The basis is two-fold: (1) Failure to perform and (2) Resolution of the conditions that created the joint grievance. The Tribal employees were gone from the Bison Range as ordered by the end of the next day.

◆ PEER press release and NBRC AFA termination documents:

http://www.peer.org/news/news_id.php?row_id=795; see links at end of text.

December 11, 2006: The FWS compiled a background document for internal use responding to queries about the AFA termination. Supplemental information included states that approximately \$585,000 was paid to the CSKT in the period for fiscal years 2005, 2006 and 2007. The document was released in March 2008 in response to a FOIA request.

◆ FWS Q&A document of 12/11/06: Available on request to NBRC.AFA.Info@gmail.com.

December 29, 2006: A Department of Interior (DOI) press release reopens negotiations with the stated purpose of reinstating the AFA. Subsequent DOI comment indicated the intention to reactivate the AFA by the end of January.

◆ DOI press release: http://www.doi.gov/news/06_News_Releases/061229.html

January 9, 2007: Leaked documents regarding the independent investigation confirm that the NBRC employee joint grievance is the outcome of an extremely hostile work environment and that management's recommendation for resolution is termination of the AFA. Subsequent to the leak of

the investigator's findings, the Office of the Secretary of the DOI assumed all responsibility for actions and decisions regarding the grievance.

◆ PEER press release and joint grievance investigation documents:

http://www.peer.org/news/news_id.php?row_id=803; see links at end of text.

January 9, 2007: The Rocky Mountain Arsenal National Wildlife Refuge announces a pilot program aimed at improving NWRS bison conservation. It will transfer bison from the NBR to its site near Denver, an action that will also reintroduce the species to a landscape it once grazed. The program includes additional transfers of NBR animals to existing Refuge herds across the region, actions that are expected to enrich the genetic quality of all the herds.

◆ FWS Press Release of 1-9-07: <http://www.rma.army.mil/involve/PressReleases07/RMABison.html>

January 2007: CSKT file an administrative appeal with the Bureau of Indian Affairs, stating that statements by the FWS leading to the December 11 termination of the AFA are incorrect and the termination did not follow BIA regulations.

◆ CSKT press release: http://www.cskt.org/about/press/tribes_file_appeal011607.htm

January 18th, 2007: Letters to DOI and FWS officials from the attorney representing the employees involved in the joint grievance are posted. The complaint moves from an informal to formal grievance under the FWS Grievance process. It is not filed as an Equal Employment Opportunity (EEO) complaint.

◆ PEER press release and joint grievance documents:

http://www.peer.org/news/news_id.php?row_id=807; see links at end of text.

January, 2007: The House Resources Committee decides it will ask the DOI for a briefing meeting with majority and minority staff. Committee staff begins to acquire information and plans for a briefing meeting following the return of DOI officials from meetings at the NBRC.

January 22-25, 2007: DOI officials visit Montana, meeting with FWS management and CSKT leaders preparatory to a renewed AFA. The visiting group included: Jim Cason, Acting Asst. Secretary for Indian Affairs and Dave Verhey as acting Asst. Secretary for Fish, Wildlife and Parks; Pat Ragsdale, Director of the Bureau of Indian Affairs; Dale Hall Director of the Fish and Wildlife Service. One evening session included a small group of local citizens and representatives of groups opposing the AFA. A summary of that session and a breakfast meeting the next day was prepared by a public attendee. The report includes key points for the planned AFA including ending any FWS documenting and reporting of events and degree and success of program elements.

◆ Public Attendee Report: Available on request to NBRC.AFA.Info@gmail.com.

January 24, 2007: Congressman Denny Rehberg, Montana's sole Congressman, issues a press release announcing his actions requesting both an investigation of the AFA situation at the NBRC by the House Committee of Natural Resources and an investigation by the Government Accountability Office (GAO). In the release Rehberg says "I look forward to the findings of these investigations so that we can resolve the serious issues surrounding this important Montana landmark."

◆ Rehberg Press Release and Letter:

http://www.house.gov/list/press/mt00_rehberg/012407_BisonRange.html

January 24, 2007: Congressman Don Young, in a 3-page letter to Secretary Kempthorne, describes a meeting in the prior week of CSKT representatives and House Natural Resources Committee staff in regards to the NBRC AFA. As Ranking Member of the Committee, Mr. Young asks eight questions related to the termination of the NBRC AFA and the employee grievance.

◆ Representative D. Young letter of 1/24/07 : Available on request to NBRC.AFA.Info@gmail.com. January 26, 2007: The FWS is informed that all communication regarding the AFA, media or Congress requests, must be routed through contacts in the Office of the Secretary of the DOI. This change in access is confirmed in contact attempts by a reporter and the staff of the House Natural Resources Committee.

