

and installed from private agricultural land 800 feet east of the Refuge using directional drilling equipment, construction and operation of the pipeline would not be detectable at the surface of the Refuge and cause no detectable ground surface disturbances to terrestrial or aquatic habitats within Stone Lakes NWR at any time during its construction or operation. Therefore the proposed use would not negatively affect the purposes of Stone Lakes NWR or the mission of the Service or impact existing or potential wildlife-dependent recreational uses.

**DATES:** Written comments should be received on or before March 3, 2005 to receive consideration by the Service.

**ADDRESSES:** Comments should be addressed to: Manager; California/Nevada Operations Office, Attention Realty Officer, U.S. Fish and Wildlife Service, 2800 Cottage Way, W-2610, Sacramento, CA 95825.

**FOR FURTHER INFORMATION CONTACT:** Realty Specialist Steve Lay at the above California/Nevada Operations Office address, (916) 414-6447.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public that the Service will be proceeding with the processing of this application, the compatibility determination, and the approval processing which includes the preparation of the terms and conditions of the permit. The purpose of the natural gas pipeline is to provide reliable and cost effective energy to the residential, commercial, and industrial customers within Sacramento and adjacent counties. The total width of the subsurface right-of-way is twenty feet to be located ten feet on either side of the centerline. The total length of the right-of-way is 170.85 feet. Therefore the total area of the subsurface right-of-way would comprise approximately 3,417 square feet or 0.0784 acres. The depth of the subsurface right-of-way would be approximately 15–20 feet underground. The pipeline itself is six inches in diameter Schedule 20 ERW carbon steel API 5L Grade B or Grade x 42 steel pipe and will be inserted into a slightly larger diameter (7 inches) hole. An Environmental Action Statement has been prepared by the Stone Lakes NWR Refuge Manager stating the relevant categorical exclusion pertaining to this proposed right-of-way. A Compatibility Determination has been written and has concluded that the proposed use would not negatively affect the purposes of Stone Lakes NWR or the mission of the Service or impact existing or potential wildlife-dependent recreational uses.

**Authority:** Right-of-way applications for pipelines are to be filed in accordance with Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449; 30 U.S.C. 185 amended by Pub. L. 93-153).

Dated: January 26, 2005.

**Ken McDermond,**

*Acting Manager, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 05-1810 Filed 1-31-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF INTERIOR

### Fish and Wildlife Service

#### Fish and Wildlife Service and Confederated Salish and Kootenai Tribal Governments Sign Annual Funding Agreement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** On December 15, 2004, the U.S. Fish and Wildlife Service (Service or we) signed an annual funding agreement (AFA or Agreement) with the Confederated Salish and Kootenai Tribal Governments (CSKT) under the Tribal Self-Governance Act of 1994. The action was taken at the discretion of the Service. The decision reflects review and consideration of concerns, issues, and comments received during a 90-day public comment period which began on July 14, 2004, and ended on October 12, 2004. The public comment period was reopened for an additional 15 days on October 20, 2004, and closed on November 4, 2004. The Agreement was re-negotiated and slightly re-worded following the public comment period. The Agreement provides for the CSKT to perform certain programs, services, functions, and activities (Activities) for the National Bison Range and ancillary properties (Northwest Montana Wetland Management District, Pablo, and Ninepipe NWRs) during an 18-month period. The Regional Director for the Service in Denver, Colorado, signed the agreement December 15, 2004. The Secretary of the Interior immediately endorsed the Agreement, and forwarded it to the U.S. Congress for a 90-day review period.

**DATES:** The agreement period is March 15, 2005, through September 30, 2006. As provided by the Tribal Self-Governance Regulations at 25 CFR 1000.146, and subject to applicable laws and regulations, the Service and the CSKT may agree in writing to extend to a date after September 30, 2006, the term for performing any Activity covered by the AFA. All of the terms

and conditions of the AFA will apply during any extension of the term of the AFA. The Service and CSKT may modify the Activities covered by the AFA or the consideration paid by the Service to the CSKT for performing an Activity only by amending the AFA as provided in section 20.A of the AFA.

