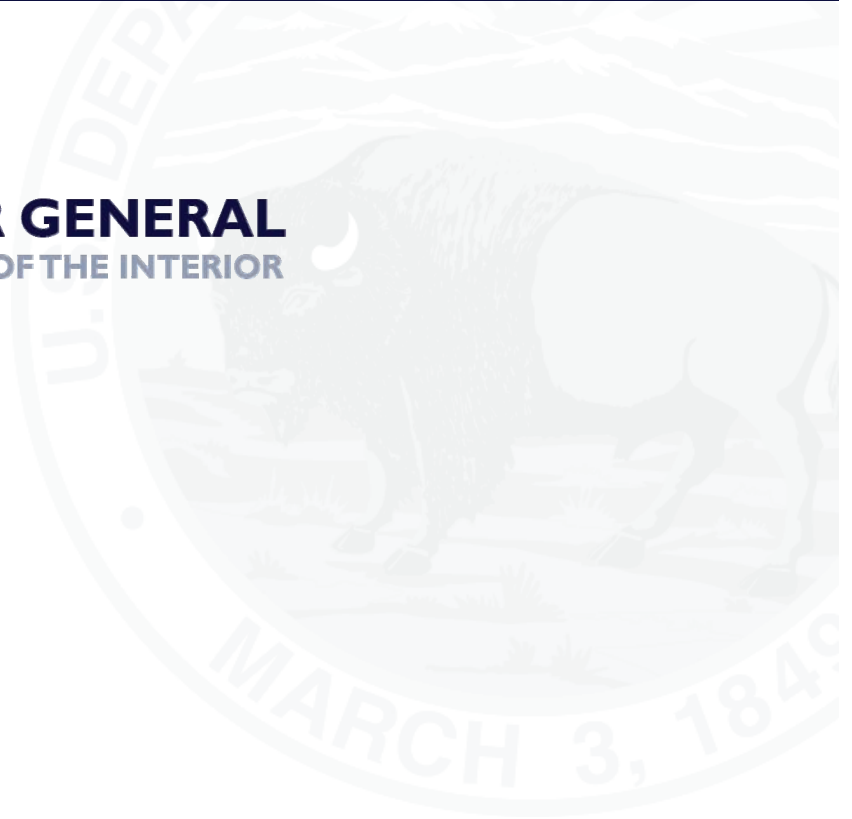




OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR



THE NATIONAL BISON RANGE



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

MAR 30 2011

Memorandum

To: Rowan W. Gould
Acting Director, U.S. Fish and Wildlife Service

From: Mary L. Kendall *Mary L. Kendall*
Acting Inspector General

Subject: Evaluation – The National Bison Range
Report No. NM-EV-FWS-0001-2010

This memorandum transmits the findings of our evaluation of the National Bison Range (NBR) operations in response to a complaint from Public Employees for Environmental Responsibility (PEER). PEER alleged that specific operational and management deficiencies involving law enforcement, bison containment, pesticide application, work planning, and management activities existed at NBR.

At the time of our evaluation, NBR operated as a partnership between the U. S. Fish and Wildlife Service (FWS) and the Confederated Salish and Kootenai Tribes (CSKT). CSKT participated in NBR operations under an annual funding agreement signed with FWS. CSKT is not presently involved in NBR operations due to the rescission of the agreement by a U.S. District Court judge.

We found deficiencies in work planning activities required by the annual funding agreement, as PEER alleged. We did not find any current evidence to support allegations of operational deficiencies in the other programs included in the PEER allegations. In a draft report, we offered two recommendations to improve NBR operations.

In FWS's February 10, 2011 response to the draft report, the acting director concurred with our recommendations and provided a corrective action plan (See Attachment 3). We consider one recommendation to be resolved and implemented, and the other resolved but not yet implemented.

If you have any questions about this report, please do not hesitate to contact me at 202-208-5745.

Attachments (3)

Background

The National Bison Range (NBR) is part of the National Wildlife Refuge System and was established in 1908 for the preservation of the American bison at a time when these animals were threatened by extinction. NBR is located within the Flathead Indian Reservation, home to the Confederated Salish and Kootenai Tribes (CSKT). These tribes claim an ancestral connection to the origins of the bison herd.