January 29-31, 2007: Representatives of the DOI Inspector General's (IG) office visit the NBRC and the CSKT for in-person interviews. . Several federal employees are interviewed as are CSKT employees and leadership.

January 30, 2007: A CSKT press release announces that it is writing the new agreement under the direction of Acting Asst. Secretary of Indian Affairs Jim Cason. This announcement makes it clear that the FWS, the agency responsible to taxpayers and wildlife for the outcome of this agreement, is not involved in creation of the AFA. In the release, the CSKT continues to reference the boundaries of the historical reservation, as entitlement, omitting mention of CSKT reduction of legally-owned boundaries over time through recorded sales to the federal government and other entities.

◆ CSKT Press Release: Text available by request to NBRC.AFA.Info@gmail.com.

January 31, 2007: A call from GAO staff to a local citizen is the first indication that a GAO investigation has begun. At the same time the multiple, simultaneous investigations limit the progress of one another. The GAO investigation will not go forward until the DOI investigation of that issue is complete. That same DOI investigation has had no known action since mid-January. The House Natural Resources Committee decides that it will not take further action pending review of the report of the DOI Inspector General's investigation, a date that is unknown and not predictable.

February, 2007: The NBRC released its Calendar Year 2006 AFA Report, dated January 17, 2007. It summarizes the year's results, makes comparisons to AFA results in the prior year, lists activity-by-activity outcomes and includes detailed reports previously prepared on several specific events requiring detailed documentation during the year.

◆ NBRC AFA Report CY 2006: <http://www.montanasnewsstation.com/Global/Link.asp?L=230332>

February 9, 2007: CSKT attorney Brian Upton, in a memorandum to Associate Deputy Secretary J. Cason, suggests a plan that would immediately reestablish CSKT involvement at the NBRC and summarizes the CSKT Notice of Appeal, filed January 9, 2007, as a legal basis for such action prior to further negotiation. The Notice of Appeal document was provided. The letter was released in March 2008 in response to a FOIA request.

◆ CSKT B. Upton memo with Notice of Appeal of 2/9/07 : Available on request to NBRC.AFA.Info@gmail.com.

February 12th, 2007: The House Natural Resources Committee, in a press release, announces the first in a planned series of oversight hearings investigating a wide range of issues at the DOI and specifically including the FWS in the list of agencies of particular concern. The announcement is significant, as the first such oversight on the DOI in six years. The first hearing is restricted to DOI with no direct bearing on the NBRC-AFA.

◆ Committee of Natural Resources Press Release:

<http://resourcescommittee.house.gov/News/PRArticle.aspx?NewsID=20>

◆ 2./16/07 DOI Oversight Hearing:

<http://resourcescommittee.house.gov/hearings/hearingdetail.aspx?NewsID=13>

February 15, 2007: Congressman John Dingell of Michigan's District 15, announces his request to the Chairs of the House Natural Resources Committee and its Subcommittee for Fisheries, Wildlife and Oceans, asking for their action on the issue of the NBRC-AFA. In his request he places major emphasis on the statutory protections of the National Wildlife Refuge Administration Act, citing specific points of concern. He also commits two members of his own staff to work with the Committees' staff, taking a House leadership position on the issue.

◆ Dingell's Press Release and letter: http://www.house.gov/dingell/Press_Releases/110th/02-15-07-2.htm

March 17, 2007: 16 bison arrive at the Rocky Mountain Arsenal NWR from the NBR, reintroducing a species that was native to the local high prairie but had not been seen there for >100 years.

March 23, 2007: The White House announces the nomination of Robert Lyle Laverty for the position of Assistant Secretary of Fish, Wildlife and Parks in the Department of the Interior.

March 23, 2007: A Federal Register Notice published by the FWS lists all of the National Wildlife Refuges recognized as eligible for annual funding agreements under the SGA. This Notice states that it applies to Fiscal Year 2007 and gives an expiration date of September 30, 2007.

◆ Federal Register Notice: <http://edocket.access.gpo.gov/2007/pdf/E7-5343.pdf>

April 11, 2007: The FWS announces several changes to the National Bison Range Complex. It will transfer management of several refuges to alternate Complex configurations and reduce personnel based at the NBRC headquarters in conjunction with a regional workforce adjustment produced by budget limitations at the national level. They also announce a new process of containing the number of bison at the NBR in a program that will use the herd's genetic diversity as a resource to enrich herds at other refuges, as announced 1-9-07 by the Rocky Mountain Arsenal NWR.

◆ FWS Press Release of April 11, 2007: <http://www.fws.gov/mountain-prairie/pressrel/07-27.htm>

April 27, 2007: FWS Region 6 Refuge Supervisor Dean Rundle, in a letter to CSKT Natural Resources Department Head Clayton Matt, describes terms offered in an April 9, 2007 meeting by the FWS and providing for a 5-year Cooperating Agreement at the NBRC, including reassignment of employee positions at the NBRC. The letter notes that the CSKT Tribal Council continues to seek an AFA arrangement.