**ADDRESSES:** You may obtain the final agreement and supporting documentation at:

1. Montana—National Bison Range Headquarters, 132 Bison Range Road, Moiese, Montana 59824;

2. Denver—U.S. Fish and Wildlife Service Regional Office, National Wildlife Refuge System—Mountain-Prairie Region, P.O. Box 25486, DFC, Denver, Colorado 80225;

3. Confederated Salish and Kootenai Tribes, P.O. Box 278, Pablo, Montana 59855; or

4. Internet—<http://mountain-prairie.fws.gov/cskt-fws-negotiation>.

**FOR FURTHER INFORMATION CONTACT:** Steve Kallin, Refuge Manager, (406) 644-2211, extension 204.

#### SUPPLEMENTARY INFORMATION:

*What is the National Bison Range Complex?* The National Bison Range Complex (NBRC), part of the National Wildlife Refuge System (NWRS), and consists of the National Bison Range, Swan Lake, Lost Trail, Pablo, and Ninepipe National Wildlife Refuges, and the Northwest Montana Wetland Management District. Established in 1908 to conserve the American bison, the Bison Range and ancillary properties provide important habitat for a variety of species such as elk, pronghorn antelope, and migratory birds.

*How Did the Service Develop the Agreement?* The Service and the CSKT carried out negotiations in accordance with regulations in 25 CFR part 1000.

*What Events Led to This Action?* In spring 2003, the CSKT submitted a formal request to reinitiate negotiations related to compacting of activities at the National Bison Range and ancillary properties (Northwest Montana Wetland Management District, Pablo, and Ninepipe NWRs) pursuant to the Indian Self-Determination and Education Assistance Act (Pub. L. 93-638). In response to this request, negotiations between CSKT and the Service on an AFA for that portion of the National Bison Range Complex within the Flathead Indian Reservation began in the summer of 2003.

*What is the Tribal Self-Governance Act?* The Tribal Self-Governance Act of 1994 was enacted as an amendment to Public Law 93-638 and incorporated as Title IV of that Act. The Self-Governance Act allows qualifying self-

governance tribes the opportunity to request AFAs with the Bureau of Indian Affairs (BIA) and nonBIA bureaus within the Department of the Interior. When dealing with nonBIA bureaus, including the Service, qualifying tribes may enter into AFAs that would allow them to conduct certain activities of such nonBIA bureaus. Eligible activities include Indian programs (programs created for the benefit of Indians because of their status as Indians); activities otherwise available to Indian tribes (any activity that a Federal agency might otherwise contract to outside entities); and activities that have a special geographic, historical, or cultural significance to an Indian tribe.

Public Law 93–638 and the regulations that implement the law (25 CFR 1000.129) prohibit the inclusion of activities in an AFA that are inherently Federal functions. The Refuge has no special Indian programs. All activities of the Service on national wildlife refuges are for the benefit of the fish and wildlife resources, their habitats, and the American public. Activities that may have a special relationship with a tribe are the most promising for inclusion in an AFA. Whether to enter into an agreement with a tribe for these activities is discretionary on the part of the Service. The Service recognizes that many members of the CSKT who live near the National Bison Range have a cultural, historical, and/or geographical connection to the land and resources of the National Bison Range and; therefore, may feel very much a part of these lands. The proposed agreement provides for the CSKT to perform certain programs, services, functions, and activities for the National Bison Range Complex during an 18-month period.

**What Happens Now?** The Service and CSKT signed the Agreement on December 15, 2004. The Secretary of the Interior accepted and endorsed the Agreement the same day. In accordance with 25 CFR 1000.177, the Secretary then forwarded the Agreement to the Senate Indian Affairs Committee and the House Resources Committee Office of Insular and Native American Affairs. If there are no objections to the Agreement, it will go into effect 90 days after it was submitted to Congress.

#### Summary of Public Involvement

On July 6, 2004, the Service issued a press release in Montana announcing a future **Federal Register** notice and present availability of the AFA on the joint Service and CSKT Web site. It provided the Web site where the public could obtain the draft agreement, an address to obtain a hard copy of the document, and an address for