The U. S. Fish and Wildlife Service (FWS) and CSKT entered into annual funding agreements for joint NBR operation in accordance with provisions of the Indian Self-Determination Act Amendments of 1994 (Tribal Self-Governance Act). The first agreement became effective March 15, 2005. In September 2006, the Office of Inspector General (OIG) received allegations that senior U. S. Department of the Interior officials improperly influenced the creation of that agreement. We conducted an investigation and concluded that nothing improper or illegal occurred.

In June 2008, FWS and CSKT signed a second annual funding agreement for NBR operations. That agreement, which was in effect during our current evaluation, was set to expire on September 30, 2011. The agreement specified that CSKT would perform substantive management activities involving biological, fire, maintenance, and visitor services activities at NBR. FWS retained the refuge manager and deputy refuge manager positions, as well as responsibility for the law enforcement program.

On February 24, 2010, Public Employees for Environmental Responsibility (PEER) contacted the OIG with specific allegations of operational and management deficiencies in NBR activities involving law enforcement, bison containment, pesticide application, work planning, and management. PEER asserted that the responsibilities assigned to CSKT by the annual funding agreement had precipitated the deficiencies.

On September 28, 2010, a U.S. District Court judge in Washington, DC, rescinded the annual funding agreement in response to a lawsuit filed by PEER and other plaintiffs. The judge ruled that the annual funding agreement was an arbitrary and capricious agency action in that FWS failed to formally invoke a categorical exclusion for an environmental analysis as required under the National Environmental Policy Act. CSKT involvement in NBR operations ceased the following day.

Law Enforcement Coverage

PEER alleged that an inadequate law enforcement presence at NBR resulted in the inability to respond to acts of arson, poaching, and illegal hunting. PEER based its complaint on a memorandum, *Law Enforcement Status Report for 2009*, which the NBR deputy refuge manager sent to the NBR refuge manager on September 8, 2009. In that memorandum, the deputy manager, who is responsible for law enforcement as a collateral duty, wrote that inadequate law enforcement coverage precluded him from properly investigating criminal incidents. He recommended that NBR hire either two dual-function officers or one full-time officer to handle law enforcement duties.

While insufficient law enforcement coverage may have existed at the time the memorandum was written, we found that law enforcement coverage at NBR was adequate. We interviewed FWS and CSKT managers and employees assigned to NBR about the adequacy of law enforcement coverage. None of the interviewees, including the deputy refuge manager who wrote the September 2009 memorandum, expressed concerns that law enforcement coverage was insufficient.

In July 2010, FWS hired a full-time law enforcement officer at NBR in response to a request from NBR management. We noted, however, that the officer's occasional absence from the refuge on temporary assignments may result in brief periods where only the deputy refuge manager is available to perform law enforcement duties.

Bison Containment

PEER alleged that repeated fence openings at NBR allowed the bison to wander. This allegation was based on the previously cited memorandum, *Law Enforcement Status Report for 2009*, which reported an August 22, 2009 incident when 150 bison had to be rounded up and returned to their assigned grazing unit after they wandered into another pasture through an unlatched gate. The memorandum referenced two other similar incidents that occurred since October 2007.

We found that during the incidents cited by PEER, bison did not wander outside NBR boundaries. Rather, they moved between fenced pastures. The bison were neither in danger nor did they suffer food deprivation. They merely found their way into the wrong pastures. Employees recounted only one occasion in the 1990s when bison crossed outside of NBR boundary lines into an adjoining rancher's pasture. We observed that both exterior boundary and interior pasture fencing were well maintained and appeared adequate to retain the herd. Damaged fences were promptly repaired.

Interviews with NBR staff indicated that such incidents were commonplace and rectified in the normal course of operations. CSKT and FWS managers and employees explained that incidents of bison wandering into the wrong pasture occurred long before CSKT assumed specific NBR functions. One employee, who has 25 years of experience at NBR, said that such escapes occurred daily before electrified fencing was installed in the 1990s. Since then, elk have continued to jump into the pastures and ground out the electricity, thus allowing bison to get through fences. Gates between pastures also have been left unlatched, facilitating the animals' passage between pastures. Another employee, who has 16 years of NBR experience, said that bison getting into the wrong pasture "always happens. You just go and get them, it's no big deal."

