

Testimony of Carole Lankford, Vice-Chair
Confederated Salish and Kootenai Tribes
Before the House Natural Resources
Subcommittee on Indian and Alaska Native Affairs
Legislative Hearing on H.R. 4546,
“Department of the Interior Tribal Self-Governance Act of 2014”

July 15, 2014
Washington, D.C.

Greetings Chairman Young, Ranking Member Hanabusa, Congressman Daines, and Committee members. My name is Carole Lankford and I serve as the Vice-Chair of the Confederated Salish and Kootenai Tribes (“CSKT” or “Tribes”).

On behalf of the Confederated Salish and Kootenai Tribes, I thank you for holding this hearing and for the opportunity to provide our views on HR 4546. We would like to thank Representatives DeFazio, Cole, DelBene, Hanabusa, Heck and Kilmer for introducing this important bill in the House. We are very appreciative of the strong bipartisan support for this bill in the House and the Senate and with the Administration.

This legislation, which would amend the Tribal Self-Governance Act’s Interior Department provisions, found in Title IV of the Indian Self-Determination and Education Assistance Act (ISDEAA), has a long history. Ten years ago, in 2004, my former Tribal Council colleague and former Tribal Chairman D. Fred Matt, testified before the Senate Committee on Indian Affairs on an earlier version of this legislation (S.1715). Seven years ago, in 2007, another of my former colleagues and former Tribal Chairman, James Steele, Jr., also testified on an earlier version of this legislation. Earlier this year, our current Tribal Chairman Ron Trahan testified before the Senate Indian Affairs Committee on behalf of S. 919, the Senate companion bill to this legislation.

The success and resilience of the Tribal Self-Governance Act, and Self-Governance tribes, is unquestioned. The record of success built by Self-Governance tribes is a testament to the foresight and wisdom of tribal and congressional leaders. The late CSKT Chairman Michael (“Mickey”) T. Pablo, had fiercely fought for enactment of Tribal Self-Governance legislation and policies. As we have stated before, the record built by CSKT, and Indian country, in administering federal programs would make Mickey proud. Mickey was instrumental in CSKT becoming one of the first ten tribes in the country to participate in the Tribal Self-Governance Demonstration Project in the late 1980’s, and he was a key player in the subsequent permanent establishment of Tribal Self-Governance as federal policy.

I would also like to acknowledge the essential contributions of this Committee, and its past leaders such as former Congressmen Bill Richardson, Craig Thomas, and Pat Williams, for their work in establishing Tribal Self-Governance as permanent federal policy. The manner in which Congress worked with tribal leaders to develop, test, and then permanently enact the Tribal Self-

Governance paradigm is an outstanding model for how legislation and policy should be formulated.

CSKT has long asserted that ISDEAA and its 1994 amendments, known as the Tribal Self-Governance Act (Title IV of ISDEAA), have been two of the most important and successful pieces of federal Indian legislation in history. They are a logical progression from the Indian Reorganization Act of 1934, which first set the stage under federal law for tribal governments to once again determine our own affairs, protect our own communities, and provide for our own people in concert with our respective cultures and traditions – something we have done since time immemorial. Fully implementing Tribal Self-Governance is a pivotal step in realizing the federal policy of Indian Self-Determination that was ushered in almost forty years ago.

CSKT's Self-Governance Background

General Background

CSKT has been one of the most active of the many Self-Governance tribes and, as mentioned above, is one of the original ten Self-Governance tribes. We have found the system of Self-Governance contracting, through compacts and annual funding agreements (AFA's), to be highly effective in: 1) increasing the efficiency and integrity of federal services to tribes and tribal members; 2) increasing tribal autonomy and self-sufficiency; 3) strengthening the government-to-government relationship between the United States and tribal governments; and 4) developing our Tribal economy. All of these are among the principal objectives identified by Congress in its policy rationale for ISDEAA:

[T]he United States is committed to supporting and assisting Indian tribes in the development of strong and stable tribal governments, capable of administering quality programs and developing the economies of their respective communities.

