

University of Montana

ScholarWorks at University of Montana

Undergraduate Theses and Professional Papers

2016

Comanagement Between Federal Agencies and Native American Tribes: Applications and Lessons

Rachel Grabenstein

The University Of Montana, rachel.grabenstein@umconnect.umt.edu

Follow this and additional works at: <https://scholarworks.umt.edu/utpp>



Part of the [Other Public Affairs, Public Policy and Public Administration Commons](#), and the [Recreation, Parks and Tourism Administration Commons](#)

Let us know how access to this document benefits you.

Recommended Citation

Grabenstein, Rachel, "Comanagement Between Federal Agencies and Native American Tribes: Applications and Lessons" (2016). *Undergraduate Theses and Professional Papers*. 114.

<https://scholarworks.umt.edu/utpp/114>

This Professional Paper is brought to you for free and open access by ScholarWorks at University of Montana. It has been accepted for inclusion in Undergraduate Theses and Professional Papers by an authorized administrator of ScholarWorks at University of Montana. For more information, please contact scholarworks@mso.umt.edu.

COMANAGEMENT BETWEEN FEDERAL AGENCIES AND NATIVE AMERICAN

TRIBES: APPLICATIONS AND LESSONS

By

RACHEL KATHLEEN GRABENSTEIN

Undergraduate Professional Paper
presented in partial fulfillment of the requirements
for the University Scholar distinction

Davidson Honors College
University of Montana
Missoula, MT

December 2016

Approved by:

Martin Nie
Resource Conservation – College of Forestry and Conservation

ABSTRACT

Grabenstein, Rachel, B.S., December 2016

Wildlife Biology

Comanagement Between Federal Agencies and Native American Tribes:
Applications and Lessons

Faculty Mentor: Martin Nie

The Badger Two Medicine Area in the Lewis and Clark National Forest has faced conflict over management since the 1980s due to leasing of what is considered sacred land. Recently those leases were cancelled. However questions about how to manage the land still remain. This paper explores examples of comanagement between the federal government and Native American tribes in an effort to understand what options and obstacles the Blackfeet tribe will face in future management of the Badger Two Medicine Area. I examined the National Bison Range and Badlands National Park efforts at comanagement in depth and additional current comanagement situations with other federal agencies. Background information is provided on both of these topics. This policy piece found that comanagement suffered at both the National Bison Range and Badlands National Park due to poor communication, political and personal issues within agencies, and issues beyond agency control, such as funding. In situations where comanagement has been successful, strong interpersonal relationships and effective communication have played a significant role.

Comanagement Between Federal Agencies And Native American Tribes:
Applications and Lessons

Describe the political and legal context of co-management on the National Bison Range.

For decades the Nation Bison Range (NBR) has been the subject of intense negotiations between the United States Fish and Wildlife Service (USFWS) and the Confederated Salish and Kootenai Tribes (CSKT). These negotiations have been part of the larger push for more co-management between federal agencies and tribes. It has been a long difficult process for the groups involved and this paper is intended to simply provide a general history and overview of the situation.

The NBR is a wildlife refuge situated in northwest Montana that is part of the USFWS. It is important to keep in mind that the USFWS is part of the Department of the Interior (DOI). The NBR was created in 1908 to protect the few remaining buffalo left in the United States (Reffalt, et al., 2008). The NBR lies on the Flathead Indian Reservation, which belongs to the CSKT. This reservation was created in 1855 through the Hellgate Treaty (Upton, 2014).

The NBR is of particular significance for the CSKT because of the considerable cultural bonds tying the tribes to the bison themselves and the land that the NBR rests on. Bison were historically hunted by the CSKT and thus there are many historical and traditional tribal practices that are related to bison. The CSKT feel an even deeper connection to the NBR because many of the bison of the NBR exist today due to efforts of past CSKT members to preserve bison (Reffalt et al., 2008; Stumpff, 2010). The CSKT call themselves a people of vision and it is fitting that they had the foresight to preserve bison in their worst time. They want to continue that tradition and continue to help preserve and manage bison for future generations. Furthermore the land for the refuge was appropriated from the tribes despite tribal opposition. The 1904 Flathead Allotment Act, through the Dawes Act, allowed allotments of land on the reservation to be given to non-Indian homesteaders and permitted the purchase of land for the NBR. (Reffalt et al. 2008; Upton, 2014; Lyons, 2005).

