

**PART II:
BACK TO THE BISON:
THINGS COME TOGETHER**



Photo from US FWS Digital Online Library

After the Confederated Salish Kootenai Tribes (CSKT) made the decision to work towards signing a management agreement, they began discussions with United States Fish and Wildlife Service (USFWS) in 1994 to pursue the co-management and joint operation of the National Bison Range Complex (NBRC) which includes the National Bison Range plus additional wetland refuge areas. They will implement this strategy under the provisions of the Self-Governance Act Amendments of 1994 (including the Tribal Self-Governance Act of 1994) that allows tribes that demonstrate capability and a geographic, historic and cultural connection to a federal area to negotiate for the management of specific projects listed in the National Register. CSKT argued that they demonstrated excellent abilities in contracting for and managing tribal and federal programs and in natural resources. They felt strongly they could substantiate an unarguable geographic, historic and cultural connection to most of the NBRC, including the Bison Range, and the ancillary Ninepipes and Pablo Refuges as part of the Complex. But the Tribes met with continued resistance. The choice to work for a co-management agreement produced almost as much conflict, outcry, and reaction as if they had moved toward ownership in fee title. Grady E. Hocutt, Refuge Keeper, Public Employees for

Environmental Responsibility (PEER) voiced concerns from his organization. Related organizations with a strong USFWS retiree/employee base, including the Blue Goose Alliance and National Wildlife Refuge Associations did as well. (Federal Register. 2005) These views were stated in the face of a \$2 billion budget deficit facing the National Wildlife Refuge System, long-term underfunding and understaffing, and a sense that the USFWS has evolved a certain type of management that could not be duplicated. Most objections were founded in the context of a perception that the politicization of the Department of Interior (DOI) was leading to a loss of employee rights and reduced ability to meet stewardship goals for wildlife and natural resources. Many would find the fears about job security and general politicization of agencies well-founded.

Though negotiations for the agreement were well underway, the USFWS's regional refuge chief announced that the CSKT should not be allowed to manage the National Bison Range as they had been requesting since 1994. (Capriccioso) Despite his protests, the first agreement to work together was signed on December 15, 2004. Reaction was immediate among USFWS employees and their supporters and environmental groups acting amid the fears of large-scale privatization of public lands and concerns for budget cuts and job loss in government agencies.

While the fears may not be relevant to the issue of co-management with CSKT, strong positions formed against the management agreement. The notice of the final Annual Funding Agreement (AFA) resulting from the initial agreement was preceded by a 90-day period for public comment, press releases, and public meetings, and publication in the Federal Register and followed by a notice in the Federal Register. (US, Federal Register Notice, 2005) The reaction to the AFA hardened positions against tribal-federal co-management in general and especially in this instance, despite the fact that a similar agreement was working well between the Council of Athabascan Tribal Governments and the USFWS in the Yukon to manage the Yukon Flats National Wildlife Refuge of Alaska.

The notice of the signed agreement published in the Federal Register explained the nature of the agreement, the legal framework for the agreement under the Tribal Self-Governance Act of 1994, the endorsement of the Secretary of the Interior, the 90-day review period in Congress, and the agreement period from March 15, 2005 through September 30, 2006, with language opening the way for a future extension of the agreement. All negotiations were carried out in accordance with the US Code of Federal Regulations, "Annual Funding Agreements Under the Tribal Self-Government Act" (US 25 Code of Federal Regulations, part 1000). The notice goes on to describe 1,356 comments received, including 720 pre-printed postcards.

The majority of criticisms were that the AFA (Annual Funding Agreement) hinders/weakens the USFWS's ability to fulfill its mission and that the final agreement lacked sufficient specificity. Some comments took a strong position based on beliefs about the and organizational culture. As one put it, "No Refuge Manager, no matter how skilled, could successfully implement this agreement as it is written." (US, Federal Register. Notice 2005) Employee safety was raised as a concern along with reduced

financial accountability and the separation of USFWS employees from the Refuge Manager's supervisory authority. Whether or not the management agreement constituted a federal action under the National Environmental Policy Act was a question that was raised and answered in the negative by the USFWS.

