

## **NATIONAL BISON RANGE**

### **ESTABLISHING A WORKING RELATIONSHIP BETWEEN FWS AND CSKT TO IMPLEMENT DUTIES AND RESPONSIBILITIES AT THE NBR**

#### **ACTION PLAN**

##### **OBJECTIVE:**

It is our intent to establish a positive, working relationship with CSKT that, at the very least, includes material involvement of Tribal members in the day-to-day operations at the NBR.

##### **MECHANISM:**

Director Hall and I concur that to meet existing expectations and in a sign of good faith to foster positive negotiations, the form of the agreement shall be an annual funding agreement (AFA).

##### **NEGOTIATING AN AFA:**

Given the history of this issue, it is important to assure a fair and transparent negotiating environment for all parties. FWS and BIA have jointly sponsored third-party neutral facilitators ("facilitators"), who were mutually selected by FWS and CSKT, to assist the parties with this relationship.

The facilitators, Jon Townsend and Suzanne Ghais, have agreed to assist the parties to negotiate an AFA. The DOI senior management team and CSKT have agreed to accept the assistance of the facilitators. Director Hall and I agree that the active assistance of the facilitators will be very helpful in our efforts to negotiate an AFA.

To be clear, the facilitators are not empowered to make the decisions needed to resolve issues between the parties. Making decisions and commitments is the responsibility of DOI and CSKT representatives. However, the facilitators can provide invaluable guidance in assisting the parties to identify issues, options and common ground and to utilize proven techniques designed to help us resolve concerns and disagreements.

The facilitators can also assist all of us to capture the views of FWS and CSKT on issues for which agreement is elusive and to assist the parties in exploring the options available to resolve these issues. If we find that through the good faith efforts of the parties, we are unable to reach agreement, then we will elevate matters for resolution by the CSKT and DOI leadership teams.

## **OTHER NON-NEGOTIABLE TERMS:**

The NBR is a unit of the National Fish & Wildlife Refuge System and it shall remain so.

The NBR will be managed in compliance with Federal statutes, regulations, policies and procedures and such other reasonable guidance as may be forthcoming from the Director, Fish and Wildlife Service and his subordinate management team.

Policy and management direction for the NBR will be provided by the FWS. On-the-ground operations decisions will be made by the staff located at the NBR, including both FWS and CSKT staff.

The NBR must operate within the budget and staffing levels assigned by FWS. For planning purposes, the current FY '08 commitment to the NBR, based on past decisions, will be 13 FTE and \$1.5 million. Any negotiated decisions, involving resource commitments, will require AS/FWP and Director/FWS approval.

The FWS will retain the majority of the bison herd in residence at the NBR. Any plan to reduce the bison herd below 90% of the average (FY 05, FY 06 & FY 07) NBR bison population will require AS/FWP approval.

The operations staff at the NBR must be organized and tasked to work as a team. The staffing complement is too small to permit any NBR staff member not to be fully engaged in the operations of the refuge and to assist other NBR staff with short-term assistance needs notwithstanding the assignment of primary job responsibilities.

## **ANNUAL FUNDING AGREEMENT BASELINE:**

At the beginning of the effort to prepare a new AFA, CSKT prepared and submitted a draft for our consideration. The DOI Solicitors office reviewed the draft document carefully and made some changes. The Solicitor's office shared the amended draft with FWS for comments and received several, which led to some additional changes.

To expedite our efforts to agree upon a new AFA, I am attaching the draft AFA as amended. Rather than starting from scratch to prepare a new AFA to govern our partnering relationship for FY 2008, the draft AFA will provide a beginning point from which we can negotiate a final agreement.

I am confident that neither party will agree with this version, in its entirety, but this draft will provide a baseline upon which the parties may agree or disagree with specific provisions, terms or conditions. I expect the FWS and CSKT to start with the attached draft AFA and to move forward expeditiously to amend the draft, in mutually acceptable ways, as we pursue a final AFA that can be approved by both parties.

## **ACTION PLAN:**

FWS and CSKT must discuss and identify all "programs, services, functions, and activities" that are being conducted at the NBR.