Pesticide Application

PEER alleged that CSKT workers routinely violated pesticide label instructions when applying the chemicals. The allegation included an FWS employee's May 22, 2009 written account of employees violating label instructions for high wind speeds during a specific spraying application.

We randomly reviewed NBR 2010 pesticide application records to evaluate whether or not chemicals had been applied according to application instructions. We did not find any instance where an NBR employee violated pesticide application instructions. We identified only one instance of noncompliance where the specified rate of pesticide application was exceeded by a member of the FWS Invasive Species Strike Team, which travels among refuge system sites to conduct necessary spraying. An FWS representative acknowledged that the incident was a mistake made by a team member, not an NBR employee.

We also interviewed the FWS employee who wrote the critical May 22, 2009 account cited by PEER. The employee said that his comments were taken out of context and that the situation was a “non-issue.” All other FWS and CSKT managers and employees we interviewed expressed no concerns about pesticide application.

In September 2010, the U.S. Environmental Protection Agency (EPA) performed a routine inspection at NBR that compared pesticide use to pesticide label instructions. The EPA inspection did not result in any adverse findings.

Work Plans

PEER alleged that 2009 and 2010 NBR operational work plans required by the annual funding agreement were not completed. The allegation also included an August 11, 2009 email from the CSKT tribal deputy refuge manager to other NBR employees that indicated the 2009 plan of work was significantly past due.

The annual funding agreement required that an operational work plan be completed by the start of each fiscal year (FY). This plan was expected to contain routine, ongoing, and project-specific work descriptions. We found that the FY2009 plan was never completed and that the FY2010 plan was not completed in a timely manner. The FY2010 work plan was not completed until April 2010. The FWS refuge manager acknowledged that the plan should have been completed by October 2009.

FWS and CSKT managers and staff told us that they were unable to create the 2009 plan due to the basic demands of NBR operations while CSKT staff was being hired. The CSKT tribal deputy refuge manager started in December 2008 and most CSKT employees were hired in the second quarter of the fiscal year. A CSKT employee who started at NBR in December 2008 said that he and many other new CSKT employees were “scrambling all year just to get things done.” NBR managers said they followed the 2008 work plan for 2009 operations and that operations had not changed significantly between those years.

Management

PEER alleged that NBR management was “adrift” and that the bison range was experiencing a “leaderless malaise.” The allegation included a May 27, 2009 internal communication from the NBR deputy manager to the manager, expressing a lack of direction, specifically in the biological program.

We did not find any significant information to support this allegation. Nearly all FWS and CSKT employees that we interviewed said they had no major concerns with management. Interviewees told us that the FWS manager and the CSKT tribal deputy manager worked well together and collaborated on operational decisions. They stated that managers sought out experienced NBR staff regarding their opinions on various issues and did not differentiate according to whether they were FWS or CSKT employees. Interviewees also said that free and open communication existed between FWS and CSKT employees.

The NBR lead biologist position, which is a CSKT position under the annual funding agreement, was vacant at the time of our evaluation. CSKT officials said the position had been advertised but that hiring requirements hindered finding a qualified person. NBR managers and staff said that the position's duties were capably handled in the interim by a highly regarded CSKT staff member who was also a biologist. Furthermore, the FWS employee who wrote the critical document cited by PEER in its complaint reported that operation of the biology program had improved and that the interim lead employee provided excellent direction.

One employee expressed concern that the NBR leadership team did not meet weekly as required by the annual funding agreement. NBR managers stated that this requirement was unreasonable and that the intent of these meetings was being fulfilled through regular, informal communication among leadership team members and staff. We found no evidence that NBR suffered from a lack of formal weekly meetings.

Recommendations

We recommend that NBR management:

1. Monitor and control pesticide applications performed by outside parties.

Department Response: The Refuge Manager will ensure that all pesticide applications at the National Bison Range Complex, including those performed by outside parties, are in compliance with 242 FW 7, Pesticide User's Safety, and 569 FW 1, Integrated Pest Management

OIG Reply: We consider this recommendation to be resolved and implemented.