25 U.S.C. § 450a(b)

As Congress later stated in enacting the Tribal Self-Governance Act of 1994:

The Tribal right of self-government flows from the inherent sovereignty of Indian tribes and nations[. . .] It is the policy of the Tribal Self-Governance Act to permanently establish and implement self-governance . . . [t]o permit each Tribe to choose the extent of its participation in self-governance.

25 C.F.R. § 1000.4(a)(1), (b)(2)

Currently, the CSKT Tribal government annually administers approximately: \$25 million in Self-Governance funds; \$150 million in contracts and grants; and \$44 million in Tribal revenue. Our government alone has 1,000 full-time employees. We are the largest employer on the Flathead Reservation, the largest employer in northwestern Montana, and we contribute over \$30 million in payroll and over \$50 million in purchasing to the local economy. A report funded by the State of Montana several years ago showed that CSKT contributed \$317 million to the

Montana economy annually.¹ It is important to remember, however, that the Indian unemployment rate on our Reservation is still much higher than that of the general area population. This is an indicator that we have a long way to go in building our Tribal and Reservation economies. To this end, the Tribal Self-Governance Act remains a vital tool for us.

The following is a list of just several examples of CSKT's successes in administering programs through ISDEAA and Self-Governance:

- In 1986, we signed a contract to take over control and management of the electrical utility on our reservation, then known as the Electrical Division of the Flathead Indian Irrigation Project. We renamed it Mission Valley Power (MVP). This utility serves every home and business on the reservation, Indians and non-Indians alike. It also provides power to the National Bison Range. It is considered one of the best-run utilities in the state of Montana. Since the Tribes took over, MVP has replaced and updated much of the utility's infrastructure yet managed to retain some of the lowest rates in the region. MVP has been contracted under Title I of ISDEAA and has not been included in subsequent Self-Governance agreements due to the prohibition found in 25 U.S.C. § 458cc(b)(4)(C). CSKT supports HR 4546's deletion of this prohibition.
- Since 1996, CSKT has contracted the operation of the Bureau of Indian Affairs' (BIA) Land Title Recording Office (LTRO) for the Flathead Indian Reservation. We are aware of only a few other tribes that contract or compact the LTRO program in its entirety. Through Tribal control, we have: greatly decreased waiting time for requested documents; more nimbly adjusted priorities to respond to different needs regarding appraisals, mortgages, leases, etc.; and increased budget efficiencies for a program that is severely underfunded by the federal government. Tribal operation of LTRO functions has also been a key factor in CSKT's record of proactive land acquisitions and reduction of land fractionation through Tribal acquisition of fractionated interests.
- In 1989, CSKT contracted the BIA's Safety of Dams (SOD) program. One of the main objectives of this program is to eliminate or remediate structural and/or safety concerns at 17 locations on the Flathead Indian Reservation as identified by the Department of Interior National Dams - Technical Priority Rating listing. CSKT's SOD Program provides investigations, designs and SOD modifications to resolve the concerns of the dams on the list. The Tribes' SOD Program has been extremely successful and, under our administration, Reservation dams have been modified at a cost significantly lower than originally estimated by the Bureau of Reclamation. Past examples include completion of Black Lake Dam in November 1992 at a savings of approximately \$1.3 million below Bureau of Reclamation estimates. The Pablo Dam Modification Project was completed in February 1994 at a savings of nearly \$140,000.
- In fiscal years 1997 and 1998 respectively, CSKT began compacting for administration of the Individual Indian Monies (IIM) program for the Flathead Reservation. As of the January 23, 2013 Federal Register listing of Tribal Self-Governance agreements with non-BIA agencies,

¹ "Monetary Contributions of Reservations to the State of Montana", prepared by Eleanor YellowRobe, Bureau of Business and Economic Research, University of Montana (submitted to State Tribal Economic Development Commission, Montana Department of Commerce - November 2007) pp. 1, 9-10.

CSKT was the only tribe that currently has such an agreement with the Office of Special Trustee (OST) for these functions.