◆ PEER press release and D. Rundle's letter: http://www.peer.org/news/news_id.php?row_id=857; see links at end of text.

May 15, 2007: Chairman Nick Rahall and Ranking Member Don Young of the House Natural Resources Committee, in a letter to Secretary Kempthorne, support a new NBRC AFA and allege that FWS staff have distorted the record of CSKT performance.

◆ Reps Rahall & Young letter of 5-15-07: Available on request to NBRC.AFA.Info@gmail.com.

May 17, 2007: Senator Jon Tester, in a letter to Deputy Secretary Lynn Scarlett, seeks a meeting of the two of them, a new AFA during FY 2007 and objects to any NBRC reduction in staff or herd size. The letter was released in October 2008 in response to a FOIA request.

◆ Senator Tester letter of 5-17-07: Available on request to NBRC.AFA.Info@gmail.com.

June 1, 2007: Bill West becomes Project Leader (Complex Manager) for the NBRC, replacing Steve Kallin who had transferred to the National Elk Refuge in Wyoming.

June, 2007: Although there is no official announcement, it becomes understood by word of mouth that the employee grievance was decided by the DOI/FWS in favor of the NBRC complainants. Settlement terms are not disclosed. A number of NBRC employees took positions elsewhere.

June 13, 2007: Representative John Dingell, in a letter to Secretary Kempthorne, describes a legal finding restricting Refuge management to the FWS, asks for a response to five questions on the topic of Refuge AFAs and that he provide a copy of the IG's NBRC-AFA investigation report.

◆ Rep. Dingell letter of 6-13-07: Available on request to NBRC.AFA.Info@gmail.com.

June 18, 2007: Mark Jette, aide to Senator Tester, in an e-mail to DOI Director of Congressional Affairs Matt Kales, discusses their joint weekly phone meetings regarding the NBRC AFA and expectation that new agreement proposals will soon be in Deputy Secretary Scarlett's hands. Citing concerns raised by the CSKT, he requests advance copies. The document was released in October 2008 in response to a FOIA request.

◆ M.Jette e-mail of 6-18-07: Available on request to NBRC.AFA.Info@gmail.com

June 27, 2007: Talking points provided to Secretary Kempthorne prior to a phone meeting with Senator Tester, state that the DOI has "twin responsibilities" to the SGA and NWRSA. The document was released in October 2008 in response to a FOIA request.

◆ Secretary Kempthorne talking points, 6-27-07: Available on request to NBRC.AFA.Info@gmail.com

October 29, 2007: The Senate confirms R. Lyle Laverty as Assistant Secretary of Fish, Wildlife and Parks in the Department of the Interior.

October 30, 2007: H.R. 3994, the Department of Interior Tribal Self-Governance Act of 2007, is introduced in the House by Representative Dan Boren and co-sponsored by Representatives Nick Rahall and Frank Pallone. The law significantly amends the SGA including repeated replacement of discretionary action by the Interior Secretary with required action on behalf of tribal governments.

◆ Text of H.R. 3994: <http://thomas.loc.gov/cgi-bin/query/F?c110:1./temp/~c110SVmzYE:e876>:

November 1, 2007: Chairman Nick Rahall and Ranking Member Don Young of the House Natural Resources Committee, in a letter to FWS Director Dale Hall, ask him to respond to a series of questions regarding the AFA and charge that he has misrepresented the manner in which the CSKT has participated in agreement discourse. Dates of CSKT letters to the FWS, said to address the issue, are cited. Copies of letters are not included.

Reps Rahall & Young letter of 11-1-07: Available on request to NBRC.AFA.Info@gmail.com.

November 2 and 7, 2007: Chairman Nick Rahall and Ranking Member Don Young of the House Natural Resources Committee, in a letter to Secretary Kempthorne, allege that FWS Director Dale Hall misrepresented the status involving reinitiating AFA negotiations to a House Subcommittee and that the FWS was the party responsible for the lack of negotiation action. ■■■ Representative John Dingell, in a letter to Secretary Kempthorne, asks why he has not received a response to his letter of July 30, 2007 nor to questions raised in person on September 12, 2007 nor a copy of the IG report that he requested by letter on June 13, 2007. He restates that AFA transfer of management is unsanctioned by law.

◆ PEER press release and the Representatives' letters:

http://www.peer.org/news/news_id.php?row_id=945; see links at end of text.

November 8, 2007: Hearing on H.R. 3994 is held by the House Natural Resources Committee with no resulting action. Associate Deputy Secretary Jim Cason, speaking for the DOI, opposes the bill's enactment.