It is partly because of these deep cultural ties to bison and the location of the NBR, that the CSKT have wanted a greater role in managing the NBR. In the 1990s this became possible with the passage of the Tribal Self Governance Act (TSGA) of 1994. The TSGA, “is a federal law that authorizes Indian tribes to contract for the operation of DOI programs of specific significance to tribes” (Upton, 2014). The TSGA amended the Indian Self-Determination and Education Assistance Act (ISDEAA) and created contracts, which are known as annual funding agreements (AFA) (*Reed v. Salazar*, 2010). It is crucial to note that the TSGA only applies to DOI programs and no other federal programs.

The TSGA was and is a huge step forward for the concept of co-management. It forces federal agencies to work with tribes on a government-to-government basis and recognize that these tribes bring something different yet equally meaningful to the management of public lands. This allows and can encourage tribes to become much more involved in the management of a resource. This could have considerable implications if it was able to be successfully realized (King, 2007). However as can be seen with the NBR, this is not always the case and there can be many hurdles along the way.

The NBR co-management saga begins in 1994 with the passage of the TSGA. Soon after its passage the CSKT entered into discussions with the USFWS towards creating and implementing a co-management plan on the NBR. Finally in 2004, 10 years after negotiations began, an agreement was reached creating the first AFA. This was signed in December 2004 and became effective in March 2005. In March 2006, “FWS’s Project Leader for the NBRC, Steven Kallin, compiled a report on the CSKT’s implementation of the AFA” for the previous year. It claimed that the CSKT performance on the NBR was not satisfactory. The situation escalated from there, culminating in a request from the Project Leader to terminate the CSKT authority to operate on the NBR and to end negotiations for another AFA. This was granted in December 2006. This decision was appealed by the CSKT in January citing, “that FWS had improperly terminated the AFA without prior notice to the CSKT and that FWS had not notified the CSKT of alleged deficiencies and given them an opportunity to respond to them” (*Reed v. Salazar*, 2010). The situation had essentially turned into a war of words with little

beneficial communication occurring on the ground.

Eventually the Deputy Secretary of the Interior became involved and indicated that another AFA would be created. A new draft AFA was submitted in May 2007 but was not signed until June 2008, due to prolonged negotiations. This 2008 AFA was then sued in 2010 by various groups under allegations of violating the National Environmental Policy Act (NEPA) and the National Wildlife Refuge System Administration Act of 1966, among others. Many of the groups that brought suit had a strong federal government background, or were considered part of a, “USFWS retiree/employee base”. These groups mentioned concerns with the AFA due to staffing, budget, and privatization/politicization of the USFWS (Stumpff, 2010). The courts found that the 2008 AFA did violate NEPA because the USFWS failed to properly explain why the AFA was a categorical exclusion (*Reed v. Salazar*, 2010; Upton, 2014). This was a technicality and did not really address any of the underlying issues of why the plaintiffs were upset with the AFA.

With that decision the CSKT and USFWS went back to work to complete a new AFA and prepare an environmental assessment to accompany that AFA. The latest draft AFA was released in August 2014 and comments were allowed through September 2014 (U.S. Fish and Wildlife Service, 2014). It is not currently in effect and it remains to be seen if any groups will file suit or if this AFA will turn out to be more successful than its predecessors (Lisk, 2015).

What are the major political and legal arguments made in opposition to the co-management of the National Bison Range?

When people generally refer to the lawsuit brought against the National Bison Range (NBR) for the 2008 Annual Funding Agreement (AFA), they tend to refer to it as the PEER lawsuit. It is important to know who PEER is to understand their motivations for suing the United States Fish and Wildlife Service (USFWS) in regards to this AFA. However this lawsuit at its core, also helps us recognize deeper concerns regarding co-management.

