Investigative Report of the National Bison Range

(REDACTED)

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

NOV 27 2007

Memorandum

To: Secretary

From: Earl E. Devaney
Inspector General

Subject: Transmittal of Report of Investigation Regarding Annual Funding Agreement Between The Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation and the U. S. Fish and Wildlife Service

With this memorandum, I am transmitting the Office of Inspector General (OIG) Report of Investigation into allegations regarding the annual funding agreement between the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation and the U.S. Fish and Wildlife Service for activities at the National Bison Range Wildlife Refuge.

We are also sending a letter to Congressman Denny Rehberg and Congressman John D. Dingell, Jr, Chairman, Committee on Energy and Commerce, summarizing the results of our investigation. Congressman Rehberg had written to the OIG in July 2007 requesting status updates on our investigation into the annual funding agreement. Chairman Dingell recently requested a copy of our report when it is completed.

If you have any questions, please do not hesitate to contact me at (202) 208-5745.

Attachments

United States Department of the Interior
Office of Inspector General

REPORT OF INVESTIGATION

Case Title National Bison Range	Case Number [Ex. 2]
Reporting Office Program Integrity Division	Report Date November 20, 2007
Report Subject Closing Report	

SYNOPSIS

We initiated this investigation based on allegations received from the U.S. Fish and Wildlife Service (FWS) in September 2006. Region 6 FWS employees alleged that Department of the Interior (DOI) officials had exerted undue influence by directing them to enter into an annual funding agreement with the Confederated Salish and Kootenai Tribes of the Flathead Nation (CSKT or Tribe) for activities at the National Bison Range Wildlife Refuge near Moiese, Montana. FWS employees also alleged that the personal information of individuals who had submitted public comments to an FWS Web site publicizing the funding agreement had been released to CSKT officials, in violation of Freedom of Information Act (FOIA) and Privacy Act regulations.

Our investigation disclosed that senior DOI officials did exert considerable and unusual influence by directing FWS to enter into the annual funding agreement with the Tribe, but such influence was neither improper nor illegal. CSKT met all of the statutory requirements for entering into negotiations to operate the National Bison Range.

Pursuant to prevailing FOIA and Privacy Act case law, releasing personal identifying information for individuals submitting comments was permissible. However, DOI and FWS should have provided better notification to the public that personal identifying information could be released. Although the Web site soliciting public comments notified the public that comments would be shared with the Tribe, there were inconsistent notices in the Federal Register and FWS news releases.

Reporting Official/Title [Ex. 6 and 7(C)]/Investigator	Signature
Approving Official/Title Alan F. Boehm/Director, Program Integrity	Signature
[Exemption 2]	

This report contained information that has been redacted pursuant to 5 U.S.C. §§ 552(b)(2), (b)(6) and (b)(7)(C) of the Freedom of Information Act. Some references indicating gender were written in the masculine form to protect the identities of individuals and to facilitate the reading of the report. Supporting documentation for this report may be obtained by sending a written request to the OIG Freedom of Information Act Office.

BACKGROUND

Annual Funding Agreement

CSKT had aggressively pursued assuming complete operation and management of the National Bison Range at various times following the passage of the Indian Self-Determination Act Amendments of 1994,[1] commonly known as the "Tribal Self-Governance Act." The National Bison Range is completely encompassed within the boundaries of the Flathead Tribal reservation, and the Tribe claims an ancestral connection to the origins of the bison herd.

Under the Tribal Self-Governance Act, a recognized tribal government can administer certain programs within DOI bureaus, including projects outside the control of BIA, if the Secretary determines the program is of "special geographic, historical or cultural significance." CSKT met all of the statutory requirements under this Act for entering into negotiations for operation of the National Bison Range.

Previous negotiations, dating back to 1994, between the Tribe and DOI or FWS failed to result in an agreement. Sometime between 2001 and 2002, CSKT representatives briefed former Deputy Secretary J. Steven Griles and Associate Deputy Secretary James E. Cason regarding the Tribe's desire to manage the National Bison Range. Deputy Assistant Secretary for Policy, Management and Budget Paul Hoffman, who was Deputy Assistant Secretary for Fish, Wildlife and Parks at that time, was assigned to evaluate the Tribe's request and oversee the negotiations between FWS and the Tribe.

FWS and CSKT officials signed the annual funding agreement on December 15, 2004; it became effective on March 15, 2005. By late summer 2006, senior DOI leadership believed the Tribe was functioning under the agreement reasonably well and wanted to transfer three FWS positions per year to the Tribe, which would have resulted in the Tribe fully operating the National Bison Range by 2010. However, FWS leadership felt the Tribe was performing poorly and identified performance issues in a 2005 evaluation of the agreement. FWS was resistant to incorporate the transfer language into the new annual funding agreement until the Tribe corrected the performance issues identified.

