



THE SECRETARY OF THE INTERIOR
WASHINGTON

ORDER NO. 3390

Subject: Transfer of Functions and Property Related to the National Bison Range

Sec. 1 Purpose. The purpose of this Order is to clarify process and provide guidance for the transfer of functions and property associated with the National Bison Range (National Bison Range or Range) from the U.S. Fish and Wildlife Service (FWS) and Bureau of Land Management (BLM) to the Bureau of Indian Affairs (BIA) and the Confederated Salish and Kootenai Tribes (Tribes).

Sec. 2 Authorities. This Order is issued under the authority of Section 2 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262), as amended, and Pub. L. 116-260, the Consolidated Appropriations Act, 2021.

Sec. 3 Background. On December 27, 2020, the President signed into law H.R. 133, the Consolidated Appropriations Act, 2021 (Act). Division DD of the Act, the Montana Water Rights Protection Act, includes at § 12 certain provisions affecting title to the real and personal property and the administration of the National Bison Range, a tract of approximately 18,800 acres previously managed by FWS—with certain limited management roles on the part of BLM through its remaining General Land Office functions—within the Flathead Indian Reservation in northwest Montana.

Specifically, the Act provides at § 12(c) 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.” The Act further states that this restored land shall be a part of the Flathead Indian Reservation, administered as tribal trust land, and managed by the Tribes. Section 12(d)(1) requires the United States to convey to the Tribes “all ownership interests of the United States in all buildings, structures, and appurtenances located on the land” and § 12(d)(2) provides that the United States “may convey to the Tribes any personal property owned by the United States and found on, or otherwise associated with, the land[.]” Section 12(e) relinquishes to the Tribes all interests of the United States in the bison on the National Bison Range.

Section 12(f), entitled “Transition,” establishes a 2-year period, beginning on December 27, 2020, during which “the Secretary shall cooperate with the Tribes in transition activities regarding the management of land, bison, and other resources conveyed by this Act, including by providing to the Tribes, as determined to be appropriate by the Secretary, funds, personal property, equipment, or other resources for the performance of, or assistance with, the types of activities carried out by the Secretary at the National Bison Range as of the date of enactment” of the Act.

This Order provides guidance to the Department of the Interior for the transfer of functions and property outlined above.

Sec. 4 Policy. It is the policy of the Department of the Interior to effectively and expeditiously carry out the transfer of functions and property mandated by the Act.

Sec. 5 Directives. Consistent with applicable laws and regulations, I direct that the following actions take place to facilitate the transfer of functions and property related to the National Bison Range from FWS and BLM to the Tribes and BIA:

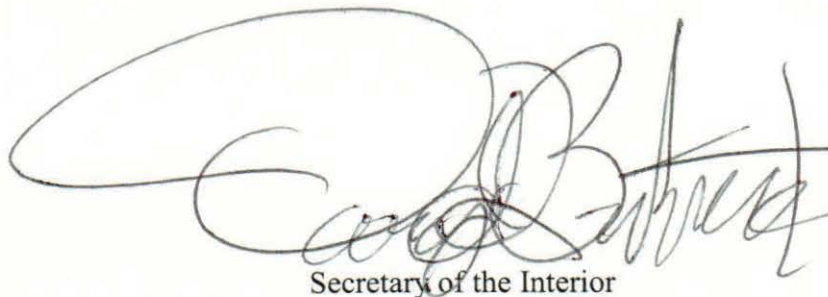
- a) As interpreted by the Office of the Solicitor through a memorandum issued on January 6, 2021, the Act effected an immediate legislative transfer of title to the real property comprising the National Bison Range from FWS to BIA in trust for the benefit of the Tribes. The BIA, FWS, and BLM—collectively, the Agencies—shall update their title and land status records to reflect this immediate change.
 1. In the update to records described in paragraph (a), the Agencies shall include all land that comprises the National Bison Range, including public lands withdrawn for the Range and lands acquired by FWS for the Range through other means.
 2. Not later than January 19, 2021, the BIA shall submit for publication in the Federal Register a notice of the trust status of the Range lands.
 3. The FWS and BLM will provide copies of all historical, out-grant, and other realty files to BIA and the Tribes.
- b) In order to maintain public safety, the BIA shall take such actions needed to legally authorize FWS law enforcement officers to provide law enforcement services on trust lands under BIA superintendence within the National Bison Range.
- c) Consistent with the Act, no National Environmental Policy Act analysis will be required to update the title and land status records for the lands transferred by mandate of Congress through the Act. However, FWS shall provide to BIA copies of any and all environmental records FWS has maintained. At the request of either the Tribes or BIA, FWS, with assistance as needed from BLM, shall prepare a Phase I Environmental Site Assessment for the National Bison Range in order to inform the Tribes and the Agencies regarding any environmental conditions of concern present on the Range. This assessment may be performed after recordation of title by BIA in trust for the benefit of the Tribes.
- d) The FWS and BIA, and, if necessary, the BLM shall enter into a Memorandum of Agreement (“Agreement”) supporting the United States obligations during the 2-year transition period described in § 12(f) of the Act and, to the extent necessary, supporting ongoing responsibilities and cooperation beyond the transition period. The Agreement shall address, among such other matters the Agencies choose to include, the following:

the responsibilities of the parties; budgets; operating costs; staffing; deferred maintenance; the mandatory transfer in fee of all buildings, structures, improvements (including fences), and appurtenances owned by the United States and located on the National Bison Range; and the discretionary transfer of any personal property owned by the United States and found on, or otherwise associated with, the National Bison Range.

1. To further the transfer of property identified in the Act, and to facilitate the Agreement, not later than February 15, 2021, FWS shall prepare an Inventory of the United States property found on, or otherwise associated with, the National Bison Range and shall provide such Inventory to the Tribes.
 2. Unless determined otherwise by the Office of the Solicitor, the Inventory need not include the bison found on the Range, interests in which were immediately transferred to the Tribes by operation of law pursuant to § 12(e) of the Act.
- e) The FWS and BLM, if necessary, shall convey the real property described in paragraph (d) and listed on the Inventory to the Tribes in fee by quit claim deed (or deeds) in a form acceptable to the Tribes. The FWS and BLM may convey personal property described in paragraph (c) and listed on the Inventory to the Tribes by appropriate instrument(s), including, for instance, by bill of sale.

Sec. 6 Effect of the Order. This Order and any resulting reports or recommendations are not intended to, and do not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.

Sec. 7 Expiration Date. This Order is effective immediately and will remain in effect until the appropriate provisions are incorporated into the Departmental Manual, or until the Order is amended, superseded, or revoked, whichever occurs first.



Secretary of the Interior

Date: JAN 15 2021