PEER stands for Public Employees for Environmental Responsibility. PEER is non-profit, environmental organization that works with both federal and state resource agency professionals. PEER often acts as government watch dog and is used as resource by whistleblowers who are afraid of retaliation from their agency (PEER, 2015). When PEER brought suit against the USFWS they claimed that the 2008 AFA violated the National Wildlife Refuge System Administration Act of 1966 (NWRSA), the Indian Self-Determination and Education Assistance Act (ISDEAA), the Freedom of Information Act (FOIA), the Intergovernmental Personnel Act (IPA), and the National Environmental Policy Act (NEPA). The court found that the 2008 AFA did violate NEPA and thus struck down the 2008 AFA (*Reed v. Salazar*, 2010).

However many of the laws mentioned above were just used as a technicality to stop the 2008 AFA. When examining PEER news releases and editorials, many arguments arise that have nothing to do with the laws above (Hocutt, 2007; PEER 2012, PEER 2014). Many of the arguments can be broken down into two main categories; those having to do with funding and employment and those having to do with privatization. When George W. Bush became president in 2001, America's federal lands experienced a dramatic shift in funding and policy. The USFWS was particularly hard hit, experiencing funding cuts, "that threatened up to 25% of the agency workforce". The NBR was no exception to these cuts, feeling the general pressure to downsize and reduce regulation (Stumpff, 2010).

This atmosphere of fear, combined with the news of the AFA generated animosity and distrust among USFWS employees. To begin with, there were claims that the first

AFA was essentially negotiated only between upper management, without much input from lower level employees or public comments (King, 2007; PEER, 2014). Then when the AFA was released, it basically gave USFWS employees' two options. These employees could either go work for the CSKT or be reassigned to another Refuge, dependent of funding, which was unlikely to happen (Stumpff, 2010). This combination led to the filing of employee grievances and the relationship between USFWS and CSKT employees quickly soured.

The most recent comments from PEER regarding the third AFA focus on job fears again. A press release from PEER criticizing the third, most recent AFA says, "The EA does not analyze how the changes in staff will affect the resource" and "The short term and uncertain nature of these jobs make it hard to hire "experienced staff" from the CSKT" (PEER, 2014). At their core, these comments reflect fears about the safety and security of jobs with the USFWS and a strong commitment to the USFWS mission, both of which are under attack as a result of increased political and budget pressures.

Intertwined with these budget cuts was the idea that privatization and less regulation would help reduce costs on federal lands (Crompton, 1998; More, 2005). This fear for employees and public land enthusiasts increased in 2007, when the NBR staff was reduced from 17 to 6.3 permanent full-time employees (Stumpff, 2010). It seemed that policy was determined to make the NBR private. Part of this fear justly stems from the fact that tribal documents cannot be accessed under the FOIA. According to the most recent AFA, "records of the CSKT shall not be considered Federal records for the purpose of the FOIA. The FOIA does not apply to records maintained solely by CSKT." Under FOIA, any USFWS documents are accessible for the public. However with this transfer of duties, the public has limited access to documents concerning the NBR (PEER 2012; United States, 2012). This reduces oversight and makes it much more difficult for the American people to have a say in the NBR. For many, this violated the inherently public nature of national refuges and the mission of the USFWS.

This fear was compounded by the fact that the NBR is one of the few national refuges without a Comprehensive Conservation Plan (CCP) (U.S. Fish and Wildlife Service, 2015). The CCP as a guide for the Refuge, detailing what the Refuge wants to achieve and how it will do so. Without a CCP, many were afraid of what would happen

to the NBR if it had no long-term management guide for the CSKT to follow. Another large fear stemming from this was the precedent it set for other national refuges and parks. There was and still is no national strategy for AFA's and so each agreement is negotiated on an ad hoc basis. Critics were worried that the NBR with no CCP and heavy funding cuts was a poor choice for one of the first national refuge AFA's.

