



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Mountain-Prairie Region

IN REPLY REFER TO:

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December 11, 2006

VIA FACSIMILE AND FEDERAL EXPRESS

James H. Steele, Jr.  
Chairman  
CSKT Tribal Council  
P.O. Box 278  
Pablo, Montana 59855

Re: National Bison Range Complex; Unavailability for Negotiations; Termination of  
Negotiations for FY 2007 AFA; Termination of Authority to Extend Performance  
Under Expired FY 2006 AFA

Dear Chairman Steele:

The U.S. Fish and Wildlife Service (Service or FWS) hereby notifies the Confederated Salish and Kootenai Tribes of the Flathead Reservation (CSKT) that, effective on the date of this letter:

1. The National Bison Range Complex (NBRC) is unavailable to the CSKT for negotiations concerning an annual funding agreement (AFA) under the Tribal Self-Governance Act; and
2. The Service is terminating negotiations with the CSKT for a Fiscal Year (FY) 2007 AFA between the Service and the CSKT for activities at the NBRC.

Also effective on the date of this letter, the Service is withdrawing the CSKT's authority to extend performance under the expired FY 2006 AFA between the Service and the CSKT for activities at the NBRC (FY 2006 AFA). The Service hereby reassumes all responsibility for performing all activities covered by the expired FY 2006 AFA.

Upon receipt of a facsimile copy of this letter, the CSKT must:

1. Immediately cease performing all activities at the NBRC under the expired FY 2006 AFA.

2. Initiate the return to the Service of all available property provided to the CSKT by the Service under the expired FY 2006 AFA, to be completed not later than 4:00 P.M., Mountain Standard Time, on December 12, 2006.
3. Initiate the withdrawal from the NBRC of all CSKT employees, contractors, and volunteers acting on behalf of the CSKT under the expired FY 2006 AFA, to be completed not later than 4:00 P.M., Mountain Standard Time, on December 12, 2006.

#### 1. Background

On December 15, 2004, the Service and the CSKT entered into a FY 2006 AFA for activities at the NBRC. In April 2006, the Service and the CSKT began negotiations for a FY 2007 AFA for activities at the NBRC.

In the negotiations, the Service's position generally was that a FY 2007 AFA should be essentially the same as the FY 2006 AFA, with only those minor revisions needed to reflect what the Service and the CSKT learned in operating under the FY 2006 AFA. The CSKT's position generally was that the scope of work for a FY 2007 AFA should be significantly greater than for the FY 2006 AFA, and that under a FY 2007 AFA the CSKT should have significantly more management control of operations at the NBRC than it had under the FY 2006 AFA. While the Service and the CSKT reached agreement in principle on a number of relatively minor issues concerning a FY 2007 AFA, they remained at an impasse on the above two issues.

When it was evident that the negotiations for a FY 2007 AFA would not be completed prior to expiration of the FY 2006 AFA, the Service, on September 5, 2006, authorized the CSKT to extend performance of the FY 2006 AFA into FY 2007, beginning on October 1, 2006. The FY 2006 AFA expired on September 30, 2006. Since October 1, 2006, the CSKT has been performing at the NBRC under the expired FY 2006 AFA.

On October 4, 2006, the CSKT sent the Service a proposed FY 2007 AFA that substantially revised the FY 2006 AFA. Among other things, the revisions included a phased-in schedule for the CSKT to take over operation of the entire NBRC. The Service rejected the CSKT's proposed revisions as contrary to the Service's statutory mission and responsibilities at the NBRC, and the Service's consistent negotiating position.

The Service and the CSKT last met for formal negotiations concerning a FY 2007 AFA on May 31 to June 1, 2006. The negotiations reached a standstill when Service employees alleged mistreatment by the CSKT in connection with the CSKT's performance under the expired FY 2006 AFA. Those and other issues concerning the CSKT's initial and extended performance under the expired FY 2006 AFA have lead the Service to conclude that continuing to make the NBRC available for negotiations with the CSKT would be contrary to the Service's statutory mission and responsibilities at the NBRC.

## 2. Procedures

The Secretary of the Interior has promulgated regulations governing annual funding agreements under the Tribal Self-Governance Act amendments to the Indian Self-Determination Act (Tribal Self-Governance Regulations). 25 C.F.R. Part 1000.

Under the Tribal Self-Governance Regulations at 25 C.F.R. § 1000.173(d)(2), "If [a] program is unavailable for negotiation, the bureau will give to the Tribe/Consortium a written explanation of why the program is unavailable for negotiation." This letter provides that written explanation of why the NBRC is unavailable to the CSKT for negotiation.

