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FOIA-REVEALED CHRONOLOGY OF EVENTS SURROUNDING NATIONAL BISON RANGE “TRANSFER” TO CSKT

- On [February 5, 2016](#), the USFWS Mountain-Prairie Regional Director dispatched an email to regional staff announcing the agency’s then recent discussion with the CSKT regarding the potential of the agency to support legislation that would facilitate such a transfer. [As the media then reported](#), in that email, she recognized that such “a proposal would require congressional approval” and that the agency was uncertain whether such a transfer would ever occur. Emails also had been exchanged on [February 6, 2016](#) between the USFWS Regional Director and the former USFWS Assistant Regional Director-External Affairs regarding the then forthcoming media statement about the NBR transfer policy that had been approved by USFWS headquarters. In addition, emails were exchanged during [February 5-6, 2016](#) between Manager of the Lost Trails National Wildlife Refuge and the regional refuge supervisor for Montana, Wyoming and Utah regarding the fate of Lost Trail and the other National Bison Range Complex components when the NBR is transferred to the CSKT.
- On [February 10, 2016](#), Interior’s former Acting Assistant Secretary of Indian Affairs and the former USFWS Director exchanged emails regarding an earlier meeting that day with former CSKT Chairman, who also had previously “visited with *Sen. Tester and Rep. Zinke from MT*,” at which “*both of them were very positive and supportive as well.*” (emphasis added). On [February 12, 2016](#), two CSKT Tribal Attorneys had emailed (*Ibid.*, at 2-3) the designated USFWS point-of-contact regarding the USFWS Director having contacted the former CSKT Chairman to discuss “the possibility of issuing a joint statement on USFWS’ recent proposal on the National Bison Range,” which statement was included in the email. During [February 17-18, 2016](#), the emails exchanged between a CSKT Tribal Attorney and USFWS External Affairs, however, revealed that the joint statement had never been issued. (*Ibid.*, at 4-5).
- During February 17-18, 2016, the former CKST Chairman and the former USFWS Director exchanged emails that revealed the Tribes’ appreciation of the [Washington D.C. meeting](#) they had attended earlier that month which addressed the agency’s desire to support the Tribes’ efforts to propose legislation eventually resulting in the NBR’s transfer to the CSKT. The emails also revealed the regional USFWS point-of-contact who stood ready to work with the Interior Department’s Solicitor and the CSKT to achieve good draft legislation by the end of February 2016, as well as the regional “Transition Team” lead for the eventual transfer process transition period.
- On [February 22, 2016](#), the Lake County Civil Deputy Attorney, Walter Congdon, sent a letter to the USFWS Mountain-Prairie Regional Office protesting the USFWS’ public announcement of the NBR’s transfer to the CSKT without the proper NEPA review required under [42 U.S.C. § 4332](#), or the issuance of a record of decision as required by [43 U.S. Code § 1701](#) and [43 U.S. Code § 1712](#). That letter also expressed Lake County’s “desire to cooperate in completing consideration of various options for this facility.” On [April 7, 2016](#), USFWS Mountain-Prairie Regional Director Noreen Walsh responded to the Lake County Civil Deputy Attorney letter clarifying that “there ha[d] been no final decision and no proposal for action,” legislation would be required to accomplish any transfer of the [NBR],” “there [was] no certainty as to when, or even if, any action would occur,” and that the Service would “comply with applicable laws as directed by Congress [...] if legislation is proposed directing transfer of the [NBR].”