The USFWS indicated that any waiver of regulations would be first discussed between the Tribes and the Refuge, must be further addressed through the Service Director and may be denied by the Secretary. Finally, a number of personnel issues were raised, including the qualifications of CSKT employees – despite the fact that it had a well-established tribal Natural Resource Department with an excellent reputation. However, perceived competition and fear of loss of jobs continued to drive opposition. One comment stated:

These faithful staff are now being told they have the choice of taking a position with CSKT, taking an IPA (temporary) position paid for by the refuge, but under full control and supervision of CSKT, transferring to another refuge (fully restricted to time limits and availability), or they face the loss of their job. All of their years of service have been wiped away by the CSKT demands, and the lack of forceful defense by the USFWS. (US, Federal Register, 2005)

One item that would come up later was the cost of the agreement. Some accounts reported the number at \$23,460. The amount seemed quite low to perform all the activities, especially in the first year of the agreement. The agreement included activities in the following categories: biological program, fire program, maintenance program, and visitor services. Questions arose about the process for dispute resolution, but the USFWS replied that this was covered by an “appeals” policy under the US Code of Federal Regulations, “Annual Funding Agreements Under the Tribal Self-Government Act “ (US 25 Code of Federal Regulations, Subpart R, 1000: 420-438) In addition, the AFA required that the Refuge Manager notify the Tribal Council in writing of any other performance deficiency, identifying the deficiency, the applicable Operational Standard or term or condition of the AFA, and why the performance of CSKT did not meet the standard, term or condition, with a reasonable amount of time to remedy the deficiency or demonstrate that no performance deficiency exists.

THINGS FALL APART

USFWS employees at the Refuge were dissatisfied with their choices. Basically they had to agree to reassignment at another National Wildlife Refuge or work for the Tribes under CSKT supervision.¹ Given the context of general employee reductions and internal political pressure on the USFWS from sources not specifically related to NBRC issues-- especially those political initiatives to downsize government and reduce any regulation that appeared to slow private economic development-- it is not surprising that employee

¹ After USFWS positions were to be eliminated CSKT was prepared to offer the former employees jobs at the Refuge.

grievances, seven in all, went forward. Allegations flew of non-performance of tasks by the Tribes such as fence replacement, invasive plant surveys and prescribed burns. One particularly hurtful allegation was that the Tribes had not properly fed the bison. However, looking further into this allegation, the debate about performance seemed to revolve around a protocol that stated that the bison, when corralled, should be fed so that there would be leftover food each day. On Thanksgiving evening, a USFWS employee found that there was no excess feed and assumed the bison had not been fed according to the protocol. On the other hand, bison are adapted to the free range, where they may eat different amounts of food depending on conditions such as the temperature. Kept for months in a corral, it would seem extremely difficult to gauge their daily needs so as to ensure leftover feed each day. The bison had been fed that day and it had been cold that fall, which might have increased their intake. (McDonald, Tom interview.6/28/09)

Negotiations for renewing the first agreement, set to lapse in 2006, were marred by a background of allegations. Nonetheless, the USFWS and CSKT extended the agreement indefinitely on a provisional basis after the first agreement technically ended in 2006. But by September, USFWS employees pressed their grievances using the agency's internal grievance system citing safety and ethical violations. The agency then hired an outside firm to investigate performance allegations.

On December 11, 2007 the Regional Refuge Manager sent a letter to CSKT cancelling the agreement. It is not so surprising that the same Regional Refuge Manager, who had announced that the proposed agreement was not appropriate at the annual round-up in fall 2003, wrote a letter in 2007, supporting the termination of the agreement in 2007. The agreement was continuing on a provisional basis past its original date. After his letter, the USFWS then terminated talks with CSKT.

CSKT denied the allegations and offered detailed explanations and rebuttals. The unilateral termination of the agreement, without prior communications about any violation of performance, compliance, grievance and termination provisions of the AFA created mistrust about USFWS intentions. Further, the CSKT Natural Resource Director later recollected that there was feeling that "recent actions regarding the NBRC were aimed at discouraging the Tribes from seeking future agreements," and that regional priorities needed adjustment. (Matt, C., 2009)

At the same time, as the result of national budget cuts, key staff positions were eliminated in the National Refuge System. It seemed most unusual to the Tribes that specific and deep cuts at the NBRC meant that this refuge, charged with conserving bison and other species, would have no full or part-time biologist and only one part-time bio-technician. Such an unusual action, not in keeping with USFWS science-based management even with budget cuts, raised the suspicions of the Tribes and of the USFWS employees.