National Bison Range Complex

With respect to non-BIA programs, the Interior Department has not established a very encouraging record regarding Tribal Self-Governance agreements. As this Committee is well aware, for almost twenty years CSKT has been working to secure a stable funding agreement with the U.S. Fish & Wildlife Service (FWS) for programs at the National Bison Range Complex (NBRC), which is almost entirely located within the Flathead Indian Reservation. The NBRC includes two ancillary National Wildlife Refuges that are located on Tribally-owned land in the center of the Reservation (the Ninepipe and Pablo Refuges).

While the effort has been unnecessarily expensive, frustrating and resource-intensive, it is worth the fight. In addition to the National Bison Range's physical location in the center of our Reservation, the NBRC's bison herd has its origins with the bison herd started and grown by Tribal members in the late 1800's and early 1900's, when bison were threatened with extinction. The NBRC's Ninepipe and Pablo Refuges are the result of Tribal requests in the 1910's and 1920's for the federal government to put the areas around two irrigation reservoirs into protected status for bird conservation. After several years, the United States responded by issuing two Executive Orders designating the areas as Refuges. In 1948, Congress acquired a perpetual easement from CSKT for such Refuge uses at Ninepipe and Pablo, while also recognizing the Tribes' reserved rights on the properties.² Collectively, the National Bison Range and the Ninepipe and Pablo Refuges occupy a unique place within our Reservation, our history, our culture, and our hearts.

As this Committee is aware, the CSKT has executed two multi-year AFA's with FWS for programs at the NBRC. The first AFA was signed in 2004, and the second was signed in 2008 at a Washington, D.C. ceremony attended by Interior Secretary Dirk Kempthorne and Montana Senators Jon Tester and Max Baucus. Unfortunately, both of these agreements came to premature ends.

With the negotiation and implementation of the 2008 AFA for NBRC programs, which covered fiscal years 2009-2011, CSKT and FWS built a highly constructive relationship both on the ground and at all policy-maker levels within FWS. That relationship was reflected in many ways, including: positive status reports; successful annual bison round-ups; positive visitor feedback; and increased general communication and coordination between federal and tribal staffs.

Unfortunately, two non-governmental organizations³ who have consistently opposed the federal-tribal partnership, challenged the agreement in a federal court action, stating that it violated a number of federal statutes such as the Tribal Self-Governance Act and the National Wildlife

² Act of May 25, 1948, 62 Stat. 269, at Section 5(b).

³ Public Employees for Environmental Responsibility (PEER) and the Blue Goose Alliance.

Refuge System Administration Act. The court did not rule on any of those substantive claims, but it did find that FWS had failed to properly explain its invocation of a categorical exclusion under the National Environmental Policy Act when it approved the AFA, so the court rescinded the agreement on the basis of that procedural violation. The court decision was handed down in September 2010. In the almost four years since that decision, CSKT has negotiated a new draft agreement with FWS and the agency then began preparing an Environmental Assessment for the draft agreement. It is still in the process of preparing that Assessment.

CSKT is pleased to have a wide pool of support for an NBRC Self-Governance agreement, including from conservation groups such as the National Wildlife Federation (*see attached letter from NWF submitted in response to FWS' 2012 request for scoping comments regarding the Environmental Assessment*). As stated by then-Chairman and Ranking Member of the House Natural Resources Committee, Congressmen Nick Rahall and Don Young:

Working with Tribal governments . . . 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 NBRC National Bison Range Complex [*sic*] are located.⁴

While we have been very frustrated with the length of time that this process is taking, we are hopeful that the improved relationship between CSKT and FWS will result in a satisfactory agreement that will return CSKT staff to the National Bison Range soon so we can continue what was widely-acknowledged to be an effective partnership. As the New York Times said in a September 3, 2003 editorial addressing the Bison Range partnering efforts, “if the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it.” (*copy of editorial attached to this testimony*).

To this end, I would like to extend the CSKT Tribal Council’s sincere appreciation for our friends in Congress who have long supported a Self-Governance partnership at the NBRC, including Congressman Don Young – whose active support we truly value. Our appreciation also extends to past and present Committee staff who have worked hard on Tribal Self-Governance legislation and policies.