FWS Employee Grievance

On September 19, 2006, seven FWS personnel filed an informal employee grievance with FWS Region 6. The grievance alleged that for 1.5 years, CSKT National Bison Range employees subjected FWS National Bison Range employees to personal slander, harassment, and employment intimidation. The grievance also alleged that as a result of working with untrained CSKT personnel, FWS employees had been subjected to various levels of unsafe acts. The employee grievance resulted in FWS leadership suspending the annual funding agreement negotiations pending the completion of a preliminary inquiry.

FWS hired a former employee of the Division of Law Enforcement, National Park Service, to investigate the employee grievance filed by the seven FWS employees. The former NPS investigator began his investigation in mid-October 2006 and interviewed the National Bison Range FWS employees during the investigative process. He attempted to interview CSKT personnel; however, a

[1] P.L. 103-413.

CSKT attorney declined to permit the interviews without the background information surrounding the allegation, and FWS had informed the former NPS investigator not to disclose this information.

The Director of the DOI Office of Civil Rights then assigned a U.S. Geological Survey (USGS) Equal Employment Opportunity (EEO) counselor to conduct a fact-finding investigation of the FWS employees' complaint on behalf of DOI. However, the FWS employees ultimately elected not to file a formal EEO complaint.

DETAILS OF INVESTIGATION

A senior regional refuge official, FWS Region 6, provided the Office of Inspector General (OIG) with the FWS employees' grievance shortly after they filed it. In addition to these grievances of harassment, he brought two other allegations to our attention: (1) that senior DOI officials placed undue pressure on FWS officials to enter into the annual funding agreement with the Tribe and (2) that FWS inappropriately disclosed to CSKT officials the personal information of individuals leaving comments on an FWS Web site regarding the agreement.

In September 2006, we opened an investigation into these two specific allegations. During the course of our investigation, we interviewed over 40 individuals and reviewed thousands of documents and e-mails.

Allegations of Undue Influence by Senior Department Officials

As we examined the preliminary facts surrounding the annual funding agreement negotiation process, it was apparent that the initial negotiations, as well as the negotiations to renew the agreement, were very contentious. From the onset of the negotiations, DOI and FWS officials disagreed on how many CSKT positions would be allowed under the annual funding agreement. Ultimately, under the oversight of DOI, FWS authored an annual funding agreement that called for 11 CSKT positions at the National Bison Range, with FWS keeping 10 positions. As the annual funding agreement was in the process of being renegotiated, a series of events derailed the negotiations, resulting in termination of the agreement in December 2006.

Between September and October 2006, we interviewed Region 6 FWS employees involved in the annual funding agreement negotiations. During these interviews, a theme developed that the degree of involvement and oversight in the negotiations of former Deputy Secretary Steven Griles, Associate Deputy Secretary James Cason, and Deputy Assistant Secretary Paul Hoffman was suspect. FWS employees speculated that DOI's motivation to pursue the agreement stemmed from the Tribe not joining the *Cobell v. Kempthorne*[2] litigation against DOI.

We interviewed a senior regional refuge official, FWS Region 6, who represented FWS during the annual funding agreement negotiations in 2004. He said that based on Paul Hoffman's senior position within DOI (Deputy Assistant Secretary for Fish, Wildlife and Parks at that time), he was somewhat intimidated by Hoffman during the annual funding agreement negotiation process. He said Hoffman eventually pressured FWS to give up additional positions, including a management position and the second highest biology position, to the Tribe. The senior regional refuge official noted that similar

[2] The *Cobell v. Kempthorne* (formerly *Cobell v. Norton*) litigation is based upon allegations that DOI is not fulfilling its fiduciary responsibilities involving Individual Indian Trust. The ongoing lawsuit was originally filed on June 10, 1996.

agreements had been reached in the past between other tribes and FWS, without the intervention of senior DOI officials.

As the second round of annual funding agreement negotiations continued, he said seven FWS National Bison Range employees filed an informal employee grievance claiming they were subjected to personal slander and hostility by the CSKT employees at the Bison Range. He said FWS personnel suspected the reason the CSKT employees were harassing the FWS employees was to get them to quit. The senior regional refuge official said that by this time, FWS personnel were speculating that if FWS employees vacated their positions, they would be turned over to the Tribe.

He said he felt that he had faced reprisal from DOI and was put on a "black list" because of his disagreement with the manner in which the annual funding agreement negotiations were handled. [Ex. 6 and 7(C)].