2. Reconsider the hiring requirements for the lead biologist and fill the position.

Department Response: The hiring requirements for the lead biologist position at NBR has [sic] been revised. The opening will be advertised as a career ladder position and filled below the full performance level, GS-12. The positions will reflect the Office of Personnel Management's qualification standards for federal employees, not the more stringent qualification standards used by the CSKT (Confederated Salish and Kootenai Tribes). It is the intent of the Service to fill this position in the current fiscal year pending final appropriation legislation from Congress, and decisions regarding what, if any, type of involvement the CSKT will have at the NBR. While the position is currently vacant, we believe we have met the

intent and purpose of Recommendation #2 and consider no further action is required.

OIG Reply: We consider this recommendation to be resolved but not yet implemented until the position is filled.

Scope and Methodology

Scope

We performed our evaluation in accordance with the President's Council on Integrity and Efficiency "Quality Standards for Inspections." Our evaluation focused on NBR operations in response to allegations received from PEER. Our objective was to determine if specific mismanagement and operational deficiencies existed as PEER alleged.

Methodology

We performed our evaluation from June to October, 2010. Documents reviewed included the PEER allegations, the annual funding agreement between FWS and CSKT, and NBR pesticide application records. Interviews included FWS and CSKT managers and staff, CSKT tribal personnel, former NBR employees, and EPA inspection personnel. We believe that the work performed provides a reasonable basis for our conclusions and recommendations.



United States Department of the Interior

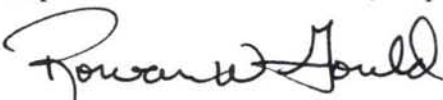
FISH AND WILDLIFE SERVICE
Washington, D.C. 20240



FEB 10 2011

In Reply Refer To
FWS/ABHC/PDM/047309

To: Assistant Inspector General for Audits, Inspections, and Evaluations

From: **Acting** Director 

Subject: USFWS (Service) response to Draft Evaluation - The National Bison Range
Report No. NM-EV-FWS-0001-2010

This memorandum is in response to your January 6, 2011, memorandum that transmitted the findings of your draft evaluation of the National Bison Range (NBR) operations. Your evaluation was completed in response to a complaint from Public Employees for Environmental Responsibility who alleged that specific operational and management deficiencies involving law enforcement, bison containment, pesticide application, work planning, and management activities existed at NBR.

The Service has reviewed the draft report and has no recommended changes. The report offered two recommendations for improved operations at NBR. Management actions are already underway in response to this evaluation and recommendations as indicated in the attached corrective action plan.

Attachment

CORRECTIVE ACTION PLAN
Draft Evaluation - The National Bison Range
Report No. NM-EV-FWS-0001-2010
January 6, 2011

The draft evaluation contains two recommendations and corrective actions are underway as indicated below:

Recommendation #1. Monitor and control pesticide applications performed by outside parties.

The Refuge Manager will insure that all pesticide applications at the National Bison Range Complex, including those performed by outside parties, are in compliance with 242 FW 7, Pesticide User's Safety, and 569 FW 1, Integrated Pest Management. These manual chapters contain current U. S. Fish and Wildlife Service policy that requires pesticide application consistent with the rates specified on the label and applicable state and local requirements. No further action required.

Responsible Official: Refuge Manager, National Bison Range Complex

Recommendation #2. Reconsider the hiring requirements for the lead biologist and fill the position.

The hiring requirements for the lead biologist position at NBR has been revised. The opening will be advertised as a career ladder position and filled below the full performance level, GS-12. The positions will reflect the Office of Personnel Management's qualification standards for federal employees, not the more stringent qualification standards used by the CSKT (Confederated Salish and Kootenai Tribes). It is the intent of the Service to fill this position in the current fiscal year pending final appropriation legislation from Congress, and decisions regarding what, if any, type of involvement the CSKT will have at the NBR. While the position is currently vacant, we believe we have met the intent and purpose of Recommendation #2 and consider no further action is required.

Responsible Official: Regional Director

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