The CSKT responded to Department of the Interior's request that they create a framework for a new agreement shortly after the termination, and they submitted a draft to DOI on February 2, 2007. They demanded more funds and professional biologist positions. When CKST requested more funds to do the work, it actually echoed the

concerns of USFWS employees about underfunding. Yet USFWS employees and supporters didn't envision receiving a larger piece of the funding pie because of CSKT's ability to lobby for more funds: instead, they feared receiving even smaller slices for the Refuge System. CSKT wanted a longer term agreement, realizing the need to build relationships and programs over an extended period of time. The Tribes maintained a large natural resources department with more than 100 full-time regular employees and up to 130 seasonal employees in 2006 with a combined annual budget of more than \$20 million. (CSKT, Annual Report to the Tribal Membership, 2006). They were prepared to take on larger projects like the NBRC.

On December 29, only 18 days after the termination of the agreement, the Department of the Interior, the parent agency of the USFWS, intervened and reversed the termination decision, announcing its intention to reestablish a working relationship with the CSKT. In an April 27, 2007 letter, the Regional Refuge Supervisor for the USFWS laid out terms for a five year cooperative agreement at NBRC proposing to fill vacant, non-supervisory permanent positions and term or temporary positions with CSKT personnel. He offered to involve CSKT as a full partner in preparing annual work plans for management of NBR and its satellite refuges.

In April 2007 during the interim period between agreements, the USFWS announced that agency staffing at the NBR would be reduced from 17 to 6.3 permanent full-time employees. The previous agreement with the CSKT had actually kept the NBRC "isolated and insulated from" reductions occurring nationwide, according to Dean Rundles, supervisor of wildlife refuges in Colorado, Utah, Wyoming and Montana. CSKT spokesman Rob McDonald said "It's hard not to think about what could have been—had the USFWS been more willing to work alongside tribal workers in the joint management deal." (Devlin, 2008) Discussions about reducing the herd as well as the staff continued. Promises were made by the DOI to return tribal employees to the range and Lyle Laverty, the new Asst. Secretary for Fish Wildlife and Parks, made it clear the CSKT would be given a fair shot to manage the refuge. (CKST Annual Report 2007,)

Nevertheless, the opposition dug in again and worked a national campaign to create public fear of tribal involvement in potential agreements under the Self-Governance Act Amendments of 1994 (which includes the Tribal Self-Governance Act) in dozens of National Parks and National Wildlife Refuges including all of those in Alaska. The CSKT, looking at a commitment of many months of long-term public relations work, use of tribal resources to answer allegations, and a lengthy negotiation process to achieve a new, working agreement, wondered what they should do. Again, they would have to choose whether to continue negotiations, relying upon a framework of law and evidence supported by the Office of the Inspector General's report, despite allegations to the contrary. And the U.S. Institute for Environmental Conflict Resolution, part of the Morris K. Udall Foundation, an esteemed environmental mediation institution, was standing ready to assist with negotiations using its highly effective environmental conflict resolution process. The Tribes could also choose to drop out from the negotiation process completely and step back from involvement in the management of the NBRC. Or they could drop out of the negotiation process and sue the government.

POSTSCRIPT

On June 19, 2008, the CSKT and the USFWS issued a joint press release announcing the signing of a new AFA wherein “The CSKT is assuming a substantive role in managing mission-critical programs at the Bison Range” and CSKT Chairman Steele commented “Our Tribes’ unique history with this particular bison herd, and our ownership of the land upon which the ancillary Ninepipe and Pablo Refuges are located, provided both our motivation for stewardship and our ability to add another dimension to the NBRC.” (USFWS & CSKT, Annual Funding Agreement, 2008) The agreement outlined activities during fiscal years 2009-2011. Many questions remain about CSKT’s decision to sign a new agreement and what should be in such an agreement.

REFERENCES:

Annual Report to the Tribal Membership, Confederated Salish and Kootenai Tribes, obtained at the Tribal Offices, CSKT Administration, PO Box 278 Pablo Montana, 59855

Bartlett, W.A. Works Progress Administration Papers, collection 2336, Merrill G. Burlingame Special Collections, Montana State University, Libraries, Bozeman, MT. Bartlett buffalo manuscript is in Box 127. Buffalo Research Report 399.092.