Provisions of HR 4546

As mentioned at the outset of this testimony, CSKT supports HR 4546. Making Titles IV and V of ISDEAA (Interior Self-Governance and Indian Health Service Self-Governance, respectively) more consistent has long been a goal for Self-Governance tribes. CSKT agrees with HR 4546’s approach of leaving intact much of the existing statute, while amending some of the current provisions and adding new ones.

⁴ May 15, 2007 letter to Interior Secretary Dirk Kempthorne from House Natural Resources Committee Chairman Nick Rahall and Ranking Minority Member Don Young, p. 2 (*copy attached to this testimony*).

CSKT greatly appreciates the inclusion in HR 4546 of specific recognition that 50% of costs incurred by a tribe's governing body are reasonable and allowable for purposes of contract support cost determinations. Including this provision in the statute would bring an end to past uncertainties as to whether the federal government would continue this past practice. This has a significant impact on the budget of CSKT and many other tribes. [*§ 104 of HR 4546, as introduced*]

CSKT particularly supports HR 4546's definition for the term "inherent Federal function". While the term is already so defined in Title V, having the definition specifically included for Interior programs is a positive step towards eliminating the confusion over this term during field-level negotiations. [*§ 201(a)(401(6)) of HR 4546, as introduced*]

As the only tribe currently with a Self-Governance agreement with the OST, we also support HR 4546's explicit incorporation of the OST with respect to mandatory Self-Governance agreements. [*§ 201(c)(1)(a)(2)*"]

CSKT appreciates HR 4546's inclusion of specific authority for multi-year funding agreements, as this is an issue for which we have encountered some resistance from federal agencies in the past. We have been able to resolve the disagreements successfully, but statutory clarification will prevent needless disagreements on the issue in the future. [*§ 201(c)(1)(p)(4)*"]

CSKT strongly supports the statutory clarification of tribal ability to carry-over funding. This is also an area in which we have had disagreements with federal agencies and we welcome the clarification. [*§ 201(d)(408(k))*"]

With respect to contract support funding, it is important that HR 4546 retains the existing statutory language mandating funding for contract support costs (25 U.S.C. § 458cc(g)(3)). Payment of contract support costs is a prerequisite for realizing the full potential of Tribal Self-Governance objectives. Stronger efforts to secure adequate appropriations for this area are badly needed. In our testimony on prior versions of this legislation, CSKT has repeatedly raised this issue. We have consistently maintained that Congress did not intend for Self-Determination or Self-Governance contracting to be money-losing propositions, yet that is what they have become as long as the federal government refuses to pay tribes what they are due under the law for administration of the programs. Since our testimony in past Congressional sessions regarding previous versions of this legislation, the Supreme Court has confirmed, in its *Salazar v. Ramah Navajo Chapter* opinion,⁵ that the federal government is legally obligated to fully pay these costs. We were very happy when the Obama Administration, with Congressional encouragement, agreed to fully fund contract support costs under ISDEAA for fiscal years 2014, 2015, and hopefully beyond.

CSKT supports HR 4546's approach of maintaining the existing statutory authority for contracting Interior programs, outside of the BIA, that are of geographic, historical or cultural significance to tribes. It is through the lens of our experiences involving the NBRC that we evaluate the non-BIA provisions of HR 4546. The legislation would leave untouched the

⁵ 132 S.Ct. 2181 (2012).

statutory authority for NBRC contracting, found at 25 U.S.C. § 458cc(c). CSKT supports this since we have negotiated multiple agreements under this authority and do not want to see it diminished or impaired in any way. Section 202 of HR 4546 further clarifies that nothing in this legislation would modify this aspect of non-BIA contracting authority. CSKT would strongly oppose any changes or amendments to non-BIA contracting authority that could be used by opponents of tribal contracting to further hamper or prevent Self-Governance partnerships such as those we have built, and hope to continue, at the NBRC.

CSKT believes more should be done to encourage, rather than discourage, these partnerships. The United States is rapidly falling far behind countries such as Canada and Australia when it comes to federal-tribal partnerships in the management of protected areas such as refuges and parks. CSKT believes that Tribal Self-Governance policies and agreements have been, and can be, strong vehicles for constructive collaboration between the United States and Indian tribes.