Another common argument against the AFA that falls into the privatization category is that the AFA gives inherently federal actions to a group that is not a federal agency. The ISDEAA under the Tribal Self Governance Act (TSGA) of 1994 allows Indian tribes to contract for the operation of DOI programs of specific significance to tribes through AFA's. However these contracts cannot include any action or program that is considered inherently federal. (*Reed v Salazar*, 2010; Upton, 2014). This brings up this discussion of what inherently federal means and comes down to the core of what actions people think federal agencies should alone be responsible for. The idea of inherently federal actions is also inseparable from job security because those are jobs that stay with the USFWS and are not transferred to the CSKT.

It remains to be seen with the third and most recent AFA, if the agreement will last. PEER, current, and former USFWS employees still have fears, while the USFWS will most likely face yet another policy change with the imminent retirement of the Obama administration. Issues of transparency, finances, personal relationships, and privatization continue to plague the NBR. What is ironic, is that it appears the first AFA protected the NBR somewhat from budget cuts at the time and begs the question of what could have been for the NBR, had the second, 2008, AFA been successful (Stumpff, 2010).

What lessons can other Native Nations learn from the National Bison Range experience?

The National Bison Range (NBR) co-management situation is unique in many ways. This is due mostly to agency concerns and the people involved. This will of course be different for every co-management situation. However there are some important lessons that can be taken away from this situation and applied elsewhere. The NBR co-management saga illustrates the importance of effective communication.

Right away it is important to note key administrative differences between the NBR and the Badger Two Medicine Area. The NBR is managed by the United States Fish and Wildlife Service (USFWS), which is part of the Department of the Interior (DOI). The Badger Two Medicine Area is part of the Lewis and Clark National Forest. This national forest is managed by the United States Forest Service (USFS), which is part of the Department of Agriculture (USDA). The USDA and the DOI function under a very different set of laws and one of these is the Tribal Self Governance Act (TSGA) of 1994.

Under the Tribal Self Governance Act (TSGA) of 1994 Indian tribes can, “contract for the operation of DOI programs of specific significance to tribes” (Upton, 2014). This only applies to DOI programs and allows the DOI to consider co-management an option, which the USFS cannot (Nie, 2008). This means something like the AFA for the NBR can never technically be applied to the Badger Two Medicine Area. However some current proposed partnership solutions seem very similar in substance to the NBR AFA and could head down a similar, extended, unproductive negotiation pathway (Flora, 2014). On the other hand, because the USFS is under no forced imperative to co-manage the area, unlike the USFWS, this could lead to more flexible, willing, and productive discussions about collaborations in the first place.

Another important difference between the NBR and the Badger Two Medicine Area is that at the time of the first AFA and when negotiations first started for co-managing the NBR, those decisions were precedent setting for the National Wildlife Refuge system. At the time of the TSGA in 1994, no AFA’s had been created outside the Bureau of Indian Affairs (BIA). Today they still remain relatively few (Upton, 2014). However for the Badger Two Medicine Area, greater tribal involvement and ideas of co-

management are not precedent setting. There are now other examples that can be used to provide guidance from the Grand Portage National Monument (GPNM) work with the Minnesota Chippewa Tribe (MCT) and Grand Portage Band of Minnesota Chippewa (Band) to the Santa Rosa and San Jacinto Mountains National Monument work with the Agua Caliente Band of Cahuilla Indians (King, 2007; Nie, 2008; Upton 2014).

Looking at these previous examples of co-management and similar partnerships, a common theme that starts to emerge is the importance of effective communication. The two ends of this dichotomy arise from the NBR and the GPNM examples. With the GPNM, the Tribe and Band initiated talks with the National Park Service (NPS) and from there negotiations proceeded. In its enabling legislation, “the Monument was specifically established “to work with the Grand Portage Band”. This clear establishment of expectations from both parties helped set the stage for future efforts. “The Band and GPNM staffs communicate daily” and throughout the history of the Monument, the Band, MCT, and NPS have continued to work together on a variety of other projects, communicating and building a stronger partnership as the years have passed (King, 2007).