- A January 2017 internal USFWS document reaffirmed the subject matter of the early USFWS February 2016 emails. It revealed that USFWS had previously “received a request from congressional offices to provide technical drafting assistance for legislation that would transfer” NBR lands to the CSKT, to be held in trust by the Interior Secretary for the Tribes’ benefit. ([See Internal NBR CCP TPs and Q&A](#), at 4). It also said that “Congress can request ‘subject matter expert’ agencies to draft legislative text for potential legislation to accomplish particular objectives. Requests for ‘technical drafting assistance’ are initiated by Congress and outline these objectives. In response to such requests, federal agencies provide draft legislative text.” The document went on to say that “[t]echnical drafting assistance was *requested by Senator Tester and Representative Zinke*. *Senator Tester’s Office* submitted a request on March 3, 2016. *Representative Zinke’s Office* submitted a request on March 15, 2016. A response was provided to both offices on April 8, 2016.” (*Ibid.*, at 4-5). (emphasis added). ([See also Note to Reviewers Tester Request](#)).
- During [March 31, 2016 and April 1, 2016](#), senior Washington, D.C. officials from within the USFWS’ and the Interior Department’s respective Offices of Congressional and Legislative Affairs exchanged emails discussing when the [revised/edited draft legislation](#) to transfer the NBR to the Tribes, which the CSKT had provided to the USFWS and Interior Department for review, would be completed and cleared by counsel. This email exchange also confirmed that the only congressional offices requesting technical drafting assistance on the CSKT draft NBR transfer legislation were those of *Senator Tester and former Congressman Zinke*, and that the Senate Indian Affairs Committee had been eager to review the draft legislation. On [April 8, 2016](#), the Interior Department Office of Congressional and Legislative Affairs Legislative Counsel sent a letter to Senator Tester referring to his March 3, 2016 request for technical drafting assistance and enclosing the draft bill the Interior Department had prepared “as a service” to the Senator.
- On May 23, 2016, the nonprofit group Public Employees for Environmental Responsibility (“PEER”) [filed a lawsuit](#) against the USFWS seeking to enjoin the agency’s transfer of the NBR to the Tribes. The [lawsuit claimed](#) the agency had failed to develop either the required National Environmental Policy Act (“NEPA”)-based Environmental Impact Statement or the required National Wildlife Refuge Improvement Act of 1997 Comprehensive Conservation Plan for the proposed NBR transfer.
- On [June 10, 2016](#), and [June 13, 2016](#) local media reported that the CSKT had publicly released their draft NBR transfer legislation and informed the public of its newly formed Bison Range Working Group which, [agency June 2016 emails reveal](#), had apparently surprised USFWS officials and triggered a need for talking points, as well as a public backlash resulting in correspondence between the [USFWS and U.S. Senator Dianne Feinstein](#). On or about June 29, 2016, agency officials finally received the [CSKT draft NBR transfer bill](#).
- On July 12, 2016, a professional moderator convened for the CSKT a [two-hour public meeting](#) on the Tribes’ draft NBR transfer legislation at the Johnny Arlee and Victor Charlo Theatre, at which the CSKT Legal Department and Tribal officials discussed the draft legislation. Attendees, including



myself, were provided with a [meeting agenda and comment forms](#), and with forwarding information in the event they wished to contact the Montana congressional delegation, including Senators Tester and Daines, and former Congressman Zinke.

- On [September 14, 2016](#), the former CSKT Chairman sent a letter to the former USFWS Director informing him that the Tribes had “continued to develop legislation that would restore the [NBR] to federal trust ownership for the Tribes, with requirements for continued bison conservation and continued public access.” The letter stated that the steps the Tribes had taken during June-July 2016, including their revision of the draft legislation in [response to public comments](#) should reassure the Service the CSKT would continue to provide public access to, and to manage the NBR solely for bison, wildlife, and natural resource conservation. It was accompanied by the CSKT’s revised draft of the NBR transfer legislation, dated 9/13/16. On [September 21, 2016](#), the USFWS filed an answer to PEER’s lawsuit denying it had announced a legislative proposal to transfer the NBR out of the National Wildlife Refuge System, [in direct contradiction of the evidence](#).
- On [January 5, 2017](#), Senator Tester sent a letter to the former USFWS Director seeking assurance that the draft legislative proposal “needs to ensure the public does not lose any access to our public lands.” And on [January 18, 2017](#), the former USFWS Director responded that the agency, which supports the transfer of the NBR to the CSKT, ensured that the Tribes will manage those lands “in accordance with their original conservation purpose and allow for continued public access.” The USFWS Mountain-Prairie Region also issued [a January 18, 2017 press release](#) announcing that the agency had published a Notice of Intent (“NOI”) to prepare a CCP and EIS that would *inter alia* “outline a range of management alternatives based on public input received over the years.” It included “[Alternative B \(Preferred Management Option\)](#)” which “would evaluate the preferred management option of a Congressional transfer of lands comprising of the [NBR] unit of the National Wildlife Refuge System to the CSKT [...] to be held in trust by the Secretary of the Interior for the benefit of the CSKT.”
- On [January 23, 2017](#), Lake County Commissioners Gail Decker, Dave Stipe and William Barron sent a letter to the USFWS NBR expressing their “desire to cooperate with the USFWS in preparation of the Bison Range EIS and comprehensive plan [...] ASAP.
- On [March 9, 2017](#), the USFWS Mountain-Prairie Regional Director issued an information memorandum to former Interior Secretary Zinke prior to his then scheduled visit to the National Bison Range. It explained that “[t]wenty years of negotiation for an Annual Funding Agreement with CSKT ha[d] been met with mixed success due to litigation, personnel management issue, and differences in expectation regarding how the agreement should be crafted.” It also stated that the CSKT’s release in June 2016 of draft legislation directing the UFWS to transfer the NBR to the Bureau of Indian Affairs (“BIA”) to be held in trust for the CSKT would avoid these problems and support Indian Self-Determination. The memo conspicuously omitted how the USFWS and Interior Department had previously participated in the drafting of such proposed legislation. The memo, furthermore, referred to the January 18, 2017 NOI reflecting “an alternative that would transfer NBR to BIA.