submitting comments. The Service announced the public comment period (July 14–October 12, 2004) in the **Federal Register** (69 FR 42199, July 14, 2004). In addition, we issued a joint news release with the CSKT on July 14, 2004, in Montana and provided interviews with local media. We provided the news release, draft Agreement, and an opportunity to provide questions and/or comments on the joint Web site. The Service and the CSKT also provided a joint news release (August 25, 2004) in advance of public meetings held in September 2004, in Polson, Montana, and Missoula, Montana, and an open house at the National Bison Range Complex. On October 12, 2004, the Service and the Tribes issued a joint news release containing information on the cost of the AFA. As a result of the comment period reopening until November 4, 2004, on October 13, 2004, the Service, Congressman Denny Rehberg of Montana, and the CSKT issued a joint news release to the Montana community. The Service issued another news release on October 20, indicating that we published a **Federal Register** notice [69 FR 61692, October 20, 2004] that day announcing the reopening of the comment period. Media contacts, resulting in many newspaper articles and inquiries, occurred regularly throughout the process. Local Montana newspapers carried each announcement as well as some national newsletters of refuge-oriented organizations and Native American publications. We also provided the announcement electronically to private citizens nationally who are members of various conservation and refuge-oriented organizations. We provided Congressional updates throughout the public comment period. We expect a 90-day review by Congress to occur over the next few months.

#### Nature of Public Comments

We received 1,356 comments by a variety of means. Several individuals and/or groups submitted more than one comment. Comments were addressed to President George W. Bush, Secretary of the Interior Gale A. Norton, FWS Director Steve Williams, Regional Director Ralph O. Morgenweck, Refuge Manager Steve Kallin, Refuge Supervisor Steve Berendzen, or other government officials. Of the comments received, approximately 720 were preprinted postcards; approximately 115 were form letters; and approximately 520 letters/emails were from individuals, environmental groups, Indian tribes, and businesses that contained specific substantive

comments. However, some of those comments were third party comments that were forwarded to the Service and those third party comments predated the draft AFA that was available for public comment. Included in the 1,356 comments were approximately 420 pages of petitions containing approximately 8,380 unverified signatures. We received comments from 44 States, 1 from Canada, and several unknown locations. We received more than 900 comments from Montana.

#### Response to Public Comments

##### *Issue 1: Draft AFA hinders Service ability to fulfill mission of NWRS at the NBRC.*

**Concerns:** This agreement weakens Service's ability to fulfill its trust responsibilities and limits accountability to the public.

**Comment:** "Although the draft AFA reserves to FWS the ultimate responsibility and authority for operation and management of the NBRC, many of its provisions hamstring the ability of the FWS to fulfill its duty and public trust obligation under the National Wildlife Refuge System Administration Act to manage the refuge units or inappropriately shift management responsibility to CSKT \* \* \*."

**Response:** The National Bison Range Complex (NBRC) and the Confederated Salish and Kootenai Tribes (CSKT) have worked cooperatively in the past on a number of different projects and initiatives. The Service remains committed to fulfilling the mission of the NWRS by working with the CSKT to achieve refuge goals at the NBRC through the Annual Funding Agreement (AFA). The AFA states in Section 7 that the Refuge Manager retains final authority for directing and controlling the operation of the NBRC, as well as the CSKT's performance of duties covered under this AFA.

##### *Issue 2: Draft AFA lacks sufficient specificity to ensure CSKT accountability.*

**Concern:** Lack of specificity prevents successful implementation or meaningful performance assessments, which are essential for enforcing accountability.

**Comment:** "From our years of experience and perspectives as managers of National Wildlife Refuges and National Fish Hatcheries, the agreement as written is too broad and comprehensive and lacks the specificity needed to make it work, or even support a meaningful review." Also, "No Refuge Manager, no matter how skilled, could successfully implement this agreement as it is written."

**Response:** In this AFA, the Refuge Manager retains the responsibility and authority to provide additional direction to the CSKT, to ensure tasks are completed according to Service standards and applicable policy, regulations, and laws. This AFA has great detail and attempts to strike a balance between specificity and flexibility to enable the Service and the CSKT to adapt to changing conditions.

*Issue 3: Reduced financial accountability.*

**Concern:** Records of expenditures are provided “to the FWS to the extent the FWS requires them for its budget appropriation and apportionment processes \* \* \*” This requirement is insufficient for a detailed audit necessary to ensure fiscal accountability.

**Comment:** “Section 9 of the agreement, “Records and Other Information,” lacks any requirements for auditing the CSKT budget or financial records related to the AFA. Specifically, the agreement only calls for the CSKT to provide such information to the FWS “to the Extent the FWS requires them for its budget appropriation and apportionment processes \* \* \*” To ensure the FWS’s ability to effectively manage operations at the NBRC, while remaining accountable to the public, the CSKT’s financial records and other documents related to administering the AFA must be made available to the FWS, and a comprehensive auditing of activities and expenditures of funds must be performed by the FWS prior to negotiation of any subsequent AFAs.”