Burland, H. (told by in 1941) Buffalo story myths, In Whealdon, et al, Bighart, R, Ed. (2001) *“I will be meat for my Salish:” The Montana Writers Project and the buffalo of the Fathead Indian Reservation*. Pablo: MT Salish Kootenai College, p. 51.

Callenbach, E. (1996) *Bring back the buffalo: A sustainable future for America’s Great Plains*. Washington, DC: Island Press

Courville, Z (told by in 1941) History of Buffalo, In Whealdon, et al, Bighart, R, Ed. (2001) *“I will be meat for my Salish:” The Montana Writers Project and the buffalo of the Fathead Indian Reservation*. Pablo: MT Salish Kootenai College, p. 128.

Boyd, D.P. (2003) *Conservation of North American bison: Status and recommendations*. Unpublished master’s thesis, University of Calgary, Calgary, Canada.

Capriccioso, R. (2003, Nov. 17) Salish-Kootenai management of bison range more than a beef over buffalo *News from Indian Country*.

Confederated Salish-Kootenai Tribes <http://www.cskt.org/>

Dary, D.A. (1989) *The buffalo book*. 2nd ed. Athens: Ohio University Press

Devlin, V. (2007) FWS to cut Bison Range staff. *Missoulian*, April 12 Retrieved 7/8/10 from: http://missoulian.com/news/article_49794aa2-3f4d-5b7a-ad02-8d98fcff1202.html

Devlin, V. (2008) Bison Range to Celebrate 100 Years of wildlife preservation. *Missoulian*, May 28. Retrieved 7/8/2010 from: http://missoulian.com/news/article_141e7dd6-7e47-53f0-9856-d2d7c3710358.html

Freese, C. H., et al. (2007) Second chance for Plains Bison. *Biological Conservation*, v.36:2, pp. 175-84.

Grinnell, G. B. (1892) The last of the buffalo. *Scribner's Magazine* v. 12:3, pp. 267-287.

Gross, M.R. and Davies, E, (2008-07-10) Social and Biological Carrying Capacities, Paper presented at the International Congress for Conservation Biology, Convention Center, and Chattanooga TN. Retrieved 7/8/10 from: http://www.allacademic.com/meta/p_mla_apa_research_citation/2/4/3/7/8/p243783_index.html

Ground, M, (2006) Iniskim the Buffalo Rocks, In Hungry Wolf, A., *The Blackfoot papers, Pilunni history and culture*. Browning Mt: Blackfeet Heritage Center and Art Gallery.

Hornaday, W.T. (1913) *Our vanishing wildlife: Its extermination and preservation*. NY: Scribner's Sons

Knapp, S.E., et al (1993) Bibliography & abstracts: Brucellosis in the American bison, *Bison bison L.* and related wildlife. *Center for Bison Studies Montana State University – Bozeman*. Downloaded 7/10/10 from: <http://www.montana.edu/~wwwcbs/brucbib.html>

La Duke, W. (1999) *All Our relation: Native struggles for land and life*, Cambridge MA: South End Press.

Luoma, J., (1993) Back home on the range: Dubious future for the American bison's habitat. *Audubon* 95:2. pp. 46-53

Matt, C. (2009) , *Natural Resources Department Newsletter*, Vol. 2:1, p. 2, Downloaded 7/10/10 from http://www.cskt.org/tr/nrd_newsletter.htm

Matthiessen, P. (1987) *Wildlife in America*. Rev. ed. New York: Viking.

McLuhan, T.C. (1972) *Touch the earth: A self-portrait of Indian existence*. New York: Outerbridge & Dienstfrey.

Monroe, J.B. (1902) Montana's buffalo: The Pablo-Allard Herd, *Forest and Stream*, v. 59, no.2 pp.24-26

Morigeau, A (told by in 1941) In Whealdon, et al, Bighart, R, Ed. (2001) *"I will be meat for my Salish: " The Montana Writers Project and the buffalo of the Flathead Indian Reservation*. Pablo: MT Salish Kootenai College, p. 79

Plumb, G. E., Dodd, G.L. and Stellfox, J.B. (1992) A Bibliography on bison, Agricultural Experimental Station, University of Wyoming, Laramie, and Jamestown ND: *Northern Prairie Wildlife Research Center Online*. Downloaded 7/8/10 from: <http://www.npwrc.usgs.gov/resource/literatr/bisonbib/index.htm>