The Tribal Self-governance Regulations also provide for last and best offers in the event a bureau and a tribe do not reach agreement in negotiations for an available program. 25 C.F.R. § 1000.179. That regulation follows § 100.173, and therefore is premised on the availability of a program for negotiation. Since the NBRC is not available for negotiation, the provision of § 1000.179 for a last and best offer is not relevant to this notice. There is no available program as to which the Service or the CSKT could make a last and best offer. Nevertheless, this letter provides a written explanation equivalent to that required by § 1000.179(b).

The Service is not aware of any provision in the Tribal Self-Governance Regulations governing a bureau's termination of a tribe's authority to extend performance under an expired AFA.

Since October 1, 2006, the Service and the CSKT have been operating under the expired FY 2006 AFA. Section 16.D of the expired FY 2006 AFA provides:

To the extent the CSKT and the FWS are *not* negotiating a Subsequent AFA covering an Activity:

....

2. *Available Property.* On the last day of the term of this AFA, the CSKT will return to the FWS all Available Property provided by the FWS to the CSKT, and not needed by the CSKT to perform an Activity for which the FWS and the CSKT are negotiating or have executed a Subsequent AFA for the next fiscal year.

(Emphasis in original.) By this letter, the Service has made the NBRC unavailable for negotiation for a subsequent AFA, has terminated negotiations for a subsequent AFA, and has withdrawn the CSKT's authority to extend performance under the expired FY 2006 AFA. Accordingly, section 16.D of the AFA requires the CSKT to return to the Service all available property provided to the CSKT by the Service under the expired FY 2006 AFA, and to do so on the date of this letter. The CSKT must comply with that requirement by returning all available property to the Service not later than 4:00 P.M., Mountain Standard Time, on December 12, 2006.

## 3. Statement of Reasons

The Service's actions in this letter are based on the following deficiencies in the CSKT's initial and extended performance under the expired FY 2006 AFA:

#### *A. Statutory Mission and Responsibilities*

The CSKT's performance under the expired FY 2006 AFA has prevented the Service from meeting its responsibilities at the NBRC under the National Wildlife Refuge Administration Act and other applicable laws and regulations. That included CSKT employees and volunteers:

- Failing to comply with Service bison management standards, including herding bison into units with unsatisfactory fence conditions; herding bison while cows were giving birth during the calving season; feeding insufficient quantities of hay to bison being held for transport, notwithstanding service protocol and repeated reminders; not maintaining fences to standard, resulting in a serious loss of grazing management control, significant damage to interior fences, and the conditioning of bison to find and utilize weak locations for escape through fences.
- Failing to meet Service wildlife monitoring and reporting standards and protocols, including altering survey protocols without consulting with or approval from the Service.
- Failing to complete two calendar-year 2006 biological study plans, and submitting biological reports with subjective conclusions not supported by data or literature review.
- Failing to timely and properly maintain vehicles, equipment, and property, and process related documentation, including not following the pit toilet chemical protocol in the public use area; not filling root holes of downed and removed trees in the public use area; leaving buildings, vehicles, and fuel pumps unlocked, keys in unlocked vehicles, and tools unsecured in the backs of trucks; and unsatisfactorily maintaining the public auto tour route during the peak visitor season.
- Displaying commercial literature in the visitor center without prior approval from the Service.
- Repeatedly, inappropriately, and untruthfully telling the public that Service employees were the cause of delays during the annual bison roundup.
- Not following Service protocol for radio dispatch.

#### *B. Workplace Environment*

Under the expired FY 2006 AFA, the CSKT created an unacceptable workplace environment at the NBRC. That included CSKT employees and volunteers:

- Creating a work environment characterized by harassing, offensive, intimidating, and oppressive behavior on the part of employees of the CSKT, including obscenity, fighting words, and threats of violence and retaliation directed at employees of the Service.
- Creating unsafe conditions for employees of the Service and the CSKT, and for the public, by improperly using and operating equipment and vehicles, including failure to use personal protective equipment and allowing poorly trained, unlicensed, and otherwise unqualified employees to operate equipment and motor vehicles.
- Creating an unsafe environment for employees of the Service and the CSKT, and the public, by failing to properly maintain equipment and property, including not maintaining vehicles in safe operating condition, and not maintaining buildings in compliance with safety and health standards and to minimize property damage and loss.

#### 4. Appeal

The Tribal Self-Governance Regulations at 25 C.F.R. Part 1000, Subpart R, prescribe the process a tribe may use to resolve disputes with the U.S. Department of the Interior arising before or after the execution of an AFA.

Sincerely,



J. Mitch King  
Regional Director

cc: Director, USWFS  
Brian Upton, Tribal Attorney