**Response:** Since the CSKT is already statutorily mandated to submit single-agency audit reports under 31 U.S.C. 7501 *et seq.*, there is no need for the Agreement to duplicate existing Federal audit requirements. In order to qualify as a Self-Governance Tribe, the CSKT has already had to demonstrate financial accountability under existing Federal statutes and regulations. Section 9 of the Agreement contains additional assurances concerning the CSKT’s records, expenditures, and financial report. We do not believe that this AFA reduces the financial accountability of either the CSKT or the NBRC.

*Issue 4: Separation of FWS employees from Refuge Manager’s supervisory authority.*

**Concern:** Transferring supervision of Service staff to CSKT creates an unworkable management structure and separates the responsibility to manage the NBRC from the authority to accomplish these responsibilities. The Manager is still held accountable for

management of the NBRC, but lacks the ability, authority, and flexibility to direct staff efforts on a daily basis to accomplish refuge objectives.

**Comment:** “We fear that the proposed structure would eliminate the Refuge Manager’s direct authority over refuge employees. It is important that these issues be clarified in the AFA, in an effort to retain the management authority of the Refuge Manager. The Refuge Manager must retain direct supervisory authority over all employees operating on the Bison Range and retain control of the day-to-day implementation of the Range’s programs and plans.

The proposed “transfer” of staff to CSKT control, a splitting of resources that results in untenable managerial arrangements, should be abandoned. No successful business or government agency would attempt to operate with such a bifurcated supervision. The proposed concept of meeting weekly, or more often, just to initiate the process of describing upcoming tasks, setting objectives and priorities, and then going through an uncertain, time-consuming reconciliation whenever CSKT inserts disagreement or wants changes, is an inherently complicated, weak, and costly managerial process. The NWRS cannot afford such unproductive and costly methods and practices.”

**Response:** We acknowledge that, while some Service employees will be separated from the direct supervisory control of the Refuge Manager, the Refuge Manager and the Coordinator will work cooperatively to oversee the successful implementation of this AFA. However, under the AFA, the Refuge Manager retains final responsibility and authority for the NBRC operations (see Section 7 A-C of the Agreement), and thus also retains oversight necessary to exercise such authority. The Service has been careful to insure that this AFA does not contravene the spirit or letter of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee, as amended). The Service will evaluate the effectiveness of this supervisory structure and will be open to suggested modifications in the future. CSKT will only manage those NBRC employees contracted under this AFA, and CSKT’s performance of the Activities under this AFA remains subject to the Refuge Manager’s authority.

*Issue 5: CSKT may lobby Congress for additional AFA funding.*

**Concern:** If CSKT successfully lobbies Congress to earmark funding for NBRC AFA, national wildlife refuges in Montana, and throughout the NWRS will suffer from reduced funding.

**Comment:** “Explicit language throws wide open the door for CSKT to lobby Congress for even greater, and more certain funding and favors (normally a violation of law), at the expense of other units of the NWRS throughout the country.”

**Response:** The CSKT is already subject to the generally applicable Federal laws that prohibit Federal funds from being used to lobby Congress and other government entities [18 U.S.C. 1913 and 25 CFR 1000.397]. This Agreement does not alter the applicability of those laws to CSKT.

In response to the public comment, we amended the AFA to reflect that the applicable Federal laws prohibit use of Federal funds to lobby any governmental entity, not just Congress. The revised Section 12.G will now read as follows:

G. **Lobbying.** The CSKT will not use any of the funds the FWS pays the CSKT under this AFA to lobby Congress or any other government entity in any manner prohibited by Federal law.

*Issue 6: NEPA Compliance.*

**Concern:** This draft AFA is precedent setting, both for the NBRC and the NWRS. The Categorical Exclusion prepared for the draft AFA is insufficient to address this precedent and is inconsistent with the Service’s standard National Environmental Policy Act (NEPA) approach to issues of this magnitude.

**Comment:** “Such a broad change in management of critical wildlife resources and public lands and the broad controversy over this transfer clearly mandates an EIS [Environmental Impact Statement], or at minimum, an Environmental Assessment of the impacts.”

**Response:** The Service does not believe the Agreement is a major Federal action that will result in significant environmental impacts. The Service considers the work that is identified in the Agreement to be part of the routine operations, maintenance, and management of the National Bison Range Complex (whether done by Service employees, CSKT employees, or another contractor). The Service has found that routine operation, maintenance, and management activities do not (individually or cumulatively) have a significant effect on the human environment and are, therefore, categorically excluded from NEPA compliance (516 DM 6).