Two areas of continuing concern for CSKT which HR 4546 does not currently address include the following:

Federal Tort Claims Act (FTCA) coverage. Presently, liability coverage for tribal contractors, including FTCA coverage, is addressed in Title I of ISDEAA at 25 U.S.C. § 450f(c). In past AFA negotiations, CSKT has expended a disproportionate amount of time and energy over the issue of whether FTCA coverage existed for tribal volunteers who perform work for a contracted federal program. CSKT has long maintained that tribal volunteers performing federal program work should enjoy the same FTCA coverage as federal volunteers performing such work. Unfortunately, we have not resolved this issue and, as a result, the BIA has agreed to purchase liability insurance to cover Tribal volunteers under our last two NBRC AFA's. While we have found agreement with our position from Interior solicitor offices, we understand that opposition emanates from the U.S. Department of Justice (DOJ). We are generally concerned with what seems to be an increasing practice by the DOJ to narrowly interpret FTCA coverage in circumstances involving tribal contractors, as well as in other situations. This unfortunately has had negative impacts on CSKT's ability to recruit volunteers for contracted programs and/or explain to existing or prospective volunteers the scope of their liability coverage. In plain terms, we believe we have lost potential, and past, volunteers at the NBRC due to this issue. We encourage Committee attention to this ongoing problem.

Full funding of programs. CSKT has been on record with equating the issue of full program funding to effective implementation of ISDEAA and Tribal Self-Governance objectives. Without Congressional commitment to fully funding the federal programs being contracted by Self-Governance tribes, we cannot overcome the resource limitations to making the programs as successful as they need to be. Dwindling, or stagnant, federal funding results in tribes having to supplement federal programs with tribal dollars. This serves as a disincentive to contract under ISDEAA and Tribal Self-Governance. Just a couple of the many examples relevant to Title IV contracts include:

- The recently completed third independent assessment and report on the status of Indian forests and forestry finds that BIA funding for Indian trust forest management is \$2.82 per acre – an amount which is only one-third of the funding level for the U.S. Forest Service, which is \$8.57 per acre.
- Per capita spending on law enforcement in Native American communities is roughly 60 percent of the national average.

Similar disparities exist for almost all Indian programs contracted under Title IV. While this is an appropriations issue and somewhat of a separate issue from the Self-Governance provisions of HR 4546, it is materially related to achieving the goals of the Act and is thus a proper subject for this Committee's attention. Congressional rectification of this issue would be a solid investment into more effective program delivery and better administration of the federal trust responsibility.

Conclusion

The Confederated Salish and Kootenai Tribes are one of many tribes that successfully partner with the federal government under the Tribal Self-Governance policy structure. Work remains to be done towards: 1) eliminating disincentives and removing barriers to Self-Governance participation; and 2) encouraging non-BIA Self-Governance activity. The proposed legislation is a good start towards accomplishing those ends.

On behalf of CSKT, thank you for the opportunity to provide testimony and I would like to thank this Committee, its Members, and staff, for your support of Self-Governance. I would be happy to answer any questions.

- Attachments:*
- 1) National Wildlife Letter (undated) to U.S. Fish & Wildlife Service (*submitted in May 2012*);
 - 2) May 15, 2007 letter to Interior Secretary Kempthorne from Congressmen Nick Rahall and Ranking Minority Member Don Young; and
 - 3) September 3, 2003 New York Times editorial: "The National Bison Range"



Jeff King, Refuge Manager
National Bison Range
58355 Bison Range Road
Moiese, MT 59824

Via Mail and Email to nbrcomments@fws.gov

RE: Scoping Comments – Notice of Intent to Prepare an Environmental Assessment Regarding the Interest of the Confederated Salish and Kootenai Tribes to enter into an Annual Funding Agreement with the U. S. Fish and Wildlife Service (“The Service”), for the Operation and Management of Programs at the National Bison Range Complex

Dear Mr. King,

Thank you for the opportunity to provide comments concerning your notice of intent to prepare an Environmental Assessment regarding the Annual Funding Agreement (AFA) with Confederated Salish and Kootenai Tribes (CSKT) and the National Bison Range (NBR). The National Wildlife Federation (NWF) is America’s largest conservation organization and has over 4 million supporters and 47 state affiliates. NWF has a long history of partnering with Native American Tribes to conserve and protect wildlife for our children’s future and currently partners with the CSKT on numerous wildlife, habitat and environmental issues.