FWS and CSKT must discuss and then determine which, if any, "programs, services, functions, and activities, or portions thereof" conducted at the NBR are "inherently federal functions" which cannot under law be undertaken by CSKT. It is my understanding that there is no clear, unambiguous definition of the term "inherently federal function", but it is a very high bar to overcome. For any initially identified "inherently federal function," please evaluate whether FWS operations could be amended to reduce the extent to which inherently federal functions currently exist at the NBR while maintaining the ability to fulfill the refuge mission. Please discuss any recommended changes with Director Hall prior to implementation. Thereafter, please obtain Departmental concurrence regarding a determination that any remaining NBR "program, service, function or activity" is "inherently federal".

FWS and CSKT must discuss and then determine which "programs, services, functions, and activities, or portions thereof" would be undertaken by CSKT and which would remain with FWS.

FWS and CSKT must discuss and then determine the most advantageous organizational structure for undertaking the operations of the NBR. Please recognize that Tribes typically compact "programs, services, activities or functions" under an AFA. In addition, please ensure the agreed upon organizational structure promotes shared leadership responsibilities, team work, a positive, supportive work environment, clear communication channels, and effective, measurable productivity.

FWS and CSKT must discuss and then incorporate into the AFA a clear mechanism for evaluating the combined performance of the NBR staff.

FWS and CSKT must discuss and then incorporate into the AFA a clear mechanism for addressing concerns and disagreements, along with a real commitment to use it.

FWS and CSKT must discuss and then incorporate into the AFA any other provisions, terms or conditions needed to reach a mutually acceptable agreement governing our FY 2008 working relationship.

In addition, FWS and CSKT must discuss and then pursue concrete steps designed to restore the trust and mutual respect each should bestow upon the other. It is clear that both parties have a deep commitment to the mission of the NBR. It is our desire to focus upon the many positive attributes we share at the NBR rather than the few things that divide us. Let's focus our efforts upon potential benefits we will obtain from working together as governmental partners.

## EXPEDITED SCHEDULE:

Given the circumstances involved and the proximity of the holiday season, it would unrealistic to expect a completed AFA by December 31, 2007. Therefore, please conduct your negotiations in a manner designed to produce a mutually acceptable AFA as soon as possible. Since DOI committed to a new AFA in December, 2006, it seems reasonable to expect the new AFA will be completed by no later than March 28, 2008.

To ensure we are making timely progress towards our objective, the facilitators have been tasked with compiling a biweekly status report, beginning with the November 30, 2007 report, to provide the following information:

- The identity of the negotiating teams for each party.
- The date, time and duration of any meetings between the parties to advance the AFA objective.
- Identification of the incremental specific provisions, terms or conditions that have been discussed and agreed upon by the parties.
- Identification of any specific provisions, terms or conditions that have been discussed by the parties, but have not yet been resolved. This section of the progress report should specify the issue, the preferred position of each party and any other options that are being considered.
- Identification of any specific provisions, terms or conditions that the parties mutually agree cannot be resolved by the negotiating team and they believe need to be elevated for resolution or further direction. Elevated items will be discussed with the CSKT Tribal Chairman and DOI senior management team.<sup>1</sup>
- A listing of specific actions that are planned for the upcoming month.
- A copy of the revised and most current version of the draft AFA.
- And such other information as the negotiating teams believe would be helpful to the report recipients.

To ensure that we are making timely progress and that the negotiating process is transparent, the report shall be approved by the lead negotiator for each party. Subsequently, the report shall be shared with the CSKT Tribal Chairman, the CSKT Tribal Council, the FWS and CSKT negotiating teams, the NBR FWS staff, the local BIA management team, and the DOI senior management team.

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<sup>1</sup> The DOI senior management team would consist of the Deputy Secretary; Associate Deputy Secretary; Assistant Secretary-Fish and Wildlife and Parks; Assistant Secretary – Indian Affairs; Director, FWS; Director, Bureau of Indian Affairs; Associate Solicitor, General Law.