Compare this to the NBR range where a major issue with the AFA’s is how to communicate effectively between the Confederated Salish and Kootenai Tribes (CSKT) and the USFWS. Part of the reason the first NBR AFA failed so miserably was poor communication. The situation turned into a game of he said she said with the CSKT claiming, “that FWS had not notified the CSKT of alleged deficiencies and given them an opportunity to respond to them” and the USFWS claiming the CSKT were not doing their job. Furthermore, for the 2008 AFA, negotiations dragged on and outside representatives had to be brought in (*Reed v Salazar*, 2010).

Other examples where effective communication has been crucial to success include the Santa Rosa and San Jacinto Mountains National Monument work with the Agua Caliente Band of Cahuilla Indians and the Kasha-Katuwe Tent Rocks National Monument work with the Cochiti Pueblo. For the Santa Rosa and San Jacinto Monument, legislation for the area recognized its importance to the Cahuilla Indians and thus incorporated ways to make these Indian voices and opinions heard into parts of the management process. This means departments now have to, “make a special effort to

consult with representatives of the [Tribe]" and there are now committees which include tribal members, allowing them to offer opinions on management plans (Nie, 2008).

When creating the Kasha-Katuwe Monument, more cooperation was called for between the Pueblo de Cochiti and the BLM in managing the area. Part of the effectiveness of a new agreement was because the BLM, "was able to negotiate directly with the Governor and leadership of the Pueblo de Cochiti in an atmosphere of mutual respect and trust" (Nie, 2008). Both of these are examples of cooperative agreements where tribes and federal agencies came together with a willingness to recognize tribal voices and communicate with those opinions.

It is also important for the Blackfeet Tribe to recognize the importance of informal personal relationships. It does not matter if legally co-management is the right thing to do if the people who have to enforce and be part of the agreement are not satisfied. Part of the reason the GPNM AFA was so successful was because of the employees. All staff members, except for one, were willing to work under the Band, and not the NPS (King, 2007). In addition, the Superintendent of the GPNM was incredibly supportive of the project and provided strong leadership throughout the planning process (Upton, 2014). Without this support from leadership in an informal context, the project could have failed. Compare this to the NBR, where there was personal resistance from USFWS employees from the start and the regional refuge chief announced his lack of support during negotiations (Stumpff, 2010). Harmful informal relationships hampered the project from the start.

Another example of the importance of informal personal relationships comes from state fisheries management in Washington. In the 1970s, courts decided that tribes could manage their own fisheries. This was strongly opposed by the state government and became an engrained mentality in natural resource agency personnel. However with the election of a new governor, this stance was reversed. But the mentality was still entrenched in the minds of those making natural resource decisions. It took, "the replacement of 6 of the 8 senior people in the agency, to reverse the...mentality" (Pinkerton, 1992). Never forget the significance of informal relationships when making decisions.

What the NBR situation demonstrates is that willing partners who can clearly communicate expectations and are able to discuss mistakes and improvements make a huge difference. The biggest problem for the NBR has been the lack of this. The USFWS did not clearly communicate with its employees, generating an atmosphere of fear and distrust. However the CSKT did not help by poorly communicating with USFWS employees themselves. This deteriorated into poor informal relationships and has plagued the NBR AFA's ever since. The biggest implication of this for the Blackfeet Tribe and future management of the Badger Two Medicine Area is that clear effective communication needs to be maintained as a priority as the project progresses. Fears and concerns need to be addressed head on, with transparent language and negotiations. It will be hard to achieve much otherwise. It's also important to note though, that however frustrating the situation has been for the CSKT, they have not walked away from the NBR. They know how important the Refuge is to themselves and have been willing to persevere all these years. I would advocate the same for the Blackfeet tribe; no matter what tribulations the future holds.

Provide a concise, up-to-date description and analysis of the Badlands National Park planning process, with a focus on possible management options regarding the Oglala Sioux Tribe. What is the current situation? How were the management options analyzed in NEPA? What relevance, if any, does this story have for the possible future management of the Badger Two Medicine?