- On [April 13, 2017](#), former Interior Secretary Zinke issued a press release stating that “I took a hard look at the current proposal suggesting a new direction for the National Bison Range and assessed what this would mean for Montana and the nation. [...] I recognize the Bison Range is a critical part of our past, present, and future, which is why I have changed course. I have said I will not sell or transfer public land. I remain steadfast in that commitment, which reflects my decision today.” *The press release, however, conspicuously neglected to mention that former Secretary Zinke would have no choice but to ensure the USFWS transferred the NBR to the BIA in trust for the benefit of the CSKT, if Congress enacted the Tribes’ proposed legislation which directed the Interior Secretary and USFWS Director to do so.* Apparently Zinke had disavowed, at no political cost to his reputation, an agency policy that always had been dependent on congressional action.
- During the week of May 3-8, 2017, the USFWS drafted a revised NOI to develop a CCP and EIS for the NBR. The foremost primary message behind this turnabout in policy was that the Interior Department, having “reviewed the [USFWS]’ proposal for management of the [NBR,...] determined it will continue under Service ownership.” On [May 17, 2017](#), the USFWS Mountain-Prairie Region issued a press release entitled, “National Bison Range Will Continue Under U.S. Fish and Wildlife Service Ownership,” quoting from former Secretary Zinke’s April 13, 2017 press release. And, on [May 18, 2017](#), the USFWS published in the Federal Register its revised NOI stating that, “due to the variety of information and perspectives received during the comment period and a change in policy direction, we will not proceed with evaluating a preferred alternative of legislative transfer of the NBR.” Internal USFWS documents show that a majority of commenters, both before and after the revised NOI, [had been against the NBR transfer](#). A separately prepared post-May 2017 [NBR Complex CCPs Scoping Report](#) revealed that “because the January 2017 and May 2017 NOIs announced different actions by the Service the nature of the comments received was different as well.”
- On or before October 5, 2017, the U.S. Department of Interior had circulated a [Memorandum of Understanding](#) (“MOU”) for signature among the five agencies that had previously expressed interest in cooperating in the development of the NBR CCP and EIS. The MOU was to be Between the U.S. Department of the Interior Fish and Wildlife Service and Bureau of Indian Affairs – Northwest Region, the Confederated Salish and Kootenai Tribes, the State of Montana, Montana Fish, Wildlife & Parks, Lake County via Lake County Board of Commissioners, and Sanders County via Sanders County Board of Commissioners. On October 5, 2017, a Kick-off Meeting convened to introduce key USFWS and contract personnel, to initiate a project schedule, and review areas of concern. The [draft minutes of this meeting](#) revealed these same five cooperating agencies. The [executed MOU signature page](#) reveals Neil Anderson, Regional Wildlife Program Manager, Montana Fish, Wildlife & Parks was the first to execute the MOU for the State on October 5, 2017, followed by Gale Decker of the Lake County Board of Commissioners and Jeff King, the NBR Complex Project Leader, on November 7, 2017, CSKT Chairman, Vernon Finley on November 9, 2017, and BIA Northwest Regional Office Director Stanley Speaks on November 20, 2017. Carol Brooker of the Sanders County Board of Commissioners had apparently not signed the MOU as of those dates.
- On [November 7, 2017](#), the USFWS convened an NBR Complex CCP Workshop at the Red Lion Inn Hotel in Polson, MT. The [sign-in sheet](#) to this workshop revealed the attendance of three CSKT



Tribal Attorneys, and three representatives from Lake County – private consultant Pat Jamieson, Lake County Deputy Civil Attorney, Wally Congdon, and Gale Decker of the Lake County Board of Commissioners. Apparently, public meetings had previously been held to discuss the NBR Complex CCP and EIS processes in Kalispell, MT and Polson, MT during [June 2017](#).