◆ Testimony before the Natural Resources Committee:

http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=54&extmode=view&extid=124

November 20, 2007: The DOI Inspector General (IG) completes and internally publishes its investigation of allegations surrounding the original AFA negotiations and release of signed proposal. The report confirms "considerable and unusual influence" by senior DOI officials on negotiations. It also finds that the DOI and FWS failed to sufficiently notify individuals commenting on the draft AFA that identities and contact information would be provided to the CSKT. It concludes that there were no illegal actions involved. The report includes a section discussing the parallel employee grievance. The IG report is leaked to PEER, which releases it on December 7. The IG later releases a slightly redacted report.

◆ PEER press release and the IG's Report: http://www.peer.org/news/news_id.php?row_id=956; see links at end of text.

November 26, 2007: Assistant Secretary Laverty issues an order that the FWS negotiate a new NBRC AFA to be completed and signed by March 28, 2008. The order includes a memorandum of explanation and an action plan.

◆ PEER press release and Assistant Secretary Laverty's documents:

http://www.peer.org/news/news_id.php?row_id=956; see links at end of text.

December 31, 2007: President Bush signs the Open Government Act of 2007 into law. The law amends the Freedom of Information Act (FOIA). In Section 9, it amends FOIA to require that federal contractors provide the same information access as would otherwise have been provided by

the contracting federal agency. Yet to be legally tested, this change appears to disallow AFA provisions that transfer accountability and information access from federal to tribal jurisdiction.

◆ Open Government Act of 2007: <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:s2488>:

January 16-17, 2008: AFA Negotiations begin at a hotel in Missoula, Montana. Participants include principals of CSKT and NBRC negotiating teams, Assistant Secretary Laverty, lawyers representing each party, a CSKT lobbyist and a pair of facilitators, one selected by each of the two parties. The meeting's objective is to set ground rules for negotiation. No other individuals are allowed to participate or observe in the meeting room. The lead negotiators are CSKT Chairman James Steele and FWS Region 6 Refuge Supervisor Dean Rundle.

February 4-5, 2008: An AFA negotiation meeting is held, this time in the chambers of the CSKT Tribal Council in Pablo, MT. It is a closed session. Assistant Secretary Laverty does not attend.

February 11-12, 2008: An AFA negotiation meeting is held, this time at the Rocky Mountain Arsenal NWR near Denver and is a closed session.

March 25-26, 2008: An AFA negotiation meeting is held again in Tribal Council Chambers in Pablo, continuing in closed session. Subsequent to the session, the parties announce that the deadline of March 28 has been extended with expectations to complete negotiations before the end of April.



CURRENT STATUS

The future of this situation remains undetermined. As this is written, negotiations of a second NBRC AFA have not concluded and details of any draft proposal are unknown publicly. The NBRC operates with a skeleton staff, in part due to employees who chose to work elsewhere and in part due to an attempt to avoid adverse impacts of a negotiated agreement on hiring choices. A Congressional requirement that every Refuge produce a Comprehensive Conservation Plan by 2012 has seen no action at the NBRC during the five years of this AFA situation.

There has been information circulated that the CSKT appeal of January 2007 was denied. It is also generally known that the CSKT have filed a suit in the federal court system regarding this issue,

A new, signed agreement will trigger the start of a 90-day period in which Congress has the option to review, delay, deny or order the document to be changed, If unchallenged, the new AFA would be enacted at the end of the period, currently no sooner than July 2008.

May 23, 2008 will be the Centennial anniversary of the founding of the NBR. A celebration is planned at the refuge headquarters. It is anticipated that the CSKT will participate in the event. .



EDITOR'S NOTE

Sources of documented information for this compilation are by public release, informal or leaked material or through formal request under the Freedom of Information Act (FOIA). The third method, FOIA request, has produced some insightful documents. It has also proved to be an unnecessarily, drawn-out process.

The FOIA request cited for materials provided in October 2007 and March 2008, involves materials subject to a February 2007 request to the FWS and DOI. Response on the DOI level did not begin until it was contacted by the Office of the requestor's Congressional Representative. Materials received in March had required an appeal for specific documents identified but not provided in the October response.

Subsequent to the March response, a leaked document arrived that would have been expected to have been provided under the February 2007 FOIA request and that, within it, mentioned several other documents that should also have been provided. There is no means of knowing if materials have been withheld or, perhaps, overlooked, short of a court order and associated legal expense to physically examine government records.

Certain materials will never be made available. Some are covered by legitimate FOIA exemptions, as may apply to personnel records. In the case of tribal responsibilities under an enacted AFA, tribal law restricts access solely to tribe decisions to release, not release or release in modified form.

Among documents referenced, it is clear that additional FOIA requests are needed and it appears that there is potential that such documents may well help bring nagging issues of this situation to light. But the questions are...how long and how many steps will it take to get that information?