We interviewed Jay Slack, Deputy Regional Director, FWS Region 6. Slack said he was not involved in the 2004 annual funding agreement negotiations but had been the lead negotiator in the second round of negotiations, prior to the agreement being terminated. Slack said he had not felt any pressure to enter into any agreement while negotiating. He said the guidance he had received from FWS leadership was to enter into an annual funding agreement with the CSKT, similar to what was previously negotiated, with the goal of transferring all FWS National Bison Range positions to the CSKT as performance improved. Slack said he felt that eventually the CSKT would be capable of managing the National Bison Range; however, the Tribe was not there yet. Slack said he had heard the rumors that DOI was involved in the annual funding agreement negotiations because the Tribe had sided with DOI in the *Cobell* litigation, but he believed this information was only a rumor.

When interviewed, a FWS Refuge Supervisor, said FWS declined the Tribe's request (in 2000) to enter into annual funding agreement negotiations based on several National Refuge Administration Act violations at Nine Pipe and Pablo refuges, which were managed by the Tribe. FWS informed the Tribe that when those violations were corrected, FWS would entertain annual funding agreement negotiations at the National Bison Range. However, the Tribe sought and ultimately received National Refuge Administration Act relief from DOI, and Hoffman became directly involved in the negotiations.

According to the FWS Refuge Supervisor, Hoffman attended most of the annual funding agreement negotiation meetings, and while he never specifically instructed FWS to do anything, he would say things like, "We need to do this." The FWS Refuge Supervisor claimed that Hoffman was supportive of protecting certain FWS positions, but when the negotiations came to an impasse, he said Hoffman would say, "Just give it to them." When FWS told the Tribe that they would not give them $30,000 for the tribal coordinator position, he said the Tribe went to Hoffman, who later informed FWS negotiation officials that BIA had agreed to provide the funding for the tribal coordinator position.

The FWS Refuge Supervisor said he did not think the annual funding agreement was part of Hoffman's personal agenda; rather, Hoffman's direction came from Griles or higher. The FWS Refuge Supervisor speculated that DOI's motivation for pursuing the annual funding agreement stemmed from the Tribe not siding with the plaintiffs in the *Cobell* lawsuit. He also speculated that DOI pursued the funding agreement because a former congressman, who had strongly opposed any annual funding agreement at the National Bison Range, allegedly accepted money from Jack Abramoff (convicted lobbyist). The FWS Refuge Supervisor also suspected that Abramoff was a CSKT lobbyist.

Note: *During the course of our investigation, the CSKT denied any connection to Jack Abramoff.*

A former Regional Director said he had participated in previous annual funding agreement negotiations and said the Tribe's end goal was to totally manage the National Bison Range. The former Regional Director said that at no time did anyone within DOI pressure FWS to make sacrifices to forge the current annual funding agreement with the Tribe. Additionally, he said he had never heard from a valid source that DOI wanted the annual funding agreement because the Tribe was not involved in the *Cobell* litigation. He said he believed this was just speculation by some of the FWS staff.

The former Regional Director did say that Hoffman put a lot of pressure on him and his staff to work out a cooperative annual funding agreement and that Hoffman did not want to consider FWS management's concerns. The former Regional Director stated that he ultimately bowed to the pressure asserted by Hoffman and signed the annual funding agreement, saying, "It was not perfect or tight, but it was okay."

We interviewed another FWS Refuge Supervisor, who participated in the annual funding agreement negotiations. He stated that, from the beginning, Hoffman established himself as the spokesman for FWS during the annual funding agreement negotiations. The FWS Refuge Supervisor said FWS conceded a lot during the negotiations with Hoffman's pressure on them. He said that eventually the Tribe was given 11 positions at the National Bison Range and FWS retained 10 positions.

The FWS Refuge Supervisor stated that there was a lot of speculation and rumor that the CSKT was supportive of DOI's position in the *Cobell* litigation and this was why DOI was pushing the annual funding agreement. He said some people speculated that the CSKT had previously leaned toward the Democratic Party and that the Bush administration was using the annual funding agreement to sway the Tribe to the Republican side. He said it was also a little suspect that a former congressman, who was previously non-supportive of previous annual funding agreement attempts at the National Bison Range, was now visibly absent from the annual funding agreement issue.