NWF strongly believes that a partnership between the Service and the CSKT should be formalized through a new self-governance AFA that would contract with the CSKT to operate eligible refuge programs and perform specific day-to-day activities of the NBR consistent with the National Wildlife Refuge System Administration Act (“NWRSA”). NWF has supported this partnership since it was originally proposed in 2004.

On May 17, 2012, the CSKT’s received NWF’s National Government Conservation Achievement Awards for their outstanding commitment to preserving, protecting and restoring wildlife and habitat for future generations.¹ The CSKT is unparalleled in their methods, efforts, conservation ethic and follow through to achieve sustainable conservation outcomes. Known throughout the country for their scientific and cultural knowledge, their partnerships with other governments and long history of conserving, managing and restoring wildlife habitat, the CSKT Division of Fish, Wildlife, Conservation and Recreation are more than qualified to partner with the Service to manage NBR’s resources.

As you know, the CSKT’s have a long history of managing wildlife and wild lands in partnership with local, state and Federal governments. For example, they have,

¹ Missoulian, http://missoulian.com/news/state-and-regional/salish-kootenai-tribes-win-national-conservation-award/article_0e02a208-9fc2-11e1-9d9d-0019bb2963f4.html

- Signed a historic landmark agreement in 1990 between the Tribes and the state of Montana governing bird hunting and fishing on the Flathead Indian Reservation.
- Successfully managed 97,000 acres of primitive areas
- Acquired and managed over 11,000 acres of fish and wildlife habitat through the Tribal Wildlife Management Program.
- Acquired over 4,600 acres of land, including 27 miles of streams and lake habitat to offset impacts to fisheries.

The National Bison Range is an outstanding and important resource for all Americans and the CSKT are outstanding land and wildlife managers that preserve and protect wildlife in one of the most important ecosystems in North America. The Tribes helped save the bison in the 19th and early 20th centuries and will continue to protect the bison and other wildlife species and natural resources on the NBR for future generations.

We believe that this partnership will produce numerous long-term benefits to the Tribes, the Service and all Americans. The agreement will utilize the best abilities and resources of the Tribes and the Federal government to manage NBR's resources and better serve the people that utilize the land. This partnership will also facilitate the achievement of Departmental and Congressional objectives for both its NWRS and Tribal Self-Governance programs. The Tribe is in a strong legal position to participate in the AFA. The Tribal Self-Governance Act of 1994 gives qualified Indian tribes the right to request funding agreements to perform activities administered by the Department of Interior that are of special geographic, historic or cultural significance to the requesting tribe. It is well known that the NBR has a very high level of cultural, historic and geographic significance to the CSKT and all units of the NBR under consideration for an AFA are located within the Flathead Reservation. Many of the bison that reside on the NBR are descendants from a herd originally saved by Tribal members in the late 19th century, and which originated on the reservation.

We look forward to working with the Service and CSKT on the Environmental Assessment for the AFA. If you have any questions, please contact NWF's Tribal Lands Partnerships National Program Director, Garrit Voggesser, Voggesser@nwf.org, or 303-441-5161.

Sincerely,



Larry Schweiger, President and CEO
National Wildlife Federation
11100 Wildlife Center Dr.
Reston, VA 20011

RICHARD ROBERTS, R-WV
 GONNOMAN
 DALL E. KILDEE, MI
 GUY F. FALCONER/VAPOLO, AS
 NEIL ANTHONY/MI
 SOLOMON P. ORTEG, TX
 FRANK PALLONE, JR., NJ
 DENNIS CHRISTENSEN, WI
 CHUCK HASTINGS, CA
 RUSSELL HOLT, NJ
 MARK W. CHILDS, VA, AZ
 MADHUSUDAN K. BHADRAN, CA, GU
 JIM COSTA, CA
 JIM HONEN, OR
 JOHN P. SARKISIAN, MI
 GEORGE MILLER, CA
 KEVIN W. MURPHY, MA
 PETER D'AZIO, OR
 MAJORITY D. BENNETT, NY
 PATRICK J. SCHNEIDER, NY
 ROY ROSEN, NY
 LUIS CASPE, CA
 JAY INSEL, WA
 MARY UDALL, CO
 JOE UDGA, CA
 JUDITH A. JOHNS, CA
 STEPHANIE HERSHORN, SD
 HEATH SHULER, NC

