

# **National Bison Range Summary of Records Released under the Freedom of Information Act**

- The National Bison Range (NBR) was formed in 1908 within the borders of the Flathead Reservation in northwestern Montana and covers nearly 19,000 acres.<sup>1</sup> Its stated mission is “to provide a representative head of bison, or buffalo, under reasonably natural conditions [and] to help ensure the preservation of the species for continued public benefit and enjoyment.”<sup>2</sup>
- The proposal to transfer the NBR to the Confederated Salish/Kootenai Tribes (CSKT) came about as a result of the breakdown of negotiations for a third annual funding agreement (AFA) between the CSKT and the USFWS.
  - The first failed negotiation was in 2005-2006. It was ended by the USFWS amid heated accusations from both sides.<sup>3</sup> In a February 8, 2016, email sent by Robert E. Rutkowski to Paul Ryan, Mitch McConnell, and Dan Ash, Mr. Rutkowski said USFWS cancelled the agreement due to a host of performance-related issues on the part of the CSKT.
  - The 2008 agreement was invalidated in 2010 by a federal court order in a lawsuit brought by PEER. The reason was that the USFWS had failed to prepare an Environmental Assessment under NEPA requirements.<sup>4</sup>
- Between October and November 2015, Dan Ashe and Noreen Walsh developed a game plan through meetings/calls set up through emails for the transfer of the NBR to the CSKT.<sup>5</sup>

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<sup>1</sup> Jack McNeel, *Montana's National Bison Range May Revert to Confederated Salish/Kootenai Tribes*, Indian Country Today Media Network (Feb. 15, 2016) <http://indiancountrytodaymedianetwork.com/2016/02/15/montanas-national-bison-range-may-revert-confederated-salishkootenai-tribes-163433>.

<sup>2</sup> Sam Wilson, *Agency May Transfer Bison Range to Tribes*, Daily Inter Lake (Feb. 9, 2016) [http://www.dailyinterlake.com/news/local\\_montana/agency-may-transfer-bison-range-to-tribes/article\\_128d90ac-cf5d-11e5-a45c-5394939bf0ed.html](http://www.dailyinterlake.com/news/local_montana/agency-may-transfer-bison-range-to-tribes/article_128d90ac-cf5d-11e5-a45c-5394939bf0ed.html)

<sup>3</sup> Vince Devlin, *FWS Will Consider Transferring National Bison Range to Local Indian Tribes*, Missoulian (Feb. 8, 2016) [http://missoulian.com/news/local/fws-will-consider-transferring-national-bison-range-to-local-indian/article\\_b2533abc-91f4-5555-9be2-14a991550f05.html](http://missoulian.com/news/local/fws-will-consider-transferring-national-bison-range-to-local-indian/article_b2533abc-91f4-5555-9be2-14a991550f05.html); Sam Wilson, *Agency May Transfer Bison Range to Tribes*, Daily Inter Lake (Feb. 9, 2016) [http://www.dailyinterlake.com/news/local\\_montana/agency-may-transfer-bison-range-to-tribes/article\\_128d90ac-cf5d-11e5-a45c-5394939bf0ed.html](http://www.dailyinterlake.com/news/local_montana/agency-may-transfer-bison-range-to-tribes/article_128d90ac-cf5d-11e5-a45c-5394939bf0ed.html).

<sup>4</sup> <http://www.peer.org/news/news-releases/court-throws-out-national-bison-range-tribal-pact.html>

<sup>5</sup> Binder1 Released p 44, 49, 65-68.