According to H. Dale Hall, FWS Director, following the first annual funding agreement evaluation report being issued in 2005, which was critical of the CSKT performance, he recommended inflammatory comments be removed from the evaluation report. He said Mitch King, Director, FWS Region 6, agreed with him and edited the annual funding agreement assessment appropriately. Hall said he later met with Associate Deputy Secretary Cason and Deputy Secretary P. Lynn Scarlett concerning the direction of the annual funding agreement. He said Cason, who also acted as Assistant Secretary for Indian Affairs, was concerned that FWS was provoking the Tribe.

Hall recalled that the CSKT wanted more responsibilities at the National Bison Range, and Cason was concerned that the negotiations for the fiscal year 2007 annual funding agreement were still not complete. Hall said that sometime after this meeting, FWS National Bison Range employees presented their employee grievance. He opined that the Tribe – from the chairman to the lower ranking members – wanted to "make life tough" for FWS National Bison Range employees. Hall said he ultimately made the decision to terminate the annual funding agreement based on an altercation, where the Tribal Chairman aggressively confronted an FWS National Bison Range official, in the bison pen area regarding the termination of the Tribe's bison feeding responsibilities. Hall also provided the OIG with copies of letters pertaining to the Region 6 bison feeding termination, Hall's letter of concurrence

to terminate the annual funding agreement, and the Region 6 letter to the Tribe terminating the annual funding agreement.

When interviewed, Marshal P. Jones, Jr., Deputy Director (now retired), FWS, said that prior to assuming his current position, he was generally aware that CSKT had a great interest in assuming a role at the National Bison Range. As Deputy Director, Jones said he had more oversight over National Bison Range issues; however, he did not recall anything unusual crossing his desk regarding the matter during that time, as the issue was primarily being handled at the regional level. Jones said he did recall a teleconference where he heard Deputy Secretary Griles say it was important to treat the CSKT right in this issue and that the CSKT was one of the tribes that had not supported *Cobell.* Jones concurred that the CSKT should be treated right, but the National Bison Range employees also needed to be treated right. He said the statement made by Griles reinforced his feelings that there was an intense interest at the DOI political level regarding the annual funding agreement.

When interviewed, an official with the Association of Fish and Wildlife Agencies (a former FWS official) said his involvement, when he was with FWS, in the annual funding agreement negotiations between the CSKT and FWS was sporadic. He said he became engaged in the negotiations at certain times when Judge Craig Manson, then Assistant Secretary for Fish and Wildlife and Parks, would request DOI oversight on certain issues. The former FWS official said he was never a principal negotiator of the annual funding agreement and the majority of the negotiations were handled at the regional level with some oversight from the Secretary's office. He said he did not recall ever hearing Griles make the statement about treating the CSKT right because they were not part of the *Cobell* litigation. The former FWS official said he stayed away from *Cobell* litigation issues because of the controversy involved.

We traveled to Montana and interviewed two FWS National Bison Range employees and an FWS National Bison Range official. The two National Bison Range employees both said they were concerned that the annual funding agreement lacked specific detail in some areas and they voiced their concerns prior to the annual funding agreement being signed. All three National Bison Range employees agreed that once signed, they were willing to give the annual funding agreement an opportunity to work.

According to the three National Bison Range employees, when the annual funding agreement start date arrived, the CSKT employees arrived sporadically, and FWS employees had to continue performing the CSKT designated duties until all of the CSKT staff arrived. After the first annual funding agreement assessment was issued, which addressed several CSKT performance issues, the relationship between FWS National Bison Range staff and the CSKT employees declined. From this point, the employees reported the level of harassment they were subjected to by CSKT employees increased. As a result, they said seven FWS National Bison Range employees filed an employee grievance.

In November 2006, the National Bison Range official said he discovered that 64 penned bison, pending relocation from the National Bison Range, were not being fed as prescribed in the annual funding agreement. He said he personally informed the CSKT supervisor of his concerns. He said he continued to personally monitor the CSKT feeding schedule and ultimately coordinated with the region to terminate the CSKT feeding responsibilities based on the Tribe's non-compliance. He said the bison feeding termination resulted in a verbal and physical altercation between him and Tribal Chairman James Steele, Jr., at the bison pens. The National Bison Range official claimed that Steele accused

him of sabotaging the annual funding agreement and poked him in the chest while talking to him. He said he reported the incident and Hall authorized the termination of the annual funding agreement.

The National Bison Range official provided copies of several detailed reports he maintained during the course of the annual funding agreement documenting the Tribe's poor performance. He also provided a chronological matrix supporting those documents.

We also interviewed five CSKT personnel, all of whom either worked on the National Bison Range or were affiliated with CSKT leadership. Collectively, the CSKT employees agreed that they were initially enthusiastic about the opportunity to work at the National Bison Range and were under the impression that CSKT and FWS employees were going to be working as a team.