Plummer, M (2007, April 19) FWS to reduce bison range staff, herd. *Char-Koosta News*. Downloaded 7/10/10 from: http://www.charkoosta.com/2007_04_19/FWS_to_reduce_bison_range.html

Redhorn, L. (told by in 1941) The Buffalo calf. In Whealdon, et al, Bighart, R, Ed. (2001) *"I will be meat for my Salish: " The Montana Writers Project and the buffalo of the Flathead Indian Reservation*. Pablo: MT Salish Kootenai College, p. 63

Secretariat of the Convention on Biological Diversity (1992) Convention on biological diversity.

Seton, E. T. (1927) *Lives of game animals*. 4 vols. NY: Scribner's Sons.

Stinger, A, (told by in 1941) Buffalo habits, In Whealdon, et al, Bighart, R, Ed. (2001) *"I will be meat for my Salish: " The Montana Writers Project and the buffalo of the Flathead Indian Reservation*. Pablo: MT Salish Kootenai College, p. 62.

U.S. Department of the Interior, (2007) *Final Bison and Elk Management Plan an Environmental Impact Statement for the National Elk Refuge/Grand Teton National Park/John D. Rockefeller, Jr. Memorial Parkway* Retrieved 7/8/10 from: <http://www.fws.gov/bisonandelkplan/>

U.S. Federal Register (2005) v. 70:20, pp. 5205-5210. Fish and Wildlife Service and Confederated Salish Kootenai Tribal Governments sign Annual Funding Agreement. Downloaded 7/8/10 from: <http://www.fws.gov/policy/library/2005/05-1785.html>

U.S. Fish and Wildlife Service. (2008) *Fiscal Years 2009-2011 Annual Funding Agreement Between the United States Department of the Interior Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes of the Flathead Reservation*. Retrieved 7/8/10 from: http://www.fws.gov/mountain-prairie/cskt-fws-negotiation/FY08AFA_Signed_Document.pdf

U.S. Fish and Wildlife Service. (2005). National Bison Range Brochure (maps, wildlife drawings and narrative information about the NBRC)

US Fish and Wildlife Service and Confederated Salish Kootenai Tribes (2008) U.S. Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes Sign Annual

Funding Agreement For National Bison Range Complex. Downloaded 7/10/10 from:
<http://www.fws.gov/mountain-prairie/cskt-fws-negotiation/>

Whealdon, et al, Bighart, R, Ed. (2001) *"I will be meat for my Salish:" The Montana Writers Project and the buffalo of the Flathead Indian Reservation*. Pablo: MT Salish Kootenai College

SUGGESTED ADDITIONAL REFERENCES

Gates, C.C., et al. (2005) The ecology of bison movements and distribution in and beyond Yellowstone National Park: A critical review with implications for winter use and transboundary population management. Faculty of Environmental Design, University of Calgary, Calgary, Alberta. Downloaded 7/10/10 from:
<http://64.241.25.182/yell/parkmgmt/upload/2.pdf>

Group sues over Bison Range management, April 9, 2008 by the Associated Press,
www.reznetnews.org/article/group-sues-over-bison-range-management-32330

Halbert, N.D. & Derr, J.N. (2008) Patterns of genetic variation in U.S. federal bison herds. *Molecular Ecology*, v 17:23, pp. 4963-4977.

Hedrick, P. W. (2009) Conservation genetics in North American bison (Bison, bison), *Journal of Heredity*, July-Aug 2009, 100:4, pp. 411-420.

Lyons, E. P. (2005) "Give me a home where the buffalo roam:" The case in favor of the management-function transfer of the National Bison Range to the Confederated Salish and Kootenai Tribes of the Flathead Nation. *Journal of Gender Race & Justice*, v. 8:3, pp 711-734.

U.S. Federal Register: (2008) July 10, 2008, Volume 73:1311, pp. 397113 -39714 Notice of signing AFA for 2008—2011, background information and legal authorities

U.S. Fish and Wildlife Service. (2008) Fiscal Years 2009-2011 Funding Agreement Between the United States Department of the Interior Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes of the Flathead Reservation," June 19. Downloaded 7/10/10 from: http://www.fws.gov/mountain-prairie/cskt-fws-negotiation/FY08AFA_Signed_Document.pdf