For decades the relationship between National Park Service and the Oglala Lakota Tribe (OLT) regarding Badlands National Park (BNP) has been contentious. This is due to the significant cultural value of the area to the OLT and disagreements over how such area should be managed. In an effort to give the OLT a greater voice in the management of the Park, especially the South Unit, various co-management situations have come under consideration. In this paper I will look at the preferred management option of the nations first Tribal National Park and how this idea has worked out in reality.

Badlands National Park is located in the southwest corner of South Dakota, near Rapid City, SD. BNP was first authorized as a national monument in 1929 but was not established until 1939. The monument was then designated as a national park in 1978. BNP is split into two units, the North and the South. Land for the initial monument was land that was originally supposed to be part of the Greater Sioux Reservation. The Greater Sioux Reservation was a massive reservation established in 1868 with the Fort Laramie treaty. However by 1889 the Greater Sioux Reservation was broken up and whittled away by treaties and reduced to 5 smaller reservations, one of which was the Pine Ridge Reservation (Lovell, 2014). This set the stage for an exclusionary relationship between the NPS and OLT.

This relationship deteriorated further in 1942, when the United States War Department took land from the Pine Ridge Reservation to create a gunnery range for training purposes for World War II. Families on this land were forced to leave on short notice and many thought they would be able to return to their lands once the war was over. However this was not the case and in 1968 the land was declared excess property. With this decision some of the land was returned and some was not. Instead, that land was held in trust for the Tribe by the federal government. But the land was only held in trust if the tribe agreed. If the tribe did not agree then the land was permanently lost. So

essentially, “only by surrendering management of the land to the Park Service would the land be held in trust for the Tribe”. This land was then used to help create the South Unit and expand the Monument, allowing it to become a National Park (Lovell, 2014; Upton 2014).

In an effort to help repair this exclusionary and negative relationship the NPS entered into a memorandum of agreement (MOA) in 1976 with the OLT that, “legally mandated a co-management agreement” (Lovell, 2014). This MOA required the NPS to work with the tribe in managing the South Unit and gives the tribe a share, “of any federally assessed entrance fees” (Upton, 2014). This relationship between the NPS and OLT was negative for many years and has only recently deepened. With the growth in trust between the two parties, it was decided that Park Service general management plan could be used to develop management options for the South Unit (Lovell, 2014; Upton 2014).

This management option planning process began in 2006 and ended in 2012 with the issuance of an environmental impact statement (EIS), followed by a record of decision (ROD) for the EIS later the same year. Decisions were reached through the traditional planning process with public scoping and public involvement that, “included public meetings, newsletters, planning team meetings with NPS and Tribal members, review of public and agency comments, and incorporation of ideas into alternatives” (United States, 2012).

NPS staff, tribal members, and the liaison for the tribal council, the Oglala Sioux Parks and Recreation Authority (OSPRA), all worked together to create the EIS and general management plan for the South Unit. It is also important to note that a new superintendent for BNP provided strong leadership for the project. He felt that active tribal participation was important and this led to an agreement that equal participation from both sides was a requirement during the planning process (Lovell, 2014).

Ultimately this planning process led to a preferred management option and a preferred alternative for the management of resources and visitor experiences. The preferred management option was a Tribal National Park that would require Congressional action to establish the South Unit as a distinct park. This was option 2 out of 7. The preferred alternative for the management of resources and visitor experiences

was to, “protect resources while expanding interpretive experience”. This was alternative 4, out of 4 (United States, 2012). This was a two tiered decision, looking to include the tribe not only in the daily management experience but also looking for tribal co-management long term.

The 6 other management options were continued current management, shared management between the NPS and OLT, an connected area that “would be managed solely by the OST as an affiliated area of the national park system”, the South Unit would become a new national park, deauthorization of the South Unit with OLT management, or a tribal park. The 3 other alternatives for the management of resources and visitor experiences were alternative A: no action, alternative B: “expanded access and opportunities for visitors to the South Unit”, and alternative C: a heavy focus, “on preservation and protection of natural and cultural resources, and restoration of natural systems” (United States, 2012).