They said the team concept quickly diminished as the FWS employees treated them as contractors who were there to provide a service as outlined in the annual funding agreement. They reported that the relationship was complicated by the National Bison Range official implementing a policy that all annual funding agreement issues would be resolved through him and the CSKT supervisor.

CSKT personnel said the performance issues documented in the first annual funding agreement assessment came as a complete surprise to CSKT National Bison Range employees and CSKT leadership; however, the Tribe was ultimately allowed to add a rebuttal to the FWS annual funding agreement assessment. The CSKT employees said they were also under the impression that the annual funding agreement assessment was to be a joint report. They felt they had improved significantly in all areas since the last annual funding agreement assessment and anticipated a positive report was forthcoming prior to the annual funding agreement being terminated.

One CSKT employee acknowledged that there were occasional community disputes between tribal and non-tribal citizens; however, any confrontations related to the annual funding agreement, he said, were certainly not at the behest of tribal officials. According to the CSKT employee, the CSKT had no position on the *Cobell* issue and had never had any contact or used Abramoff to facilitate any Tribe business.

All of the CSKT personnel interviewed strongly disagreed with the FWS position that the penned bison were not being properly fed. The CSKT personnel interviewed said the National Bison Range official and FWS officials made the decision to terminate the CSKT bison feeding responsibilities without taking into account all of the facts. A CSKT attorney later provided the OIG with a report rebutting the FWS accounts of improper feeding. The CSKT alleged FWS personnel had failed to thoroughly calculate how much hay was actually fed to the penned bison and that the termination was based on assumptions. The CSKT attorney also provided a CSKT chronology report summarizing annual funding agreement major events from October 25, 1994 to January 24, 2007.

A long-time volunteer at the National Bison Range said he stopped volunteering at the National Bison Range a few years ago when the annual funding agreement was implemented because of his opposition to "privatization" of government services. The former volunteer said that any reports of him being discouraged to volunteer at the National Bison Range were not true. He described the annual funding agreement as "being run by two outfits with no clear responsibility by either group." He characterized the position of National Bison Range official as a "figurehead" under the current annual funding agreement who had no control over CSKT employees.

We interviewed an adviser to the Montana Governor. He said he previously served many years as a CSKT employee and one of his main duties involved self-governance issues. He said the CSKT had attempted to negotiate an annual funding agreement at the National Bison Range with DOI on several occasions since 1994. In 2001 or 2002, during a trust reform task force meeting, the adviser said he briefed Deputy Secretary Griles and Associate Deputy Secretary Cason on the CSKT connection to the National Bison Range. The adviser said Griles and Cason understood the Tribe's position and how the Tribal Self-Governance Act applied to the Tribe's request. As a result, he said the negotiations between the CKST and FWS started thereafter, and the annual funding agreement was signed in December 2005. The adviser said it has always been the goal of the Tribe to manage the National Bison Range based on the Tribe's ancestral and historical connection to the bison herd.

We interviewed Associate Deputy Secretary Cason, who could not specifically recall how his involvement with the annual funding agreement began. Cason stated that the annual funding agreement issue was "on his plate" before it was signed due to his role as Acting Assistant Secretary for Indian Affairs. He said his earliest memory of the annual funding agreement was in its infancy when he discussed the subject with Judge Craig Manson, former Assistant Secretary for Fish and Wildlife and Parks. Cason commented that FWS was "not terribly excited" over the prospect of the annual funding agreement and that it took energy from Manson and Hoffman to get the annual funding agreement completed.

Cason did not recall any statements Griles made indicating that the Tribe should be considered for the annual funding agreement since the Tribe was not part of the *Cobell* litigation. He noted that the *Cobell* litigation was a "very broad problem" and that the Tribe could not have assisted DOI.

Around July or August 2006, Cason said it appeared that FWS had moved past its initial concerns regarding the annual funding agreement. Although not perfect, he said the annual funding agreement was working reasonably well. Cason said that during this time, he met with Deputy Secretary Scarlett and Director Hall to discuss the direction of the annual funding agreement. Cason said he and Deputy Secretary Scarlett believed the logical direction for DOI to take was that as the CSKT made progress, FWS would gradually transfer three National Bison Range FWS positions per year to the Tribe. They agreed that a concentrated effort would be made to ensure qualified people were assigned to the open positions, none of the actions would be sudden, and by 2010 the CSKT would manage the National Bison Range.