*Issue 7: Waiver of Regulations.*

**Concern:** Using waivers, CSKT may bypass refuge regulations, operational standards, procedures, protocols.

**Comment:** “The Federal laws and regulations governing the NBRC have

been shaped by decades of Congressional, agency, and public interest and should not be waived lightly. Language similar to the CATG [Council of Athabascan Tribal Governments] AFA should be included in the CSKT AFA."

**Response:** Neither the AFA nor the Tribal Self-Governance Act allows the CSKT to waive any Federal law. However, Section 8.C of the AFA does recognize the Tribal Self-Governance Act provision allowing the CSKT to request a waiver of a *regulation* (25 U.S.C. 458cc(i)(2)). The waiver would be addressed to the Service Director pursuant to 25 CFR 1000.222(a).

According to 25 CFR 1000.226, The Secretary may deny a waiver request if:

(b) For a non-Title-I-eligible program, the requested waiver is:

- (1) Prohibited by Federal law; or
- (2) Inconsistent with the express provisions of the AFA.

In response to the public comment, the parties have agreed that the CSKT will only make a waiver request after consultation with the Refuge Manager. The revised Section 8.C reads as follows:

**C. Waivers.** The CSKT may request, after consulting with the Refuge Manager, that the Secretary waive a regulation in accordance with the procedures in § 403(i)(2) of the Act, 25 U.S.C. 458cc(i)(2), and the Tribal Self-Governance Regulations at 25 CFR part 1000, subpart J.

*Issue 8: Federal Tort Claims Act protection for Service volunteers.*

**Concern:** Volunteers are vital to the safe, effective, and timely completion of numerous Activities on the NBRC. We routinely involve volunteers in completion of potentially dangerous activities such as moving the bison herd between grazing units and handling bison during the annual roundup. Under the draft AFA, volunteers for these activities would become CSKT volunteers, and would not be afforded protection under the Federal Tort Claims Act. This lack of protection may preclude many current Service volunteers from volunteering with CSKT.

**Comment:** "FWS has stated volunteers for the contractor (CSKT) will not be covered for liability or be compensated in case of injury or accident. I have been a volunteer assisting in bison roundup corral work since 1994. However, because of this lack of protection, I will decline to volunteer if this operation is taken over by contract. Others who have been volunteering will no doubt have no choice but to do the same."

**Response:** As to the concern about whether there is compensation for the volunteer in the event of injury or accident, the AFA requires the Tribe to provide workers' compensation "commensurate with that provided to other CSKT Tribal government employees." Accordingly, this should not be an issue for volunteers to the Tribe.

With respect to the liability concern, the Indian Self-Determination Act and the Tribal Self-Governance Act directly focused on the question of liability for activities conducted under those Acts' agreements:

[T]he Secretary shall be responsible for obtaining or providing liability insurance or equivalent coverage, on the most cost-effective basis, for Indian tribes, tribal organizations, and tribal contractors carrying out contracts, grant agreements and cooperative agreements pursuant to this subchapter. In obtaining or providing such coverage, the Secretary shall take into consideration the extent to which liability under such contracts or agreements are covered by the Federal Tort Claims Act [25 U.S.C. 450f(c)(1)]

The AFA indicates that the Federal Tort Claims Act (FTCA) applies as authorized by applicable statutes and the Self-Governance Regulations. As the regulations make clear, the FTCA is applicable to the tribe and its employees even if the AFA were silent on this issue. However, applicability of the FTCA has never been absolute, but dependent upon a case-by-case determination of the particular facts and circumstances surrounding each incident. For example, no coverage exists at all under the FTCA for intentional torts. Depending upon the particular circumstances, volunteers may or may not be considered to be employees of the Tribe who specifically fall within the coverage extended by the Tribal Self-Governance Act. The AFA requires that all persons working on this AFA have sufficient professional requirements, skill, and/or experience to properly and safely perform their assigned activities under the AFA. It is hoped that many of the same persons who have volunteered in the past will continue to do so in the future, and thus the Bison Range will operate much the same as it has in the past. Over the past 5 years, two liability claims have been brought. There is no reason to anticipate a change in the future.