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

DON YOUNG, AK
 RANKING MEMBER
 JIM SAXTON, NJ
 ELTON GALLEGLY, CA
 JOHN J. DUNCAN, JR., TN
 WALTER T. GONZALEZ, MD
 KEN CALVERT, CA
 CHRIS CANNON, UT
 THOMAS G. LARSEN/IA, HI
 JIM FLAKE, AZ
 MARK ROBERTS, MD
 STEVEN BRADY, PA
 BRADY E. COLWELL, NJ, SC
 LURE C. ROTHMAN, OR
 CATHY MCMAHON ROBINSON, WA
 RONNY JUNGAL, LA
 LOUIS LOMBARDO, TX
 TOM COPE, OR
 HUD BISHOP, UT
 BILL SHUSTER, PA
 DEAN HILL/CA, NY
 BILL SALS, ID
 DOUG LAMARCA, CO

May 15, 2007

REPUBLICAN CLERK OF STAFF

JAMES H. PENA
CHIEF OF STAFF

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.

Dirk Kempthorne
May 15, 2007
Page 2

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 APA 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

Dirk Kempthorne
May 15, 2007
Page 3

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 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.

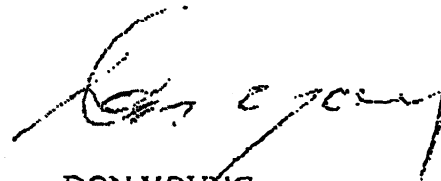
We also understand that, beyond the scope of work required of it through the AFA, the CSKT has devoted extensive tribal resources to the NBRC. At a time when the overall National Wildlife Refuge System budget has suffered, CSKT employees and volunteers literally worked thousands of hours at the NBRC. 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

Editorials/Op-Ed

September 3, 2003

The National Bison Range

Later this week Native Americans representing the Salish and Kootenai tribes will meet in Denver with officials of the Interior Department and the federal Fish and Wildlife Service. They will be trying to negotiate an agreement to take over management of the National Bison Range, an 18,500-acre prairie reserve in northwestern Montana. If negotiations end successfully, this would be the first time a tribe has taken over the management of such a property since 1994, when the Tribal Self-Governance Act authorized such arrangements.

One purpose of the Tribal Self-Governance Act was to diminish the role of federal paternalism — often inefficient and sometimes corrupt — in the lives of Native Americans. The Confederated Salish and Kootenai Tribes have been among the first to seize the opportunity to run programs that were formerly administered by the government, and run them well. But the thought of Native Americans' managing the National Bison Range has some environmental groups and local residents worried. Even the Fish and Wildlife Service has seemed reluctant, if only because it has a high regard for its own management tradition. Yet virtually no one disputes the excellent management and conservation record of the Salish and Kootenai.

With one strong condition, we think this plan makes a lot of sense. The Salish and Kootenai have a deep historical connection with the particular bison herd on this refuge — quite apart from the conventional associations of Indians and buffalo — and a strong cultural or historical link is one of the legal conditions for enacting an agreement of this kind, which would basically employ the tribes to manage the federal program. The National Bison Range is wholly enclosed by the reservation the Salish and Kootenai live on, and the tribes would be obliged to manage the refuge according to plans established by the Fish and Wildlife Service.

But such an agreement, erected on the basis of unique historical and geographical circumstances, must not become the basis for the wholesale privatization of federal parks, monuments or reserves. The National Bison Range is an unusual case. It offers a rare convergence of public and tribal interests. If the Salish and Kootenai can reach an agreement with the Fish and Wildlife Service, something will not have been taken from the public. Something will have been added to it.