Cason said that following this meeting, the FWS and CSKT relationship at the National Bison Range began to deteriorate significantly. He characterized the situation as "going to hell in a hand basket." According to Cason, the first issue that surfaced was a grievance filed by several FWS National Bison Range employees who alleged that CSKT personnel were harassing them. He said the FWS employees requested that FWS terminate the annual funding agreement, and this issue prompted several discussions between him, Hall, and Scarlett, which resulted in FWS hiring a private investigator to look into the matter.

Cason stated that Hall was in a difficult position once Hall received the investigative report. He noted that as head of the agency, Hall was troubled by the investigative findings and felt personally responsible for the employees. As the employee grievance was being processed, Cason said a physical dispute between the Tribal Chairman and a National Bison Range official occurred at the National Bison Range over the termination of the CSKT bison feeding responsibilities. Cason said that following the dispute, Hall solely authorized the termination of the annual funding agreement.

According to Cason, following the termination of the annual funding agreement, Deputy Secretary Scarlett directed that the annual funding agreement be renegotiated. In late January 2007, Cason said he, Hall, and the Acting Assistant Secretary for Fish, Wildlife and Parks, David M. Verhey, met with FWS National Bison Range employees and CSKT personnel to reinitiate the annual funding agreement negotiations. During this time, Cason said he talked to several people, including the National Bison Range official. Cason recalled that the official, based on his assessment of the CSKT performance, proposed that FWS was willing to give CSKT one half of one full-time position in the National Bison Range fire section; however, Cason said this was not the direction DOI was seeking.

Cason said FWS officials did not want to participate in the preparation of the new annual funding agreement; consequently, he said that he and Verhey would more than likely sign the new annual funding agreement on behalf of DOI once it was completed.

We interviewed Paul Hoffman, then Deputy Assistant Secretary for Fish, Wildlife and Parks, whose self-admitted role in the negotiations was to ensure everyone "played well in the sandbox" within the confines of the Tribal Self-Governance Act and FWS refuge regulations. Hoffman stated that an annual Federal Register Notice published by DOI (since 1994) listed programs and activities eligible for an annual funding agreement between bureaus and self-governance tribes, which was the case with the National Bison Range. He said he had not been concerned with the outcome of the negotiations and only wanted to ensure that the negotiation process was fair and negotiators acted civilly. Hoffman confirmed there were some financial impasses in which he intervened, where funds were transferred from BIA to FWS in order to cover unforeseen annual funding agreement costs.

Hoffman recalled that former Deputy Secretary Griles was aware of the annual funding agreement; however, Hoffman said he had minimal contact with Griles regarding the agreement. He said that during the negotiations, it was not unusual for CSKT negotiators to contact Griles or Cason directly when an impasse was reached. As a result, Hoffman said he told the Tribe on numerous occasions to contact him directly versus calling Griles or Cason. Hoffman said he did not believe the CSKT's contact with Griles helped the Tribe, and he had no knowledge of any comments Griles may have made that inferred the CSKT should be helped because they had not sided with the plaintiffs in the *Cobell* litigation.

When interviewed, an attorney, Office of the Solicitor, Rocky Mountain Region, said he was very familiar with the background surrounding the annual funding agreement and said the CSKT first approached FWS to negotiate an annual funding agreement at the National Bison Range in 1994. He said that during those negotiations, the Tribe wanted all of the positions at the National Bison Range, including positions FWS considered inherently federal. The attorney said that during those negotiations, there was a history of the CSKT negotiators "trying to browbeat" FWS.

The attorney described the 2003 round of negotiations as an efficient process and believed the final annual funding agreement produced was an excellent document that should have worked. He said that initially, there were disagreements with job positions and functions. He said he believed the annual funding agreement should have been written as a contract for specific functions, which made the process easier once they came to that conclusion. He related that 99.9 percent of the wording contained within the annual funding agreement was written by him based on the notes he took during the negotiation process.

The attorney said he had heard that the reason DOI was pushing the annual funding agreement was because the Tribe was not participating in the *Cobell* litigation and the annual funding agreement was a way of paying the Tribe back. He said he had also heard that the tribal connection to DOI stemmed from a link to a defense contract that was somehow connected to Halliburton through Vice President Dick Cheney. The attorney said he knew of no substance to any of these allegations, other than that this information had "floated around." He said that in his lengthy federal service, he had never seen a situation such as this, where DOI appeared so aligned against the responsible agency recommendations.

When interviewed, Mitch King, Regional Director of FWS Region 6, said he became directly involved in the annual funding agreement process when the first annual funding agreement evaluation was written. King said the evaluation performance reflected within the report was acceptable, but there were some areas where the Tribe had not performed well. He said he advised the Tribe that FWS leadership wanted the annual funding agreement to work, and he emphasized to the Tribe and the FWS employees that he wanted to develop the annual funding agreement into a partnership and to get past the agreement being operated like a contract. King said one tribal member responded with the suggestion that the only way to make the annual funding agreement work was to remove all of the FWS employees and allow the Tribe to run the National Bison Range; this became a regular comment that King heard from the Tribe in subsequent re-negotiation meetings.