The FTCA itself specifically encompasses persons who serve without compensation. The FTCA defines "employee of the government" to include both "employees" and "persons acting on behalf of a Federal agency in an official capacity, temporarily or

permanently in the service of the United States, whether with or without compensation" [28 U.S.C. 2671, *emphasis added*].

*Issue 9: Personal safety of employees, volunteers, and visitors.*

**Concern:** The Service will not have direct supervision of, or adequate interaction with CSKT employees and volunteers, in order to anticipate and prevent unsafe situations. This will hinder the Service's ability to provide the normal Service standard of safety.

**Comment:** "\*" \* [S]ome activities on the National Bison Range are unique and dangerous. Sudden loss of the majority of the affected employees would leave management of the refuge and safety of employees and the public in jeopardy."

**Response:** Although the Refuge Manager will no longer be directly responsible for the supervision of some employees, this reduced interaction with the staff is not anticipated to result in unsafe conditions. The Refuge Manager retains the responsibility and authority over the NBRC and can address any safety concerns or unsafe situations that come to his attention. The Service will evaluate the effectiveness of this structure on public and employee safety and will be open to suggested adjustments in the future. However, in response to this public concern and in the interest of making this point clear, the AFA has been modified by adding a new Section 7.E which reads as follows:

**E. Safety.** Nothing in this Agreement shall be interpreted as restricting the authority of either the Refuge Manager or the Coordinator to take immediate steps to address any safety concerns.

*Issue 10: Qualifications of CSKT employees and volunteers.*

**Concern:** The draft AFA does not provide the Refuge Manager with adequate oversight authority to determine whether CSKT employees and volunteers are adequately qualified to safely, effectively, and efficiently perform assigned Activities.

**Comment:** "\*" \* [W]e recommend that a more descriptive set of standards be developed to ensure qualified professionals are doing the work. Relegating work from federal fish and wildlife biologists and managers with known credentials to persons unknown and potentially unqualified could be detrimental to management efforts on the Refuge."

**Response:** The CSKT has an existing Natural Resources Department and has assured the Service that only qualified personnel will be working on the NBRC. To make the issue of qualifications

clearer in response to this public comment, Section 11, C of the AFA was modified to include "knowledge, skills and abilities" in the list of items identified in the provision addressing "Training and Skill." The revised section would read as follows:

*C. Training and Skill.* The CSKT will ensure that each CSKT Employee, CSKT Contractor, and CSKT Volunteer has sufficient knowledge, skills, and abilities to properly and safely perform each Activity the CSKT assigns her or him to perform.

*Issue 11: Affected [FWS] employees.*

*Concern:* Under the draft AFA, career Service employees are forced to select from employment options they consider completely unacceptable. Many comments characterize the offered employment options as "unfair treatment" of the Service's most valuable resource, its employees.

*Comment:* "These faithful staff are now being told they have the choice of taking a position with CSKT, taking an IPA 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 FWS. What has happened to the often vaunted Federal employee protection and rights? Since when does a decade or more of dependable, timely, and successful work not bring some job protection? How can this heavy-handed and unwarranted abridgement of sound employee practices be permitted to occur on the basis of applying a discretionary authority to sign an AFA as against their long held rights?"

*Response:* The AFA provides four different options for the existing NBRC employees whose positions will be contracted by CSKT. These options include: (1) Remaining a Service employee and being assigned to CSKT under an Intergovernmental Personnel Act (IPA) Agreement; (2) becoming a CSKT employee but retaining Federal benefits; (3) becoming a CSKT employee with tribal benefits; and (4) reassignment by the Service to another duty station. *See Section 11.E.3 of the Agreement.*

This practice of IPA assignments has also taken place with a nonBIA agency: The National Park Service (NPS) has an AFA with the Grand Portage Band of Chippewa Indians in which an NPS employee is assigned to the Grand Portage Band via an Intergovernmental Personnel Act (IPA) agreement. That

option and more are available to NBRC employees under Section 11.E.3 of the NBRC AFA.

In response to related concerns that seasonal NBRC employees may somehow be restricted from extending their employment at the NBRC, the parties have agreed to modify the Agreement to make clear that seasonal employees assigned to CSKT via an IPA agreement can have their assignments extended beyond their 6-month standard period of employment (contingent upon funding from the Service). A new Section 11.E.5.d reads as follows:

*d. Seasonal IPA Employees.*

Contingent upon funding provided by FWS, the IPA agreement of any seasonal Affected Federal Employee may be extended beyond the original six month duration specified in the AFA, provided that such extension does not result in such employee working more than 50 weeks of the year, in which case the employee would no longer have seasonal status.