When making decisions about the management options there was no outright analysis of specific impacts like there were for the alternatives for the management of resources and visitor experiences. However when reading through the management options, there are underlying subjects that come up repeatedly and were clearly important when considering the preferred management options. These subjects include administrative functions, funding, management of resources, staffing responsibilities, visitor experiences, implementation of EIS, and the application of federal laws, especially in the context of tribal law (United States, 2012).

This agreement and decision seemed full of potential at the time, not only for the NPS and the OLT but also for tribes across the country. A Tribal National Park founded on such collaboration could have acted as a model and set the stage for many other such projects. However since the publication of the ROD, it seems the Badlands Tribal National Park has floundered. This is due partly to issues beyond the control of the NPS and the OLT but also because of relationships between and from within the parties involved.

When the EIS was issued, the parties involved recognized that there might not be funding available and that Congressional action was needed to create a Tribal National Park. Since 2012 neither of these items have been forthcoming. The EIS specifically

recognizes that, “all projects will be contingent on funding from Congress” (United States, 2012). So if Congress is unwilling to provide to funds or actions necessary to create a Tribal National Park, it will not happen. As of 2014, only one member of South Dakota's congressional delegation had endorsed the proposal and that senator chose not to seek reelection the next year (Upton, 2014).

Meanwhile relationships between the NPS and the OLT have stagnated and people within the tribe remain ambivalent about the project. Most recently according to Tupper of the Rapid City Journal, “the Oglala Sioux Tribe has passed a resolution halting its participation in the project. Badlands National Park, meanwhile, is withholding \$442,000 of the tribe’s share of park gate receipts because of the tribe’s failure to produce required annual financial reports” (Tupper, 2015).

Part of this problem stems from a lack of communication on both sides. Tribal members that once supported the project now oppose it and it seems there is a general lack of support from tribal members (Borrell, 2013; Tupper 2015). While the NPS did try to involve tribal members in the planning process, there were low attendance levels at public participation meetings and the EIS only records that a total of 361 comments were submitted for the final EIS (Lovell, 2014; United States, 2012). This is a fairly small amount and could be indication that tribal members were not involved as much as possible.

The NPS also has not communicated as much as it could have. The NPS says that it, “began withholding the tribe’s half of the North Unit gate receipts in mid-2014 because of the tribe’s failure to produce required reports”. The tribe claims it refused to submit the reports because there is no language in the 1976 MOA requiring them to do so. The NPS disagrees (Tupper, 2015). With this dispute it’s not clear how much the NPS has tried to resolve the problem and figure out why exactly the tribe doesn’t want to submit the reports or if a solution can be discovered between the two parties.

There are several important lessons that can be drawn from this process. Some things such as funding are beyond the control of the NPS and tribe to some extent. However clear communication between all parties is within the grasp of those involved. It is important for the Blackfeet tribe to present a united front that truly represents what the tribal members want. To this extent tribal members should be heavily involved in and

informed about the planning process so their opinions are heard and recognized. It's also important for the Blackfeet tribe to communicate clearly to the Forest Service what they would like to see happen to the Badger Two Medicine area. It's just as equally important however that the Forest Service clearly communicates to the tribe what their expectations are and the guidelines they are required to follow. If either side encounters a problem, explaining the problem and trying to work towards a solution will be mutually beneficial for everyone. Sharing in problematic situations can help to prevent situations like the standoff that has occurred in the Badlands.

Meanwhile, hopes for the nations first Tribal National Park seem to be dwindling. In an effort to revive the dream of a Tribal National Park the NPS did bring in a new superintendent and deputy superintendent to BNP. Mike Pflaum, the new superintendent, "said he wants to work on rebuilding strained relationships with tribal officials and see...if there is a way to bring back the plan to create the nation's first tribal national park" (Feldman, 2015). Hopefully this dream will someday become a reality and act as a model for the future.