King said the 2005 annual funding agreement assessment report was eventually rewritten at his direction, based on discussions he had with FWS Director Hall. He said that although the rewrite removed the analysis by a National Bison Range official of how the annual funding agreement was affecting the overall management of the refuge, approximately 144 unsatisfactory performance issues remained in the report. King also included a Tribe rebuttal to the final assessment report. He said that although some FWS personnel were upset with the rewrite, he felt he had been fair.

King said that in March or April of 2006, the negotiations for the fiscal year 2007 annual funding agreement were initiated. He said he discussed FWS's position with Hoffman, and both agreed that negotiating an annual funding agreement that allowed the same CSKT positions as the previous agreement was reasonable. King said the Tribe came to the negotiation table with a different agenda and wanted every National Bison Range position except for the manager's position, which sent the negotiations into "a black hole." King said the position of FWS was that the Tribe still had performance issues to resolve.

King stated that in September 2006, following a meeting between FWS Director Hall, Associate Deputy Secretary Cason, and Deputy Secretary Scarlett, he received guidance to include language in the new annual funding agreement that over the next 3 to 5 years, based on performance, the National Bison Range would be managed exclusively by the Tribe. He said this new language was never discussed during the negotiation process because the employee grievance was received in mid-September 2006 and the negotiations were put on hold pending the outcome of the employee grievance investigation.

King explained that in November 2006, there were 64 bison penned up from a roundup that were going to be shipped to other refuges. He said the bison were to be fed "ad libitum" by the Tribe, which meant the bison were to be fed enough hay so when they were fed again there was still hay on the ground, which was outlined in the annual funding agreement. King said the Tribe decided on its own, and without consultation with FWS, that it would assess how much the bison needed to be fed based

on how the bison appeared. King said FWS National Bison Range leadership explained to the Tribe that it needed to fatten the bison to endure a trailer trip and the bison needed to be in the best health possible.

In early December 2006, King said he was informed that the bison were still not being fed by the Tribe, resulting in Jay Slack, Deputy Regional Director, FWS Region 6, discussing the feeding issue with the Tribe. After 4 to 5 hours passing, and the Tribe not reacting, King said he made the decision for FWS to assume responsibility of the bison feeding function.

On December 7, 2006, following the termination of the CSKT bison feeding responsibility, a National Bison Range official reported to King that Tribal Chairman James Steele assaulted him at the bison corrals over the bison feeding issue. King said he felt the chairman was trying to intimidate the National Bison Range official, and that was enough for King to recommend to Hall that the annual funding agreement needed to be terminated, and Hall agreed.

FOIA/Privacy Act Violations

Paul Hoffman said he directed an Information Technology Specialist, to establish the annual funding agreement public comment Web site to solicit comments. Hoffman said he wanted FWS and CSKT representatives to review the public comments generated during the annual funding agreement public comment period and jointly resolve the issues raised prior to the signing of the agreement.

Hoffman said he discussed potential FOIA issues regarding the release of the public comments with the Office of the Solicitor, possibly Barry N. Roth, Deputy Associate Solicitor, Parks and Wildlife. Hoffman said he did not recall what, if any, opinion was provided by Roth. He said it seemed like the Tribe had a legitimate need to review the comments despite FWS concerns; however, he wanted to deal with the comment submission according to established policy and the same way as in other instances where public comments were solicited.

Hoffman said the public comment period was not required under Tribal Self-Governance Act regulations or the National Environmental Policy Act since an environmental impact statement was not necessary. However, he said he wanted a public comment period based on the high level of interest and dissention over the issue within the local community. In addition, he said a former congressman was interested in a public comment period since the matter concerned his constituents. Hoffman said he believed the names of some people who submitted comments were provided to the Tribe in accordance with the process and policy in place at that time. He noted that the names of commenters were typically not withheld during the public comment period unless there was a specific request from the submitter.

Hoffman said that during the comment period, FWS employees reported that the Tribe retaliated against non-tribal personnel for opposing the annual funding agreement. He said these non-specific reports of retaliation included a physician's assistant whose position was terminated; an educator whose job was threatened; and school fights between children whose parents were on opposite sides of the issue.