*Issue 12: AFA implementation costs.*

*Concern:* Additional costs (i.e., costs above existing station budget) associated with implementing an AFA will reduce available funding for NBRC operations and other NWRs.

*Comments:* "In these days of Federal Budget shortages, any increase in operation costs for the National Bison Range will be diverted from budgets of other Refuges." And, "As similar agreements are requested for more refuges, a reasonable person must presume that extra costs will continue to multiply. Negative financial impacts to the Refuge System, as a whole, will compound with each additional agreement."

*Response:* The cost estimate that the Service provided to Senator Conrad Burns found that, for fiscal year 2005, the Agreement would cost approximately \$23,460, or about 2.45 percent more than it would cost the Service to conduct the same activities within the external boundary of the Flathead Indian Reservation based on FY 2004 operational budgets for the NBRC. The cost estimate also found that, over a 5-year period, there could be cost savings to the NBRC if a supervisory position were to be contracted to CSKT under a future AFA, eliminating the need for the Coordinator position currently provided in the AFA.

*Issue 13: Unresolved Incompatible uses on Pablo and Ninepipes NWRs.*

*Concern:* Unresolved CSKT issues with applicability of Service compatibility requirements may extend into other aspects of the AFA.

*Comment:* "Because of the importance of the compatibility requirement in refuge system law we request that concrete measures be taken by FWS and CSKT to resolve these compatibility issues before the AFA is finalized. We believe that all parties should act in good faith and begin the important relationship established in the AFA with a "Clean Slate, unmarred by the compatibility issue."

*Response:* Most of the incompatible uses on the Pablo and Ninepipes NWRs have been resolved; however, the Service acknowledges that a few agricultural issues are still unresolved pending resolution of Service authority in this matter. The parties continue to discuss these issues and work toward a mutually satisfactory resolution. As long as these issues are being addressed in good faith by both sides, there has been a policy decision that they should not have any bearing on this Agreement.

*Issue 14: Service AFAs are inconsistent due to the lack of policy guidance.*

*Concern:* Too many Activities contracted under NBRC draft AFA; "too much too fast."

*Comments:* "In the interest of future success, I urge a serious consideration of immediate action to suspend the processes now under way. \* \* \*" And, "I earnestly recommend the prompt initiation of a policy development process to give proper guidance to FWS managers as more requests for participation are presented by Tribal authorities. To be most profitable, this process should be a thoroughly transparent one, preferably involving the public, representatives of Tribes, and others, employing the processes widely prescribed for public involvement in important policy considerations."

*Response:* While the Service may not have a great deal of experience with Tribal AFAs, other Interior agencies have been administering them for years. Four existing AFAs between Tribes and the National Park Service have established a record of success, as have numerous other BIA AFAs, and we are confident that the NBRC AFA will be equally successful. Nonetheless, we agree that, because of the greater amount of public interest in the negotiation process for the NBRC AFA, policy questions were raised that were not at issue in other AFA negotiations. The Service agrees that the development of a policy to guide future AFA negotiations would improve the negotiation process. The Service is beginning the process of developing its policy to address and clarify various

issues including, but not limited to, the role of public comment, the government-to-government relationship, affected employee considerations, and other issues as may be raised during the process of developing this policy. The Service will seek input from Indian Country, nongovernment organizations, and the public as it develops its policy.

*Issue 15: No process identified to resolve disagreements over performance deficiencies.*

*Concern:* Section 10.3.b provides no final guidance for resolution of disagreements on performance.

*Comment:* "This says that after the Refuge Manager informs CSKT of a deficiency, the CSKT will have a 'reasonable amount of time to either remedy the performance deficiency or establish that no deficiency exists.

\* \* \* This implies that CSKT can unilaterally decide that the Refuge Manager is wrong and that they are not deficient in performance."