- As of [December 11, 2017](#), USFWS representatives from the Lost Trail National Wildlife Refuge and National Bison Range were already planning an NBR Complex CCP Alternatives Development Workshop for the week of February 6, 2018 at the Red Lion in Polson again.
- On January 29, 2018, PEER issued a press release announcing that it had reached an agreement with the USFWS [to settle its 2016 lawsuit against the USFWS](#). The [settlement agreement](#) indicated the USFWS had agreed to prepare a CCP for the National Bison Range pursuant to the Refuge Act and USFWS Compatibility Policy ([603 FW2](#)) and an Environmental Impact Statement on the CCP pursuant to NEPA. Completed drafts of the CCP and EIS were due “by July 31, 2022, and a completed final CCP and final NEPA EIS were due by January 31, 2023.
- During September 2019, the USFWS released its [final EIS on the CCP](#) – i.e., of the potential effects on the National Bison Range environment and wildlife of the no-action and two proposed action alternatives contained within the soon-to-be released final CCP of the National Bison Range. The final NBR EIS identified Lake and Sanders Counties, Montana as two of the five cooperating agencies on the EIS planning team, along with the CSKT, the Interior Department Bureau of Indian Affairs and the Montana Fish, Wildlife and Parks (Final EIS, at 3). The final EIS also identified the representatives from Lake and Sanders Counties, Montana as individual members of the “core planning team” set forth in Appendix A. “Appendix A – List of Preparers” identifies *as preparers* of both the Final EIS and Final CCP the following nine individuals representing the five cooperating agencies on the “core planning team:” (1) Neil Anderson of the Montana Fish, Wildlife and Parks, Region 1; (2) Dale Becker of the CSKT Natural Resources Department; (3) Robert Compton of the Bureau of Indian Affairs Land Management; (4) Wally Congdon, Lake County Attorney; (5) Gale Decker, Lake County, Commissioner; (6) Pat Jamieson, Lake and Sanders Counties Subject Matter Expert; (7) David Redhorse, Bureau of Indian Affairs Natural Resources Division; (8) Dave Stipe, Lake County Commissioner; (9) Brian Upton, CSKT Attorney. (Final EIS, App. A, Table A-1. Planning Team, at A1-A2).
- On December 5, 2019, the USFWS released its [Final CCP of the National Bison Range](#), which had been developed separate and apart from the CCP and Environmental Assessment that had been developed for the other units of the NBR Complex. This suggests that the governmental and tribal parties had known something about the future of the National Bison Range about which most members of the American public at-large had remained unaware.
- On December 11, 2019, barely six days following the USFWS’ issuance of its Final CCP on the National Bison Range, U.S. Senators Daines announced he would introduce the new Montana Water Rights Protection Act ([S.3019](#)) to ratify as federal law the CSKT Water Compact already adopted as Montana law. Senator Tester immediately became S.3019’s co-sponsor and the bill was introduced into the Senate Committee on Indian Affairs. S.3019 is significantly less transparent than Senator Tester’s unsuccessful 2016 proposed legislation entitled the “Salish and Kootenai Water



Rights Settlement Act of 2016” ([S.3013](#)). Section 3(3) of S.3019 identifies the CSKT Water Compact as [MCA 85-20-1901 \(2017\)](#), including any state amendments consistent with S.3019 that may subsequently be made thereto. A great many Montanans have expressed concern that the CSKT Water Compact would transfer the State-defined water rights of Montana’s nontribal citizens and residents to the CSKT tribal trust account without such individuals’ informed consent. Section 13 of S.3019, entitled “National Bison Range Restoration,” has an uncanny resemblance to the September 13, 2016 draft version of the CSKT proposed NBR transfer legislation which the USFWS had previously revised and edited. Section 13(c)(1) of S.3019 states that “all land comprising the National Bison Range (including all natural resources, interests, and appurtenances of that land) shall be held in trust by the United States for the benefit of the Tribes.” (emphasis added). This means that the USFWS is likely to transfer its federal reserved water rights described in the USFWS-National Bison Range Montana Compact ([MCA 85-20-1601](#)), incident to the agency’s transfer to the Tribes of the NBR lands and associated wildlife and natural resources.