A regional FOIA coordinator determined that the annual funding agreement public comments were routed into an FWS mailbox and then e-mailed to Hoffman and several key CSKT leaders. He

determined that the Information Technology Specialist created the Web site per instructions from Hoffman.

The FOIA coordinator, who said he knew the history of previous annual funding agreement negotiations, felt the CSKT was entitled to view the public comments but did not agree that providing the public commenters' personal identifiers was proper in this case.

One of the FWS Refuge Supervisors stated that there was an annual funding agreement public comment period during the annual funding agreement negotiations, and it was set up so that he, the Governor's policy adviser who was a CSKT representative, and Hoffman would be able to receive and review the comments. The FWS Refuge Supervisor said Hoffman forwarded e-mail comments to the Tribe prior to the Web site being fully established. He recalled Hoffman wanting an open forum during this part of the annual funding agreement negotiations.

The FWS Refuge Supervisor said he could not remember Hoffman having knowledge of allegations that CSKT members were harassing people who made anti-annual funding agreement comments, but he felt Hoffman was aware that the CSKT was capable of using such tactics. He said the Web site was later altered so that names could be redacted before personal information was sent to the Tribe, and for a short period FWS did not send the Tribe any comments. The FWS Refuge Supervisor said he remembered Hoffman still wanted the comments to be openly provided to the Tribe and to not redact anything; however, FWS decided to redact the personal information prior to the public comments being forwarded to the Tribe.

We interviewed Information Technology Specialist. He said that although the annual funding agreement public comment Web site was created by Region 6, it was clear to him that the Web site was for Hoffman. The Information Technology Specialist stated that then Regional Director did not want Region 6 guiding the Web site since there appeared to be some concern with the Web site's actual function.

The Information Technology Specialist said press releases were placed on the Web site and comments from the public were sent to Hoffman, one of the FWS Refuge supervisors and the CSKT representative. He said the Web site was set up so that when an individual asked a question, clicking an icon would open up the individual's e-mail. He said the comments would go into a group mail box and from there Hoffman, the FWS Refuge Supervisor, and the CSKT representative could directly retrieve the comments.

Despite all of the Privacy Act concerns that the Region 6 staff had with respect to the public comments provided to the CSKT, the Information Technology Specialist said Hoffman informed him that the DOI Solicitor's Office had approved the release of the names. The Information Technology Specialist provided the OIG with four screen shots of the annual funding agreement public comment Web site as it appeared during different time periods.

We interviewed a private citizen who posted a comment on the FWS annual funding agreement Web site during the public comment period opposing the agreement, which was obtained by the Tribe. He said he was under the impression that the Web site was an FWS site and that his personal information would be protected. He stated that another private citizen approached a former CSKT Tribal official, because he wanted to know why he lost a business contract with the Tribe. The private citizen said the former CSKT Tribal official showed the other private citizen comments from the Web site (including

his and the other private citizen's) opposing the annual funding agreement and said that was why he lost the contract.

When interviewed, Deputy Associate Solicitor Roth recalled attending a meeting to discuss the proposed annual funding agreement with Cason, Hoffman, and CSKT tribal officials. During this meeting, Roth recalled a CSKT representative making a remark that the federal government had stolen the National Bison Range land from the Tribe. Roth said he detected significant "racial" tension on both sides of the issue. He said he believed it was clear that the Tribe wanted complete management of the National Bison Range.

Roth did not recall providing any specific guidance to Hoffman regarding the release of annual funding agreement public comments to CSKT officials. He said the Federal Register Notice advising of the public comment period should have addressed the release of public comments submitted to FWS to the Tribe. Roth stated that any direction he would have given on the matter, if he did, would have followed the guidance noted in the Federal Register Notice.

The OIG Office of General Counsel (OGC) reviewed the FOIA and Privacy Act issues identified in this investigation and determined that, pursuant to then prevailing case law interpreting the FOIA and Privacy Act, it was permissible to release commenters' personal identifying information, absent a showing that the release could cause harm that was more than merely speculative.

OGC determined that there is no standard language required on government Web sites regarding the potential disclosure of comments and personal identifying information. However, the E-Government Act required the FWS to notify the public as to how solicited information would be handled, including how it would be shared and secured. OGC found that although the FWS public comment Web site soliciting views on the annual funding agreement at various times notified potential commenters that their comments would be shared with the Tribe, there were inconsistent notices in the Federal Register and FWS news releases. A number of these solicitations failed to provide sufficient notice that the submitted comments, as well as identities and identifying information, would be disclosed to the CSKT, and potentially the public.

SUBJECT(S)

None

DISPOSITION

This is a final report of investigation. We provided a copy of this report to the Office of the Secretary for any action deemed appropriate.