Bibliography

- Borrell, B. "Will the Badlands Become the First Tribal National Park?" High Country News Online. 11 Feb. 2013. Web.
- Crompton, J. "Forces underlying the emergence of privatization in parks and recreation." *Journal of Park and Recreation Administration* 16.2 (1998): 88-101. Web.
- Feldman, S. "New Badlands Superintendent 'Open-minded' on Tribal National Park." Rapid City Journal Online. 6 Aug. 2015. Web.
- Flora, G. *The Badger Two Medicine: Looking Back, Looking Forward*. The Wilderness Society. 2014.
- Hocutt, G. "Why Operation of Wildlife Refuges Shouldn't be Privatized." High Country News Online – Opinion. January 22 2007. Web.
- King, M. "Co-management or Contracting-Agreements Between Native American Tribes and the U.S. National Park Service Pursuant to the 1994 Tribal Self Governance Act." *Harvard Environmental Law Review* 31(2007): 475-530.
- Lisk, A. Email correspondence. 7 December 2015.
- Lovell, A. *Creating a Tribal National Park: Barriers that Constrain and Mechanisms that Promote Collaborative and Adaptive Environmental Management*. Dissertation – Colorado State University. 2014. Web.
- Lyons, E. "Give Me a Home Where the Buffalo Roam": The Case in Favor of the Management-Function Transfer of the National Bison Range to the Confederated Salish and Kootenai Tribes of the Flathead Nation." *Journal of Gender, Race, & Justice* 8(2005): 711-734. Web.
- More, T. "From public to private: Five concepts of park management and their consequences." *The George Wright Forum* 22.2(2005): 12- 20. Web.
- Nie, M. "The Use of Co-Management and Protected Land-Use Designations to Protect Tribal Cultural Resources and Reserved Treaty Rights on Federal Lands." *Natural Resources Journal* 48 (2008): 585-647.
- PEER – Public Employees for Environmental Responsibility, 2015. Web. November 21, 2015.
- PEER - Public Employees for Environmental Responsibility. "New Bison Range Tribal Agreement Repeats Same Old Mistakes." News – News Releases. PEER - Public Employees for Environmental Responsibility. 22 July 2014. Web.

PEER - Public Employees for Environmental Responsibility. "New Plan for Outsourcing National Bison Range to Tribe." News – News Releases. PEER - Public Employees for Environmental Responsibility. 15 May 2012.

Pinkerton, E. "Translating legal rights into management practice: overcoming barriers to the exercise of co-management." *Human Organization* 51.4(1992): 330-341. Web.

Reed v. Salazar (D.D.C. Civil Action No. 08-2117 (CKK)) (2010), *Blue Goose Alliance v. Salazar* (D.D.C. Civil Action No. 09-0640 (CKK)) (2010).

Reffalt, B., B. West, and P. Jamieson. "The National Bison Range – From the Past, For the Future." National Bison Range – About the Refuge. U.S. Fish and Wildlife Service. 2008. Web.

Stumpff, L. Teaching Case Study – Back to the Bison: The Confederated Salish & Kootenai Tribes and the National Bison Range. Enduring Legacies Native Cases Initiative, The Evergreen State College. Olympia, Washington. 2010. Web.

Tupper, S. "Dream of Tribal National Park Crumbling." Rapid City Journal Online. 3 May 2015. Web.

Upton, B. "Returning to a Tribal Self-Governance Partnership at the National Bison Range Complex: Historical, Legal, and Global Perspectives." *Public Land & Resources Law Review* 25(2014): 51-146. Web.

U.S. Fish and Wildlife Service. *Fiscal Years 2013-2016 Annual Funding Agreement Between the United States Department of the Interior Fish and Wildlife Service and the Confederated Salish and Kootenai Tribes of the Flathead Reservation*. U.S. Fish and Wildlife Service, Draft, 2012.

U.S. Fish and Wildlife Service. National Bison Range Wildlife Refuge Complex. U.S. Fish and Wildlife Service. 2014. Web.

U.S. Fish and Wildlife Service. National Bison Range – Conservation. U.S. Fish and Wildlife Service. 2015. Web. November 21, 2015.

United States. National Park Service. *South Unit Badlands National Park Final General Management Plan & Environmental Impact Statement*. National Park Service, Final, 2012.