



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, D.C. 20240

Memorandum

NOV 26 2007

To: Regional Director, Fish and Wildlife Service, Region 6

Through: Dale Hall *A Dale Hall*  
Director, Fish and Wildlife Service

From: Lyle Laverty *NOV 26 2007*  
Assistant Secretary for Fish and Wildlife and Parks *Lyle Laverty for*

Subject: Negotiating an Annual Funding Agreement (AFA) with CSKT

During the courtesy visits that preceded my confirmation, I had the occasion to discuss issues of importance to Senator Tester of Montana. One of the issues of great concern to him was our lack of progress in concluding annual funding agreement (AFA) discussions with the Confederated Salish and Kootenai Tribes (CSKT).

Since that conversation with Senator Tester, I have learned that this issue has been contentious on many fronts and the lack of resolution is distracting us from fulfilling our mission. I have also been informed that the remainder of the Montana Congressional delegation, Senator Baucus and Congressman Rehberg, share Senator Tester's views. Further, I have been informed that the leadership of the House Natural Resources Committee, Chairman Rahall and Ranking Member Young, share these views as well. You should know, as well, that these Congressional members have also shared their concerns and expectations with Secretary Kempthorne, Deputy Secretary Scarlett and Director Hall.

In addition, I received guidance from the Solicitor's office regarding our legal obligations in this matter. In particular, I have been informed that 25 U.S.C. § 458cc(c) specifically addresses AFA agreements with non-BIA bureaus:

"Additional activities. Each funding agreement negotiated pursuant to subsections (a) and (b) may, in accordance to such additional terms as the parties deem appropriate, also include other programs, services, functions, and activities, or portions thereof, administered by the Secretary of the Interior which are of special geographic, historical, or cultural significance to the participating Indian tribe requesting a compact."

Given that the NBR is an isolated island of land completely surrounded by the CSKT reservation, a casual review of the CSKT relationship to the NBR demonstrates that the

statutory requirement of a "special geographic, historical or cultural significance" has been met.

Further, 25 U.S.C. § 458ee(c) addresses the way the Department makes such "additional activities" in non-BIA bureaus available to Tribes:

(c)(1)(A) [We are to] review all programs, services, functions, and activities, or portions thereof, administered by the Department of the Interior, other than through the Bureau of Indian Affairs, without regard to the agency or office concerned; and,

(c)(2) The Secretary shall establish programmatic targets...to assure that a significant portion of such programs, services, functions, and activities are actually included in the negotiated agreements; and,

(c)(4) The Secretary shall annually review and publish in the Federal Register...a revised listing and programmatic targets.

I have been informed that the FWS has selected units of the National Wildlife Refuge System where there is a "special geographic, historical, or culturally significant" nexus to nearby Tribes and, for the past several years, published that list in the Federal Register in compliance with the aforementioned statutory requirement. Through this mechanism, the FWS has notified the CSKT of our interest and willingness to consider compacting, through an AFA, some or all of the programs, services, functions or activities, carried out at the NBR. Director Hall has supported a positive working relationship, involving both FWS and CSKT, in conversations held directly with the CSKT Tribal Council.

In addition, the Deputy Secretary, the Associate Deputy Secretary (fulfilling the duties of the Assistant Secretary – Indian Affairs) and the FWS Director agreed to work with CSKT on a new AFA that would govern their active participation and involvement at the NBR. That agreement was reached almost one year ago and progress towards implementing that agreement has been limited. During this period, the FWS, with the concurrence of the Department, pursued a working relationship with CSKT using an alternative, cooperative agreement, approach. I am appreciative of the efforts you have made to resolve this issue and involve CSKT in bison and elk management. However, after some discussion with CSKT and BIA, the Deputy Secretary and I have concluded that the cooperative agreement approach will not successfully meet all of our objectives in this situation.

Given the circumstances, it is time for us to become keenly focused on making expeditious progress in crafting and finalizing an AFA. Towards that end, I am forwarding an action plan designed to bring this matter to closure. Please take the actions necessary to establish a positive, working relationship with CSKT on the NBR. I will expect periodic updates on progress including dialogue regarding how FWS plans to address topics where mutual agreement has not yet been reached. As noted in the

attached action plan, I will be expecting the first update by close of business, Friday, November 30, 2007, and every two weeks thereafter, until the AFA is approved.

Thank you for your attention to this important matter. Let's bring this issue to closure!

Attachment