*Response:* Section 18 of the AFA refers to 25 CFR part 1000, subpart R ("Appeals"), as well as 25 U.S.C. 450m-1, as the authority and process for dispute resolution. To address this public concern, the AFA was amended to read that the CSKT would "demonstrate to the Refuge Manager" that an alleged deficiency does not exist. The revised Section 10.A.3.b(2) now reads as follows:

(2) *Written Notice.* The Refuge Manager will notify the Tribal Council in writing of any other performance deficiency, including any performance deficiency that constitutes grounds for reassumption under Section 16.C of this AFA. The written notice will identify the Activity and describe the performance deficiency at issue, the applicable Operational Standard or term or condition of this AFA, and why the performance of the CSKT does not meet the Operational Standard or term or condition. The notice will give the CSKT a reasonable amount of time to either remedy the performance deficiency or demonstrate to the Refuge Manager that no performance deficiency exists, the amount of time to be set by the Refuge Manager depending on the nature of the deficiency.

Dated: January 6, 2005.

**Matt Hogan,**

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 05-1785 Filed 1-31-05; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Rate Adjustments for Indian Irrigation Projects

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed rate adjustments.

**SUMMARY:** The Bureau of Indian Affairs (BIA) owns, or has an interest in, irrigation facilities located on various Indian reservations throughout the United States. We are required to establish rates to recover the costs to administer, operate, maintain, and rehabilitate those facilities. We request your comments on the proposed rate adjustments.

**DATES:** Interested parties may submit comments on the proposed rate adjustments on or before April 4, 2005.

**ADDRESSES:** All comments on the proposed rate adjustments must be in writing and addressed to: Arch Wells, Director, Office of Trust Services, Attn: Irrigation and Power, MS-4655-MIB, Code 210, 1849 C Street, NW., Washington, DC 20240, Telephone (202) 208-5480.

**FOR FURTHER INFORMATION CONTACT:** For details about a particular irrigation project, please use the tables in **SUPPLEMENTARY INFORMATION** section to contact the regional or local office where the project is located.

**SUPPLEMENTARY INFORMATION:** The tables in this notice list the irrigation project contacts where the BIA recovers its costs for local administration, operation, maintenance, and rehabilitation, the current irrigation assessment rates, and the proposed rates for the 2005 irrigation season and subsequent years where applicable.

#### What Are Some of the Terms I Should Know for This Notice?

The following are terms we use that may help you understand how we are applying this notice.

*Administrative costs* means all costs we incur to administer our irrigation projects at the local project level. Local project level does not normally include the Agency, Region, or Central Office costs unless we state otherwise in writing.

*Assessable acre* means lands designated by us to be served by one of our irrigation projects and to which we provide irrigation service and recover our costs. (See *Total assessable acres*.)

*BIA* means the Bureau of Indian Affairs.

*Bill* means our statement to you of the assessment charges and/or fees you owe the United States for administration, operation, maintenance, and/or rehabilitation. The date we mail or hand deliver your bill will be stated on it.

*Costs* mean the costs we incur for administration, operation, maintenance, and rehabilitation to provide direct support or benefit to an irrigation facility.

*Customer* means any person or entity that we provide irrigation service to.

*Due date* is the date on which your bill is due and payable. This date will be stated on your bill.

*I, me, my, you, and your* means all interested parties, especially persons or entities that we provide irrigation service to and who receive beneficial use of our irrigation projects affected by this notice and our supporting policies, manuals, and handbooks.

*Irrigation project* means, for the purposes of this notice, the facility or portions thereof, that we own, or have an interest in, including all appurtenant works, for the delivery, diversion, and storage of irrigation water to provide irrigation service to customers for whom we assess periodic charges to recover our costs to administer, operate, maintain, and rehabilitate. These projects may be referred to as facilities, systems, or irrigation areas.

*Irrigation service* means the full range of services we provide customers of our irrigation projects, including, but not limited to, water delivery. This includes our activities to administer, operate, maintain, and rehabilitate our projects.

*Maintenance costs* means all costs we incur to maintain and repair our irrigation projects and equipment of our irrigation projects and is a cost factor included in calculating your operation and maintenance (O&M) assessment.

*Must* means an imperative or mandatory act or requirement.

*Operation and maintenance (O&M) assessment* means the periodic charge you must pay us to reimburse our costs.

*Operation or operating costs* means costs we incur to operate our irrigation projects and equipment and is a cost factor included in calculating your O&M assessment.

*Past due bill* means a bill that has not been paid by the close of business on the 30th day after the due date, as stated on the bill. Beginning on the 31st day after the due date we begin assessing additional charges accruing from the due date.

*Rehabilitation costs* means costs we incur to restore our irrigation projects or features to original operating condition or to the nearest state which can be achieved using current technology and