- A meeting was set up for February 5, between Noreen Walsh and CSKT to talk about the proposed transfer of the NBR.<sup>6</sup>
- On February 5, 2016, Noreen Walsh,<sup>7</sup> director of the Fish and Wildlife Mountain-Prairie Region, and Cynthia Martinez,<sup>8</sup> Chief of the National Wildlife Refuge System, sent emails to FWS staff informing them of the FWS’s decision to enter discussions with the CSKT about the potential for the USFWS to support legislation that would transfer the NBR to be held in trust by the US for the CSKT.
  - The email lines out that USFWS has been working with CSKT for around 20 years on the idea of a partnership at the NBR that would be outlined in an Annual Funding Agreement (AFA), but a mutually acceptable agreement has not been reached.
  - As a result of failing to come to an agreement, the USFWS decided to investigate the possibility of transferring the refuge in a trust to the CSKT.
  - Such a proposal would require Congressional approval.
  - The emails state that this action would not represent a new direction for the Refuge System, but rather “is a response to a specific set of circumstances in a specific location at a specific point in time.”
- Anna Munoz, assistant regional director for external affairs at USFWS’s Mountain-Prairie Region, told press that the USFWS would “no longer have responsibility” for the NBR if the lands were transferred into a trust.”<sup>9</sup>
- On February 9, 2016, an email from Roya Mogadam to Cynthia Martinez stated that Congressman Zinke’s (R-MT-AL) office was requesting a briefing on the NBR.<sup>10</sup>
- In a February 11, 2016, email from Roya Mogadam forwarded to Will Meeks, Anna Munoz, Noreen Walsh, Matt Hogan, and Martin Kodis stated that Ms. Mogadam was looking to schedule Hill meetings for “next week” with Cynthia Martinez with the following offices:
  - Congressman Ryan Zinke (R-MT-AL)

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<sup>6</sup> Binder1 Released p 27-28, 61.

<sup>7</sup> Binder1 Released.pdf p 2.

<sup>8</sup> Binder1 Released.pdf p 29.

<sup>9</sup> *Supra* Devlin note 2.

<sup>10</sup> Binder1 Released.pdf p 16.

- Senator Steve Daines (R-MT-AL)
- Senator Jon Tester (D-MT-AL); and
- House Natural Resource Minority<sup>11</sup>
- A February 16, 2016, email from Anna Munoz to Noreen Walsh, Matt Hogan, and Will Meeks stated the meeting with Zinke was scheduled for Feb 16 at 1pm EST. The other meetings with Daines and Tester were on Thursday, February 18, 2016.<sup>12</sup>
- A February 18, 2016, email from Dan Ashe to Vernon Finley, CC: Brian Upton, Noreen Walsh, Cynthia Martinez, Betsy Hildebrandt, and Will Meeks states:<sup>13</sup>
  - “Our NWRS Chief, Cynthia Martinez, has been meeting with the Montana delegation staff, and as you described from your visits, she is getting supportive responses.”
  - “We met today with our DOI team, and the DOI Solicitor (Hilary Tomkins) is ready to begin work to draft legislation.”
  - “I hope we can have a good draft by the end of next week, as I’m anticipating that the delegation may ask us for assistance in drafting legislation.”
- April 1, 2016, retired refuge manager Ralph Webber documented a telephone call he had with Dan Ashe. This documentation was received in an email from Marvin Plenert on April 3, 2016.
  - Mr. Ashe stated the USFWS had achieved the refuge purpose of bison recovery in the NBR and the USFWS could no longer afford being just “bison managers;” the CSKT could manage bison just fine.
  - Mr. Ashe stated the NBR is bleeding funds that should be targeted for stations like Charles M. Russel Refuge.
  - For landscape conservation Mr. Ashe stated that the role of a foundation and a model for partnership would be played by the Charles M. Russell Refuge.
  - Mr. Ashe stated that CSKT only had interest in the Bison Range and no interest in managing the migratory water bird refuges in the area.

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<sup>11</sup> Binder1 Released.pdf p 74.

<sup>12</sup> Binder1 Released.pdf p 36.

<sup>13</sup> Binder1 Released.pdf p 69.

- Mr. Ashe felt the USFWS could not waste more time with a failed AFA and that if a transfer was not completed the CSKT would keep coming back to the table over management of the NBR.
- In 2011 Mr. Ashe stated the USFWS could not and would not turn over management of the NBR. In the conversation with Mr. Webber, Mr. Ashe said this statement was only meant to state that he would not use the AFA to transfer the NBR. He said his former statements had nothing to do with the sponsorship of congressional legislation being considered today.
- Mr. Ashe believed the Montana Delegation was mostly in full support with hosting some type of legislation for removal of the NBR from the NWRS.
- Mr. Webber posed the question as to when USFWS would prepare an EIS given the discussion for the transfer was initiated by USFWS. Mr. Ashe's opinion was the transfer was not a federal action and that Congressional legislation was not held accountable under NEPA.